

Economic Policy Institute

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Brian D. Pasternak,
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Employment and Training Administration,
Department of Labor,
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Washington, DC 20210

RE: Department of Labor, Employment and Training Administration,
[*Strengthening Wage Protections for the Temporary and Permanent
Employment of Certain Aliens in the United States*](#), Interim Final Rule DOL
Docket No. ETA-2020-0006, RIN: 1205-AC00

Dear Brian Pasternak:

The Economic Policy Institute (EPI) is a nonprofit, nonpartisan think tank established in 1986 to include the needs of low- and middle-income workers in economic policy discussions. EPI conducts research and analysis on the economic status of working America, proposes public policies that protect and improve the economic conditions of low- and middle-income workers—regardless of immigration status—and assesses policies with respect to how well they further those goals. EPI submits these comments on the Department of Labor’s (DOL) Interim Final Rule (IFR) regarding the updated four-tiered wage structure for H-1B, H-1B1, and E-3 nonimmigrant workers and DOL permanent labor certifications for employment-based permanent immigrant visas (i.e. green cards). EPI has researched, written, and commented extensively on the U.S. system for labor migration, including in particular, the H-1B program and other temporary work visa programs. EPI recently published a lengthy piece of research detailing the need to improve the way DOL sets the H-1B wage levels,¹ which I coauthored with Professor Ron Hira at Howard University. The report is annexed to these comments and referenced throughout them.

It must be noted that the timing and procedural aspects of the IFR have raised concerns, including among legislators who support reforming the wage levels of the

¹ Daniel Costa and Ron Hira, [*H-1B visas and prevailing wage levels: A majority of H-1B employers—including major U.S. tech firms—use the program to pay migrant workers well below market wages*](#), Economic Policy Institute, May 4, 2020.

H-1B program.² President Donald Trump campaigned on reforming the H-1B program and immediately promised to do so after winning the presidency. Yet, virtually no substantive action was taken until just weeks before the 2020 election, and despite the fact that DOL has the requisite legal authority it needs to make this regulatory change—the public was not given an opportunity to comment—thereby making the IFR susceptible to procedural legal challenges.

Nevertheless, EPI generally supports the main substance of the IFR and believes it improves the current four-tiered wage structure for H-1B, H-1B1, E-3 nonimmigrant visas and for permanent labor certifications, because it will better ensure that migrant workers are not underpaid according to U.S. wage standards while protecting the wages of U.S. workers. As a result, the rule helps address a major critique EPI has long held about the program, and which Members of Congress from both major parties have attempted to address through repeatedly proposed legislation beginning over a decade ago. Nevertheless, the rule could go further to protect wage standards, and avenues should be explored to phase in the rule for the current workforce of H-1B, H-1B1, and EB-3 workers so that they suffer no harm—but in the meantime, the IFR should only apply to new workers in those temporary work visa programs with DOL labor condition applications (LCAs) submitted after the IFR took effect—because of the potential to discourage renewals and petitions for lawful permanent residence by employers unwilling to pay market wage rates.

It must also be noted at the outset of these comments that recent actions taken by DOL with respect to wages for migrant workers in temporary work visa programs have been inconsistent and confusing. While DOL has taken action in this IFR that will raise wage rates for migrant workers in the H-1B, H-1B1, and E-3 visa programs, just days ago DOL issued a new wage rule for the H-2A program that will cut wages for the migrant farmworkers in that program³—whom the Department of Homeland Security has determined are part of the U.S.’s critical infrastructure workforce, and whom the Department of State has designated “a national security priority”—because of their contribution to stabilizing the food supply chain during the Coronavirus pandemic. DOL should issue regulations that lead to improved labor standards and higher wages for all work visa programs, and not treat workers differently based on their education levels, occupations, and nationalities. All temporary migrant workers deserve to be paid fairly for their work and no work visa programs should operate as loopholes that allow employers to legally underpay migrant workers.

The first major section of these comments addresses the flaws in the current H-1B program, and the second section specifically addresses elements of the IFR.

² [Tweet from Senator Richard Durbin](#), October 6, 2020, 4:35 p.m.

³ Dave Jamieson, “[Trump is hoping to deliver a parting gift to the agriculture lobby: an effective wage cut for farmworkers.](#)” *Huffington Post*, November 9, 2020.

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I. THE H-1B PROGRAM IS AN IMPORTANT AVENUE FOR ATTRACTING SKILLED, TALENTED WORKERS FROM ABROAD— BUT IS DEEPLY FLAWED AND IN DESPERATE NEED OF REFORM

The H-1B program provides temporary, nonimmigrant U.S. work visas for college-educated workers and fashion models from abroad. While no one can deny the importance of attracting skilled, talented workers to the United States, the reality is that some of the biggest beneficiaries of the H-1B program are outsourcing companies that have hijacked the system—using it to pay low wages, replace thousands of U.S. workers with much-lower-paid H-1B workers, and to send decent-paying technology jobs abroad. Outsourcing companies, however, are not the only abusers of the system: The vast majority of employers that use H-1B are legally allowed to pay their H-1B workers at wage levels that are below the local average for the occupation.

The major structural, programmatic flaws in H-1B are:

U.S. employers do not have to recruit U.S. workers before hiring H-1B workers

Employers and corporate lobby groups claim that they use the H-1B primarily to bring in the “best and brightest” workers from abroad to fill labor shortages in science, technology, engineering, and math fields (STEM). But despite this widely held belief, the contrary is true:

- Employers are not required to recruit U.S. workers or prove they are experiencing a labor shortage before hiring H-1B workers.
- “H-1B-dependent” employers—those filling 15% or more of their U.S. jobs with H-1B workers—are required to recruit U.S. workers first, but they get around the requirement with a cheap and easy loophole: they can hire an H-1B worker who holds a master’s degree or pay the H-1B worker an annual salary of over \$60,000. For comparison, \$60,000 per year is \$24,560 *lower* than the national median wage for all workers employed in computer occupations.⁴

U.S. employers can legally underpay H-1B workers

For years, corporate lobbyists and other H-1B proponents have claimed that H-1B workers cannot be paid less than U.S. workers because employers must pay H-1B workers no less than the “prevailing wage.” That is true in theory, but:

- Before this IFR, employers had the option of paying the prevailing Level 1 “entry-level” wage or Level 2 wage, both of which were well below the median wage (Level 3) that local employers pay workers in similar jobs.

⁴ U.S. Bureau of Labor Statistics, “[15-0000 Computer and Mathematical Occupations \(Major Group\)](#),” Occupational Employment and Wages, May 2019, Occupational Employment Statistics, U.S. Department of Labor.

- As Professor Ron Hira from Howard University and I have shown in the annexed report, in 2019, 60% of H-1B jobs were certified by DOL at the two lowest wage levels, both of which are set below the local median wage.
- While the wage level is supposed to correspond to the H-1B worker’s education and experience, in practice the employer gets to choose the wage level and the government doesn’t check unless a lawsuit or a complaint is filed by a worker.

H-1B workers are often exploited and arrive to the United States in debt after paying hefty recruitment fees

H-1B workers often pay large fees to labor recruiters, which means that many arrive virtually indentured to their employer, fearing retaliation and termination if they speak out about workplace abuses or unpaid wages. And widespread abuses have been documented—even human trafficking and severe financial bondage.⁵

H-1B workers do not have sufficient job mobility between employers and are not allowed to self-petition for lawful permanent residence

The H-1B visa itself is owned and controlled by the employer; an H-1B worker who is fired or laid off for any reason becomes instantly deportable. This arrangement results in a form of indentured servitude.⁶ Thus, H-1B workers have good reason to fear retaliation and deportation if they speak up about wage theft, workplace abuses, or other working conditions like substandard health and safety procedures on the job. While H-1B workers have the ability to switch jobs if they can find another employer willing to petition for a new visa for them, and have 60 days to find a new employer if they are fired, these avenues are not straightforward enough and inadequate to mitigate the power that employers have over the right of their H-1B workers to remain employed in the United States. These protections should be improved upon.

In addition, the ability of H-1B workers to become lawful permanent residents and remain in the United States is entirely up to the whims of their employers. Even after working for an employer for six years in H-1B status, the employer has the power to decide if an H-1B worker can remain in the country—in many cases after an H-1B worker has established firm roots in the United States. That power keeps H-1B workers from complaining and asserting their employment rights. As a result, H-1B workers should be allowed to petition on their own for permanent residence after a short provisional period—no longer than 18 months—and without the involvement of their employer.

⁵ See, for example, “[Techsploitation](#),” *Reveal News*, The Center for Investigative Reporting, and Farah Stockman, “[Teacher Trafficking: The Strange Saga of Filipino Workers, American Schools, and H-1B Visas](#),” *Boston Globe*, June 12, 2013.

⁶ Christopher Lapinig, “[How U.S. Immigration Law Enables Modern Slavery](#),” *The Atlantic*, June 7, 2017.

Outsourcing companies are using the H-1B program to underpay H-1B workers, replace U.S. workers, and send tech jobs abroad

As detailed in the annexed report, 15 of the top 30 employers of H-1B workers in 2019 were not innovative high-tech firms like Apple and Google.⁷ Some of the biggest users of the H-1B visa are staffing firms that specialize in information technology (IT) and accounting and that pay H-1B workers the lowest wages legally allowed, and outsource their H-1B employees to third-party firms. Some of those firms also have a business model dependent on sending jobs offshore where labor costs are cheaper.

Typically in this scenario, H-1B workers do computer and engineering work at the office of a U.S. employer but are employed by an outsourcing company, some of which are based abroad or have major operations abroad.⁸ The many reported cases of U.S. workers being laid off and replaced by H-1B workers have all been facilitated by this arrangement. In multiple incidents, the H-1B workers have been hired with annual wages of around \$30,000 to \$40,000 less than the workers they have replaced. Before they are laid off, the U.S. workers are often forced to train their own H-1B replacements as a condition of their severance packages; this is euphemistically known as “knowledge transfer.” Major, profitable U.S. employers like Disney and Toys “R” Us—as well as public employers and institutions like the University of California and Southern California Edison—have laid off thousands of U.S. workers who were forced to train their own replacements. Eventually, many of the outsourced jobs filled by H-1B workers get moved offshore.⁹

Contrary to the popular narrative proffered by corporations that support expanding and deregulating the H-1B visa program—the staffing firms that use H-1B visas are not using them to keep technology jobs in the United States—instead they are using them precisely to facilitate the offshoring of as many of those jobs as they can. That is in fact, the business model of those firms. News reports, including from the *New York Times*, have shown that outsourcing companies “game the system” in order to obtain a high share of H-1B visas, which leaves fewer available for the firms that directly employ H-1B workers.¹⁰

⁷ Daniel Costa and Ron Hira, [H-1B visas and prevailing wage levels: A majority of H-1B employers—including major U.S. tech firms—use the program to pay migrant workers well below market wages](#), Economic Policy Institute, May 4, 2020.

⁸ See for example, Senator Richard Durbin, [“How American Jobs are Outsourced”](#), YouTube.com video, April 16, 2016.

⁹ See for example, Stef Kight, [“U.S. companies are forcing workers to train their own foreign replacements,”](#) *Axios*, December 29, 2019; Julia Preston, [“Pink Slips at Disney. But First, Training Foreign Replacements,”](#) *New York Times*, June 3, 2015; Julia Preston, [“Toys ‘R’ Us Brings Temporary Foreign Workers to U.S. to Move Jobs Overseas,”](#) *New York Times*, September 29, 2015; Michael Hiltzik, [“How the University of California Exploited a Visa Loophole to Move Tech Jobs to India,”](#) *Los Angeles Times*, January 6, 2017; Patrick Thibodeau, [“Southern California Edison IT Workers ‘Beyond Furious’ over H-1B Replacements,”](#) *Computerworld*, February 5, 2015.

¹⁰ Julia Preston, [“Large Companies Game H-1B Visa Program, Costing the U.S. Jobs,”](#) *New York Times*, November 10, 2015.

Allowing outsourcing companies to hire H-1B workers lets employers utilize the immigration system to degrade labor standards for skilled workers—as a result, they should be barred from obtaining H-1B visas

The outsourcing/staffing model of employment generally may increase the incidence of labor law violations by separating the main beneficiary of the labor provided by H-1B workers—the third-party firm that hires the outsourcing firm, i.e. the “lead” employer—from the H-1B workers who perform the work. Firms that rely on outsourced H-1B workers are a textbook (if extreme) example of what former DOL Wage and Hour administrator David Weil calls a “fissured” workplace, where the relationship between the worker and the lead employer is fissured, or broken, via the use of a temp agency or subcontractor¹¹ (in this case the H-1B outsourcing firm). Research shows that fissuring leads to a wage penalty for workers who are subcontracted, employed as temps, and work for staffing firms,¹² in part because the subcontractor keeps a percentage of the wages earned by the workers. It is also common knowledge that employers use this model to avoid paying for benefits like health care, retirement funds, and to avoid liability for labor violations. Because the staffing and outsourcing model contributes to the fissuring of the labor market, it should not be allowed as part of the U.S. immigration system—not in H-1B or in any other temporary or permanent immigration programs.

II. ANALYSIS OF THE IFR: “STRENGTHENING WAGE PROTECTIONS FOR THE TEMPORARY AND PERMANENT EMPLOYMENT OF CERTAIN ALIENS IN THE UNITED STATES”

I will now turn to specific issues related to the IFR. In general, the rule improves upon the current wage structure but should be further enhanced and DOL should explore ways to phase in the rule for the current workforce—in the meantime it should not apply to current migrant workers in the impacted work visa programs because of the potential that employers may penalize those workers. The principal change made by the IFR is to update the four prevailing wage levels required in the H-1B, H-1B1, and E-3 visa programs—temporary work visa programs for college-educated migrant workers—to higher levels that more adequately reflect market wage rates in the U.S. labor market. The IFR also applies the new wage rates to the permanent labor certification requirements for employment-based (EB) green cards in the EB-2 and EB-3 preferences.

¹¹ David Weil, [*The Fissured Workplace: How Work Became So Bad for So Many and What Can Be Done to Improve It*](#), Harvard, 2014.

¹² A number of studies show a wage penalty for subcontracted/outsourced workers. For example, see Arindrajit Dube and Ethan Kaplan, “[Does Outsourcing Reduce Wages in the Low-Wage Service Occupations? Evidence from Janitors and Guards](#),” Cornell University ILR Review, January 1, 2010); Deborah Goldschmidt and Johannes Schmieder, “[The Rise of Domestic Outsourcing and the Evolution of the German Wage Structure](#),” *The Quarterly Journal of Economics*, Oxford University Press, vol. 132(3), 2017, pages 1165-1217; Andres Drenik, Simon Jäger, Pascuel Plotkin, and Benjamin Schoefer “[Paying Outsourced Labor: Direct Evidence from Linked Temp Agency-Worker-Client Data](#),” *Econometrics Laboratory*, University of California, Berkeley, September 2020.

The previous and new wage levels are as follows:

	<u>Previous wage percentiles (pre-IFR)</u>	<u>New wage percentiles</u>
Level 1	17%	45%
Level 2	34%	62%
Level 3	50%	78%
Level 4	67%	95%

As detailed in the annexed report, the two lowest wage levels in the pre-IFR wage rule are both below the local median wage according to the occupation and local area based on DOL wage survey data in the Occupational Employment Statistics (OES) survey, allowing employers to undercut U.S. wage standards. The IFR sets the lowest wage level at the 45th percentile, just below the local median wage, thereby continuing to permit employers to pay H-1B workers at below-market wage rates—but not at the absurdly low levels allowed by the previous wage levels.

Raising wages for H-1B workers and permanent labor certifications will benefit migrant workers and protect wage standards for U.S. workers, and not reduce the number of future H-1B workers

As discussed in the first section, for years, H-1B employers have been allowed to pay their H-1B workers at wage rates that do not reflect local market rates, by having an option to pay them at the two lowest permitted wage levels. The annexed report coauthored by Professor Ron Hira and I discusses the available data, the mechanics of the rule, and why it is important to modify the H-1B wage levels to adequately reflect market wages and ensure that H-1B workers are paid fairly, and to preserve U.S. wage standards. In the report we recommend that DOL prohibit any H-1B job from being certified at a wage that is below the local median for the occupation and region. In that respect, by setting the lowest wage level (Level 1) at the 45th percentile, DOL's IFR fails to do enough to protect wage standards in H-1B jobs. In the report we further recommend that DOL put upward pressure on H-1B wages by raising the minimum H-1B wage level to the 75th percentile, and prohibit downward pressure on wages at the national level by requiring that every H-1B job be certified at a wage that is no lower than the national median wage for the occupation.

Many commentators on this IFR, especially from the business community, including universities, will claim that raising wages for migrant workers will harm the U.S. economy and result in excluding migrants from working in the U.S. labor market. Neither of these arguments is supported by the available evidence. What the discussion in the first section of these comments shows, is that the wages of H-1B workers are being kept artificially low. The higher wage levels in DOL's IFR are based on current wage trends and better reflect market wages in particular occupations and specific geographic regions. In other words, DOL's proposal will push wage levels *toward* market wages, meaning it will *increase* labor market efficiency.

When the misleading rhetoric is stripped away, the H-1B employers who oppose higher wage levels in H-1B are simply claiming, in essence, that employers will only hire H-1B workers if they are underpaid relative to similarly situated U.S. workers, and portray higher wages as an obstacle to migration. Accepting this argument leads to a race to the bottom in terms of labor standards and excuses the co-optation of the immigration system in order to pad corporate profits. Adequate labor standards are never a barrier to migration—instead, they are a prerequisite to fair treatment for the migrant workers who are recruited by employers into the U.S. labor market and similarly situated U.S. workers.

Employer groups have also failed to provide any evidence for the claim that would suggest that higher wages for H-1B workers will lead to fewer H-1B visas being issued. In fact, the available evidence suggests that is not the case. While there are 85,000 visas available for H-1B workers in the private sector every year, the annexed report shows that in 2019, there were over 300,000 H-1B jobs certified on LCAs at prevailing wage levels 3 and 4—the 50th and 67th wage percentiles, respectively, under the previous wage rule. Those applications suggest that there are more than enough H-1B jobs that employers seek to fill at wage rates that are at least as high as the local median wage; over three times as many as the annual H-1B visa cap. Therefore, raising H-1B wage levels so that they adequately reflect market wage rates will not undermine the program, but enhance it so that it requires fair pay and incentivizes recruitment of higher-skilled migrant workers, rather than workers who will fill entry level positions for low pay.

DOL must put measures in place that would prevent employer misclassification of H-1B workers at the wrong wage levels

As noted earlier, the IFR requires that minimum H-1B salaries are set at more realistic wage rates that reflect the local market rates for H-1B jobs. While each wage level is intended to correspond to the H-1B worker’s education and experience, in practice the employer gets to choose the wage level and DOL does not verify that a prevailing wage is appropriate unless a lawsuit or a complaint is filed by a worker. Such complaints are unlikely since it would require an H-1B worker to blow the whistle on their own employer, the same employer that controls the H-1B worker’s visa status and ability to remain in the United States. I am unaware of any cases in which DOL has investigated an LCA-stage misclassification of an H-1B wage level,¹³ but there have been reports of, for example, H-1B employers receiving approval for LCAs that certify they will pay employees at the same prevailing wage level despite having job titles that clearly warrant different wage levels.

A well-known firm received approval for two different LCAs at the same wage level (Level 2) even though one LCA had the job title *Senior Software Engineer* and the other had the job title *Software Engineer*.¹⁴ The firm, a major employer of H-1B workers, is not

¹³ See further discussion in the annexed report.

¹⁴ Ethan Baron, “[H-1B: Uber snatches up more foreign-worker visas as it lays off hundreds of employees](#),” *Mercury News*, October 17, 2019.

accounting for differences in skill levels as evident from its own job titles when selecting the LCA wage level. Both engineers and senior engineers are receiving the exact same salary and wage level, and they are approved by DOL with zero scrutiny. Using the DOL Prevailing Wage Determination Policy Guidance, the LCAs in this case should be instantly flagged by identifying keywords like *senior*, *head*, *chief*, and *lead* within job titles, and should be checked to determine if the prevailing wage levels are appropriate. This example points to a larger need for DOL to create a more robust compliance system to ensure that employers do not misclassify workers at inappropriate wage levels.

As a result, the H-1B application and petition process should be updated so that DOL reviews the qualifications of individual workers before United States Citizenship and Immigration Services (USCIS), within the Department of Homeland Security, approves an H-1B petition, to ensure that wage levels match up with the age, education, and experience of H-1B workers. While USCIS currently performs this role to some extent, USCIS adjudicators lack expertise in wage and hour issues and do not have the same mandate to protect labor standards as DOL staff. Therefore, these functions should be undertaken by the proper agency. DOL and USCIS already have a mandate to cooperate on H-1B applications and enforcement; a memorandum of understanding between the Secretaries of Homeland Security and Labor could detail a process where DOL plays a prominent role in ensuring that H-1B workers are classified at the appropriate wage levels. Published guidance from DOL on H-1B skill levels that is more detailed, clearer, and more realistic, would also be helpful for everyone involved—employers and adjudicators alike.

To avoid harming migrant workers, DOL should explore ways to phase in the IFR's new wage levels for current H-1B, H-1B1, and E-3 workers and applications for permanent labor certification for any nonimmigrant workers who were already employed in the United States before the IFR came into effect—in the meantime, the new wage levels should not apply to them

While a significant share of the current H-1B workforce of nearly 600,000 have likely been underpaid since their arrival in the United States and deserve a raise, the IFR's new wage levels should nevertheless *not* immediately be applicable to the current workforce of H-1B, H-1B1, and EB-3 workers, because of the potential to discourage renewals and petitions for lawful permanent residence—which will ultimately harm the migrant workers the rule should protect.

The workers with temporary work visas and employers already in an employment arrangement before the IFR took effect contracted under one set of rules and expectations, and it is reasonable to refrain from changing those terms and conditions of employment on them now. While an ideal outcome would be for H-1B employers to voluntarily raise the wages of their current H-1B employees in accordance with the new wage levels set in the IFR, in reality, some employers are likely to balk at higher wages for their workers, leading them to decide not to renew the visas of their H-1B workers

and to not petition for lawful permanent residence for them either. As a result, requiring the new wage rates midstream in this way could ultimately hurt the very H-1B workers the rule should benefit.

To balance the interest of employers and current H-1B, H-1B1, and E-3 workers, DOL should immediately work with USCIS to explore possible measures that would prevent harming nonimmigrant workers at the point of visa renewal, such as a phase-in process for higher wages, as well as positive incentives for employers who match the new wage requirements for their existing workforce, and additional worker protections for H-1B, H-1B1, and E-3 workers.

Thus, for now, the IFR's new higher wage levels should therefore only apply to new workers with LCAs submitted for them after the IFR took effect. Likewise, the IFR's new higher wage levels for permanent labor certifications for EB-2 and EB-3 green cards should only be required for new applications from abroad after the IFR took effect, and for H-1B, H-1B1, and E-3 workers who did not yet have an LCA submitted for them until after the IFR took effect.

DOL had the requisite legal authority to change the H-1B prevailing wage levels

As discussed in detail in the annexed report, DOL has the requisite legal authority to change the H-1B prevailing wage levels to an appropriate rate that protects wage standards and prevents adverse effects on U.S. workers in H-1B occupations. No analyst or commentator has credibly argued otherwise. For far too long, the H-1B wage levels have been set at an artificially low level that undercuts U.S. wage standards, therefore, it is reasonable for DOL to increase the minimum wage levels so that Level 1 is no lower than the local median wage.

If the new wage levels in the IFR are enjoined, DOL should reissue the rule as a proposed rule with an opportunity for notice and comment

Litigation has been filed that seeks to enjoin the IFR on procedural grounds, due to the fact that DOL issued the IFR claiming that there was an emergency need to issue the rule quickly. DOL claims that the emergency justified its decision to not propose the new wage levels first through a Notice of Proposed Rulemaking (NPRM) that would have allowed the public an opportunity to comment on them. It is possible that the IFR will be enjoined in the near future; if that does occur, DOL should reissue the regulation as an NPRM, allow the public to submit comments, consider the public's input, and then issue a final rule with the same or higher wage percentiles for wage levels 1-4.

The Office of Foreign Labor Certification's database sometimes generates OES wage rates that are demonstrably too low

Even with the new wage rates required by the IFR, some results for prevailing wages generated by DOL's Office of Foreign Labor Certification (OFLC)—based on OES data

and which are found at the FLC Data Center website—reflect wages that are demonstrably too low to be credible according to other reliable sources of wage data

For example, the FLC Data Center returns a Level 1 wage of \$10.69 per hour or \$22,235 per year for Electrical Engineers (SOC: 17-2071) in the College Station-Bryan, Texas (Area Code: 17780).¹⁵ Entry level salaries for Electrical Engineers are \$69,000 per year according to the National Science Foundation’s (NSF) survey of recent college graduates; therefore, a wage of \$10.69 per hour is obviously inaccurate and too low.¹⁶ Even the Level 2 wage of \$25.77 or \$53,602 is obviously too low.

Such low wage results can be found in other occupations and geographies. For example, a Software Developers – Applications (SOC: 15-1132) Level 1 wage in Eastern Oregon yields a wage of \$17.61 hour or \$36,629 year.¹⁷ This compares to the NSF survey that finds a median wage of recent graduates with bachelor’s degrees in Computer Science is \$70,000.¹⁸

These inaccuracies need to be corrected to meet the intent of the programs. DOL should conduct a systematic review of major H-1B occupations to ensure that the OES does not create absurd results that are not in line with other credible sources of salary information like the NSF’s survey of recent college graduates.

DOL has failed to clear up confusion about OFLC’s prevailing wage results that do not generate four wage levels

There is widespread confusion—as evidenced by discussion in the media, among H-1B employers, and detailed in legal complaints filed seeking to enjoin the IFR—with respect to certain FLC Data Center wage search results for wage levels based on OES data.

Some FLC Data Center OES wage searches—such as this one for Software Developers, Applications, in the San Francisco-Oakland-Hayward region—return the following message:

“Leveled wages cannot be provided in Area 41860 for the occupation code 15-1132 due to limitations in the OES data. Employer provided surveys may be considered under the appropriate regulation, unless the provision of a survey is not permitted. The wage data may be at least: \$100.00 hour, \$208,000 year.”¹⁹

¹⁵ Link to OFLC OES result: <https://www.flcdatacenter.com/OesQuickResults.aspx?code=17-2071&area=17780&year=21&source=3>

¹⁶ National Science Foundation, National Center for Science and Engineering Statistics, NSF-19-304, [Table 9-13](#), *Employment status and median salary of recent science, engineering, and health bachelor's degree recipients from U.S. educational institutions, by field of bachelor's degree, sex, race, ethnicity, and disability status: 2017*.

¹⁷ See FLC Data Center result at: <https://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1132&area=4100008&year=21&source=3>

¹⁸ National Science Foundation, National Center for Science and Engineering Statistics, NSF-19-304, [Table 9-13](#), *Employment status and median salary of recent science, engineering, and health bachelor's degree recipients from U.S. educational institutions, by field of bachelor's degree, sex, race, ethnicity, and disability status: 2017*.

¹⁹ See FLC data center result at: <https://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1132&area=41860&year=21&source=3>

In this example of an FLC Data Center result that does not include wage rates at each of the four wage levels, the mean (i.e. average) wage for the occupation and area is nevertheless reported (\$69.83 per hour - \$145,246 per year).

News organizations and commentators on immigration have been reporting that the OFLC-generated OES wage search results such as these are defaulting to set the prevailing wage at \$100.00 per hour or \$208,000 per year for the occupation and local area. This appears to be a misreading of the results. It is not clear what the prevailing wage should be in such instances, but neither is it obvious that \$100.00 per hour or \$208,000 year is the established and required prevailing wage rate.

DOL should therefore act quickly to clarify what the appropriate action is for employers to take in these circumstances. The IFR's FAQ Rounds 1 and 2 provided by the OFLC do not clear up this confusion whatsoever.²⁰ Is the employer required to use an alternative method to the OFLC-generated OES wage rates in these cases? Or is the employer required to use the mean wage generated, or pay the H-1B, H-1B1, or E-3 worker \$100.00 per hour/\$208,000 per year? Or can the employer choose between them?

DOL must provide more clarity about alternative sources of wage data, including private wage surveys, to set H-1B prevailing wages, and inform the public about their impact on H-1B wage rates

Under the main prevailing wage regulation language at 20 C.F.R. §655.731, an employer has a number of options at their disposal to determine a prevailing wage for an LCA. In other words, the OES wage levels are just one of the available options. The employer may use one of the following sources to establish a prevailing wage: the “actual wage,” defined as “the wage rate paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question;” the OES wage, the wage set in an applicable Collective Bargaining Agreement, an applicable wage set by the Davis-Bacon Act or McNamara-O’Hara Service Contract Act, an Office of Foreign Labor Certification National Processing Center prevailing wage determination, or a wage set by an independent authoritative source or another legitimate source of wage data.

Therefore, employers do not need to use the OFLC’s OES data to determine a prevailing wage for an LCA. The IFR corrects the longstanding problems in how the prevailing wage was determined using the OFLC-generated OES wage rates, but it remains silent on an employer using an independent authoritative source or another legitimate source of wage data, which include private wage surveys accepted by DOL. Standards for such alternative sources of wage data are described in 20 CFR § 655.731, but it remains unclear how such sources compare to OFLC-generated OES prevailing wages. Table 1 in the annexed report shows that in 2019, at least 9% of all certified wages for H-1B

²⁰ See OFLC FAQs at <https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-1B-Prevailing-Wage-IFR-FAQs-20201008.pdf> and <https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-1B-Wage-Protection-FAQ-Round-2-10-29-20.pdf>

positions on LCAs were set by a private wage survey or other source accepted by the OFLC as legitimate.

In order to promote transparency and comport with the statutory requirement that H-1B employers “will provide working conditions for [H-1B workers] that will not adversely affect the working conditions of workers similarly employed,”²¹ DOL should conduct a study to benchmark the use of alternative wage data and especially private wage surveys against the OFLC-generated OES prevailing wages, to identify whether there are any systematic biases in such sources. If such biases are found, DOL should propose new rules to ensure that the alternative wage sources are not undermining U.S. wage standards.

The recent history of the use of private wage surveys to set wages in the H-2B visa program—a temporary work visa program for jobs outside of agriculture including in landscaping, forestry, hospitality, and construction—is instructive and should inform DOL’s review of wage surveys and other sources of wage data for setting H-1B wages. The evidence is clear in the H-2B context that when employers use private wages surveys, they primarily use them to pay lower wages than would otherwise be required.

In 2013 when DOL raised the minimum H-2B prevailing wage from the 17th wage percentile to the mean wage for the occupation and local area, H-2B employers immediately and en masse, shifted their business model to use private wage surveys to set H-2B wage rates at below-average wage rates. Evidence revealed in federal litigation clearly suggests that the shift to the use of private wage surveys was a systematic response to higher wage rates, and one that was clearly successful. Specifically, in the nine months beginning soon after the H-2B wage rule was updated—between July 1, 2013, and March 31, 2014—employers increased their submissions of private wage surveys for H-2B prevailing wage determinations by 3,182%, as compared with the 12 months leading up to the federal court decision that invalidated the previous H-2B wage rule. In 21.1% of those prevailing wage determinations set by private wage surveys, the certified H-2B wage was lower than the previous prevailing wage system where the Level 1 H-2B prevailing wage was set at the 17th percentile wage by occupation and local area, according to OFLC-generated OES wage survey data, and 94.4% of the determinations were for a wage that was lower than the Level 2 wage, at the 34th percentile.²² Despite the fact that the H-2B prevailing wage has been set at the local average wage and DOL restricted the use of private wage surveys in 2015, they are still commonly used and successful at lowering wages for H-2B workers. One clear example of this which has been detailed, is a group of H-2B workers employed as crabpickers in Maryland—they earned roughly 25% less per hour than they should have been paid according to the local corresponding OES wage.²³

²¹ [8 U.S.C. 1182 \(n\)\(1\)\(A\)\(i\)\(II\)](#).

²² See discussion of the 2013 Interim Final Rule setting the H-2B prevailing wage methodology in Daniel Costa, [The H-2B temporary foreign worker program: For labor shortages or cheap, temporary labor?](#) Economic Policy Institute, January 19, 2016.

²³ Daniel Costa, [“H-2B crabpickers are so important to the Maryland seafood industry that they get paid \\$3 less per hour than the state or local average wage.”](#) *Working Economics* (Economic Policy Institute blog), May 26, 2017.

III. CONCLUSION

The H-1B visa program is the largest temporary work visa program in the United States and an important pathway into the U.S. labor market for skilled migrants from around the world—but a pathway that has serious deficiencies when it comes to the labor rights of migrant workers and preserving U.S. labor standards. By issuing this IFR, DOL has taken an important first step towards reversing decades of artificially depressed wage rates for H-1B workers. But as these comments suggest, more should be done to improve the effectiveness of the updated prevailing wage rates and safeguards must be put in place so that H-1B workers are not penalized and stripped of the opportunity to eventually become lawful permanent residents.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dan Costa", with a horizontal flourish extending to the right.

Daniel Costa
Director of Immigration Law and Policy Research
Economic Policy Institute
Washington, DC

H-1B visas and prevailing wage levels

A majority of H-1B employers—including major U.S. tech firms—use the program to pay migrant workers well below market wages

Report • By [Daniel Costa](#) and [Ron Hira](#) • May 4, 2020

Key takeaways

H-1B is a flawed visa program:

- **DOL lets H-1B employers undercut local wages.** Sixty percent of H-1B positions certified by the U.S. Department of Labor are assigned wage levels well below the local median wage for the occupation. While H-1B program rules allow this, DOL has the authority to change it—but hasn't.
- **A small number of employers dominate the program.** While over 53,000 employers used the H-1B program in 2019, the top 30 H-1B employers accounted for more than one in four of all 389,000 H-1B petitions approved by U.S. Citizenship and Immigration Services in 2019.
- **Outsourcing firms make heavy use of the H-1B program.** Half of the top 30 H-1B employers use an outsourcing business model to provide staff for third-party clients, rather than employing H-1B workers directly to fill a special need at the company that applies for the visa.
- **Major U.S. firms use the H-1B program to pay low wages.** Among the top 30 H-1B employers are major U.S. firms including Amazon, Microsoft, Walmart, Google, Apple, and Facebook. All of them take advantage of program rules in order to legally pay many of their H-1B workers below the local median wage for the jobs they fill.

Introduction and summary

H-1B is a temporary nonimmigrant work visa that allows U.S. employers to hire college-educated migrant workers as well as fashion models from abroad; nearly 500,000 migrant workers are employed in the United States in H-1B status.¹ The H-1B is an important—but deeply flawed—vehicle for attracting skilled workers to the United States. The H-1B visa is in desperate need of reform for a number of reasons that we have explained in other writings,² but the fundamental flaw of the H-1B program is that it permits U.S. employers to legally underpay H-1B workers relative to U.S. workers in similar occupations in the same region. This report explains how this occurs by describing the H-1B prevailing wage rule and analyzing the available data on the wage levels that employers promise to pay their H-1B employees.

Background

The U.S. Department of Labor (DOL) has broad discretion to set H-1B wage levels, that is, the minimum wage employers must pay their H-1B workers, which corresponds to the H-1B workers' occupation and the region where they will be employed. By law, DOL must set four H-1B wage levels—which it does according to wage survey data from the Bureau of Labor Statistics' Occupational Employment Statistics survey. DOL has set the two lowest levels (of the four) well below the local median wage.

We believe that the median wage for an occupation in a local area is reflective of the minimum market rate that should be paid to an H-1B worker in order to safeguard U.S. wage standards and ensure that migrant workers in H-1B status are compensated fairly. By setting two of the four wage levels *below* the median—and thereby not requiring that firms pay market wages to H-1B workers—DOL has in effect made wage arbitrage a feature of the H-1B program. Changing program rules to require and enforce above-median wages for H-1B workers would disincentivize the hiring of H-1B workers as a money-saving exercise, ensuring that companies will use the program as intended—to bring in workers who have special skills—instead of using the H-1B as a way to fill entry-level positions at a discount.

The fundamental flaw of the H-1B program is that it permits U.S. employers to legally underpay H-1B workers relative to similar U.S. workers.

Wage-level data make clear that most H-1B employers—but especially the biggest users, by nature of the sheer volume of workers they employ—are taking advantage of a flawed H-1B prevailing wage rule to underpay their workers relative to market wage standards, resulting in major savings in labor costs for companies that use the H-1B. Further, our analysis of H-1B prevailing wage levels raises serious doubts about whether H-1B employers, including the top 30 H-1B employers and major U.S. technology firms, use the program solely, or even mostly, to hire workers with truly specialized skills.

A note about the data

The two initial stages to the H-1B application process are: First, an employer must submit a Labor Condition Application (LCA) to the U.S. Department of Labor (DOL), describing the positions they wish to hire H-1B workers for. Once the LCA has been certified by DOL (certifications are mostly pro forma and are only denied for obvious errors and inaccuracies), the employer can then submit a petition to U.S. Citizenship and Immigration Services (USCIS), Form I-129, for approval for an H-1B for a specific worker who will fill a position. (Note that not all LCA approvals result in approved petitions for H-1B worker visas.) Migrants who are not in the United States after USCIS approves a petition for their employment in H-1B status must then take the extra step of applying to the U.S. State Department for a visa.

For the purposes of our analysis, we look at both DOL LCA data and USCIS petition data, as described below.

Key findings

The two lowest permissible H-1B prevailing wage levels are significantly lower than the local median salaries surveyed for occupations. The two lowest H-1B wage levels set by DOL correspond to the 17th and 34th wage percentiles locally for an occupation. This translates into salaries that are significantly lower than local median salaries—17% to 34% lower on average for computer occupations (which are among the most common H-1B occupations). H-1B employers can reap significant savings by selecting one of the two lowest wage levels instead of the Level 3 wage (the median, or 50th-percentile, wage) or the Level 4 wage (above the median, at the 67th percentile).

Not surprisingly, three-fifths of all H-1B jobs were certified at the two lowest prevailing wage levels in 2019. In fiscal 2019, a total of 60% of H-1B positions certified by DOL had been assigned wage levels well below the local median wage for the occupation: 14% were at H-1B Level 1 (the 17th percentile) and 46% were at H-1B Level 2 (34th percentile).

Likewise, three-fifths of H-1B jobs certified for the top 30 H-1B employers were at the two lowest prevailing wage levels. Twelve percent of all certified positions for the top 30 H-1B employers were set at the Level 1 wage, and nearly half (48%) were certified at Level 2, meaning that 60% (three in five) of all H-1B jobs for the top 30 employers were certified at wages lower than the local median wages for the occupations.

The top 30 H-1B employers play an outsized role in the program. In 2019, 53,377 employers had at least one petition approved for an H-1B worker. However, the top 30 H-1B employers accounted for more than a quarter, or one in four, of all H-1B petitions approved by U.S. Citizenship and Immigration Services for initial and continuing H-1B employment (105,660 of the 389,323 total). Looking at the DOL data on Labor Condition

Applications, the top 30 H-1B employers received approval for 371,461 H-1B positions on LCAs, accounting for 38% of the 968,538 H-1B positions certified by DOL in fiscal 2019.

The vast majority of employers that use the program employ very few H-1B workers. In fiscal 2019, 86% of the 53,377 H-1B employers were approved by USCIS for five or fewer H-1B workers, including both new and continuing H-1B workers, while the top 30 H-1B employers were approved for an average of 3,522 H-1B workers each.

Half of the top 30 H-1B employers use an outsourcing business model. Fifteen of the companies listed in the top 30 H-1B employers have a business model based on outsourcing jobs; these companies place their H-1B hires at third-party client sites. These companies rely on the H-1B program to build and expand their business, which sometimes includes sending U.S. jobs overseas.

Major U.S. firms—not just outsourcing companies—pay low wages to their H-1B employees. Major U.S.-based technology firms that hire H-1B workers directly, rather than contract them out to third-party employers, had significant shares of their certified H-1B positions assigned as Level 1 or Level 2, the two lowest wage levels in fiscal 2019, both of which are below the local median wage:

- Amazon and Microsoft each had three-fourths or more of their H-1B positions assigned as Level 1 or Level 2.
- Walmart and Uber had roughly half of their H-1B positions assigned as Level 1 or Level 2.
- IBM had three-fifths of its H-1B positions assigned as Level 1 or Level 2.
- Qualcomm and Salesforce had two-fifths of their H-1B positions assigned as Level 1 or Level 2.
- Google had over one-half assigned as Level 2.
- Apple had one-third of its H-1B positions assigned as Level 2.

Recommendations

DOL should act. The H-1B prevailing wage should reflect realistic market wage levels and help prevent downward pressure on U.S. wage rates in H-1B occupations. To accomplish this, we recommend that DOL use its existing authority to set the lowest (Level 1) wage to the 75th percentile for the occupation and local area and also require that wage offers to H-1B workers never be lower than the national median wage for the occupation.

Congress should act. Further, to ensure that future administrations do not reduce wage levels, Congress should enact a statute setting reasonable minimums for H-1B wage levels and providing DOL with new legal authority and funding to conduct random audits of H-1B employers to verify that they are not manipulating job titles and wage levels in order to underpay H-1B workers. The H-1B and L-1 Visa Reform Act of 2017, introduced by Senators Chuck Grassley (R-Iowa) and Richard Durbin (D-Ill.), would vastly improve the H-1B program along these lines.³ The Act would eliminate the two lowest wage levels, so that H-1B

workers could not be paid at a wage that is lower than the local median (50th-percentile) wage, and would grant DOL new authority to increase audits and hire additional staff.

H-1B visas, Labor Condition Applications, and prevailing wage levels

The statute creating the H-1B visa—which allows U.S. employers to hire college-educated workers as well as fashion models from abroad—contains language establishing a “prevailing wage.”⁴ This prevailing wage requirement is intended to protect the wages of U.S. workers in occupations requiring a college degree from adverse impacts and to prevent college-educated migrant workers from being underpaid and exploited. Corporate lobbyists and other H-1B proponents often cite this prevailing wage requirement in the H-1B law as evidence that H-1B workers cannot be paid less than U.S. workers. However, the reality is that the H-1B statute, regulations, and administrative guidance allow employers wide latitude in setting wage levels.

Hiring an H-1B worker is an action that occurs outside of the normal operation of the labor market, with the government setting key hiring and employment rules. As such, setting an appropriate wage level is critical to ensure the program operates in a way that is fair to both U.S. workers in major H-1B occupations and the migrant workers who are hired through the H-1B program. The migrant workers hired through the H-1B program should possess specialized skills and fill genuine shortages in the U.S. labor pool. The shortages should be significant enough that they cannot easily be filled by standard market mechanisms such as: increasing offered wages to the existing U.S. labor pool, training and developing the skills of U.S. workers, or expanding recruitment to find new employees from the U.S. labor pool. To ensure that migrant workers possess specialized skills and are filling genuine shortages, H-1B policy should set the prevailing wage for an H-1B worker at a wage that is higher than the market wage.

Conceptually, the market wage is the wage a U.S. worker would command for a position in a specific occupation and region. We believe that the most reasonable and closest proxy for a market wage is the median wage for an occupation in a local area. However, employers seeking to hire workers through the H-1B program may select from among four permissible “prevailing” wage levels—the two lowest of which the U.S. Department of Labor (DOL) sets significantly *below* the local median wage. The 2005 statutory language from Congress requires there be four H-1B prevailing wage levels,⁵ but does not prescribe what these wage levels should be relative to the local wage distribution.⁶ DOL has yet to explain its reasoning and justification for setting the two lowest levels below the local median wage.

The process of assigning prevailing wage levels to H-1B positions is done through what is known as a Labor Condition Application (LCA)—the first stage of the H-1B process. Employers must submit LCAs to DOL, and those LCAs must be certified by DOL before

employers can submit petitions to United States Citizenship and Immigration Services (USCIS) to hire H-1B workers. In an LCA, an employer specifies one or more positions it wants to hire an H-1B worker for, including the occupations being hired for, the geographic locations where the workers will be placed, and, for each position, the wage level chosen, the prevailing wage (the government-required minimum wage at that wage level), and the salary the employer intends to pay for that position (which must be at least as high as the specified prevailing wage).

The LCA is the H-1B program's primary mechanism to ensure employer accountability, by requiring employers to promise they will comply with H-1B visa rules and pay at least the prevailing wage that corresponds to a specific occupation in a geographic area. The LCA is intended to preserve the integrity of the labor market by safeguarding the wages and working conditions of U.S. workers and of migrant workers employed with H-1B visas.

DOL reviews individual LCAs and then either certifies or denies the requested positions. The review process is perfunctory, with "minimal human intervention," according to a report from DOL's own inspector general.⁷ Electronically submitted LCAs may be approved in a matter of minutes. To be approved, applications must only be "complete and free of obvious errors." The inspector general's report labeled the DOL's review of LCAs as simply a "rubber stamp" that "adds nothing substantial to the process."

In fiscal 2019, 968,538 H-1B positions were certified through LCAs. However, it is important to note that not all certified positions in LCAs go on to become approved USCIS petitions that ultimately allow employers to hire H-1B workers; every year there are many more positions certified by DOL than the ultimate number of H-1B petitions and work visas that are approved, because employers may decide not to use the certified positions from an LCA in a petition (application) for a worker, or the subsequent petition might be denied by USCIS, or the employer may not be allowed to petition because of the H-1B visa's annual numerical limit.⁸ The total number of H-1B petitions approved for H-1B workers by USCIS in fiscal 2019 was 389,323, which includes approved petitions for both initial (new) and continuing employment.

When reporting wage levels for H-1B positions on an LCA, the employer follows DOL guidelines for determining the appropriate prevailing wage that corresponds to each H-1B position. Since wages for workers in an occupation can vary widely, DOL relies on data from one of the U.S. Bureau of Labor Statistics' major surveys—the Occupational Employment Statistics (OES) survey—to construct a distribution of wages for each occupation in a specific geographic location. DOL then sets four prevailing wage levels, with each level set at a specific percentile in the distribution. Employers must use either the OES survey or a private wage survey (more on this later) to determine the wage levels that correspond to the occupation and geographic location for each position, so they do have some constraints in identifying the prevailing wages they are asking DOL to certify. However, employers have significant latitude to decide which of the four wage levels get assigned to particular jobs.

As noted above, employers have four wage levels to choose from: They may pay the Level 1 "entry-level" prevailing wage, which DOL sets at the 17th percentile of wages surveyed

for the occupation in the local area. This is clearly the bottom of the distribution, with 83% of workers in that occupation being paid more than the Level 1 H-1B worker. Employers may also opt to pay the Level 2 wage, which is at the 34th percentile. The Level 3 wage is at the 50th percentile—the median wage—and Level 4 is at the 67th percentile, the only wage level that is higher than the median.⁹ While the wage level is intended to correspond to the H-1B worker’s education and experience, in practice the employer gets to choose the wage level and the government doesn’t verify that a prevailing wage is appropriate unless a lawsuit or a complaint is filed by a worker. Such complaints are unlikely since it would require an H-1B worker to blow the whistle on their own employer, the same employer that controls the H-1B worker’s immigration status and ability to remain in the United States. We know of no cases in which DOL has investigated an LCA-stage misclassification of an H-1B wage level.

Three-fifths of all H-1B jobs were certified at the two lowest prevailing wage levels in 2019

Although salary information that corresponds to requested positions on LCAs has been made available by DOL for a number of years through the Office of Foreign Labor Certification’s LCA disclosure data, until recently the prevailing wage *levels* selected by employers were not readily available. In 2011, the Government Accountability Office (GAO) for the first time reported what some had suspected and speculated about but to that point were not able to officially confirm: The vast majority of H-1B jobs were being certified by DOL at the two lowest wage levels.¹⁰

GAO reported that between June 1, 2009, and July 30, 2010, 83% of H-1B jobs were certified at Level 1 or Level 2. Only 11% were certified at the median wage and a mere 6% (one in 17 workers) at a wage above the median. DOL has since released wage-level data for fiscal years 2015, 2017, 2018, and 2019.¹¹ Our analysis of the data, shown in **Table 1**, reveals that in every year for which the raw data on prevailing wage levels has been made available, at least three-fifths of all H-1B positions certified were assigned by employers as Level 1 or 2: 80% in fiscal 2015, 62% in fiscal 2017, 63% in fiscal 2018, and 60% in fiscal 2019. The fiscal 2019 wage-level data from DOL show that Level 1 accounts for 14% of all certified positions, Level 2 accounts for 46%, Level 3 accounts for 19%, and Level 4 accounts for 12%; alternative wage surveys were used for 9% of certified positions.

The two lowest permissible H-1B wage levels are significantly lower than the median of salaries surveyed for the occupation in the local area

In order to understand the differences among salary amounts that correspond to prevailing wage levels, we provide an example in **Table 2** that comes from the Foreign Labor Certification (FLC) Data Center’s Online Wage Library. The Online Wage Library lists prevailing wage levels for every available occupation and geographic area, based on DOL’s OES survey data, and employers visit this site to find the appropriate wage levels for the vast majority of H-1B positions they list on LCAs. (Employers used alternative wage surveys to set the prevailing wage for 9% of positions certified in 2019; see Table 1.)

For our example, we selected the occupation of Software Developers, Applications—nationally the most common certified H-1B occupation in 2019—and selected the Washington, D.C., metropolitan area as the region. Table 2 shows the DOL minimum annual salary that employers must pay H-1B workers for this occupation and region at each of the four corresponding prevailing wage levels. Employers hiring at Level 1 receive a discount of 36%, or \$41,746, versus paying the median wage for the job in the region—represented by Level 3—and those hiring at Level 2 receive a discount of 18%, or \$20,863.

This example is typical of the wage differentials between the levels and shows how, because of where DOL has set the percentiles for the wage levels, employers can reap significant savings by selecting the two lowest wage levels instead of the Level 3 wage (the median) or Level 4 wage (above the median, at the 67th percentile). The Level 1 wage for computer occupations nationwide in the FLC’s data set is, on average, 34% lower than the median and Level 2 is 17% lower than the median for the occupation in the local area.¹²

The top 30 H-1B employers play an outsized role in the program and half use an outsourcing business model

We now take a closer look at the 30 H-1B employers with the largest number of approved petitions at USCIS—which we refer to as the “top 30” H-1B employers. Approved USCIS petitions for H-1B workers are the best way to identify the number of actual H-1B workers employed in a given fiscal year, as opposed to LCA positions certified by DOL.¹³ We identify these top 30 employers based on the number of H-1B petition approvals (including petitions for both initial and continuing H-1B workers) reported for fiscal 2019 in the USCIS H-1B Employer Data Hub.¹⁴ The top 30 are listed in **Table 3** along with the total number of

H-1B petitions that were approved for each company in fiscal 2019.

It is notable that one-half of all companies listed in the top 30 H-1B employers are companies that have an outsourcing business model. Companies with an outsourcing business model rely on the H-1B program to build and expand a business model based on outsourcing jobs.¹⁵ In this arrangement, rather than being employed directly by the company that hired them, the H-1B workers ultimately work for third-party clients, either on- or off-site. In some cases the work is later moved abroad to the H-1B worker's country of origin once the worker has become proficient enough in the job to perform it remotely from abroad.¹⁶ The last column in Table 3 indicates which of the top 30 H-1B employers have an outsourcing business model. The implications of the outsourcing business model for the H-1B program are discussed in a later section.

The USCIS H-1B Employer Data Hub data show that in 2019, 53,377 employers participated in the H-1B program, meaning they had at least one approved petition for an H-1B worker.¹⁷ Of those 53,377 employers, the top 30—which represent 0.06% of all employers participating in the H-1B program—were issued more than *one in four* of all approved H-1B petitions (105,660 of the 389,323 total) (see Table 3). That amounts to an average of 3,522 H-1B workers per company in the top 30 in 2019. In contrast, the vast majority of H-1B employers have very few approved petitions. Petition data in the USCIS H-1B Employer Data Hub show that for fiscal 2019, 45,651 employers—86% of the 53,377 total employers participating in the program—had five or fewer H-1B petitions approved (see **Table 4**).

The top 30 employers accounted for an even larger share of the H-1B positions certified by the U.S. Department of Labor (through LCA approvals) in fiscal 2019 than they did for approved petitions to USCIS. (As described above, getting an H-1B position certified by DOL via an LCA is a required initial step for an employer applying to hire, renew, or move an H-1B worker.) DOL disclosure data show that in fiscal 2019, employers submitted LCA requests for certification totaling 1,051,707 H-1B positions to DOL.¹⁸ Of those submitted, nearly all (92%, or 968,538) were certified by DOL.¹⁹ The top 30 employers received approval for 371,461 H-1B positions—accounting for 38% of all H-1B positions certified in fiscal 2019.

Three-fifths of all H-1B jobs certified for the top 30 were at the two lowest prevailing wage levels

The data in **Table 5** show the total number of certified H-1B positions for each of the top 30 employers, as well as how those certified positions break down by prevailing wage level. **Table 6** is calculated from the data in Table 5; for each employer, it shows the shares of H-1B positions by wage level. The wage-level data from DOL are useful measures for understanding the wages that employers pay their H-1B workers, the sophistication of the positions an employer is seeking to fill, and the possible impact on U.S. wage standards.

(Because H-1B prevailing wage levels are specific to an occupation and local area, they allow comparisons to be made with the salaries that are being paid to workers who are currently employed in an occupation and local area.)

Table 6 shows that 12% of all certified positions for the top 30 H-1B employers were at Level 1, and nearly half (48%) were certified at Level 2. A total of 223,509 H-1B positions certified for top 30 employers were at either Level 1 or 2, meaning that **60% (three in five) of all H-1B positions for the top 30 employers were certified at a wage lower than the local median wage for the occupation.**

Just over one-fifth of all H-1B positions (21%) were certified at the Level 3 wage, which is the local median wage, and only 11% (one in nine) were certified at the highest prevailing wage level—Level 4—the 67th percentile wage.

A total of 26,877 positions, accounting for 7% of all H-1B positions certified for the top 30 companies, had prevailing wages established by an “independent authoritative source” or “another legitimate source” that was not DOL, which means a non-DOL wage survey was used to determine the H-1B worker’s salary. Because of data limitations, we cannot make any definitive claims about why employers would opt for an independent wage survey when the DOL OES wage surveys are free and easily accessible; however, based on evidence from other visa programs, it seems likely that they are doing so in order to justify paying even lower wages to H-1B workers. In the case of the H-2B, a temporary work visa for jobs that do not require a college degree, employers have long used private wage surveys to undercut the OES-determined prevailing wage rates.²⁰ Further investigation is needed to identify the reasons employers use private wage surveys when seeking H-1B workers. Currently, more information about private wage surveys in H-1B is not readily available; DOL does not disclose the corresponding prevailing wage levels when firms use private wage surveys, so it is impossible to make comparisons with the OES wage levels.

Major U.S. firms—not just outsourcing companies—pay low wages to their H-1B employees

Much of the policy discussion around the H-1B program in recent years has focused on the problematic practices of H-1B employers that use an outsourcing business model (Table 3 identifies outsourcing companies in the top 30). Previous data analyses have revealed that H-1B outsourcing companies pay their H-1B employees relatively lower wages in absolute terms,²¹ and these companies’ practices have been well documented by media reports and congressional hearings: Outsourcing and staffing firms like Infosys, Cognizant, and Tata have replaced U.S. workers with H-1B workers earning tens of thousands of dollars less per year; the laid-off U.S. workers were required to train their H-1B replacements to do their former jobs—and in some cases sign nondisclosure agreements saying they would not speak publicly about their experiences—as a condition of receiving severance pay.²²

The data in Tables 5 and 6 show that all companies with an outsourcing business model in the top 30—Cognizant, Deloitte, Tata, Infosys, Capgemini, Larsen and Toubro, Wipro, Accenture, IBM, Ernst & Young, Tech Mahindra, HCL America, Pricewaterhouse Coopers, Mphasis, and Syntel—had roughly half or more of their H-1B positions certified at the two lowest wage levels, and six had over 90% certified at the two lowest wage levels. These lower wage levels are consistent with the previous findings showing that outsourcing firms pay relatively lower wages to H-1B workers.²³

Until now, much of the public discourse and proposals for reforming H-1B have focused on rules that would constrain the practices of these outsourcing companies. But Tables 5 and 6 also reveal a fact that has not been previously been part of the H-1B policy discussion: Many firms that employ H-1B workers directly (i.e., they do not use an outsourcing model)—including some of the biggest names in the technology industry such as Amazon, Google, Microsoft, Apple, Qualcomm, Salesforce, and Uber—pay a large share of their H-1B workers at one of the two lowest wage levels, Level 1 or Level 2. (In addition, these direct-hire firms also hire many H-1B workers on a contract basis through outsourcing firms.²⁴)

As Table 6 shows, Microsoft, the seventh-largest H-1B employer in 2019, assigned one-third (35%) of its positions on LCAs as Level 1 and two-fifths (42%) as Level 2. In total, Microsoft assigned more than three-quarters (77%) of its H-1B positions as Level 1 or Level 2, a wage level below the local median wage. Microsoft assigned only 18% of its positions as Level 3 (the median) wage, and a mere 3% as Level 4, the only above-median wage level.

Amazon—which appears twice in the H-1B top 30, as both “Amazon.com Services” (no. 4 among the biggest H-1B employers) and “Amazon Web Services” (no. 27)—also assigned the vast majority of its H-1B positions at one of the two lowest wage levels. Amazon.com Services assigned 34% of its H-1B positions as Level 1 and 51% as Level 2, for a total of 86% of all positions certified. Amazon Web Services assigned 47% of its H-1B workers as Level 1 and 36% as Level 2. Combined, Amazon.com Services and Amazon Web Services had 12,428 positions certified at Level 1 or 2, for a total of 85% certified at a wage level below the median. Only one in eight (1,684) were certified at or above the 50th percentile (Level 3 or Level 4).

Apple, eleventh on the list, assigned 558 of its H-1B positions (2%) as Level 1 and one-third (32%) as Level 2, for a combined total of 34% at Levels 1 and 2. Apple assigned 32% as Level 3 and 34% as Level 4.

Google, ranked the fifth-largest H-1B employer, had 9,085 H-1B positions certified by DOL in fiscal 2019. Google assigned less than one-half of one percent of its certified H-1B jobs as Level 1, and 54% as Level 2. Only 37% of Google’s jobs were certified at or above the median wage.

Facebook assigned only one position as Level 1 and 10% of its 6,118 total H-1B positions as Level 2. Twenty-five percent were certified at Level 3 and 16% at Level 4. Nearly half (49%) of Facebook’s H-1B positions were certified at a wage established by an alternative wage survey making it difficult to assess its H-1B wage distribution.

Uber, the 29th-ranked H-1B employer in 2019, had 5,708 H-1B positions certified by DOL. Less than 1% were assigned as Level 1 and just over half (53%) as Level 2. Just over one-third were assigned as Level 3 and 13% as Level 4. While Uber had 5,708 H-1B positions certified by DOL and hired 1,160 H-1B workers in 2019 (see Table 3), in the same year Uber made headlines by laying off 400 employees, including 125 software engineers, nearly half of whom were “senior” software engineers. The firm was hiring H-1B workers for the same types of positions it was conducting mass layoffs. According to analysis by Ron Hira reported in *The Mercury News*, 1,800 of the certified H-1B positions were for “new software engineer jobs and about 1,500 for new senior software engineer jobs.” Uber’s wage-level classification for positions the firm identified as *senior* is questionable. The *Mercury News* article reported that “Uber’s applications put nearly half the senior software engineer positions at the Labor Department’s ‘Level 2’ wages, the same level it listed for more than half of the non-senior jobs.”²⁵ The DOL’s prevailing wage guidance clearly states that, “Frequently, key words in the job title can be used as indicators that an employer’s job offer is for an experienced worker. Words such as ‘lead’ (lead analyst), ‘senior’ (senior programmer)...would be indicators that a Level [3] wage should be considered.”²⁶ This illustrates the major weaknesses in the LCA. The employer has discretion over picking the wage level and DOL does not ensure compliance.

Qualcomm, ranked number 23, had 32,309 H-1B positions approved, with 4% assigned as Level 1 and 38% as Level 2, for a total of 42% assigned below the median wage.

Salesforce, ranked number 25, is a relative newcomer to the top 30 H-1B employer list, and had wage-level shares similar to Qualcomm’s. Only 2% of Salesforce’s certified H-1B positions were assigned as Level 1 and 37% were assigned as Level 2, for a total of 40% assigned below the median wage.²⁷

Intel Corporation, ranked number 14, had 7,409 certified H-1B positions. It did not assign any certified positions as Level 1, but it assigned one-third (33%) of the positions as Level 2, 29% as Level 3, and a mere 1% as Level 4. Intel, like Facebook, frequently set its prevailing wage through an alternative survey, accounting for more than one-third (36%) of its certified positions.

Nearly half (49%) of Walmart’s 2,056 certified H-1B positions were assigned below the median wage: 15% as Level 1 and 34% as Level 2. Thirty-nine percent were assigned as Level 3 and 11% as Level 4.

Conclusion and recommendations: Federal agencies and Congress should step in and fix the H-1B wage rule

The highest priority for H-1B reform is fixing the prevailing wage rule. The new wage-level data presented in this report make clear that most companies that use the H-1B program—but especially the biggest users, by nature of the sheer volume of workers they employ—are exploiting a flawed H-1B prevailing wage rule to underpay their H-1B workers

relative to market wage standards. These largest H-1B employers include not only outsourcing companies—whose abuses of the program have been well documented—but also major U.S. firms such as Microsoft, Amazon, and Google.

The purpose of the H-1B program is to allow employers to hire workers with specialized skills that are not available in the existing local workforce.²⁸ Specialized skills should command high wages; such skills are typically a function of inherent capability, education level, and experience. It would be reasonable to expect that these workers should receive wages higher than the median wage. One would therefore expect most H-1B positions to be assigned as Level 4 (the only wage level above the median), but as the data presented in this report show, H-1B employers as a whole assign only a very small minority of H-1B positions as Level 4—just 12%—and the top 30 H-1B employers assign even fewer H-1B positions as Level 4, just one in nine (11%).

The data in this report show the top 30 H-1B employers are in fact hiring H-1B workers to fill a very large number of routine (Levels 1 and 2) positions that require relatively little experience and ordinary skills. H-1B proponents might argue that the H-1B workers they are hiring for these routine positions are recent graduates with little experience, and therefore it is appropriate to pay them prevailing wages set far below the median. There are two problems with this proposal.

First, there is a large existing U.S. labor pool for Level 1 and 2 types of positions that could be expanded even further through private investments in training. U.S. citizens and lawful permanent residents have been graduating in record numbers with bachelor's degrees in computer science and engineering over the past five years;²⁹ these recent graduates can and should be filling most positions that H-1B employers have assigned as Levels 1 and 2, and they should be prioritized for those positions. But since most H-1B employers are not required to advertise H-1B positions to U.S. workers before hiring H-1B workers,³⁰ it is unclear whether very many U.S. workers are ever afforded an opportunity to apply for these positions. Further, employers could develop the workers they need to fill these positions through training, since the positions are routine and require only modest skill levels. Instead, employers have all but disinvested in workforce training, in part because of the disincentives created by ready access to lower-paid H-1B workers.³¹

The second reason we should be skeptical of claims that Level 1 and 2 wages should be set low since most H-1B workers are recent graduates with little experience, is that such claims are not consistent with the available data on the characteristics of H-1B workers. In fact, USCIS data show that most H-1B workers do not fit that description: In fiscal 2018, 70% of approved H-1B petitions were for workers 30 years of age and older—a significant indicator that those workers already possess at least six to eight years of experience. Further, H-1B workers' educational levels, which are an important determinant of skills, indicate they should be filling higher-skilled positions. In fact, 63% of all H-1B workers held an advanced degree (master's, professional, or doctorate degree),³² meaning one could reasonably conclude that a majority of H-1B workers have the educational attainment and/or years of experience to fill positions at wage levels 3 and 4. These data suggest it is likely that H-1B employers are underpaying workers relative to their skill levels. The case of Uber assigning Level 2 wages to positions it described as “senior software engineer” may

illustrate such misclassification.

The data presented in this report indicate that all H-1B employers, but especially the largest employers, use the H-1B program *either* to hire relatively lower-wage workers (relative to the wages paid to other workers in their occupation) who possess ordinary skills *or* to hire skilled workers and pay them less than the true market value of their work. Either possibility raises important policy questions about the use and allocation of H-1B visas.

By setting two of the H-1B prevailing wage levels so low relative to the median and not requiring that firms pay at least market wages to H-1B workers, DOL incentivizes firms to earn extraordinary profits by legally hiring much-lower-paid H-1B workers instead of workers earning the local median wage. The fact that firms earn those profits through poorly crafted wage rules and by underpaying H-1B workers—instead of by offering a better or more innovative product or service—means DOL has in effect made wage arbitrage a feature of the H-1B program. And as the wage-level data in this report show, nearly all H-1B employers are exploiting these H-1B wage rules in order to pay below-median wages. The top 30 employers capture a large and disproportionate share of the visas. These firms are not using the H-1B program sparingly to hire truly specialized workers and they are not using it only when U.S. workers are unavailable. Some are using the program as a substitute for workforce development.

As noted above, the existing statutory language that sets out the H-1B prevailing wage requires that there be four H-1B wage levels, but it does not prescribe specific percentiles, and no law requires DOL to set any of these prevailing wage levels below the local median wage. To ensure that H-1B workers possess specialized skills and are fairly paid, and to protect local wage standards and eliminate wage arbitrage as a feature of the H-1B program, DOL should promulgate regulations and/or issue administrative guidance that sets the lowest (Level 1) wage to the 75th percentile for the occupation and local area, and requires that wage offers to H-1B workers never be lower than the national median wage for the occupation. Requiring and enforcing above-median wages for H-1B workers would disincentivize the hiring of H-1B workers as a money-saving exercise, ensuring that companies will use the program as intended—to bring in workers who have special skills—instead of using H-1B as a way to cheaply fill entry-level positions.

Further, to ensure that future administrations do not reduce wage levels, Congress should enact a statute setting reasonable minimums for H-1B wage levels and providing DOL with new legal authority and funding to conduct random audits of H-1B employers to verify that they are not manipulating job titles and wage levels in order to underpay H-1B workers.

Senators Chuck Grassley (R-Iowa) and Richard Durbin (D-Ill.) have pursued such legislation for over a decade, jointly introducing and reintroducing their H-1B and L-1 Visa Reform Act in the Senate, most recently in 2017. The 2017 version of the Act would strengthen the statute governing the H-1B program by eliminating the two lowest wage levels, so that H-1B workers could not be paid at a wage that is lower than the local median (50th-percentile) wage. It would also grant DOL new authority to increase audits and hire additional staff.³³ Passing Durbin and Grassley's H-1B and L-1 Visa Reform Act is the

easiest and simplest solution to ensure that migrant workers with H-1B visas are never paid below the market rate according to U.S. wage standards, and that the wages and working conditions of college-educated U.S. workers are not undermined. Future legislation can and should go further by permanently setting the lowest H-1B wage level at the 75th percentile of wages surveyed for an occupation in the local area.

Endnotes

1. Daniel Costa and Jennifer Rosenbaum, *Temporary Foreign Workers by the Numbers: New Estimates by Visa Classification*, Economic Policy Institute, March 2017.
2. See, for example, Daniel Costa, *H-1B Visa Needs Reform to Make It Fairer to Migrant and American Workers* (fact sheet), Economic Policy Institute, April 2017.
3. *H-1B and L-1 Visa Reform Act of 2017*, S. 180, 115th Cong. (2017).
4. 8 U.S.C. 1182 (n)(1)(A)(i)(II).
5. Division J, Sec. 423. H-1B Prevailing Wage Level, *Consolidated Appropriations Act, 2005*, U.S. Public Law 108-447 (Dec. 8, 2004).
6. 8 USC §1182(p), Computation of Prevailing Wage Level, at subsection (4), reads: “Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.”
7. Office of Inspector General, U.S. Department of Labor, *Overview and Assessment of Vulnerabilities in the Department of Labor’s Alien Labor Certification Programs*, Report No. 06-03-007-03-321 (September 30, 2003).
8. A statutorily mandated annual limit of 65,000 H-1B visas may be issued and an additional 20,000 may be issued to persons who have obtained a master’s degree or higher from a U.S. university, for a total H-1B annual “cap” of 85,000. In addition, as specified by law, certain employers are exempt from the H-1B cap, including institutions of higher education or related nonprofit entities, nonprofit research organizations, and government research organizations.
9. See discussion about prevailing wage levels in *Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program*, U.S. Department of Homeland Security and U.S. Department of Labor, 80 Fed. Reg. 24155 (April 29, 2015).
10. Government Accountability Office, *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, GAO-11-26 (January 2011), Table 5.
11. While LCA disclosure data are available from DOL’s Office of Foreign Labor Certification for fiscal 2016, information about H-1B wage levels was not included in the data set.
12. To calculate these averages, we reviewed the wage differentials between wage levels 1 vs. 3 and 2 vs. 3 in the FLC’s prevailing wage data for July 2018 to June 2019, for all geographic areas and for all computer occupations except Computer User Support Specialists (SOC code 15-1151). Data

are available at FLC Data Center – Downloadable Files, <https://flcdatacenter.com/Download.aspx> (retrieved February 5, 2020).

13. For more background, see the H-1B discussion in Daniel Costa and Jennifer Rosenbaum, *Temporary Foreign Workers by the Numbers: New Estimates by Visa Classification*, Economic Policy Institute, March 2017.
14. USCIS H-1B Employer Data Hub, <https://www.uscis.gov/h-1b-data-hub>.
15. For background on the H-1B outsourcing business model, see Ronil Hira, “[The Impact of High-Skilled Immigration on U.S. Workers](#),” testimony before the U.S. Senate Committee on the Judiciary, Subcommittee on Immigration and the National Interest, Washington, D.C., February 25, 2016.
16. Senator Richard Durbin, “[How American Jobs Are Outsourced](#),” YouTube video, 1:08, posted April 15, 2016.
17. Because the USCIS data do not contain a unique identifier for each company, some unknown but likely small percentage of the separately listed employers in the USCIS Employer Data Hub may be either the same company or affiliated through related entities.
18. The number of LCA positions requested and positions certified found in the raw microdata, which we discuss here and which are available from DOL’s Office of Foreign Labor Certification (OFLC), differ slightly from what is reported on the OFLC’s “Selected Statistics” fact sheet for fiscal 2019. We do not know what accounts for this discrepancy, but we rely on the microdata for our analyses of LCA data throughout this report. See U.S. Department of Labor, Office of Foreign Labor Certification, Labor Condition Applications Disclosure Data, Fiscal Year 2019, downloadable at https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2019/H-1B_Disclosure_Data_FY2019.xlsx; and U.S. Department of Labor, Office of Foreign Labor Certification, “[H-1B Temporary Specialty Occupations Labor Condition Program – Selected Statistics, FY 2019](#),” data as of September 30, 2019.
19. The ultimate approval rate may be higher than this. When an LCA is denied (e.g., because the application is incomplete or contains inaccuracies), the employer may resubmit the request for certification as a new application. If most or all resubmissions are approved (as they likely are if they are filled out correctly), then the ultimate approval rate is likely to be much closer to 100%, though that is not reflected in the raw data because DOL treats resubmitted LCAs as new applications.
20. For more discussion about employers using private wage surveys to establish prevailing wages in the H-2B context, see Daniel Costa, “[H-2B Crabpickers Are So Important to the Maryland Seafood Industry That They Get Paid \\$3 Less per Hour Than the State or Local Average Wage](#),” *Working Economics Blog* (Economic Policy Institute), May 26, 2017; and Daniel Costa, *The H-2B Temporary Foreign Worker Program: For Labor Shortages or Cheap, Temporary Labor?* Economic Policy Institute, January 2016.
21. See, for example, Haeyoun Park, “[How Outsourcing Companies Are Gaming the Visa System](#),” *New York Times*, November 10, 2015; U.S. Immigration and Customs Enforcement, “[Indian Corporation Pays Record \\$34 Million Fine to Settle Allegations of Systemic Visa Fraud and Abuse of Immigration Processes](#)” (press release), October 29, 2013; and Ronil Hira, “[The Impact of High-Skilled Immigration on U.S. Workers](#),” testimony before the U.S. Senate Committee on the Judiciary, Subcommittee on Immigration and the National Interest, Washington, D.C., February 25, 2016.

22. See, for example, Stef Kight, “U.S. Companies Are Forcing Workers to Train Their Own Foreign Replacements,” *Axios*, December 29, 2019; Julia Preston, “Pink Slips at Disney. But First, Training Foreign Replacements,” *New York Times*, June 3, 2015; Michael Hiltzik, “A Loophole in Immigration Law Is Costing Thousands of American Jobs,” *Los Angeles Times*, February 20, 2015; Ron Hira, “New Data Show How Firms Like Infosys and Tata Abuse the H-1B Program,” *Working Economics Blog* (Economic Policy Institute), February 19, 2015; and Bill Whitaker, “Are U.S. Jobs Vulnerable to Workers with H-1B Visas?” *60 Minutes*, August 13, 2017.
23. See, for example, Ronil Hira, “The Impact of High-Skilled Immigration on U.S. Workers,” testimony before the U.S. Senate Committee on the Judiciary, Subcommittee on Immigration and the National Interest, Washington, D.C., February 25, 2016.
24. Newly disclosed LCA data from DOL indicate that Microsoft has major contracts with Tata Consultancy Services, Wipro, and HCL, by which those firms place large numbers of lower-paid H-1B workers at Microsoft’s worksites. Similarly, Google contracts with outsourcers Accenture, Deloitte Consulting, HCL, and Wipro to provide lower-paid H-1B workers at Google’s facilities. Authors’ analysis of U.S. Department of Labor, Office of Foreign Labor Certification, Labor Condition Applications Disclosure Data, Fiscal Year 2019, downloadable at https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2019/H-1B_Disclosure_Data_FY2019.xlsx.
25. Ethan Baron, “H-1B: Uber Snatches Up More Foreign-Worker Visas as It Lays Off Hundreds of Employees,” *Mercury News*, October 17, 2019.
26. U.S. Department of Labor, Employment and Training Administration, *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs*, revised November 2009.
27. The 40% total is calculated using unrounded numbers.
28. The U.S. Department of Labor describes the purpose of the program this way, “The intent of the H-1B provisions is to help employers who cannot otherwise obtain needed business skills and abilities from the U.S. workforce by authorizing the temporary employment of qualified individuals who are not otherwise authorized to work in the United States.” See “H-1B Program” (web page on the DOL website, Wage and Hour Division, at <https://www.dol.gov/agencies/whd/immigration/h1b>).
29. See National Science Board, *Science & Engineering Indicators 2018*, “Appendix Table 2-21. Earned Bachelor’s Degrees, by Sex and Field: 2000–15,” and “Appendix Table 2-22. Earned Bachelor’s Degrees, by Citizenship, Field, Race, and Ethnicity: 2000–15.”
30. U.S. Department of Labor, Wage and Hour Division, “Fact Sheet #620: Must an H-1B Employer Recruit U.S. Workers Before Seeking H-1B Workers?” (July 2009).
31. For example, see the following work by Peter Cappelli: “Why Companies Aren’t Getting the Employees They Need,” *Wall Street Journal*, Oct 11, 2011; and “Skill Gaps, Skill Shortages, and Skill Mismatches: Evidence and Arguments for the United States,” *ILR Review* 68, no. 2 (March 2015): 251–290.
32. U.S. Citizenship and Immigration Services, *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2018 Annual Report to Congress*, Tables 5 and 7.
33. H-1B and L-1 Visa Reform Act of 2017, S.180, 115th Congress (2017–2018); see also Senator Chuck Grassley, “Grassley, Durbin to Introduce Reforms to Skilled Non-Immigrant Visa Programs” (press release), January 19, 2017.

Table 1

Most H-1B positions are certified at wage levels below the median wage

Frequency of wage levels reported on approved H-1B Labor Condition Applications (LCAs), June 1, 2009, to July 30, 2010, and fiscal years 2015, 2017, 2018, 2019

Wage level	Percentile of surveyed wages by occupation & region	Description of wage level	June 1, 2009–July 30, 2010	Fiscal 2015	Fiscal 2017	Fiscal 2018	Fiscal 2019
1	17th	Entry-level	54%	41%	32%	16%	14%
2	34th	Qualified	29%	39%	30%	47%	46%
3	50th	Experienced	11%	10%	11%	19%	19%
4	67th	Fully competent	6%	5%	6%	10%	12%
Other	N/A	Other wage surveys, including privately financed surveys	N/A	5%	21%	8%	9%

Notes: Table adapted from U.S. Government Accountability Office table. For full descriptions of wage levels from U.S. Department of Labor guidance, Employment and Training Administration, "[Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs](#)" (revised November 2009).

Sources: Authors' analysis of U.S. Government Accountability Office, *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, GAO-11-26, January 2011, "Table 5: Frequency of Wage Levels Reported on Approved LCAs, June 1, 2009–July 30, 2010," at page 58; U.S. Department of Labor, Office of Foreign Labor Certification, [Labor Condition Applications](#) for fiscal years 2015, 2017, 2018, and 2019 (Disclosure Data tab)

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Table 2

Employers can get steep discounts by paying H-1B workers below the median wage

H-1B prevailing wage levels for ‘Software Developers, Applications,’ in the Washington, D.C., region

Wage level	Percentile of surveyed wages by occupation & region	Annual salary	Discount from median (%)	Discount from median (\$)
1	17th	\$75,712	36%	\$41,746
2	34th	\$96,595	18%	\$20,863
3	50th (median)	\$117,458	—	—
4	67th	\$138,341	—	(\$20,883)

Note: Table reflects H-1B prevailing wage levels for Standard Occupational Classification (SOC) code 15-1132, which corresponds to SOC title “Software Developers, Applications,” for Washington-Arlington-Alexandria (area code 47900).

Source: Authors’ analysis of “[Software Developers, Applications](#)” data for the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division, U.S. Department of Labor: [Foreign Labor Certification \(FLC\) Data Center Online Wage Library](#), retrieved February 5, 2020. FLC Data Center data are based on the [Occupational Employment Statistics](#) survey, Bureau of Labor Statistics, U.S. Department of Labor.

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Table 3

The top 30 H-1B employers account for more than one in four H-1B petitions approved by USCIS

Top 30 H-1B employers by number of approved petitions, fiscal year 2019

Rank	Employer name	Total H-1B petition approvals	Outsourcing/offshoring business model?
1	Cognizant Technology	13,466	Yes
2	Deloitte Consulting LLP	7,690	Yes
3	Tata Consultancy	7,620	Yes
4	Amazon.com Services	7,337	—
5	Google LLC	6,054	—
6	Infosys Ltd.	5,546	Yes
7	Microsoft Corp.	5,275	—
8	Capgemini America Inc.	3,695	Yes
9	Facebook Inc.	3,552	—
10	Larsen & Toubro Infotech	3,495	Yes
11	Apple Inc.	3,469	—
12	Wipro Ltd.	3,131	Yes
13	Accenture LLP	3,120	Yes
14	Intel Corp.	2,992	—
15	IBM Corp.	2,966	Yes
16	Ernst & Young US LLP	2,910	Yes
17	Tech Mahindra Americas	2,866	Yes
18	HCL America Inc.	2,431	Yes
19	Cisco Systems Inc.	2,098	—
20	Oracle America Inc.	2,005	—
21	PricewaterhouseCoopers	1,735	Yes
22	JPMorgan Chase & Co.	1,697	—
23	Qualcomm Technologies	1,620	—
24	Walmart Associates Inc.	1,518	—
25	Salesforce.com Inc.	1,310	—
26	Mphasis Corp.	1,303	Yes
27	Amazon Web Services	1,283	—
28	Syntel Inc.	1,196	Yes
29	Uber Technologies Inc.	1,160	—
30	Randstad Technologies	1,120	—
Total H-1B petition approvals, top 30		105,660	
Total H-1B petition approvals, all employers		389,323	
Top 30 share of total H-1B petition approvals		27%	

Notes: H-1B petition approvals include approved petitions for initial and continuing employment. Petitions are approved by U.S. Citizenship and Immigration Services (USCIS).

Source: Authors' analysis of USCIS [H-1B Employer Data Hub](#), fiscal year 2019 data

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Table 4

The vast majority of H-1B employers employ very few H-1B workers

Share of H-1B employers with one to five petitions approved by USCIS, fiscal year 2019

Description	Number/share
<i>Number of H-1B employers with at least one approved petition</i>	53,377
<i>Number of H-1B employers with one to five approved petitions</i>	45,651
<i>Share of H-1B employers with one to five approved petitions</i>	86%

Notes: H-1B petition approvals include approved petitions for initial and continuing employment. Petitions are approved by U.S. Citizenship and Immigration Services (USCIS).

Source: Authors' analysis of USCIS H-1B [Employer Data Hub](#), fiscal year 2019 data

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Table 5

Top 30 H-1B employers had over 200,000 H-1B positions certified at below-median wage levels

Number of H-1B certified positions at each wage level, top 30 H-1B employers, fiscal 2019

Rank	Employer name	Wage level 1 (17th percentile)	Wage level 2 (34th percentile)	Wage level 3 (50th/ median)	Wage level 4 (67th percentile)	Other wage surveys	Total
1	Cognizant Technology	788	14,443	7,411	2,493	396	25,531
2	Deloitte Consulting LLP	31,024	32,343	17,657	4,407	4,824	90,255
3	Tata Consultancy	—	14,397	1,271	16	107	15,791
4	Amazon.com Services	4,211	6,332	1,241	137	404	12,325
5	Google LLC	13	4,944	2,752	678	698	9,085
6	Infosys Ltd.	1	16,738	3,162	1,493	120	21,514
7	Microsoft Corp.	3,499	4,198	1,842	338	112	9,989
8	Capgemini America Inc.	157	5,583	2,862	581	127	9,310
9	Facebook Inc.	1	591	1,509	994	3,023	6,118
10	Larsen & Toubro Infotech	21	5,283	394	13	45	5,756
11	Apple Inc.	558	8,279	8,432	8,838	3	26,110
12	Wipro Ltd.	—	11,656	834	25	62	12,577
13	Accenture LLP	36	4,151	2,061	843	58	7,149
14	Intel Corp.	—	2,476	2,153	78	2,702	7,409
15	IBM Corp.	2	3,506	1,457	670	50	5,685
16	Ernst & Young US LLP	1,061	4,001	2,703	766	273	8,804
17	Tech Mahindra Americas	1	3,971	35	13	43	4,063
18	HCL America Inc.	567	3,941	2,979	1,353	380	9,220
19	Cisco Systems Inc.	10	3,579	2,940	3,588	3,991	14,108
20	Oracle America Inc.	1	1,530	20	5,535	5,710	12,796
21	PricewaterhouseCoopers	636	1,324	94	447	45	2,546
22	JPMorgan Chase & Co.	80	636	528	406	459	2,109
23	Qualcomm Technologies	1,150	12,361	9,354	6,474	2,970	32,309
24	Walmart Associates Inc.	301	708	800	233	14	2,056
25	Salesforce.com Inc.	55	838	587	720	38	2,238
26	Mphasis Corp.	641	3,364	73	—	111	4,189
27	Amazon Web Services	1,059	826	291	15	81	2,272
28	Syntel Inc.	157	1,490	36	—	14	1,697
29	Uber Technologies Inc.	23	3,015	1,946	716	8	5,708
30	Randstad Technologies	1	951	1,778	3	9	2,742
Totals for top 30 H-1B employers		46,054	177,455	79,202	41,873	26,877	371,461
Totals for all H-1B employers		134,900	447,843	184,825	116,754	84,216	968,538

Notes: "Top 30" is defined as the 30 employers with the largest number of approved H-1B petitions, according to data from United States Citizenship and Immigration Services (USCIS). Top 30 H-1B rankings are based on fiscal year 2019 H-1B USCIS Employer Data Hub total approvals.

Source: Authors' analysis of USCIS [H-1B Employer Data Hub files](#), fiscal year 2019, and U.S. Department of Labor, Office of Foreign Labor Certification, [Labor Condition Applications](#) for fiscal year 2019 (Disclosure Data tab)

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Table 6

Most H-1B workers are paid below-median wages

Share of H-1B certified positions at each wage level, top 30 H-1B employers, and totals for all employers, fiscal 2019

	Employer name	Wage level 1 (17th percentile)	Wage level 2 (34th percentile)	Wage level 3 (50th/median)	Wage level 4 (67th percentile)	Other wage surveys	Share at wage levels 1 & 2
1	Cognizant Technology	3%	57%	29%	10%	2%	60%
2	Deloitte Consulting LLP	34%	36%	20%	5%	5%	70%
3	Tata Consultancy	0%	91%	8%	<1%	1%	91%
4	Amazon.com Services	34%	51%	10%	1%	3%	86%
5	Google LLC	<1%	54%	30%	7%	8%	55%
6	Infosys Ltd.	<1%	78%	15%	7%	1%	78%
7	Microsoft Corp.	35%	42%	18%	3%	1%	77%
8	Capgemini America Inc.	2%	60%	31%	6%	1%	62%
9	Facebook Inc.	<1%	10%	25%	16%	49%	10%
10	Larsen & Toubro Infotech	<1%	92%	7%	<1%	1%	92%
11	Apple Inc.	2%	32%	32%	34%	<1%	34%
12	Wipro Ltd.	0%	93%	7%	<1%	<1%	93%
13	Accenture LLP	1%	58%	29%	12%	1%	59%
14	Intel Corp.	0%	33%	29%	1%	36%	33%
15	IBM Corp.	<1%	62%	26%	12%	1%	62%
16	Ernst & Young US LLP	12%	45%	31%	9%	3%	57%
17	Tech Mahindra Americas	<1%	98%	1%	<1%	1%	98%
18	HCL America Inc.	6%	43%	32%	15%	4%	49%
19	Cisco Systems Inc.	<1%	25%	21%	25%	28%	25%
20	Oracle America Inc.	<1%	12%	<1%	43%	45%	12%
21	PricewaterhouseCoopers	25%	52%	4%	18%	2%	77%
22	JPMorgan Chase & Co.	4%	30%	25%	19%	22%	34%
23	Qualcomm Technologies	4%	38%	29%	20%	9%	42%
24	Walmart Associates Inc.	15%	34%	39%	11%	1%	49%
25	Salesforce.com Inc.	2%	37%	26%	32%	2%	40%
26	Mphasis Corp.	15%	80%	2%	0%	3%	96%
27	Amazon Web Services	47%	36%	13%	1%	4%	83%
28	Syntel Inc.	9%	88%	2%	0%	1%	97%
29	Uber Technologies Inc.	<1%	53%	34%	13%	<1%	53%
30	Randstad Technologies	<1%	35%	65%	<1%	<1%	35%
Totals for top 30 H-1B employers		12%	48%	21%	11%	7%	60%
Totals for all H-1B employers		14%	46%	19%	12%	9%	60%

Notes: "Top 30" is defined as the 30 employers with the largest number of approved H-1B petitions, according to data from United States Citizenship and Immigration Services (USCIS). Top 30 H-1B rankings are based on fiscal year 2019 H-1B Employer Data Hub total approvals.

Source: Authors' analysis of USCIS H-1B Employer Data Hub files, fiscal year 2019, and U.S. Department of Labor, Office of Foreign Labor Certification, [Labor Condition Applications](#) for fiscal year 2019 (Disclosure Data tab)

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