October 24, 2025

The Honorable Kristi Noem
Secretary, Department of Homeland Security
C/O Business and Foreign Workers Division, Office of Policy and Strategy,
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Subj: Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions - DHS Docket No. USCIS-2025-0040, RIN 1615-AD01

Dear Secretary Noem:

WERC, formerly known as the Worldwide Employee Relocation Council, welcomes the opportunity to submit comments in response to the "Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions," DHS Docket No. USCIS-2025-0040, RIN 1615-AD01 Notice of Proposed Rulemaking (NPRM) published in the *Federal Register* on 24 September 2025. WERC, the trade association representing over 5,000 individuals and 2,750 enterprises in the global talent mobility industry responsible for supporting employers with moving their current and potential employees, supports policies that enable American employers to hire the talent they need to successfully compete in a global environment.

WERC members support companies located in all fifty U.S. states employing hundreds of thousands of workers in the United States, with the largest sectors including: manufacturing, technology, finance, insurance and healthcare. In addition to supporting movement of their client's domestic workforce around the country, WERC members facilitate the movement of global talent to and from the United States.

WERC believes its members and the Trump administration have the shared goal of strengthening American corporations so they can successfully compete in a competitive global environment. Successful companies contribute to the United States economy by growing employment opportunities for all American workers. However, a key aspect of strengthening U.S. companies, growing technology and rebuilding manufacturing is the ability to recruit, retain, and move the best talent to where it is needed, regardless of nationality.

<u>The H-1B Visa is a Critical Nonimmigrant Visa Option for U.S. Employers</u>

For most of WERC's member organizations, the H-1B nonimmigrant visa is an important immigration pathway that they regularly utilize to support their movement of talent. In a March 2025 WERC survey, 72 percent of surveyed corporate members indicated that they frequently utilize the H-1B specialty occupation visa to support movement of current and potential employees[1]. In this same survey, nearly two-thirds of corporate respondents indicated that limitations in access to and/or usage of both U.S. nonimmigrant and immigrant visas would result in a decreased ability to successfully compete in a global business environment. Additionally, over half of respondents noted it would result in revenue

[1] "U.S. Immigration Corporate Pulse Survey," WERC, 31 March 2025, https://www.talenteverywhere.org/Education/Research/Research-Library.

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reductions, and nearly a third indicated it could result in the reduction of American domestic employee headcounts. Respondent employers had an average of over 21,000 U.S. employees per organization, representing a significant source of jobs and economic activity for Americans from coast to coast.

This criticality is also reflected in the recent data pertaining to the H-1B lottery for cap-subject petitions. For the FY 2026 lottery, USCIS reported that over 57,600 unique employers submitted a registration for a beneficiary within the lottery.[2] And within these numbers, the data reflects a broad array of industries, company sizes, and geographic locations from coast to coast. The impacts of the H-1B program extend across the United States, and from Wall Street to Main Street. The economic benefits of the program not only support U.S. employers but also positively impact their U.S. workforces.

NPRM Positively Improves Registration Process from 2021 Final Rule, but Issues Remain

WERC appreciates the administration's revisions to the 2021 H-1B Selection Final Rule[3], particularly the changes around the selection process for cap-subject petitions included in the updated NPRM published last month. Changing the selection criteria to continue to allow companies to put forward candidates at all levels in their professional journey, including those that are early career, is a critical change that positively improves one of the biggest areas of concern raised by employers. However, while the structure in the NPRM is an improvement, it does not fully address the issue of adverse impacts on early career professionals, and in particular individuals that are foreign national graduates of U.S. undergraduate, graduate, and post-graduate academic institutions. WERC's members remain concerned about the limitations the weighted process in the NPRM imposes on the early career talent pipeline and the disadvantages it creates for early career professionals and small and mid-sized businesses.

More generally, the 2025 NPRM cannot be viewed in a vacuum. When coupled with the Duration of Status NPRM[4], the September 19, 2025 Restriction on Entry of Certain Nonimmigrant Workers President Proclamation[5], and the anticipated NPRM to amend Practical Training regulations[6] noted in the 2025 Spring Regulatory Agenda, WERC is very concerned about the impact the totality of these actions will have on the ability for American companies to access, retain, and move the talent they need to compete successfully. While WERC supports USCIS's goal of protecting the U.S. workforce and increasing the global competitiveness of U.S. businesses, we do not believe this NRPM in its current form accomplishes either of those goals, and in fact has a strong likelihood of undermining both objectives. For these reasons, without changes to what the administration has proposed, the effect of the NPRM will be to undermine the "overall economic security of the United States" if the proposed regulation is given final effect as currently drafted.[7]

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[2] "H-1B Electronic Registration Process," U.S. Citizenship and Immigration Services, https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations/h-1b-electronic-registration-process

[3] 86 FR 1676, January 8, 2021

[4] Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors and Representatives of Foreign Information Media, RIN 1653-AA95, 90 FR 42070, August 28, 2025

[5] Restriction of Entry of Certain Nonimmigrant Workers (September 19, 2025).

[6] RIN 1653-AA97

[7] The NPRM, 90 Fed. Reg. at 45988, cites Section 101(b)(1)(F) of the Homeland Security Act (HSA), 6 U.S.C. 111(b)(1)(F) as statutory authority warranting promulgation of the proposed rule. This statute provides that a primary mission of DHS is to "ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland". The proposed rule as it currently stands, WERC submits, would "diminish" our country's economic security, as we explain in this comment.

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Proposed Structure Adversely Impacts Early and Mid-Career Professionals Vital for U.S. Employers and Disadvantages Foreign Nationals Graduating from U.S. Academic Institutions

The proposed rule will have a particularly negative impact on individuals at early or middle stages in their careers, the companies that benefit by their presence and the smaller or emerging companies that may operate with lower salary structures that commonly operate in U.S. locations with lower overall average salaries and costs. Regardless of seniority or size, employers operating or headquartered in the United States compete in a global economy, their U.S. presence is based on our country's superior capital markets, legal system, the availability of the world's best technology and our economy's premiere competitive position in the global economy. All of these features rely on the unmatched quality of U.S. human capital - perhaps the most critical drawing card of the U.S. economy.

Skilled U.S. workers are found domestically, some come here from abroad to work, and others are educated here in our renowned universities and then enter the U.S. labor market. Each facet of the highly skilled U.S. workforce is enabled by an immigration system that allows measured access to foreign national talent to allow employers to remain competitive. Highly skilled foreign executives and managers enter the U.S. to help run key aspects of U.S. companies that create thousands of well-paid jobs for domestic workers; highly skilled foreign national talent enter the U.S. to work alongside similarly employed and skilled U.S workers; and smart ambitious young people from around the world come from abroad to study alongside U.S. students at our finest universities – then upon graduation, they compete with their American counterparts to join the U.S. workforce. There is a symbiosis and synergy between foreign nationals and the U.S. residents that underpins our vibrant economy and explains our leadership in the global economy.

By educating over 1.2 million foreign students each year[8] and having a system whereby American businesses can work with the best and the brightest of these young people through the F-1 Optional Practical Training and Curricular Practical Training programs, they are well placed to successfully grow their workforce by assessing the effectiveness and potential fit of these early career professionals with their companies first-hand. After employment under these OPT and CPT programs ends, businesses once again have the opportunity to try to retain successful, skilled early career workers by trying to obtain H-1B visas to enable them to continue to work with their companies for an additional three years. This long-standing system results in a de facto talent pipeline that has helped create economic prosperity for our nation. The NPRM's proposed changes to a weighted lottery will take an already competitive H-1B lottery and make it harder for American companies to retain the early career foreign talent our country's institutions have educated and trained. This, in turn, disadvantages U.S. employers. Many of these talented early career individuals will be forced to take their skills and talents to other countries and companies in which the U.S. competes. And in the recent weeks since this NPRM and President Trump's H-1B proclamation were both released, other countries such as China, Canada, and the United Kingdom, have enacted or have indicated forthcoming government actions aimed at attracting the talent for whom the United States may become a less viable destination.

[8] IIE Open Doors Report 2024. Institute of International Education and U.S. Department of State study, https://opendoorsdata.org/fact_sheets/fast-facts/.

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Changes will Disproportionately Impact Small and Medium-Sized U.S. Employers

The system will disadvantage all U.S. companies that have talent needs not met by domestic talent, but the problem will be worse for smaller-sized employers. According to the NPRM, small businesses that typically have fewer resources, comprised 76 percent of the total 22,453 unique entities that submitted H-1B petitions in FY 2024. While large companies may have been the beneficiaries of recent lotteries by sheer virtue of numbers of petitions filed, small businesses will be most impacted by the weighted lottery system, having lower pay scales. They will be less likely to be able to compensate a potential desired H-1B beneficiary at a higher level to ensure a higher probability of securing the candidate. And when combined with the proposed $100,000 USD fee in President Trump's 19 September 2025 proclamation, the financial ramifications for most companies, but most acutely for smaller companies and start-ups, become too high a burden to overcome. This would then result in most U.S. employers being unable to consider participation in the H-1B visa program as a viable option for their organization.

In addition to smaller for-profit businesses, many smaller not-for-profit businesses that are cap-subject will also be adversely affected. Their pay scales, at all levels of the organization, are typically lower than their for-profit counterpart. This would then result in them being priced out of the market for potential H-1B visa beneficiaries.

Wage Level Does Not Necessarily Equate to Skill

Furthermore, wage is not the sole determinant of value, but the NPRM without justification makes this assumption. An early career innovator might take a small technology business to the next level creating jobs within the company and industry. But this innovator will be disadvantaged by the weighted system as will the company because of lack of resources to secure (through payment of the $100,000 fee) and compensate them (to increase their odds of securing the individual under the NPRM). The result of this system will be to enable companies with more resources to access talent that will otherwise be de facto unavailable to lesser resourced companies.

This process is contrary to long-standing precedent. The H-1B program, which was established in 1952, has long recognized that the H-1B category is intended for professionals at all levels, including early career professionals. This is well documented, with the Immigration and Naturalization Service explaining in a January 1990 rulemaking that the inclusion of entry-level members of a profession had been well established since before 1970 and "that a Congressional amendment to the statute would be required to change the current interpretation after such a long time." [9] Later in 1990, when Congress considered revisions to a bill that became IMMPACT90, the bill retained the ability of early career professionals to utilize the classification. Weighting the H-1B lottery in favor of potential level IV beneficiaries will inevitably stifle innovation in the U.S. and changes the Congressional intent of the program.

Wage discrimination risks against American employees

The proposed rule sets up a process whereby a company, as an example, may have a talented early career beneficiary that it would be willing to pay more to increase the chance of the potential beneficiary being selected in the lottery by ending up in a higher beneficiary level. In this case, the early career beneficiary could be paid more than their comparably skilled American colleague(s) if the

[9] 55 Fed. Reg. 2606 at 2608-2609 (January 26, 1990).

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beneficiary is selected in the lottery and hired. The company is then in the position of having two similarly qualified employees being paid at vastly different wage levels, with the American worker receiving less – an outcome which please no one and poses potential immigration-related employment discrimination legal risks based on the pay inequity.[10]

Recommendations

For companies to succeed in a competitive global economy, companies need consistent and stable regulations so they can predictably plan and implement their business and talent strategies. In order to maximize their potential for success, employers need the ability to hire, retain, and move talent where it can be most innovative and efficiently utilized. The proposed pule, as it currently stands, would not advance these interests and needs to be recalibrated to maximize the benefits for workers, employers, and the U.S. overall while mitigating the economic risks.

If USCIS decides to proceed with a weighted-wage selection process that prioritizes more highly compensated candidates, WERC proposes that additional mechanisms should be utilized to provide some relief to the issues flagged for international students and small businesses and empower employers to boost the registration opportunity for priority talent they are seeking.

WERC recommends the following boosts to the weighted structure within the NPRM:

- **Graduates of U.S. colleges/universities/vocational schools:** American academic institutions are the best in the world, and international students earning U.S. degrees are a critical input to the nation's STEM workforce and economy.[11] Every year American universities graduate over 1.2 million young people with a heavy emphasis on the STEM fields. Rather than ceding this talent pipeline to America's competitors overseas, WERC recommends that the Administration give additional chances in the H-1B lottery to American-educated potential beneficiaries.

  Recommendation: One (1) additional registration (separate from those determined based on the wage level) awarded to all American-educated potential beneficiaries that submit a registration for a fiscal year cap lottery within 12 months of their graduation. We would also recommend providing a second additional registration to graduates in critical fields identified by the administration, including those in vital STEM sectors.

- **Recalibrate the Playing Field for Small Businesses:** USCIS reported that over 57,600 unique employers submitted a registration for a beneficiary within the 2026 lottery. While the media has focused on the use of H-1B visa holders by a handful of large technology companies, much less has been said about the value and impact on innovation of just one or two H-1B

[10] WERC notes that several enforcement agencies (e.g., the Department of Labor with its newly announced Project Firewall, the Justice Department's Immigrant and Employee Rights section, and the Equal Employment Opportunity Commission) have each designated as enforcement priorities instances where an employer is perceived as using the employment-based immigration system to favor noncitizens over U.S. citizens and other protected individuals. The proposed rule, WERC fears, would thus heighten enforcement risks for employers that are prompted to offer higher wages in order to increase the likelihood of selection in the H-1B lottery.

[11] Brain Freeze: How International Student Exclusion Will Shape the STEM Workforce and Economic Growht in the United States, Michael Clemens, Jeremy Neufeld, and Amy Nice, September 28, 2025, p 4.

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beneficiaries at small companies, who comprise the majority of petitioners.[12] A shortage of labor at all levels is a chronic problem for small businesses. National Federation of Independent Businesses (NFIB) survey from September 2025 showed that 28% of its members surveyed have ongoing openings for skilled workers. The problem is even greater among highly skilled employees for whom small businesses must compete on compensation. H-1B visa beneficiaries can be a small but valuable addition to a small company. A research paper published by the National Bureau of Economic Research in which nearly 1,900 startups in the technology industry were surveyed, found that firms successful in their petitions, for even one H-1B beneficiary, showed a higher level of receiving outside funding.[13] While small businesses and start-ups benefit by access to H-1B talent, they are often stymied by cash flow. Prioritizing Level IV applications over lower-level registrants will disproportionately hurt small and medium size enterprises.

Recommendation: Firms which are classified as small businesses by their Small Business Administration industry NAICS code should receive one (1) additional registration (separate from those determined based on the wage level). This would go a long way in helping to balance the playing field for small businesses while being consistent with the intent and focus of the NPRM.

- **Employer opportunities for prime candidates:** WERC urges the Administration to modify the rule to enable a company to "purchase" one (1) or more chances in the lottery for a particular candidate. This will increase the likelihood that the candidate will be selected but would do so in a manner that remains consistent with the intent and spirit of the lottery system. It will have the added benefit of potentially avoided wage discrimination against American employees by providing companies an alternative to raising the wage level to seek additional lottery chances. Should the Administration pursue this recommendation, WERC would recommend a price point which would not price small and medium-sized businesses out of the market.

Lastly, changes to the H-1B registration process should take into account the long lead time companies have in making their employment and human resources decisions and delay implementation until the FY2028 lottery. Many companies are already well underway in determining both their budgets and talent pipelines for the next year. By the time this rule is finalized, companies will be at a point in the planning processes where changes will adversely impact both the company and foreign nationals for whom the registration changes would have significant impacts on their chances of selection. This would then further hamper the ability of employers to retain and recruit the best talent and to provide clarity of process to all potential candidates.

We appreciate the opportunity to work with DHS on the weighted selection process for the H-1B program. While the revisions from the 2021 final rule are an improvement, this proposed rule, without substantial changes will not achieve the intended results. It will limit American business access to early career innovators, many of whom are American educated and will limit the ability of small businesses to successfully compete for talent. Should USCIS move forward, the recommendations we have proposed will limit the negative impact of the rule on valuable early career applicants and small businesses while preserving opportunities for highly skilled Americans competing for these early career positions.

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[12] 90 FR 45986, 46016

[13] Give Me Your Tired, Your Poor, Your High Skilled Labor: H-1B Lottery Outcomes and Entrepreneurial Success, Dimmock, Huang, and Weisbenner, Working Paper 26392, October 2019, National Bureau of Economic Research

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This program is critical to ensuring America remains a destination for the best and the brightest talent throughout the world and that Americans have the opportunity to innovate with talent from around the world. The risks to the U.S. economy and employers across the country are great if a revised structure ultimately drives critical talent toward America's competitors around the world rather than fueling American innovation and business growth. With changes to the NPRM, we believe a balance can exist that significantly benefits American employers, American workers, foreign national talent, and the U.S. economy. We look forward to working with you as this process moves forward.

Sincerely,

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About Worldwide ERC (WERC):

WERC, a Washington, D.C.-based global industry trade association, represents talent mobility professionals representing over 5,000 individuals and 2,750 enterprises located in every state of the nation. Our members include corporations and government agencies moving employees across the United States and around the world. In 2024 our members moved nearly half a million employees to meet the talent needs of their private and public sector employers.

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