Assessing the Department of Labor's rule raising wage requirements for H-1B workers

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Executive Summary

- On October 8th, the Department of Labor issued an interim final rule increasing the minimum wage requirements for H-1B workers across all four wage levels. The required minimum pay is based on wage percentiles of similarly employed native U.S. workers.
- For the most popular H-1B occupational categories, we estimate that the required increase in wages for entry–level workers ranges from 58 to 150 percent of the current wage (see table below).

Changes to Level 1 Workers' Wages for Most Common H-1B Occupations Generally (Weekly Wages)

Occupations	**Old Prevailing Wage (17th percentile)**	**New Prevailing Wage (45th percentile)**	**Percent Change**
Computer and Information Systems Managers	$1,038	$1,904	83%
Software Developers	$1,153	$1,846	60%
Computer Systems Analysts	$1,154	$1,817	58%
Business Intelligence Analysts and Other Computer Occupations	$692	$1,200	73%
Computer Programmer	$769	$1,923	150%

- Changes of this magnitude to the wage requirements, especially for entry-level workers, will adversely affect firms, such as nonprofits and startups, that have limited financial resources but rely on skills that H-1B workers bring.
- By making it more expensive to hire workers, the rule change would further discourage foreign-born students from attending American colleges and universities, despite the fact that they support the departments and programs that teach high–demand skills to both native and foreign–born students.

Introduction

The H-1B visa was created under the Immigration and Nationality Act. It is an employment-based visa issued to workers who have the skills or education necessary to work in specialty occupations in the United States. H-1B visa requirements include having specialized knowledge and a bachelor's degree or higher. The program is intended to help employers obtain skills and knowledge that are in short supply within the U.S. workforce.

On October 8th, 2020, the Department of Labor (DOL) issued an interim final rule increasing the wages required to be paid to H-1B workers without following the standard comment procedures in the rulemaking process. It was effective on the date of publication. The central argument for raising the required wage is that the economic situation of American workers has changed so drastically that it has become necessary to fast-track changes to wages in order to protect American workers. The reality is that the changes made to wage levels do little to help workers and could put much–needed economic recovery at risk.

High–Skilled Labor

Before the COVID-19 pandemic, the United States was experiencing record–breaking low levels of unemployment. Even with unemployment levels as low as 4 percent, however, many positions across the labor market remained unfilled because of the technical skills or knowledge required to do those jobs. The H-1B visa program exists to alleviate this challenge by allowing employers to find and hire workers with the needed skills outside of the normal labor pool. The number of H-1Bs is capped at 85,000, with individuals on both sides of the immigration debate claiming the number is too high or too low.

The general argument that surrounds limiting H-1B workers and raising the required wage is that H-1B workers take jobs that would otherwise go to native workers. Research has debunked this claim. Work by economist Giovanni Peri in addition to independent analysis done by the American Action Forum find that H–1B holders are a net–positive addition to the labor market, spurring economic growth and creating more jobs. Peri's analysis focuses on the effect that the flow of H-1B workers had on native college–educated workers between 1990 and 2010. He found that a 1 percentage point increase in the share of foreign-born STEM workers (those who specialize in science, technology, engineering, or mathematics) to a city's total employment increased wage growth of native college-educated workers by 7-8 percentage points and 3-4 percent for non-college-educated native workers. His results indicate that high-skill foreign–born workers increase productivity and contribute to overall economic growth.

Beyond expanding the share of skilled workers within the U.S. labor force, H-1B workers contribute to the U.S. economy in other ways as well. H-1B workers annually spend $76.7 billion at U.S. businesses, and 74 percent of H-1B spending goes directly to local businesses. A joint study conducted by the Partnership for a New American Economy and the American Enterprise Institute found that every additional H-1B visa granted is correlated with an increase in 1.83 additional jobs for U.S.-born workers over the following 7 years.

Prevailing Wage

To protect native workers from wage suppression due to the influx of foreign-born workers, there are a number of standards in place, including the prevailing–wage requirement. Within each occupation, H-1B workers must be paid a wage that is at least equal to the wage of similarly qualified native-born workers (prevailing wage) or the actual wage paid by the employer to other workers within the same role. Under the prevailing–wage requirement, there are four distinct wage levels that depend upon the experience of the worker in question. Levels 1, 2, 3, and 4 represent entry-level, qualified, experienced, and fully competent workers, respectively. The prevailing wages for H-1B workers vary based on occupation, experience, and worksite location and are set at percentiles based on the wages of U.S. workers in that occupation across all experience levels. Under the old rule, an entry-level H-1B worker would make at least the same as workers in the 17th percentile of workers in that occupation, a level that ideally matches the amount paid to native workers with similar experience. In October, the DOL issued an interim final rule that increased the prevailing wage for H-1B workers by changing the percentiles at each wage level. The change in the rule is illustrated below.

H-1B Rule Change by Wage Level

Wage Level	Previous Prevailing Wage	Prevailing Wage Under New Rule
Level 1 (Entry)	17th percentile	45th percentile
Level 2 (Qualified)	34th percentile	62nd percentile
Level 3 (Experienced)	50th percentile (median wage)	78th percentile
Level 4 (Fully Competent)	67th percentile	95th percentile

H-1B Wage Details

How will the new wage rule impact the various types of employers and segments of the U.S. economy? As shown above, the totality of H-1B visa holders is divided into groups based on their experience. Different experience yields different prevailing–wage values. In drastically increasing the prevailing wage at different experience levels, there are a number of consequences, including pricing out smaller employers who need specific skills. According to AAF analysis using the most recent DOL data, the percentage of H-1B Labor Condition Applications at each wage level is as follows:

Level 1 – 13.9 percent,

Level 2 – 49 percent,

Level 3 – 21.8 percent, and

Level 4 – 15.3 percent

The most common occupations of H-1B visa holders are computer and information systems manager, software developer, computer system analyst, business intelligence analyst, and computer programmer. Looking specifically at wage level 1, the most common occupations are software developers, business intelligence analysts, civil engineers, mechanical engineers, and management analysts.

Analyzing native-worker weekly wage data at the 17th and 45th percentiles for these occupations shows the general magnitude of the increases that U.S. employers face with the recent prevailing–wage rule change. As the two tables below show, the percentage increase in pay varies from a low of 17 percent to a high of 150 percent. Even the most modest increase could mean an additional annual cost of $10,000 per H-1B worker. In the case of occupations with larger percentage increases such as computer programmers, employers would need to more than double the salaries of entry–level workers, adding $60,000 in annual wage cost per programmer.

Most Common H-1B Occupations at Wage Level 1 (Weekly Wages)

Occupations	**Old Prevailing Wage (17th percentile)**	**New Prevailing Wage (45th percentile)**	**Percent Change**
Software Developers	$1,153	$1,846	60%
Business Intelligence Analysts and Other Computer Occupations	$692	$1,200	73%
Civil Engineers	$1,346	$1,640	22%
Mechanical Engineers	$1,154	$1,346	17%
Management Analysts	$1,078	$1,500	39%

** There is likely to be variation given prevailing wage calculations consider geographic location as well.*

Changes to Level 1 Workers' Wages for Most Common H-1B Occupations Generally (Weekly Wages)

Occupations	**Old Prevailing Wage (17th percentile)**	**New Prevailing Wage (45th percentile)**	**Percent Change**
Computer and Information Systems Managers	$1,038	$1,904	83%
Software Developers	$1,153	$1,846	60%
Computer Systems Analysts	$1,154	$1,817	58%
Business Intelligence Analysts and Other Computer Occupations 1	$692	$1,200	73%
Computer Programmer	$769	$1,923	150%

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Even just for level 1 H-1B visa holders, the wage data above show how different and substantial the increase in wages can be across different occupations.

Effects on Level 1 Workers and Their Employers

The prevailing–wage level changes would mandate that employers pay entry–level workers (wage level 1) who hold an H-1B visa at the 45th wage percentile of native-born workers. This change would almost certainly require U.S. employers to pay H-1B workers a much higher wage than similarly qualified and situated U.S. workers. Under the new rule, even an entry–level H-1B worker would need to be paid more than nearly 50 percent of native workers in the same industry in the same geographic location. Research by the Cato Institute analyzing the old prevailing–wage rule found that 100 percent of H1-B employers pay visa holders average market wages, with nearly 80 percent of employers paying above market wages. Given this evidence, it's likely that the changes to prevailing wage would artificially inflate wages far above market wages. Analysis by the National Foundation for American Policy found that "the wages mandated under the new DOL rule do not reflect market wages." For proponents of the rule change, the hope is that the increased prevailing–wage levels will incentivize employers to hire native over foreign–born workers. The problem is that this line of thinking assumes that the U.S. native–born labor force can supply all the necessary workers and relevant skills to U.S. employers. The reality is that H-1B workers are a crucial part of the labor force and fill important roles in U.S. companies. It is unlikely that H-1B workers are used as a financially beneficial labor option given how costly and time consuming the entire hiring process can be. Hiring H-1B workers allows sustainable business growth to occur without necessitating interruption because native workers lack the required skills.

There are numerous consequences to raising the prevailing wages beyond the market rates. Those employers and workers at the wage level 1 are likely to be the most negatively affected by the changes given that they may effectively be priced out of the labor market. While wage level 1 does not contain the majority of H-1B workers, its "entry level" designation and associated wage level make it more accessible to those employers with limited financial resources whose needs can be addressed by bachelor's-level graduates with specialized knowledge. Employers such as startups and non-profits are particularly likely to hire these workers. The new wage rule would make it much more difficult for these types of organizations to be able to afford the workers that they need. AAF analysis found that nonprofits make up slightly over 9 percent of wage level 1 employers, and startups make up 33 percent of employers in wage level 1. In a labor market where an entry–level H-1B employee must be paid nearly median wage, many of these employers would not be able to afford to fill those roles.

Beyond the challenges presented to under–resourced employers, the increase in the prevailing wage will also affect international students graduating from American colleges and universities. Recent graduates are unlikely to be able to find employers who are willing to pay them at the same rate as their median-wage workers. This would likely lead to American–educated international students taking their knowledge and skills elsewhere instead of putting them to use as part of the U.S. labor market.

Similar Effects for Level 2 Wage Changes

As with level 1, the prevailing–wage changes at level 2 would force significant increases. For the most common occupations, employers would have to raise wages from 31 percent to 47 percent, depending on the occupation, as seen in the table below. While the percentage increases are not as large as those for level 1, more H1B holders would be affected since almost half are currently at level 2.

Changes to Level 2 Workers' Wages for Most Common H-1B Occupations Generally (Weekly Wages)

Occupations	Old Prevailing Wage (34th percentile)	New Prevailing Wage (62nd percentile)	Percent Change
Computer and Information Systems Managers	$1,442	$2,115	47.0%
Software Developers	$1,583	$2,211	44%
Computer Systems Analysts	$1,442	$2,019	40%
Business Intelligence Analysts and Other Computer Occupations 1	$1,153	$1,513	31%
Computer Programmer	$1,672	$2,308	38.0%

** There is likely to be variation given that prevailing wage calculations consider geographic location as well.*

Notably, the new level 1 wage is set at the 45th percentile, which falls between the old level 2's 34th percentile and the new level 2's 62nd percentile. Employers who may face difficulty affording level 2 workers may decide to hire level 1 H–1B workers instead and forgo the additional and necessary experience that higher level workers bring.

International Students

The Trump Administration has increased regulations surrounding high–skilled labor by implementing more stringent review and denial processes. As a result, the denial rate for H-1B visas has risen to 30 percent in the first quarter of 2020 from 6 percent in 2015, while the demand for those workers and their skills continues to rise. Furthermore, the administration has halted issuing H-1B visas through the end of the year. Many future H-1B recipients are currently studying at American colleges and universities, and their tuition is largely responsible for the continued operation of many workforce development-focused departments and programs. According to the National Foundation for American Policy, many U.S. universities have multiple undergraduate majors and graduate programs that cannot be maintained without international students. The very institutions that could help upskill native workers rely on a functioning H-1B program that incentivizes foreign–born students to enroll in American universities and pursue employment through the H-1B visa program.

Foreign nationals account for large majorities of programs that teach high–demand skills. For example, they represent 81 percent of the full-time graduate students in electrical petroleum engineering, 79 percent in computer science, 75 percent in industrial engineering, 69 percent in statistics, 63 percent in mechanical engineering, 59 percent in civil engineering, and 57 percent in chemical engineering. Without an H-1B prevailing–wage system that matches market conditions and enables these international students to be hired, institutions of higher learning may not have the resources needed to sustain programs that teach in–demand skills to either native or foreign–born students.

Conclusion

Research demonstrates that the DOL's changes to the prevailing wage will do little, if anything, to help native U.S. workers. Unfortunately, the new rule is likely to harm U.S. businesses—particularly startups and nonprofits—and hinder the economic recovery. The new prevailing–wage levels require employers to pay entry–level H-1B visa holders close to the median wage of all workers in particular occupation categories, effectively forcing employers to choose between obtaining needed skills and paying H-1B workers higher than similarly situated native workers. Forgoing crucial skills could weaken both individual firms and the overall economy during an already uncertain time.