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September 24, 2026

The Honorable Markwayne Mullin
Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528

**Re: Fee for Certain H-1B Petitions (CIS No. 2861-26; DHS Docket No. USCIS-2026-0298; RIN 1615-AD20)**

Dear Secretary Mullin:

The Consumer Technology Association (CTA)® supports the Administration's goals of protecting American workers, preventing abuse of the H-1B program, and making sure the United States leads the world in artificial intelligence and other critical technologies. We write because we are concerned that this proposal will work against those goals. As North America's largest technology trade association, CTA is the tech sector. Our over 1200 member companies are the world's leading innovators – from startups to global brands – supporting more than 18 million American jobs. CTA owns and produces CES® – the most powerful tech event in the world.

We are not defending the status quo, and we are not arguing against reform. CTA has supported measures that strengthen the integrity of the H-1B program and target its misuse, and we continue to do so. Our concern is with this particular approach. A $103,265 charge on every cap-subject petition would hurt American startups, make it harder to keep great talent in this country, and could push jobs overseas. We ask the Department to withdraw the rule and work with us on a more targeted approach.

**This Proposal Could Send Jobs Overseas Instead of Bringing Them Home**

The proposal assumes that if a company does not hire an H-1B worker, it will hire an American instead. Sometimes that will happen. But there is another possibility the rule does not consider: the job goes to Toronto, London, Bangalore, or Warsaw.

This is where talent differs from products. When a tax raises the costs of a good – where imported or produced in country – a consumer or business can find an alternative, perhaps one made domestically. Talent does not work that way. Making it $103,265 more expensive to employ an engineer in the United States does not mean an American gets hired. It means the company can put the engineer, and the job, in another country. Instead of gaining an American job, we lose one — and the research, the intellectual property, the investment, and the taxes go with it. So does the secondary hiring that surrounds a technical team: the operations, sales, and support roles filled by American workers, and the supply-chain spending that follows.

This matters most in exactly the fields where the Administration has set out to win — artificial intelligence, semiconductors, quantum, cybersecurity, and advanced manufacturing. Talent in these fields is globally mobile, and investment follows it. Competitor nations are recruiting these people openly. The United States should be making it easier, not harder, to put the world's best technical talent to work for American companies, in America.

**The Department's Own Analysis Shows the Problem**

The Department estimates that this proposal will have a significant economic impact on three out of every four small businesses that use the program. In its own words: "DHS estimates that the proposed rule would result in a significant economic impact on 11,051 small entities (76 percent of small entities that filed cap-subject petitions in FY 2025) due to additional fees proposed in this rulemaking."[1] The Department has told the public that its rule will significantly harm three of every four small businesses that rely on this program, and proposes to proceed anyway.

Startups feel it most. For a seed-stage company, a $103,265 fee could make or break its ability to continue operating and growing in the United States. The fee is payable at filing, so it is a cash barrier, not merely a cost, and early-stage firms run on lean reserves. These firms also often compete for talent through equity compensation, a dynamic the Department's wage-based analysis does not adequately capture.

The charge is a flat amount. As salary falls, its effective rate climbs. The fee equals 78 percent of the $133,000 median H-1B salary the Department cites. For an early-career engineer earning $95,000, it tops 100 percent. For a senior researcher earning $400,000, it is about a quarter. The burden lands hardest on entry-level roles, on American university graduates, and on employers outside high-wage coastal markets.

New and young firms account for a disproportionate share of net new job creation in the United States. Setting aside the jobs created by new firms, average net employment growth in the private sector has been negative.[2] Foreclosing these firms' access to specialized technical talent does not redistribute those jobs to incumbents. It forgoes them.

**America Should Not Educate the World's Best and Then Price Them Out**

The rule applies the full $103,265 to petitions filed under the 20,000 advanced degree exemption. Congress created that exemption in the H-1B Visa Reform Act of 2004 to keep graduates of American universities in

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[1] Fee for Certain H-1B Petitions, 91 Fed. Reg. 54817 (Aug. 25, 2026), Table 12 ("Estimated Number of Small Entity H-1B Cap-Subject Petitioners"), FY 2025 data.

[2] Kauffman Foundation, "Business Dynamics Statistics Briefing: Jobs Created from Business Startups in the United States" (Jan. 2009) (finding that excluding jobs from new firms, average U.S. net employment growth over 1980–2005 is negative); John Haltiwanger, Ron S. Jarmin & Javier Miranda, "Who Creates Jobs? Small versus Large versus Young," 95 Rev. Econ. & Stat. 347 (2013) (finding firm age, not size, drives net job creation).

the American economy.[3] Charging the same six figures for a U.S. master's or Ph.D. graduate as for any other petition substantially undermines the pathway Congress built.

Unlike the Proclamation, this fee also reaches petitions to change status for workers already in the United States, so it captures graduates converting from student status, not just new arrivals from abroad. America should not educate the world's best engineers and scientists and then make it prohibitively expensive for American startups to keep them here. Starting salaries for entry-level researchers, data scientists, and engineers cannot justify a six-figure upfront charge, and the graduates priced out will take their research, patents, and ventures to Canada, the United Kingdom, and the European Union, which are competing openly for exactly these people.

Nearly one in four U.S. billion-dollar startups has a founder who came here as an international student. Those companies average 1123 jobs each.[4] Startup founders have a choice of where to build. Pricing them out of the United States does not create American jobs. It ensures those jobs are created somewhere else.

**The Charges Stack**

The Department says the fee applies "in addition to any other applicable fees or payments," including the $100,000 payment under Proclamation 10973. It also stacks on the base Form I-129 fee, the Asylum Program Fee, the fraud prevention and detection fee, and ACWIA training fees. An employer facing the Proclamation payment as well pays more than $203,000 for one hire, before legal costs. The cumulative upfront cost per hire approaches or exceeds the entire annual salary of many of the workers involved. The Department does not analyze the combined burden.

The stacking also runs across a career. Optional Practical Training is the bridge from an American university to an American employer: a company hires a U.S.-trained graduate on practical training, then sponsors that same graduate for H-1B status. The Department's regulatory agenda includes a practical training rulemaking, and press reports say a separate OPT fee rule sits at the Office of Management and Budget.[5] If both take effect, an employer pays twice for the same worker, in the same job, at the same company — more than $300,000 to keep one graduate. Each rule counts only its own charge. No one adds them up.

**A Flat Fee Does Not Target Abuse**

CTA shares the Department's interest in stopping misuse of the H-1B program, and we have urged precise tools for it. Last year we asked the Department to close the $60,000 salary exemption loophole for H-1B dependent employers, which favors large outsourcing firms. A flat charge does the opposite of targeting. A high-volume filer and a 40-person hardware company each pay $103,265. The first spreads the cost across

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[3] H-1B Visa Reform Act of 2004, Pub. L. No. 108-447, div. J, tit. IV, subtit. B; see INA § 214(g)(5)(C).

[4] National Foundation for American Policy, "Immigrants and U.S. Billion-Dollar Companies," June 2026.

[5] Unified Agenda of Regulatory and Deregulatory Actions, July 6, 2026 (RIN 1653-AA97, Practical Training). Press reports indicate a separate rule setting Optional Practical Training fees is under review at the Office of Management and Budget. See Bloomberg Law, "Fee Rule for Foreign Graduate Work Program Sent to White House"; The Wall Street Journal (Aug. 2026). No proposed rule has been published.

many filings and passes it to customers. The second stops sponsoring. A fee that is blind to conduct will not deter bad actors. It will hand the program to whoever can pay.

**CTA Raised These Concerns Last Year**

In our October 24, 2025 comments on the weighted selection process, CTA asked the Department to "avoid tying selection odds to fee levels that deter hard-to-fill roles or push work offshore."[6] This rule does exactly that. The weighted selection rule took effect on February 27, 2026 and cut selection odds roughly in half for Wage Level I registrants. Adding a $103,265 fee closes the early-career path. An employer must commit to a candidate before knowing whether the registration will be selected, and then faces six figures if it is. Employers will pause student hiring and let F-1 students go when practical training ends.

**The Affordability Case Does Not Hold**

The Department says employers can afford the fee because the median beneficiary earns $133,000. That proves the opposite: the fee takes 78 percent of the salary offered as evidence it is affordable. Employers cannot pass it to the worker, and ability to pay is not a test under Section 286(m). The affordability claim rests almost entirely on a single 2026 study, which estimates an average H-1B wage gap of 16 percent and simulates a revenue-maximizing fee of $95,000 to $152,000 per hire.[7]

That study cannot carry the weight the Department puts on it. First, a revenue-maximizing fee is not an affordable fee. A revenue maximum exists only because volume falls as price rises. The calculation assumes employers walk away. The Department relies on the study to show employers will pay, while assuming petition volumes hold at 85,000. Both cannot be true. Second, a 16 percent average wage gap says nothing about the entry-level role or the seed-stage employer. Pricing every petition at the average over-charges every position below it.

The affordability assumption also misreads how employers decide. Firms do not weigh a filing fee against the economic value a worker might generate over several years. Hiring happens inside approved headcount, compensation, immigration, and business-unit budgets, and $103,265 is an immediate, incremental cost attached to one hire. Even where the business values the candidate and the role is fully justified, a six-figure immigration cost can push an employer to reconsider the hire, the sponsorship, or where to put the position — including offshore.

The timing compounds the mismatch. The fee is due upfront, at filing. The value the Department relies on accrues over years, and only if the employee stays. Retention is never guaranteed. A certain, immediate six-figure outlay is not the equivalent of an uncertain, deferred benefit. The rule does not reconcile the two.

The revenue math fails for the same reason. The Department divides a fixed cost by 85,000 petitions — the statutory cap — while admitting filings may drop and that the rule works only if volumes hold. The fee is set

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[6] CTA, Comments on the Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions (DHS Docket No. USCIS-2025-0040), Oct. 24, 2025.

[7] George J. Borjas, "The H-1B Wage Gap, Visa Fees, and Employer Demand," NBER Working Paper No. 34793 (Feb. 2026). The paper finds an average H-1B wage gap of 16 percent and simulates a revenue-maximizing visa fee of $95,000 to $152,000 per hire.

by dividing costs by a number the fee itself will shrink. The Department ran no elasticity analysis and built in no true-up. It weighed one alternative and dismissed it in a sentence, and did not study tiering by employer size, relief for small firms, or a phase-in.

**The Department Lacks the Authority**

Congress set H-1B fees carefully, in the low thousands. Section 286(m) lets the Department recover "the full costs of providing" adjudication "services." That is cost recovery for services given to the payer. At $103,265, this charge is a tax, and only Congress has the authority to impose one.

This rule would collect $8.8 billion a year. Most of it has nothing to do with adjudicating H-1B petitions: about $3 billion for Justice Department immigration courts and 8,400 court positions, $1.05 billion for Immigration and Customs Enforcement, $76.2 million for Customs and Border Protection biometrics, and more for the State and Labor Departments. Removal proceedings are not a service to an American employer hiring an engineer. Shifting general enforcement and other agencies' overhead onto one group of high-skilled employers bypasses regular appropriations and exceeds the authority Congress granted.

**30 Days Was Not Enough**

The Department allowed 30 days to comment on a rule costing $8.8 billion a year, built on a cost-recovery theory it has never used before. Executive Order 12866 calls for at least 60 days. The Department also withheld the cost model, so no one can test how court, enforcement, border, and labor costs were assigned to H-1B petitions. In the time allowed, CTA could not gather member data on startup H-1B use — the very data the Department's small-entity analysis lacks.

**Conclusion:** CTA shares the Administration's goals of protecting American workers, strengthening the integrity of the immigration system, and making the United States the best place in the world to innovate and build companies. Our concern is that this proposal could work against those goals. We urge the Department to withdraw the rule and work with us on a more targeted approach — one that goes after abuse without making it harder for American startups to compete for the talent they need. CTA stands ready to help.

Sincerely,

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