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October 24, 2025

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

Re: Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions (CIS No. 2820-25; DHS Docket No. USCIS-2025-0040)

Dear Secretary Noem:

The Consumer Technology Association (CTA) appreciates the opportunity to comment on the Department of Homeland Security's (DHS) proposed rule to modernize the H-1B cap selection system through a weighted approach that rewards higher skills and pay while preserving fair access across roles and regions. CTA represents the U.S. consumer technology industry and produces CES, the world's most powerful technology event. Our members include more than 1200 companies, from startups to global brands, supporting more than 18 million American jobs. For more than a century, CTA has been a vocal advocate for American-led technology innovation as a catalyst for economic growth.

We support reforms to the H-1B visa lottery that strengthen the integrity of the selection process, make it harder for employers to game the system, and align with the statutory goals of the program set by the U.S. Congress. At the same time, these reforms must empower America's innovators – especially small businesses and startups – to recruit and hire the talent needed to fulfil President Trump's vision for American technology dominance.

DHS's proposed weighted selection methodology appears to conflict with the Immigration and Nationality Act (INA), which requires that petitions be processed "in the order in which they are filed."¹ By introducing a selection mechanism that prioritizes wage levels over filing order, the rule fundamentally contravenes this statutory requirement.

Why the Transfer of Talent Matters

Professionals who come to the United States through the H-1B program complement U.S.-based teams, help launch startups, and pioneer new products and innovation. Limiting the ability to

¹ INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3) (stating that aliens who are subject to the numerical limitations will be "issued visas (or otherwise provided nonimmigrant status) in the order in which the petitions are filed").

transfer skilled individuals to the U.S. slows entrepreneurship and weakens the United States' standing in the global race for ideas and skills. CTA supports modernization of the H-1B program to improve transparency and facilitate U.S. employers' ability to fill higher-skill roles.

Keep Early-Career Pathways Open

The proposed weighted selection process will severely limit the probability of selection for those entrants who are assigned an OEWS Wage Level I based on their salary. DHS estimates that the odds of selection for these entrants will decrease by half. This will narrow available career paths in the United States for new graduates or employees who are early in their careers. With these employees unable to pursue careers here, the U.S. loses pipelines for entrepreneurship and growth in lower cost regions of the United States, which must pay lower wages in a competitive technology marketplace. Uncertainty in F-1 to H-1B transitions could lead employers to pause student hiring and terminate F-1 students at the conclusions of their Optional Practical Training (OPT), further shrinking the pipeline.

The proposed rule would disproportionately harm the F-1 pipeline. These U.S.-educated international graduates represent a strategic investment in America's innovation ecosystem. Penalizing them through wage-based selection criteria risks losing talent the U.S. has already cultivated, weakening our competitive edge and discouraging future enrollment in U.S. academic institutions.

Support Small Firms, Startups, and Regions

DHS's analysis suggests small entities and startups would bear most of the burden if Wage Level I hiring falls, with uneven effects across U.S. regions and states. The proposed rule would force U.S. businesses to adjust their carefully thought-out compensation strategies, which they use to foster cultures of accountability and innovation. These adjustments would increase compensation costs. The proposed rule further impacts startup businesses who often incentivize and compensate their employees using equity-based compensation. This benefit, which can often be very valuable, would not be considered as compensation under the proposed rule.

CTA asks DHS to avoid a system that steers all selections to the highest wages at the expense of smaller firms, founders, and new graduates who grow into tomorrow's leaders. For example, firms in advanced manufacturing and mobility would benefit from clear, swift treatment or targeted relief for roles tied to critical infrastructure, where domestic talent is scarce and global skills are needed to meet safety and production goals.

The proposed wage-based selection system also risks reinforcing geographic disparities by favoring employers in high-cost coastal states, where prevailing wages are naturally higher. In contrast, firms located in regions with lower costs of living—such as the Midwest, South, and Mountain West—may offer competitive salaries that fall into lower OEWS wage levels, despite reflecting strong local market conditions. This dynamic disadvantages employers outside major urban hubs and undermines efforts to build vibrant innovation ecosystems nationwide. A fair and inclusive selection process should account for regional economic diversity and avoid concentrating talent in a few high-wage enclaves.

Recognize Merit Beyond Pay Wage

Pay wage can signal skill, but the system should also reflect graduate degrees, proven expertise, invention, and entrepreneurial promise so employers of all sizes can compete for talent that drives results. That balance will keep selection diverse across roles, firms, and regions while still rewarding higher-skill hiring.

In its proposed rule, DHS instructs employers to choose an OEWS wage level that corresponds to the salary being paid to the worker. Rather than focusing on the salary itself, DHS should instruct that employers assign the OEWS wage level that corresponds to the requirements of position, as the OEWS wage is intended to function. This method would ensure that the most highly-skilled and talented employees are provided the highest odds of selection. As currently proposed, employers are incentivized to artificially increase the wage paid to an employee to ensure better odds of selection in the lottery, even if the position itself is for a less skilled worker.

Practical Safeguards and Improvements

DHS should adopt safeguards that preserve selection odds for advanced degree holders from institutions outside of the United States, STEM graduates, and bona fide founders across wage levels. DHS should explore a hybrid model – weighted plus random selection – to reward skill while keeping diversity during excess demand. To bolster real-world pipelines, DHS should:

- Avoid tying selection odds to fee levels that deter hard-to-fill roles or push work offshore;
- Consider variable compensation factors to determine total compensation instead of base pay only, including equity-based compensation favored by technology companies; and
- Provide clear, targeted relief or prioritization for roles tied to critical infrastructure where U.S. capacity is limited and projects are time-sensitive.

CTA also recommends DHS consider alternative selection criteria that more effectively target abuse without harming legitimate employers. For example, prioritizing advanced degree holders from educational institutions outside of the U.S. or applicants in high-demand occupations would better align with the rule's intent. Additionally, DHS should eliminate the \$60,000 salary exemption loophole for H-1B dependent employers, which disproportionately benefits large outsourcing firms and undermines fair competition.

Consistent With Congress and U.S. Goals

DHS should read the legislative intent underlying the H-1B program broadly: support higher-paid, higher-skill hiring and keep strong pipelines across occupations and geographies. The U.S. should welcome the “best and brightest” while avoiding a sudden loss of hiring capabilities in the technical base that supports growth at scale, including advanced manufacturing and electrification projects that depend on scarce global skillsets.

Conclusion

CTA supports H-1B modernization efforts that boost growth, entrepreneurship, and leadership of U.S. firms in the technology industry. We ask DHS to refine the rule with the safeguards above. If DHS makes major changes from the proposal, it should issue a further NPRM so stakeholders

can provide targeted feedback. CTA stands ready to help DHS shape a final rule that is fair, pro-innovation, and built to last.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Brzytwa".

Ed Brzytwa
Vice President of International Trade
Consumer Technology Association

A handwritten signature in black ink, appearing to read "Michael Petricone".

Michael Petricone
Senior Vice President of Government Affairs
Consumer Technology Association