



**College and University Professional
Association for Human Resources**

November 9, 2020

Brian D. Pasternak, Administrator
Office of Foreign Labor Certification
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington DC 20210

Submitted via <https://beta.regulations.gov/commenton/ETA-2020-0006-0001>

Re: Comment on DOL Docket No. ETA-2020-0006, Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States

Dear Administrator Pasternak,

On behalf of the College and University Professional Association for Human Resources (CUPA-HR) and undersigned organizations, we write in response to the Interim Federal Regulation (IFR) published October 8, 2020 in the Federal Register by the Department of Labor, and entitled *Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States*.¹

CUPA-HR provides leadership on higher education workplace issues in the United States, with a membership of more than 31,000 human resources professionals and other higher education leaders at more than 2,000 colleges and universities across the country, including 93 percent of all United States doctoral institutions, 79 percent of all master's institutions, 57 percent of all bachelor's institutions and nearly 600 two-year and specialized institutions.

CUPA-HR monitors trends, explores emerging workforce issues, conducts research, and promotes strategic discussions among colleges and universities. We also provide opportunities for our members to connect with one another and to develop professionally by hosting conferences and webinars, publishing tools and resources and offering online communities for collaboration.

¹ 85 Federal Register 63872 (October 8, 2020), pp. 63872 – 63915, hereinafter referred to as IFR.

For over 50 years, CUPA-HR has worked with college and university human resource professionals to create salary and benefits reporting tools and resources, including our administrator report, professional report and faculty report. We have an in-house research team and a Research Advisory Committee to ensure the quality of wage survey methodology. See Attachment 2 for detailed description of how we have produced wage surveys that specifically meet the criteria found at 20 CFR 656.40(b)(3), (g), as well as the 2009 DOL Prevailing Wage Determination Policy Guide².

CUPA-HR's research team consists of five researchers, four with Ph.D.s in the social sciences and one with an M.S. working on a Ph.D. in evaluation, measurement and statistics. A sixth member of the research team is the research operations manager, who has an M.S. in the area of human resources management. The director of research, Jacqueline Bichsel, has more than 20 years of experience in higher education research, measurement, survey development, evaluation, statistics and analytics. The other researchers have various levels of expertise in similar areas. Publications on the higher education workforce from the research team include CUPA-HR's annual reports and the various reports available here: <https://www.cupahr.org/surveys/research-briefs/>. Two of our research team, Jacqueline Bichsel, Ph.D. and Sarah Nadel-Hawthorne, Ph.D., have contributed directly to the analysis presented in this comment.

To our knowledge, CUPA-HR surveys are the most comprehensive higher education-specific salary resource. Approximately 1,300 institutions participate each year, contributing incumbent-level data that reflects the salaries, demographic information and benefits of more than 270,000 full-time faculty by discipline and rank and more than 500,000 administrators and staff. Hundreds of institutions subscribe to our general surveys or our "data on demand" function (<https://www.cupahr.org/surveys/dataondemand/>).

We join with other organizations in expressing deep concern about the Interim Final Rule (IFR) because it was implemented without opportunity for public comment, its methodology is fundamentally unsound, and the IFR does not provide colleges and universities adequate time to adjust to changes, which negatively impacts higher education's ability to provide services for students across the country. The IFR in many cases precludes U.S. colleges and universities from hiring international employees to fill much needed positions. We have provided our best analysis of the IFR in the limited time period allowed, but the truncated comment period limits our ability to comment as thoroughly as we would like. At the same time, the hurried effective date has our members scrambling to address staffing needs, which is further complicated by the ongoing pandemic.

With over five decades of experience, we know that developing wage surveys that accurately reflect the job market is exceedingly complicated. It cannot be done overnight, as happened on October 8 of this year when DOL published the IFR in the Federal Register, or October 13, 2020, when DOL replaced the online wage data survey with the new much higher salaries. Here at CUPA-HR, our data not only undergoes strict system validation, but is also subjected to the rigorous checks of our research team and is routinely cross-validated with other compensation surveys. Our annual survey cycle is November - January to gather institutional data from higher education institutions. As data is submitted the research team vets and reviews through February. It is not possible to revise data suddenly. A public notice and comment period is absolutely essential to ensure the accuracy and validity of the DOL wage survey. In fact, it took

² https://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

our research team significant time and effort to create Attachment 2, matching our data with the DOL requirements in place since the 2009 guidance.

Higher education relied on the previous 2009 guidance for staffing decisions critical to academic offerings and success

In the IFR, DOL states that “to the extent employers have reliance interests in the existing levels, the Department has determined that setting the wage levels in a manner that is consistent with the text of the Immigration and Nationality Act (INA) and that advances the statute’s purpose of protecting U.S. workers outweighs such interests and justifies such increased costs.” After careful review of the IFR, the data and the underlying statute, we disagree with the DOL’s assertion that the prior wage levels are inconsistent with the INA or that the INA would require the type of rushed change that is contained in the IFR. To the contrary, we believe the IFR is inconsistent with the INA. We therefore urge DOL to rescind the implementation of the IFR, carefully review the comments submitted and proceed with a new proposed regulation through OMB/OIRA review and then full public notice and comment if changes are to be made to the current guidance.

DOL notes in the IFR that the 2009 guidance was issued without notice and comment. While we would have preferred DOL use notice and comment when it issued the 2009 guidance, stakeholders, including CUPA-HR members, have come to rely on the guidance. As a result, any changes DOL makes to the guidance should include public notice and comment, full OMB/OIRA review, be supported by a reasonable basis, be grounded in sound statistical methodology and allow stakeholders adequate time to adjust to changes. We hope that these comments and others submitted will be used to inform any new rulemaking process.

As human resource professionals, we stress the reliance of colleges and universities on the 2009 guidance and the significant practical problems posed by the IFR abrupt changes. Academic hiring cycles often run over a year. Offers have been made based on the ability to sponsor H-1B status and/or green cards. Budgets have been set as a result. Tens of thousands of employees in higher education have likely accepted a job, and turned down others, in part on the basis of agreements about immigration sponsorship. Staffing for the academic year across the entire university system is built on these foundational decisions. The disruptions that will be caused by the IFR’s abrupt changes will impact higher education’s ability to educate students across the United States.

Our members, human resource professionals, have worked with their campuses to make hiring and retention decisions for key positions for this academic year based on the publicly available data from DOL at flicdatacenter.com. Needless to say, hiring and retention are particularly challenging during the COVID-19 pandemic, at a time of tremendous uncertainty about revenue streams, and for public institutions likely facing cuts in state funding. Searches would have to be re-run, and current valued employees may not be able to stay. This includes tenured and tenure-track faculty, and critical researchers. Also, because there are a limited number of people with the requisite skills, many colleges and universities will have to reduce academic offerings, and reduce or delay research.

Methodology of the IFR is fundamentally flawed and contrary to the INA

The IFR has been reviewed carefully by our research team, and its methodology is deeply flawed. The statistical tests are not accurate and the resulting data do not accurately reflect

college and university salaries. The Immigration and Nationality Act states that the required wages should be “based on the best information available as of the time of filing the application.”³ Labor union negotiated collective bargaining agreements are given the most weight,⁴ Government or nongovernmental wage surveys may be used, with the Department of Labor determination considered “most accurate and reliable.”⁵ The government survey data then must be held to the highest degree of statistical rigor to support its place as a “safe harbor.”

The IFR’s stated “primary” purpose is to “better reflect the actual wages earned by U.S. workers similarly employed to foreign workers.”⁶ In reviewing the wide range of categories currently on flcdatacenter.com, the DOL data presented now does not reflect the current salaries earned in job classifications in higher education. In fact, the previous data was a significantly better reflection of wages actually being paid. In many cases, the new data will inflate wage rates in a manner that renders the program unusable, which is contrary to the INA.

The statute requires four wage levels for government surveys.⁷ The IFR raises the lower level from 17th percentile to 45th percentile. This change does not make the DOL wage the “best available information,” as it leaves out nearly half of the workers similarly employed. The new wages rise by about 40% for each of the levels.⁸

Calculation of Level I (entry level) wages is skewed improperly

Much of the analysis in the IFR focuses on entry level (Level I) wages, so we will discuss those specifically. Level I is defined in 2009 guidance as entry level, for a beginner with “only basic understanding of the occupation.”⁹ By raising the base salary required for such an entry level position to 45th percentile, many Level I jobs effectively cannot be sponsored for temporary visas or permanent residence.

Raising the Level I wage to 45th percentile wage by arguing that most employees have master’s degrees¹⁰ is conflating two separate points. The degree is not valid justification for the changes in the wage levels. For those positions, e.g. professors, doctors, lawyers, the attainment of an advanced degree is a requirement for admission to the profession and the true entry-level wage (assuming no additional requirements) should be the lower end of the wage survey data. One more example common among our members is Medical Scientists, which requires a Ph.D. as entry level.¹¹ 17th percentile was a better real-world approximation than the 45th.

³ INA Sec. 212(n)(1)(A)(i) and (t)(1)(A)(i).

⁴ 20 CFR Sec. 655.731(a)(2)(i).

⁵ DOL, “Prevailing Wage Determination Guidance” (Nov. 2009), p. 5, https://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

⁶ IFR, Fed Reg

⁷ INA Sec. 212(p)(4).

⁸ Anderson S. “New LawsUIT and Glaring Problems Threaten DOL H-1B Visa Rule.” *Forbes*. October 19, 2020. Available at: <https://www.forbes.com/sites/stuartanderson/2020/10/19/new-lawsuit-and-glaring-problems-threaten-dol-h-1b-visa-rule/#489eb8b35be5>

⁹ Department of Labor. “Prevailing Wage Determination Guidance.” November, 2009. Available at: https://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf

¹⁰ IFR, p. 63, arguing that a Masters degree is a “better proxy” for specialty occupation than a bachelor’s degree.

¹¹ Foreign Labor Certification Data Center Online Wage Library. ACWIA - Education Industry database for 10/8/2020 - 6/30/2021. Last Visited November 3, 2020. Available at: <https://www.flcdatacenter.com/OesQuickResults.aspx?area=30700&code=19-1042&year=21&source=4>

Also, many positions at universities are by their nature training positions, and therefore will not be at the top of the salary scale. Postdoctoral fellows, medical residents, and a host of other professional positions in higher education are on-the-job training, obtained after achieving an advanced-degree. They will often not meet the 45th percentile of wage data in the field. In fact, BLS's own instruction for the surveys state that employers should report "trainees and interns into the survey result for the position for which they are training."¹²

One example that highlights absurd results under the IFR can be found at Louisiana State University, where the new required postdoc (entry level positions in research) wage levels exceed the salaries of the professor supervisors, with a postdoctoral fellow in psychology wage increasing 81% to \$86,944.

Prevailing Wage Increases- Examples

| Code | Occupation | Level 1 before 10/08/20 | Level 1 After 10/08/2020 | Percentage Difference |
|---------------|--------------------------|-------------------------|--------------------------|-----------------------|
| 19-3039 Geo 4 | Psychologists, all other | 47,965 | 86,944 | 81% |
| 19-2031 Geo 4 | Chemists | 42,994 | 57,553 | 34% |
| 19-2012 Geo 4 | Physicists | 54,101 | 73,195 | 35% |
| 19-1029 Geo 3 | Biological Scientist | 47,258 | 66,893 | 42% |
| 17-2041 Geo 4 | Chemical Engineers | 45,074 | 57,699 | 28% |
| 17-2144 Geo 4 | Mechanical Engineers | 29,061 | 55,557 | 91% |
| 17-2053 Geo 4 | Civil Engineers | 38,438 | 64,605 | 68% |
| 17-2073 Geo 4 | Electrical Engineers | 55,786 | 73,986 | 33% |



Further complicating the situation is the fact that some DOL occupational categories are very broad. DOL's Bureau of Labor Statistics (BLS) maintains the OES wage library, which covers about 800 occupational categories.¹³ Dividing the universe of jobs in the United States into roughly 800 categories is already an over-simplification (certainly over the previous Dictionary of Occupational Titles that had about 10,000 occupations listed¹⁴). As a result, a range of occupations are now grouped together, making it particularly important to reflect the lower and higher range. For example, many jobs on campuses fall under Higher Education Administrator (SOC 11-9033) - from a junior admissions officer to the Dean or Chancellor. Having the lowest

¹² Bureau of Labor Statistics, in cooperation with U.S. Department of Labor. "Occupational Employment Report." Revised March 2020. Available at: https://www.bls.gov/respondents/oes/pdf/forms/uuuuuu_fillable.pdf

¹³ Bureau of Labor Statistics. "Occupational Employment Statistics - May 2019 Occupation Profiles." Last Modified on April 17, 2020. Available at: https://www.bls.gov/oes/current/oes_stru.html

¹⁴ Dictionary of Occupational Titles (DOT) Job Descriptions. *GovtUSA.com*. Last visited November 3, 2020. Available at: <http://www.govtusa.com/dot/>

salary be 46th percentile effectively precludes a large swatch of higher education jobs from consideration for visa sponsorship.

This one OES category, 11-9033, includes 126 separate higher education jobs included in our wage survey. In Attachment 1 are eight jobs in our survey as a sample - all that fall into the OES category of Higher Education Administrator. Many of the higher education categories in the OES are hopelessly broad, leading to inflated wages because Higher Education Administrator includes Deans, Provosts, Chancellors and Presidents, but also admissions officers, residential life positions, etc.

To highlight the differences among regions and positions based on weighted mean prevailing wage salaries, see the highest salary of Chief Academic Affairs Officer or Provost within the New England Census Region at \$276,892/year, and the lowest for the Deputy Chief, Student Affairs position within the South Atlantic region at \$108,804/year. That is a range of almost \$170,000/year, and a clear example of why lower or entry level salaries cannot be left out of the BLS OES survey.

Level 4 data is deeply flawed

For Level 4, the senior level positions, the DOL data is deeply flawed as noted by the CATO institution.¹⁵ We agree that the median would be more appropriate and that the mean calculation for the 95th percentile is not statistically valid in any way. Moreover, the focus on the highest data points is not good statistical methodology. These errors in procedure are clear evidence that DOL was moving too quickly on the IFR - it was not validated or vetted by data scientists.

At CUPA-HR, we do not use the top 5% or bottom 5% of data collected as those are likely "outliers." Consider a wage survey for the General Manager OES category where Amazon responded. The salary for a Senior Vice President of \$57 million is so high that it would skew the mean significantly.¹⁶ Best practice is to remove outliers and DOL has not done that.

Level 2 and 3 data is therefore also skewed improperly since it is based on Levels 1 and 4

Note that Level 2 and 3 are set by statute by interpolating the data for Levels 1 and 4. INA Sec. 212(p)(4). The previous wage levels (2-4 as 35, 50 and 67th percentile) are now 62, 78 and 95th percentile respectively, again leaving out the majority of workers similarly employed and producing wildly skewed wage data.

The new data is based on a faulty premise about H-1b workers and specialty occupation, and makes the data largely unworkable for permanent residence sponsorship

¹⁵ Bier DJ. "DOL's H-1B Wage Rule Massively Understates Wage Increases by up to 26 Percent." *Cato Institute*. October 9, 2020. Available at: <https://www.cato.org/blog/dols-h-1b-wage-rule-massively-understates-wage-increases-26>

¹⁶ Kilgore T. "Amazon CEO Jeff Bezos salary of \$81,840 hasn't changed in decades." *Market Watch*. April 16, 2020. Available at: <https://www.marketwatch.com/story/amazon-ceo-jeff-bezos-salary-of-81840-hasnt-changed-in-decades-2020-04-16>

DOL argues in the IFR that the new data set is now tailored specifically to H-1B petitions,¹⁷ which DOL estimates is about 80% of the usage of the data.¹⁸ We strongly assert that data should be just that: data. Salary surveys should reflect the range of salaries paid to employees in each occupational classification. Data can then be used by DOL or USCIS for various purposes. USCIS can and does look at the complexity of the job to evaluate whether a particular wage level is accurate.

Moreover, raising wages of the OES data presented to address perceived concerns about the H-1B program has serious adverse implications. The data is also used for permanent residence. The DOL PERM Labor Certification program is based on a test of the labor market and the unavailability of US workers. Eligibility is based on a shortage of US workers. Not all shortage occupations are bachelor's level or higher, and not all bachelor's level jobs have a labor shortage. For example, in higher education, it can be very difficult to recruit and retain residence life supervisors - people who oversee hundreds of students in a dorm. Some of those positions may qualify for an H-1B but even those jobs that are not specialty occupations should be able to use the DOL data to qualify for Labor Certification. Consider also nurses, who are pre-certified by DOL as shortage occupations, but may not require a bachelor's degree. If all data is shifted upward to the 45th percentile based on a general idea of focusing on Specialty Occupation, then schools will not be able to sponsor much needed employees for Labor Certification.

For Labor Certification purposes, also consider the percentages of employees with certain levels of education, as listed in O*NET, some of the occupations cited by DOL actually have very low percentages of people with less than a Bachelor's degree. Software Developers, App: 3% Assoc, Software Developers, Software: 4% Associates. It does not make sense to raise the wage percentiles for these occupations since that precludes filing Labor Certifications. DOL's concern is that H-1B workers could be underpaid in these categories if the employer selects Level I or II on the wage survey - that is an issue for USCIS in H-1B adjudication.

New data has significant gaps, resulting in no data (or an exorbitant high default wage) for many positions

Another significant methodology concern is that the new data posted on flcdatcenter.com on October 8th now shows no data available for many positions crucial to higher education.¹⁹ We strongly disagree with the use of \$100/hour or \$208,000 per year as a default wage for all positions. For example, in the complaint in *Purdue v. Department of Labor*, the University of Utah says that it will have to pay \$208k now to sponsor a Computer Science teacher for H-1B or green card, where the previous DOL OES salary was \$62,760.²⁰ As another example, the prevailing wage for clinical faculty at a dental school in Connecticut is also listed at the default wage, well above what dental school teachers are making in that state (roughly \$81,000)

¹⁷ IFR, p. 24, "the Department notes that much of its assessment of how best to adjust the prevailing wage levels gives special attention to the H-1B program."

¹⁸ Id. FN 79. DOL also notes that 68.2 % of all PERM labor Certifications were for H-1B workers to argue that H-1B workers should be the focus on the wage survey, leaving out the 31.8% of Labor Certification applications not done for H-1B workers.. Id. at FN 81

¹⁹ Anderson S. "Flaw In DOL Rule Sets H-1B Visa Salaries At 208,000 A Year." *Forbes*. November 2, 2020. Available at: <https://www.forbes.com/sites/stuartanderson/2020/11/02/flaw-in-dol-rule-sets-h-1b-visa-salaries-at-208000-a-year/?sh=24a2cd55187c>

²⁰ Case 4:20-cv-07331-JSW Document 31 Filed 10/23/20, p. 22.

according to our data.²¹ Similarly, dental school faculty in San Antonio, serving underserved populations at University of Texas clinics now have a Level I wage of \$183,976 year, over \$60,000 more than the wage before the IFR.

DOL is focusing the prevailing wage pool on workers who use the H-1B, H-1B1, E-3 and PERM programs whereas before, the prevailing wage data pool was based on all wage data within the occupation regardless of the number of years of education, experience, and level of responsibility. Because the pool is defined so narrowly, there does not seem to be enough data for many occupations. The lack of data for over 18,000 positions,²² and the use of an artificially high default wage rate is unrealistic and inappropriate.

Even if surveys such as ours are used on account of OES data gaps for an increasing number of categories, employers will now be required to pay for private surveys such as ours in more cases, and have to wait an additional four months to obtain a formal wage determination from DOL for PERM cases to confirm the use of the alternative survey.²³

IFR mistakenly conflates the “prevailing wage” with the “actual wage” - two different concepts in the law

We also note that DOL is misinterpreting the definition of the prevailing wage. DOL should not consider the accomplishments, education or training of the employee – that is the “actual wage,”²⁴ – but should focus on the requirements for the position.²⁵ The 2009 DOL guidance indicates the same.²⁶ The IFR conflates the two distinct concepts of prevailing and actual wage: “both clauses yield wage calculations that in similar fashions are designed to approximate the rate at which workers in the U.S. are being compensated, taking into account the area in which they work, the types of work they perform, and the qualifications they possess.” That is incorrect - the prevailing wage is, by regulation, based on the requirements for the position, whereas the actual wage is based on employees at the particular employer who do the same job.

For instance, DOL notes that because Microsoft testified that they pay their entry level workers 36% higher than Level 1 workers, that the Level 1 ONET wage is not accurate.²⁷ This reasoning is faulty. Individual employers may choose to pay higher salaries, but the survey data should reflect the market rate. Overall, the IFR drastically overweights perceived concerns

²¹ Foreign Labor Certification Data Center Online Wage Library. ACWIA - Education Industry database for 10/8/2020 - 6/30/2021. Last Visited November 3, 2020. Available at:

<https://www.flcdatacenter.com/OesQuickResults.aspx?area=73450&code=25-1071&year=21&source=4>. See also attachment 3 for CUPA data on health specialty teachers in Connecticut.

²² Anderson S. “Flaw In DOL Rule Sets H-1B Visa Salaries At 208,000 A Year.” *Forbes*. November 2, 2020. Available at: <https://www.forbes.com/sites/stuartanderson/2020/11/02/flaw-in-dol-rule-sets-h-1b-visa-salaries-at-208000-a-year/?sh=24a2cd55187c>.

²³ See 2009 guidance, which built on the previous guidance at <https://wdr.doleta.gov/directives/attach/GAL1-00AttachA.pdf> on requirements for alternative wage surveys.

²⁴ 20 CFR 655.731(a)(1).

²⁵ 20 CFR 655.731(a)(2)(iii). See generally: U.S Department of Labor. “Fact Sheet #62G: Must an H-1B worker be paid a guaranteed wage?” Revised July 2008. Available at: <https://www.dol.gov/agencies/whd/fact-sheets/62g-h1b-required-wage>

²⁶ Department of Labor. “Prevailing Wage Determination Guidance.” November, 2009. Available at: https://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf

²⁷ IFR 63886.

regarding the tech industry. Corporate America has and will comment on DOL's concerns,²⁸ but here we stress that higher education is disproportionately impacted by a tech-centered approach. Data sets and proposed changes ought to address differences among industries and regions.

The IFR will create critical staffing shortages - for one, by making it more fiscally difficult to hire foreign workers, institutions will struggle to adequately fill open positions.²⁹

Although DOL data could always be made better, it was not seriously flawed, and should not be changed without careful consideration

Last, DOL argues in the IFR that the current wage guidance could be updated to more accurately reflect the market of similarly situated employees. Any data set could always be better. And in fact, our wage surveys for higher education are more precisely tailored to academic positions than the OES wages. We also understand that there are questions raised about the salary data for private sector H-1B and permanent residence cases, and those could be considered and, if appropriate, addressed in future rulemaking.³⁰ However, our research team has reviewed the current DOL OES wage data at flcdatacenter.com and the 2009 guidance and does not find it sufficiently flawed or inaccurate to support changing it suddenly and dramatically. The Department of Labor, Bureau of Labor Statistics (DOL BLS), specifically states that its own wage data was gathered as statistics, and not specifically designed for regulatory purposes. It also states that the data will only be used if "the head of the agency administering that program has first determined that the use of such occupational definitions is appropriate to the implementation of the program's objectives."³¹ We ask that DOL carefully consider changes in how the data is presented and used.

Specifically, the current DOL wages are based on a 2009 memorandum that assumes the mean of the lowest paid one third of workers in each occupation could be used as the entry level wage. Also, the 2009 DOL memo was based on the statute, which says that the current Level IV (highest level) wage was set by calculating the mean of the upper two-thirds of the wage distribution. We cannot say that there is no way to make the wage data more precise, but the DOL wage surveys pre-IFR were based on fully valid working assumptions and, as discussed above, have been relied on to plan hiring and retention of international employees in higher education for eleven years now.

In future consideration of notice and comment rulemaking on wage data, we are pleased to note IFR does not place any limits on the use of alternative wage surveys. While we strongly support DOL providing robust and predictable data through flcdatacenter.com, we also believe that alternative wage surveys are important additional sources of data.³²

²⁸ Anderson S. "Economic Research Exposes Significant Flaws in DOL H-1B Visa Rule." *Forbes*. October 22, 2020. Available at: <https://www.forbes.com/sites/stuartanderson/2020/10/22/economic-research-exposes-significant-flaws-in-dol-h-1b-visa-rule/?sh=26c3cf876146>

²⁹ See <https://www.acenet.edu/Documents/Amicus-brief-DDC-H1B-visas.pdf> for more details of the economic impact of significant wage increases on higher education.

³⁰ See e.g., Costa D and Hira R. "H-1B visas and prevailing wage levels." *Economic Policy Institute*. May 4, 2020. Available at: <https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels/>

³¹ Frequently Asked Question (FAQ) number 13 found within the [2010 SOC User Guide](#).

³² We believe that DOL's statement that there are "no alternative surveys or sources of wage data that would provide DOL with wage information at the same level of granularity needed to properly administer the H-1B and PERM programs," is meant to address the marketplace as a whole. Our data, along with

Sincerely,



Josh Ulman, Chief Government Relations Officer, CUPA-HR

On behalf of:

American Association of Community Colleges
American Council on Education
American Dental Education Association
American Psychological Association
Association of American Medical Colleges
Association of American Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
College and University Professional Association for Human Resources
Council for Advancement and Support of Education
Council for Christian Colleges & Universities
Council of Graduate Schools
EDUCAUSE
NAFSA: Association of International Educators
NASPA - Student Affairs Administrators in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators

AAMC and ADEA, are used and accepted regularly by DOL for H-1B petitions and Labor Certification applications. IFR at p. 28.

Attachment 1

| | A | B | C | D | E | F | G |
|---|---------|-------------------------|---|----------------------------------|------------------------------|---------------------------------|--------------------------|
| 1 | BLS # | CUPA_HR Position Number | CUPA-HR Position Name | Middle Atlantic PW weighted mean | New England PW weighted mean | South Atlantic PW weighted mean | Pacific PW weighted mean |
| | | 105000 | Chief Academic Affairs Officer or Provost | | | | |
| 2 | 11-9033 | 105000 | Chief Academic Affairs Officer or Provost | 251,077 | 276,892 | 253,485 | 264,115 |
| 3 | 11-9033 | 145000 | Chief Student Affairs or Student Life Officer | 179,256 | 193,640 | 170,762 | 184,054 |
| 4 | 11-9033 | 153120 | Dean, Education | 178,179 | 213,235 | 169,307 | 188,239 |
| 5 | 11-9033 | 181000 | Deputy Provost | 203,067 | 206,547 | 197,244 | 217,837 |
| 6 | 11-9033 | 183000 | Assoc Provost | 146,901 | 155,435 | 144,675 | 151,213 |
| 7 | 11-9033 | 185000 | Asst Provost | 110,424 | 145,698 | 127,274 | 122,016 |
| 8 | 11-9033 | 194170 | Deputy Chief, Student Affairs | 110,180 | 113,502 | 108,804 | 125,489 |
| 9 | 11-9033 | 304120 | Assoc or Asst Dean, Education | 119,175 | 117,753 | 134,821 | 134,037 |



Comparison of DOL OES Wage Guidelines and CUPA-HR Survey Procedures

| DOL OES Wage Guidelines ¹ | CUPA-HR Survey Procedure |
|--|---|
| (1) The survey must be recent. If the employer submits a published survey, that survey must have been published within 24 months of the date of submission of the prevailing wage request; be the most current edition of the survey; and be based on data collected within 24 months of the date of the publication of the survey. | CUPA-HR salary surveys for higher education administrators, professionals, and faculty are conducted annually. Salary data are published annually in February. CUPA-HR makes available regional comparison groups to accommodate the prevailing wage determination process. These groups can be tailored to meet case-specific needs for determining any prevailing wage. |
| (2) The wage data submitted by the employer must reflect the area of intended employment. Area of intended employment means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA), any place within the MSA or PMSA is deemed to be within the normal commuting distance of the place of intended employment. | CUPA-HR salary surveys include institutional information that can be used to create institutional groupings based on MSA, PMSA, or Census Region. Salary figures provided are weighted and unweighted averages and medians. |
| (3) The job description applicable to wage data submitted by the employer must be adequate to determine that the data represents workers who are similarly employed. Similarly employed means jobs requiring substantially similar levels of skills. | All CUPA-HR salary surveys include job titles and descriptions. These were developed in collaboration with the higher education community and/or on the basis of established job descriptions, such as the Classification of Instructional Programs (CIP) codes developed by the Department of Education. In most cases, positions at individual higher education institutions will be comparable in their content to the CUPA-HR descriptions. To ensure the inclusion in our surveys of faculty working in the medical and allied fields, survey respondents are directed to equate clinical duties with those of teaching and research. Faculty positions in these fields will normally encompass clinical duties. |
| (4) The wage data must have been collected across industries that employ workers in the occupation. | The American Competitiveness and Workforce Improvement Act (contained in P. L. 105-277) permits the surveying agency, in the case of higher education institutions, related or affiliated nonprofit entities, and nonprofit or governmental research organizations, to take into consideration in the prevailing wage process only those wages paid at these types of institutions and organizations in the area of intended employment. CUPA-HR survey data used for DOL OES Wage Guidelines excludes for-profit institutions. |

¹ Employment and Training Administration Prevailing Wage Determination Policy Guidance Nonagricultural Immigration Programs Revised November, 2009

CUPA-HR Revised June 24, 2020



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| (5) The job description applicable to the employer's survey or other wage data must be an adequate match with the job description contained in the employer's request for acceptance to use the survey or other wage data for prevailing wage purposes. Published wage surveys may not always present an arithmetic mean for job opportunities requiring skills at a level I and level II. In such instances, the arithmetic mean contained in the published survey that most closely conforms to the employer's job opportunity should be used as the basis for the prevailing wage determination. The job description submitted on the request for acceptance of an employer-provided survey or other wage data will be used in determining the appropriate level of skill to be applied. | <p>All CUPA-HR salary surveys include job titles and descriptions. These were developed in collaboration with the higher education community and/or on the basis of established job descriptions, such as the Classification of Instructional Programs (CIP) codes developed by the Department of Education. In most cases, positions at individual higher education institutions will be comparable in their content to the CUPA-HR descriptions.</p> <p>Salary data are collected for 202 positions in the Administrators in Higher Education Survey and 396 positions in the Professionals in Higher Education Survey. The Faculty in Higher Education Survey collects salary data, by rank, for 456 disciplines as defined by the <i>Classification of Instructional Programs: 2010 Edition</i> published by the U.S. Department of Education's National Center for Education Statistics (NCES). Faculty ranks include full, associate, and assistant professor, as well as instructor. Data for new assistant professors are also collected.</p> <ul style="list-style-type: none"> • Instructor: An Instructor normally holds a minimum of a master's degree or equivalent, has completed most or all the requirements for the doctorate or equivalent, and is expected to demonstrate effectiveness primarily as a teacher. • Assistant Professor: Generally, an assistant professor has been awarded a doctoral or professional degree or equivalent, exhibits commitment to teaching and scholarly or professional work of high caliber, and participates in college or university affairs at least at the department level. • Associate Professor: Generally, an associate professor meets the requirements for appointment as an assistant professor, enjoys a national reputation as a scholar or professional, shows a high degree of teaching proficiency and commitment, and demonstrates public, professional, or college/university service beyond the department. • Professor: Generally, a professor meets the requirements for appointment as an associate professor, and, in addition, has a distinguished record of accomplishment that leads to an international or, as appropriate, national reputation in his or her field. |
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| <p>(6) The prevailing wage determination should be based on the arithmetic mean (weighted average) of wages for workers that are similarly employed in the area of intended employment. If the survey provides a median wage of workers similarly employed in the area of intended employment and does not provide an arithmetic mean, the median wage shall be used as the basis for making a prevailing wage determination.</p> | <p>CUPA-HR calculates weighted averages (means) based on MSA or an extended geographical area, such as a state or Census Region. The weighted salary methodology is as follows: Weighted averages are calculated on all reported incumbents in all institutions in a comparison group. Each incumbent is given a weight of 1; for instance, an institution reporting 4 incumbents carries more weight in the calculated average than an institution reporting 1 incumbent. If no weighted average can be generated due to unbalanced data, CUPA-HR surveys also report the median salary.</p> |
| <p>(7) In all cases where an employer provides the NPWHC (National Prevailing Wage and Helpdesk Center) with wage data for which it seeks acceptance, the employer must include the methodology used for the survey to show that it is reasonable and consistent with recognized statistical standards and principles in producing a prevailing wage (e.g., contains a representative sample), including its adherence to these standards for the acceptability of employer-provided wage data. It is important to note that a prevailing wage determination based upon the acceptance of employer-provided wage data for the specific job opportunity at issue does not supersede the OES wage rate for subsequent requests for prevailing wage data in that occupation.</p> | <p>CUPA-HR is a nationally recognized, independent, authoritative source for salaries of administrators, professionals, and faculty in higher education. We have conducted staff salary surveys for 50+ years and faculty salary surveys for 30+ years. The survey methodology employed by CUPA-HR is reasonable and consistent with recognized statistical standards and principles in salary survey research.</p> <p>CUPA-HR surveys higher education institutions—colleges, universities, and system administrative offices. With a few exceptions, the entire population of higher education institutions is surveyed. Response rates are generally over 60 percent. Salaries for each full-time employee by position/discipline are collected and reported in aggregate form. Salaries reflect personnel records at each institution and are generally provided by designated HR staff.</p> <p>All CUPA-HR surveys include job titles and descriptions. Data are collected from respondents using Web-based surveys. To limit response and entry errors, all surveys are reviewed, edited, and screened for data outliers through real-time and server-side validations, as well as by using visual inspection and computer-generated reports. CUPA-HR research staff contact respondents whose data are internally inconsistent or appear to result from the misinterpretation of definitions or other instructions.</p> <p>Survey results from the current academic year are published each February in DataOnDemand, as well as in various reports throughout the year. The publications include descriptions of the responding institutions' characteristics and the research methodology. More detail on this schedule and survey methodology can be found at www.cupahr.org.</p> |

Attachment 3

Prevailing Wage Report

College and University Professional Association for Human Resources
Source: CUPA-HR Faculty in Higher Education Survey (2020)

Position

[51.] HEALTH PROFESSIONS AND RELATED PROGRAMS.:

Level

Assistant Professor (incl New)

Tenure

TT/NTT Combined (2 digit)

Comparison Group

US Census Division New England: CT, MA, ME, NH, RI, VT

If the data are unbalanced, the Incumbent based mean and median will not display.

Statistics

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| Mean of Incumbent Salaries (weighted mean) | \$81,470 |
| Median of Incumbent Salaries (weighted median) | \$80,000 |
| Mean of Institutional Average Salaries (unweighted mean) | \$81,247 |
| Median of Institutional Average Salaries (unweighted median) | \$80,106 |
| Number of Incumbents | 547 |
| Number of Institutions | 33 |

[Comparison of DOL OES Wage Guidelines and CUPA-HR Salary Survey Procedures](#)

Institutions in Comparison Group That Provided Data For Salary Statistics

Albertus Magnus College (New Haven, CT)
Bridgewater State University (Bridgewater, MA)
Central Connecticut State University (New Britain, CT)
Colby-Sawyer College (New London, NH)
Community College of Rhode Island (Warwick, RI)
Emerson College (Boston, MA)
Emmanuel College (Boston, MA)
Fitchburg State University (Fitchburg, MA)
Franklin Pierce University (Rindge, NH)
Keene State College (Keene, NH)
MGH Institute of Health Professions (Boston, MA)
Northeastern University (Boston, MA)
Plymouth State University (Plymouth, NH)
Quinnipiac University (Hamden, CT)
Rhode Island College (Providence, RI)
Rivier University (Nashua, NH)
Saint Joseph's College of Maine (Standish, ME)
Salem State University (Salem, MA)
Springfield College (Springfield, MA)
Stonehill College (Easton, MA)
University of Connecticut (Storrs, CT)
University of Hartford (West Hartford, CT)
University of Maine (Orono, ME)
University of Massachusetts (Amherst, MA)
University of Massachusetts Boston (Boston, MA)
University of Massachusetts Lowell (Lowell, MA)
University of New Hampshire (Durham, NH)
University of New Haven (West Haven, CT)
University of Rhode Island (Kingston, RI)
University of Saint Joseph (West Hartford, CT)
Western New England University (Springfield, MA)
Westfield State University (Westfield, MA)
Worcester State University (Worcester, MA)

Notes

- Data Collected: November 1, 2019
- Survey Published: March, 2020
- CUPA-HR utilizes recognized statistical standards in producing its surveys. Invitation to participate was sent to each institution with participation voluntary.
- **Mean and Median of Incumbent Salaries** : Weighted statistics are calculated on all reported incumbents in all institutions in a Comparison Group. Each incumbent is given a weight of 1; for instance, an institution reporting 4 incumbents carries more weight than an institution reporting 1 incumbent for a given position.

US Census Division New England: CT, MA, ME, NH, RI, VT

Albertus Magnus College (New Haven, CT)
American International College (Springfield, MA)
Amherst College (Amherst, MA)
Andover Newton Theological School (Newton Centre, MA)
Anna Maria College (Paxton, MA)
Antioch University New England (Keene, NH)
Asnuntuck Community College (Enfield, CT)
Assumption College (Worcester, MA)
Atlantic Union College (South Lancaster, MA)
Babson College (Babson Park, MA)
Bangor Theological Seminary (Bangor, ME)
Bard College at Simon's Rock (Great Barrington, MA)
Bates College (Lewiston, ME)
Bay Path University (Longmeadow, MA)
Bay State College (Boston, MA)
Becker College-Worcester (Worcester, MA)
Benjamin Franklin Institute of Technology (Boston, MA)
Bennington College (Bennington, VT)
Bentley University (Waltham, MA)
Berklee College of Music (Boston, MA)
Berkshire Community College (Pittsfield, MA)
Beth Benjamin Academy of Connecticut (Stamford, CT)
Blessed John XXIII National Seminary (Weston, MA)
Boston Architectural College (Boston, MA)
Boston College (Chestnut Hill, MA)
Boston Conservatory (Boston, MA)
Boston Graduate School of Psychoanalysis (Brookline, MA)
Boston University (Boston, MA)
Bowdoin College (Brunswick, ME)
Brandeis University (Waltham, MA)
Bridgewater State University (Bridgewater, MA)
Bristol Community College (Fall River, MA)
Brown University (Providence, RI)
Bryant University (Smithfield, RI)
Bunker Hill Community College (Boston, MA)
Cambridge College (Cambridge, MA)
Cape Cod Community College (West Barnstable, MA)
Capital Community College (Hartford, CT)
Castleton University (Castleton, VT)
Central Connecticut State University (New Britain, CT)
Central Maine Community College (Auburn, ME)
Champlain College (Burlington, VT)
Charter Oak State College (New Britain, CT)
Clark University (Worcester, MA)
Colby College (Waterville, ME)
Colby-Sawyer College (New London, NH)
College of Our Lady of the Elms (Chicopee, MA)
College of the Atlantic (Bar Harbor, ME)
College of the Holy Cross (Worcester, MA)
Community College of Rhode Island (Warwick, RI)
Community College of Vermont (Waterbury, VT)
Community College System of New Hampshire System Office (Concord, NH)
Connecticut College (New London, CT)
Connecticut Community Colleges System Summary (12 Institutions) (CT)
Connecticut State Colleges and Universities System Office (Hartford, CT)
Curry College (Milton, MA)
Daniel Webster College (Nashua, NH)
Dartmouth College (Hanover, NH)
Dean College (Franklin, MA)
Eastern Connecticut State University (Willimantic, CT)
Eastern Maine Community College (Bangor, ME)
Eastern Nazarene College (Quincy, MA)
Emerson College (Boston, MA)
Emmanuel College (Boston, MA)
Endicott College (Beverly, MA)
Episcopal Divinity School (Cambridge, MA)
Fairfield University (Fairfield, CT)
Fisher College (Boston, MA)

Fitchburg State University (Fitchburg, MA)
 Framingham State University (Framingham, MA)
 Franklin Pierce University (Rindge, NH)
 Franklin W. Olin College of Engineering (Needham, MA)
 Gateway Community College (New Haven, CT)
 Goddard College (Plainfield, VT)
 Goodwin College (East Hartford, CT)
 Gordon College (Wenham, MA)
 Gordon-Conwell Theological Seminary (South Hamilton, MA)
 Granite State College (Concord, NH)
 Great Bay Community College (Portsmouth, NH)
 Greenfield Community College (Greenfield, MA)
 Green Mountain College (Poultney, VT)
 Hampshire College (Amherst, MA)
 Hartford Seminary (Hartford, CT)
 Harvard University (Cambridge, MA)
 Hebrew College (Newton Centre, MA)
 Hellenic College Holy Cross (Brookline, MA)
 Holy Apostles College and Seminary (Cromwell, CT)
 Holyoke Community College (Holyoke, MA)
 Housatonic Community College (Bridgeport, CT)
 Husson University (Bangor, ME)
 Johnson State College (Johnson, VT)
 Johnson & Wales University (Providence, RI)
 Keene State College (Keene, NH)
 Kennebec Valley Community College (Fairfield, ME)
 Laboure College (Milton, MA)
 Landmark College (Putney, VT)
 Lasell College (Newton, MA)
 Lesley University (Cambridge, MA)
 Lyme Academy College of Fine Arts (Old Lyme, CT)
 Lyndon State College (Lyndonville, VT)
 Maine College of Art (Portland, ME)
 Maine College of Health Professions (Lewiston, ME)
 Maine Community College System Office (Augusta, ME)
 Maine Maritime Academy (Castine, ME)
 Manchester Community College (Manchester, CT)
 Manchester Community College (Manchester, NH)
 Marian Court College (Swampscott, MA)
 Marine Biological Laboratory (Woods Hole, MA)
 Marlboro College (Marlboro, VT)
 Massachusetts Bay Community College (Wellesley Hills, MA)
 Massachusetts Board of Higher Education (Boston, MA)
 Massachusetts College of Art (Boston, MA)
 Massachusetts College of Liberal Arts (North Adams, MA)
 Massachusetts Institute of Technology (Cambridge, MA)
 Massachusetts Maritime Academy (Buzzards Bay, MA)
 Massachusetts School of Law at Andover (Andover, MA)
 Massachusetts School of Professional Psychology (Boston, MA)
 Massasoit Community College (Brockton, MA)
 MCPHS University (Boston, MA)
 Merrimack College (North Andover, MA)
 MGH Institute of Health Professions (Boston, MA)
 Middlebury College (Middlebury, VT)
 Middlesex Community College (Middletown, CT)
 Middlesex Community College (Bedford, MA)
 Mitchell College (New London, CT)
 Montserrat College of Art (Beverly, MA)
 Mount Holyoke College (South Hadley, MA)
 Mount Ida College (Newton Centre, MA)
 Mount Wachusett Community College (Gardner, MA)
 Nashua Community College (Nashua, NH)
 Naugatuck Valley Community College (Waterbury, CT)
 Newbury College (Brookline, MA)
 New England College (Henniker, NH)
 New England College of Business and Finance (Boston, MA)
 New England College of Optometry (Boston, MA)
 New England Conservatory of Music (Boston, MA)
 New England Institute of Technology (East Greenwich, RI)

New England Law, Boston (Boston, MA)
 New England School of Communications (Bangor, ME)
 New Hampshire Institute of Art (Manchester, NH)
 NHTI-Concord's Community College (Concord, NH)
 Nichols College (Dudley, MA)
 Northeastern University (Boston, MA)
 Northern Essex Community College (Haverhill, MA)
 Northern Maine Community College (Presque Isle, ME)
 Northpoint Bible College (Barrington, RI)
 North Shore Community College (Danvers, MA)
 Northwestern Connecticut Community-Technical College (Winsted, CT)
 Norwalk Community College (Norwalk, CT)
 Norwich University (Northfield, VT)
 Pine Manor College (Chestnut Hill, MA)
 Plymouth State University (Plymouth, NH)
 Providence College (Providence, RI)
 Quincy College (Quincy, MA)
 Quinebaug Valley Community College (Danielson, CT)
 Quinnipiac University (Hamden, CT)
 Quinsigamond Community College (Worcester, MA)
 Regis College (Weston, MA)
 Rhode Island College (Providence, RI)
 Rhode Island School of Design (Providence, RI)
 River Valley Community College (Keene, NH)
 Rivier University (Nashua, NH)
 Roger Williams University (Bristol, RI)
 Roxbury Community College (Roxbury Crossing, MA)
 Sacred Heart University (Fairfield, CT)
 Saint Anselm College (Manchester, NH)
 Saint John's Seminary (Brighton, MA)
 Saint Joseph's College of Maine (Standish, ME)
 Saint Michael's College (Colchester, VT)
 Salem State University (Salem, MA)
 Salve Regina University (Newport, RI)
 Simmons University (Boston, MA)
 Smith College (Northampton, MA)
 Southern Connecticut State University (New Haven, CT)
 Southern Maine Community College (South Portland, ME)
 Southern New England School of Law (North Dartmouth, MA)
 Southern New Hampshire University (Manchester, NH)
 Southern Vermont College (Bennington, VT)
 Springfield College (Springfield, MA)
 Springfield Technical Community College (Springfield, MA)
 Stonehill College (Easton, MA)
 St. Vincent's College (Bridgeport, CT)
 Suffolk University (Boston, MA)
 The University of New Hampshire School of Law (Concord, NH)
 Thomas College (Waterville, ME)
 Three Rivers Community-Technical College (Norwich, CT)
 Trinity College (Hartford, CT)
 Tufts University (Medford, MA)
 Tunxis Community College (Farmington, CT)
 United States Coast Guard Academy (New London, CT)
 Unity College (Unity, ME)
 University of Bridgeport (Bridgeport, CT)
 University of Connecticut (Storrs, CT)
 University of Connecticut Health Center (Farmington, CT)
 University of Hartford (West Hartford, CT)
 University of Maine (Orono, ME)
 University of Maine at Augusta (Augusta, ME)
 University of Maine at Farmington (Farmington, ME)
 University of Maine at Fort Kent (Fort Kent, ME)
 University of Maine at Machias (Machias, ME)
 University of Maine at Presque Isle (Presque Isle, ME)
 University of Maine System Office (Bangor, ME)
 University of Maine System Summary (Bangor, ME)
 University of Massachusetts (Amherst, MA)
 University of Massachusetts Boston (Boston, MA)
 University of Massachusetts Dartmouth (North Dartmouth, MA)

University of Massachusetts Lowell (Lowell, MA)
University of Massachusetts Medical School (Worcester, MA)
University of Massachusetts System Office (Boston, MA)
University of New England (Biddeford, ME)
University of New Hampshire (Durham, NH)
University of New Hampshire at Manchester (Manchester, NH)
University of New Haven (West Haven, CT)
University of Rhode Island (Kingston, RI)
University of Saint Joseph (West Hartford, CT)
University of Southern Maine (Portland, ME)
University of Vermont (Burlington, VT)
University System of New Hampshire System Office (Concord, NH)
University System of New Hampshire System Summary (Durham, NH)
Urban College of Boston (Boston, MA)
Vermont Law School (South Royalton, VT)
Vermont State Colleges System Office (Montpelier, VT)
Vermont State Colleges System Summary (Waterbury,, VT)
Vermont Technical College (Randolph Center, VT)
Washington County Community College (Calais, ME)
Wellesley College (Wellesley, MA)
Wentworth Institute of Technology (Boston, MA)
Wesleyan University (Middletown, CT)
Western Connecticut State University (Danbury, CT)
Western New England University (Springfield, MA)
Westfield State University (Westfield, MA)
Weston Jesuit School of Theology (Cambridge, MA)
Wheaton College (Norton, MA)
Wheelock College (Boston, MA)
White Mountains Community College (Berlin, NH)
Williams College (Williamstown, MA)
Woods Hole Oceanographic Institution (Woods Hole, MA)
Worcester Polytechnic Institute (Worcester, MA)
Worcester State University (Worcester, MA)
World Learning - School for International Training (Brattleboro, VT)
Yale University (New Haven, CT)
York County Community College (Wells, ME)