



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

October 14, 2025

*Via Regulations.gov and email*

Kristi Noem  
Secretary  
U.S. Department of Homeland Security 301  
7th Street, SW  
Washington, DC 20528

Joseph Edlow  
Director  
U.S. Citizenship and Immigration Services  
5900 Capital Gateway Drive  
Camp Spring, MD 20746

Submitted via [www.regulations.gov](https://www.regulations.gov) and [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov)

Re: Request for 60-Day Comment Period  
DHS Docket No. USCIS-2025-0040  
CIS No. 2820-25  
RIN 1615-AD01

Dear Secretary Noem and Director Edlow,

The undersigned 29 employers, associations, coalitions, and groups come to you jointly to ask for a 30-day extension to the comment period for the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM), published on September 24, 2025, entitled "Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions" (hereafter referred to as NPRM or H-1B Wage Lottery proposal).<sup>1</sup> Presently, comments on the NPRM are due October 24, 2025, and comments on the associated information collections are due on November 24, 2025.

We are writing to request a full 60-day comment period for the NPRM so that stakeholders can provide the Department thoughtful, detailed, and, where appropriate, data-based feedback on this important matter, either ourselves or through our trade associations and coalition partners. This is a rule that will have a direct and negative impact for tens of thousands United States employers and tens of thousands college-educated, foreign-born professionals – and the underlying commercial and not-for-profit activities undertaken by these actors, including significant scientific and other efforts. Given that the NPRM has been designated a "significant regulatory action" that is economically significant, pursuant to Executive Order (EO) 12866 stakeholders should be given a minimum of 60 days to be able to provide meaningful feedback.<sup>2</sup> Moreover, a

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<sup>1</sup> 90 Fed. Reg. 45996 (Sept. 24, 2025).

<sup>2</sup> *Id.* at 45966.

60-day comment period for the NPRM would be consistent with the timeline to provide feedback on form revisions.

### **Justification for 60-Day Comment Period**

The Executive Orders governing the regulatory process establish unequivocally that the standard time for comment is 60 days and is needed for this rulemaking given the Department's multiple requests for commenter input in the NPRM. EO 12866 states that agencies should allow "not less than 60 days" for public comment in most cases, to "afford the public a meaningful opportunity to comment on any proposed regulation." EO 13563 states that "[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days.

There is no clear urgency to finalize this proposed rule which would necessitate forgoing a 60-day comment period. Indeed, even though the Office of Information and Regulatory Affairs (OIRA) had cleared the rule on August 8, 2025,<sup>3</sup> DHS waited to publish the rule 47 days later on September 24, 2025. Typically, once OIRA clears a rule, it will be published in the Federal Register within weeks, if not days. Rather than allowing the regulated public sufficient time to provide meaningful comment, DHS sat on publication of the rule as part of a coordinated rollout of other H-1B policies which directly resulted in disruption to many U.S. employer operations. Moreover, the government shut down on October 1, 2025, for an unforeseen length of time which has resulted in cessation of operations of National Archives and Records Administration (NARA), which controls the Federal Register. While public comments can still be submitted during the shutdown, NARA notes on the Federal Register page that it will not provide any technical assistance.

Moreover, the regulated community had very little notice that a regulatory proposal reordering H-1B cap-subject petitions from least-skilled to most-skilled foreign-born professionals was forthcoming. The rule first appeared on the Spring 2025 Unified Agenda on September 4, 2025,<sup>4</sup> after the NPRM had been cleared by OIRA and just a few weeks before it was published. In the 2019 final rule<sup>5</sup> entitled "Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap- Subject Aliens," the Department considered the very policy now being promoted in the H-1B Wage Lottery proposal and unambiguously stated to the public that such a prioritization scheme was not a DHS action permitted under the Immigration and Nationality Act and therefore would not be pursued.<sup>6</sup> Moreover, a 2021 Final Rule seeking to modify the H-1B lottery system based on wages published in the first Trump Administration was vacated by the District Court and ultimately withdrawn by DHS.<sup>7</sup> As such, stakeholders did not anticipate the

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<sup>3</sup> See [https://www.reginfo.gov/public/do/XMLViewFileAction?f=EO\\_RULE\\_COMPLETED\\_YTD.xml](https://www.reginfo.gov/public/do/XMLViewFileAction?f=EO_RULE_COMPLETED_YTD.xml).

<sup>4</sup> See <https://www.congress.gov/crs-product/IN12605>.

<sup>5</sup> 84 Fed. Reg. 888 (January 31, 2019).

<sup>6</sup> *Id.* at 914. In the final H-1B Registration rule published in 2019, the Trump administration explained unequivocally "DHS does not have the statutory authority to prioritize H-1B beneficiaries based on their skills" and "DHS believes, however, that prioritization of selection on other factors, such as salary, would require statutory change."

<sup>7</sup> See 86 Fed. Reg. 72516 (Dec. 22, 2021).

need to engage in the sophisticated economic and legal analysis necessary to assess the policy announced in the NPRM.

The new H-1B Wage Lottery proposal will dramatically reduce access to H-1B status for early-career professionals, including those completing master's and doctoral degrees at U.S. universities and colleges. This merits extensive inquiry and data analysis by stakeholders, including the impact the proposed H-1B Wage Lottery proposal will have on the ability of U.S. master's and above graduates to secure H-1B status. It also states that it will have a significant economic impact on a substantial number of small entities and requests that the stakeholders propose alternatives to achieve DHS's objectives "without unduly burdening small entities."<sup>8</sup> Unlike most other rulemakings, where DHS provides a separate, more fulsome regulatory impact analysis, this NPRM does not provide that data, which makes it even more difficult to properly assess the impact on U.S. employers and their employees. Calculating and understanding the exact impact of the NPRM to propose sufficient alternatives requires at least 30 further days for the public to offer meaningful comment.

### **Conclusion**

We value the opportunity to participate in the rulemaking and policy implementation process. In order to best assist the Department in its consideration of possible revisions to the H-1B lottery process, we would require further time to conduct necessary data analysis and number-crunching as well as complex legal analysis, which requires the full, standard 60- day comment period.

Respectfully submitted,

### **Businesses**

Spirit Cultural Exchange  
The Geoswerve Consultancy

### **Educational Institutions**

Boston University  
Hope International University  
Riverstone International School  
Saint Martin's University  
University of Michigan-Flint

### **Law Firms**

Berardi Immigration Law  
Edwin R. Rubin, Esq.  
Erickson Immigration Group

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<sup>8</sup> <https://www.federalregister.gov/d/2025-18473/p-314>.

Fariba Faiz Law Offices PC  
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The Navarre Law Firm

**Non-Profit/Trade Organization**

American Association of Directors of Psychiatric Residency Training  
American Immigration Council  
American Immigration Lawyers Association  
American Physical Society  
Association of American Universities  
Community Legal Services in East Palo Alto  
Compete America Coalition  
Estrella del Paso  
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