

**ANALYSIS: A MINIMUM WAGE OF \$128,000? THE
IMPACT OF IMMIGRATION LEGISLATION ON
SALARIES AND U.S. COMPETITIVENESS**

EXECUTIVE SUMMARY

What would companies do if a new minimum wage of \$128,294 per year were established? If current House or Senate immigration legislation becomes law, then we may soon find out. Under a premise, not supported by research, that H-1B visa holders are generally paid less than their U.S. professional counterparts, bills in Congress would require skilled foreign nationals to be paid substantially more – sometimes \$20,000 to \$40,000 more per year – than U.S. professionals in similar positions.

An examination of the proposed mandated minimum wage rates for skilled personnel in H-1B status in different cities under the House and Senate bill finds:

- Under H.R. 2131, an employer would need to pay an entry level (Level 1) financial analyst in New York in H-1B status at least \$116,251 per year – an increase of \$62,151 over the current \$54,100 annual market wage listed by Towers Watson Data Services for an entry level financial analyst in New York. That would represent a government-mandated wage increase of 115 percent over the current market wage. Under S. 744, the annual wage premium for a Level 1 financial analyst in New York compared to the market wage would be \$38,900, a 72 percent mandated salary increase.
- Under H.R. 2131, in the San Jose, California area, an electrical engineer at Level 1 would have a mandated minimum wage of \$111,842 per year, or an increase over current market wages for the position of \$40,296 (an increase of 56 percent) based on a Radford survey.
- The mandated minimum wage for a software developer (systems software) would be \$128,294 per year for a Level 2 professional (some experience) under S. 744 and H.R. 2131 – both increases of \$19,156 over current Department of Labor (DOL) Level 2 wages – or an 18 percent wage premium.
- Under H.R. 2131, based on the current market wage, a company would be projected to pay at least \$48,268 more, or a 60 percent increase, for a software developer (systems software) in Silicon Valley if the Level 1-qualified H-1B visa holder received his or her degree outside the country.
- In the Chicago area, under H.R. 2131, the new required Level 1 wages for H-1B visa holders for software developers (applications) would be \$39,913 above current market wages, or a 71 percent wage premium above the market wage, as measured by Mercer LLC. The new required Level 2 wage would be 29 percent above the market wage measured by Towers Watson Data Services (an increase of \$21,313).

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- In the Chicago area, under H.R. 2131, the new required Level 1 wage for H-1B visa holders could require a wage premium over current DOL Level 1 wages of \$27,768 per year (+46 percent) for electrical engineers and \$26,874 (+41 percent) for software developers (systems software).
- In the Houston area, under H.R. 2131, the new required Level 1 wages for H-1B visa holders over the current DOL Level 1 would require an annual wage premium of \$29,599 (+48 percent) for electrical engineers, \$32,281 (+53 percent) for software developers (applications), and \$33,072 (+53 percent) for software developers (systems software).
- In the Roanoke, Virginia area, under H.R. 2131, the new required Level 1 wage for H-1B visa holders over the current DOL Level 1 would require an annual wage premium of \$24,399 (+56 percent) for electrical engineers, \$24,191 (+47 percent) for software developers (applications), and \$41,600 (+60 percent) for software developers (systems software). The annual wage premiums compared to current law for H-1B visa holders under the new Level 2 wages under S. 744 and H.R. 2131 would be \$12,210 (+22 percent) for electrical engineers, \$12,106 (+19 percent) for software developers (applications), and \$20,800 (+23 percent) for software developers (systems software) in Roanoke based on DOL data.

Both H.R. 2131 and S. 744 include increases in H-1B visas and employment-based green cards that represent positive reforms. However, the proposed new minimum wage requirements for H-1B visa holders in the House and Senate immigration bills would introduce significant distortions in company compensation policies and in the U.S. labor market, leave businesses with fewer available resources to invest in the United States, and encourage more work to take place outside of the United States. Companies would be faced with a choice of doing without skilled foreign nationals, hiring them outside the United States or either paying U.S.-born employees well above the market wage or paying U.S.-born employees much less than the mandated minimum wage they must pay to foreign nationals. It would, in practice, give the U.S. Department of Labor significant authority to establish wage rates in the technology industry and other sectors. While Congress has the authority to legislate on immigration, it would be unwise to use that authority to upend and distort the compensation policies of America's most innovative companies. In sum, the current proposals will cause the United States to be a less attractive place for growth and investment, make U.S. companies less competitive and result in significant unintended consequences.

BACKGROUND

Under current law, when hiring an H-1B professional, employers must pay the higher of the prevailing wage or the actual wage paid to “all other individuals with similar experience and qualifications for the specific employment in question.”¹ Companies must also comply with other rules, including the placement of H-1B employees at off-site facilities. H-1B temporary visas are often the only practical way for a skilled foreign national to work in the United States.² These visas are used to hire professionals for short-term projects, for longer-term work or as a prelude to permanent residence (a green card). H-1B status is generally good for up to 6 years (with a renewal after three years).

Under current law and regulations, employers can demonstrate they are meeting the minimum wage requirements for H-1B professionals by utilizing either private wage surveys or the U.S. Department of Labor’s Occupational Employment Statistics (OES) survey. In general, employers typically use private wage surveys to determine compensation. These surveys are not created solely for immigration purposes and must be approved as valid surveys by the Department of Labor if used for immigration purposes. (Companies also pay thousands of dollars in government and legal fees to petition for H-1B professionals.)

Even before Congress sought to change current wage requirements for H-1B visa holders, employers did not believe the DOL’s OES survey data accurately reflected market conditions. “For many occupations and areas of the country, independent authoritative nongovernmental wage surveys provide a better and more accurate picture of the market wage – and reflect what employers pay to employees with varying levels of education and experience – than the government’s Occupational Employment Statistics (OES) wage survey,” according to Kevin Miner, partner, Fragomen, Del Rey, Bernsen & Loewy. “While the current OES Wage Survey provides four levels of wages for each occupation, it creates those levels through a mathematical formula, not by asking employers what they actually pay employees with varying levels of experience.”³ (See Appendix.)

The requirement in current law that employers pay skilled foreign nationals the same market wage as U.S. workers in similar positions is intended to prevent the undercutting of wages, although an H-1B visa holder who is

¹ Section 212(n)(1) of the Immigration and Nationality Act.

² While other visa categories exist, they carry significant restrictions that limit their applicability to most skilled foreign nationals, such as an L-1 visa, which requires working abroad for a company for at least a year and then qualifying as a manager, executive or an employee with “specialized knowledge” under USCIS regulations to reenter the United States.

³ See Appendix for Kevin Miner, “Understanding Independent Nongovernmental Wage Surveys.”

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underpaid relative to his or her skills could change jobs. H-1B professionals switching to another employer for a new opportunity happens frequently in the competitive U.S. labor market for skilled talent, note attorneys.⁴

Whether due to market wages, the legal requirement or a combination of the two, the evidence from at least four studies shows H-1B professionals are paid the same or more than their U.S. counterparts with similar experience. According to the Government Accountability Office, the median annual salary for H-1B visa holders age 20-39 was \$80,000, but is \$75,000 for U.S. workers in Electrical/Electronics Engineering; and for Systems Analysis/Programming, the median annual salary is \$60,000 for H-1B professionals age 20-29, but is \$58,000 for U.S. workers.⁵ Other studies, including by University of Maryland economists Sunil Mithas and Henry C. Lucas, Jr., find H-1B professionals in information technology (IT) earned somewhat higher wages than their native counterparts with similar experience and do not harm the prospects of U.S.-born workers.⁶ In short, the evidence indicates there is not a measureable problem with H-1B visa holders generally being paid less than U.S. professionals with similar experience in similar positions.

BILLS WOULD REQUIRE PAYING HIGHER THAN MARKET WAGES

Both the Senate and House are moving forward on immigration bills that would significantly increase the required minimum wage paid to H-1B visa holders by eliminating the use of current private wage surveys and reducing the current four levels in the OES wage survey down to three levels.

Section 4211 of the Senate immigration bill (S. 744) states:

The Secretary of Labor shall make available to employers a governmental survey to determine the prevailing wage for each occupational classification by metropolitan statistical area in the United States. Such survey, or other survey approved by the Secretary of Labor, shall provide 3 levels of wages commensurate with experience, education, and level of supervision. Such wage levels shall be determined as follows:

“(i) The first level shall be the mean of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed.

“(ii) The second level shall be the mean of wages surveyed.

“(iii) The third level shall be the mean of the highest two-thirds of wages surveyed.”⁷

The House SKILLS Visa Act (H.R. 2131) contains virtually identical language to S. 744 on wage requirements with three important differences. First, the House bill would require every H-1B visa holder to be paid a minimum

⁴ Interview with Warren Leiden. “H-1B workers switch employers all the time,” according to Warren Leiden, partner, Berry Appleman and Leiden. “They are eligible to switch as soon as the filing receipt is received from USCIS.”

⁵ *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, Government Accountability Office, GAO-11-26, January 2011.

⁶ S. Mithas and H.C. Lucas, “Are Foreign IT workers Cheaper? U.S. Visa Policies and Compensation of Information Technology Professionals,” *Management Science* (56:5) 2010. See also Madeline Zavodny, “The H-1B Program and Its Effects on Information Technology Workers,” Federal Reserve Bank of Atlanta, *Economic Review*, Third Quarter 2003; Magnus Lofstrom and Joseph Hayes, “H-1Bs: How Do They Stack Up to U.S. Workers?” IZA Discussion Paper #6259, December 2011; and Giovanni Peri, Kevin Shih and Chad Sparber, “STEM workers, H-1B Visas and Productivity in U.S. Cities,” January 29, 2013.

⁷ Section 4211 of S. 744 as amended by the Senate Judiciary Committee.

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wage equal to the new Level 2 wage (the mean of the wages surveyed) except for those who are hired within one year of completing a degree from a U.S. university.⁸ That means any H-1B visa holders who would fit into the category of Level 1 based on experience must be paid at least the mean of all professionals in that occupational classification area if they received a degree abroad or longer than one year ago in the United States. Second, the House language also would impose the new wage requirements on other categories, including Optional Practical Training and TN visas under the North American Free Trade Agreement. Third, the Senate bill would require companies with a larger percentage of their workforce on H-1B visas to use the new Level 2 wages even if the individual qualifies for Level 1 based on their work experience.

WHAT WOULD BE THE PRACTICAL IMPACT OF HOUSE AND SENATE BILLS?

To comply with the law, U.S. employers would have to pay H-1B visa holders no less than the required salary indicated under the House and Senate legislation. To better understand the impact, one can examine how much the new requirements would artificially increase salaries for skilled foreign nationals over both current law and current market wages. To some extent, several of the examples provided in different occupations and areas of the country could underestimate the likely increase in required salaries, since, as noted earlier, the Department of Labor's methodology already appears to inflate salaries even prior to the changes contemplated by Congress.

To review what the House and Senate legislation would do: "The proposed three-level OES survey in the House and Senate bills will continue to ignore what employers actually pay to employees based on the job requirements and job duties," notes immigration attorney Kevin Miner. "The levels of the new three-level OES wage survey proposed in S.744 and the SKILLS Visa Act are intended to reflect entry-level wages, mid-level wages, and wages for fully competent workers. To do this, however, the government will continue to simply collect data on occupations generally, without asking employers what they actually pay workers at the various levels. The government will then artificially set the prevailing wage for entry-level workers at no less than 80% of the average wage for the occupation; the prevailing wage for mid-level workers at the average; and the wage for fully competent workers at the average of the highest two-thirds of wages reported. None of this truly reflects what the market dictates for workers at varying levels of job responsibilities – it is instead simply a government-imposed formula for setting wages."⁹

Under H.R. 2131, an employer would need to pay an (entry level) level 1 financial analyst in New York at least \$116,251 per year – an increase of \$62,151 over the current \$54,100 market wage listed by Towers Watson Data Services for an entry level financial analyst in New York. That would represent a government-mandated increase

⁸ It is unclear from the legislative language whether such individuals would be required to receive level 2 wages after their first year of employment.

⁹ See Appendix for Kevin Miner, "Understanding Independent Nongovernmental Wage Surveys."

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of 115 percent over the current market wage. (See Table 1.) Under S. 744, the wage premium mandated for a Level 1 financial analyst in New York compared to the market wage would be \$38,900, a 72 percent salary increase.¹⁰

Compared to the Department of Labor’s OES Level 1 wage, H.R. 2131 would lead to a salary increase of \$52,353 or a wage premium of 82 percent for a new financial analyst.¹¹ (If the financial analyst graduated from a U.S. university within a year of hiring, then the wage would be \$93,000, which is still a significant wage premium.)¹² If S. 744 were to become law, a Level 1 financial analyst in New York in H-1B status would need to be paid at least \$93,000 per year, an increase of over \$29,000 from current DOL Level 1 wages of \$63,898 – a 45 percent increase based on the Department of Labor’s OES data.¹³ (As noted above, it would be \$38,900 higher when compared to the current market wage.)

**Table 1
Required Minimum Wage for New Financial Analyst on H-1B in New York Under H.R. 2131
Compared to Current Market Wage**

New Required Wage for Financial Analyst in NYC at Level 1 Wage under H.R. 2131	Current Wage for Level 1 Financial Analyst in NYC (Towers Watson Data Services) Private Wage Survey	Amount of Increase Over Current OES Level 1 Wage
\$116,251	\$54,100	+\$62,151 (+115%)

Source: Towers Watson Data Services; Foreign Labor Certification Data Center Online Wage Library. Note: Assumes individual did not graduate from U.S. university within one year of hiring. If so, the individual would be required to be a wage premium of \$29,102, or 45 percent over current OES level 1. Salary figures are annual.

**Table 2
Required Minimum Wage for New Financial Analyst on H-1B in New York Under H.R. 2131 Compared to
Current Department of Labor OES Wage Data**

New Required Wage for Financial Analyst in NYC at Level 1 Wage under H.R. 2131	Amount of Increase Over Current OES Level 1 Wage
\$116,251	+\$52,353 (+82%)

Source: Foreign Labor Certification Data Center Online Wage Library. Note: Assumes individual did not graduate from U.S. university within one year of hiring. If so, the individual would be required to be paid a wage premium of \$29,102, or 45 percent over current OES level 1. Salary figures are annual.

¹⁰ Towers Watson Data Services; Foreign Labor Certification Data Center Online Wage Library.

¹¹ Foreign Labor Certification Data Center Online Wage Library at <http://www.flcdatcenter.com/>. Note: Throughout the paper additional analysis was done to obtain the differences in wages under current and proposed law, as well as the percentage increase.

¹² Ibid.

¹³ Ibid.

Table 3
Required Minimum Wage for New Financial Analyst on H-1B in New York Under S. 744
Compared to Current Market Wage

New Required Wage for Financial Analyst in NYC at Level 1 Wage under S. 744	Amount of Increase Over Current OES Level 1 Wage
\$93,000	+\$38,900 (+72%)

Source: Towers Watson Data Services; Foreign Labor Certification Data Center Online Wage Library. Salary figures are annual.

IMPACT ON WAGES IN THE TECHNOLOGY FIELD

Similar wage distortions to those in finance will arise in the technology field if the wage requirements in the House or Senate bills were to become law. On the following pages is an examination of the increases in the minimum wage for H-1B visa holders mandated by legislation in four parts of the country – Silicon Valley, Chicago, Houston and Roanoke. Three occupational categories were analyzed – electrical engineers, software developers (applications) and software developers (systems software). Where readily available, private wage surveys were utilized, since companies today have the option of using such surveys. Employers consider private wage surveys more accurate. “In an internal Fragomen survey of an individual client out of 350 cases we found that approximately 91 percent of the time OES wages were higher than private wages survey.”¹⁴ Employers use these private wage surveys to set compensation for all workers – not just H-1B visa holders – so the companies that prepare and sell the surveys have an incentive to ensure their data is accurate and reflects the market.

In examining the tables it is worth contemplating what human resources departments will do if faced with these wage rules: Do they simply pay any foreign national a manager wishes to hire far more than a comparable U.S.-born professional already working at the company (or newly hired as well), or do the wage premiums make temporary visas unworkable in certain circumstances for companies? What are the implications of maintaining two wage scales – one wage scale would be the mandated federal minimum wage for skilled foreign nationals on temporary visas that generally would be far above the market wage for any person based on the role they are filling. The other wage scale would be the market wage for U.S. citizens and permanent residents based on compensation in the real labor market (as opposed to the artificial construct created by legislation) for experience tied to the position held. What would be the impact on morale of maintaining two sets of wages? Are there legal implications for a company that maintains separate wage rates based on citizen/resident/immigrant status?

¹⁴ Kevin Miner (see Appendix).

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SILICON VALLEY

Under H.R. 2131, in the San Jose area, an electrical engineer at Level 1 would have a mandated minimum wage of \$111,842 per year, or an increase of \$40,296 (an increase of 56 percent) over current market wages based on a Radford survey.¹⁵ Even utilizing current OES data, an electrical engineer at Level 1 in Silicon Valley would need to be paid \$37,544 or 51 percent higher than the current Level 1 wage from the Department of Labor.¹⁶ The mandated minimum wage for a software developer (systems software) would be \$128,294 per year for a Level 2 (some experience) under S. 744 and H.R. 2131 – both increases of \$19,156 over current Level 2 DOL wages – an 18 percent wage premium.¹⁷ If the H-1B visa holder would have qualified for Level 1 under current law and received a degree outside the country, under H.R. 2131, a company would likely pay at least \$38,334 above what is required under current law for a software developer (systems software) in Silicon Valley. Based on the market wage Level 1, a software developer (systems software) would have to be paid a wage premium of \$48,268, or 60 percent, based on Radford under H.R. 2131. For the same position and level it would be an increase of \$22,609, or 22 percent, under S. 744, based on Radford.¹⁸ Note that under Department of Labor rules only base salaries, not variable bonuses, may be considered in calculating salaries for immigration purposes.

**Table 4
New Minimum Wages for H-1B Electrical Engineers and Software Developers in Silicon Valley Under H.R. 2131 Compared to Current Market Wage**

San Jose/Silicon Valley	New Required Wage for Level 1 under H.R. 2131	Amount of Increase Over Current Level 1 Market Wage (Radford)
Electrical Engineers	\$111,842	+\$40,296 (+56%)
Software Developers, Applications	\$117,146	+\$34,543 (+42%)
Software Developers, Systems Software	\$128,294	+\$48,268 (+60%)

Source: Radford; Foreign Labor Certification Data Center Online Wage Library. Note: For Level 1 assumes individual did not graduate from U.S. university within a year of hiring. If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 7. Salary figures are annual.

¹⁵ Radford; If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 7.
¹⁶ Foreign Labor Certification Data Center Online Wage Library. If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 7.
¹⁷ Foreign Labor Certification Data Center Online Wage Library.
¹⁸ Radford; If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 7.

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Table 5
New Minimum Wages for H-1B Electrical Engineers & Software Developers in Silicon Valley Under S. 744 Compared to Current Market Wage

San Jose/Silicon Valley	New Required Wage for Level 1 Wage under S. 744	Amount of Increase Over Current Level 1 Market Wage (Radford)
Electrical Engineers	\$89,474	+\$17,928 (+25%)
Software Developers, Applications	\$93,717	+\$11,114 (+13.5%)
Software Developers, Systems Software	\$102,635	+\$22,609 (+28%)

Source: Radford; Foreign Labor Certification Data Center Online Wage Library. Salary figures are annual.

Table 6
New Minimum Wages for H-1B Electrical Engineers and Software Developers in Silicon Valley Under H.R. 2131 Compared to Current Department of Labor OES Wage Data

San Jose-Sunnyvale-Santa Clara, CA MSA	New Required Wage for Level 1 under H.R. 2131	Amount of Increase Over Current OES Level 1 Wage	New Required Wage for Level 2 Wage under H.R. 2131	Amount of Increase Over Current OES Level 2 Wage
Electrical Engineers	\$111,842	+\$37,544 (+51%)	\$111,842	+\$18,783 (+20%)
Software Developers, Applications	\$117,146	+\$32,344 (+38%)	\$117,146	+\$16,162 (+16%)
Software Developers, Systems Software	\$128,294	+\$38,334 (+43%)	\$128,294	+\$19,156 (18%)

Source: Foreign Labor Certification Data Center Online Wage Library. Note: For Level 1 assumes individual did not graduate from U.S. university within a year of hiring. If individual graduated within one year of hiring, then the Level 1 wages would match the "New Required Wage for Level 1 under S. 744" in Table 7. Salary figures are annual.

Table 7
New Minimum Wages for H-1B Electrical Engineers & Software Developers in Silicon Valley Under S. 744 Compared to Current Department of Labor OES Wage Data

San Jose-Sunnyvale-Santa Clara, CA MSA	New Required Wage for Level 1 Wage under S. 744	Amount of Increase Over Current OES Level 1 Wage	New Required Wage for Level 2 Wage under S. 744	Amount of Increase Over Current OES Level 2 Wage
Electrical Engineers	\$89,474	+\$15,176 (+21%)	\$111,842	+\$18,783 (+20%)
Software Developers, Applications	\$93,717	+\$8,915 (+10.5%)	\$117,146	+\$16,162 (+16%)
Software Developers, Systems Software	\$102,635	+\$12,675 (+14%)	\$128,294	+\$19,156 (18%)

Source: Foreign Labor Certification Data Center Online Wage Library. Salary figures are annual.

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CHICAGO

In the Chicago area, under H.R. 2131, the new required Level 1 wages for H-1B visa holders for software developers (applications) would be \$39,913 per year above current market wages, or a 71 percent wage premium above the market wage, as measured by Mercer LLC. The new required Level 2 wage would be 29 percent above the market wage measured by Towers Watson Data Services (an increase of \$21,313).¹⁹

H.R. 2131 could require an annual wage premium over current DOL (OES) Level 1 wages of \$27,768 (+46 percent) for electrical engineers, \$30,098 (+46 percent) for software developers (applications), and \$26,874 (+41 percent) for software developers (systems software).²⁰ The annual wage premiums above current law for H-1B visa holders under the new Level 2 wages under S. 744 and H.R. 2131 would be \$13,874 (+19 percent) for electrical engineers, \$15,039 (+19 percent) for software developers (applications), and \$13,437 (+17 percent) for software developers (systems software).²¹

Table 8
New Minimum Wage for H-1B Software Developer in Chicago Under H.R. 2131
Compared to Current Market Wage

Chicago-Naperville-Joliet, IL Metropolitan Division	New Required Wage for Level 1 Wage under H.R. 2131	Amount of Increase Over Current Level 1 Wage Market Wage (Mercer LLC) Private Survey	New Required Wage for Level 2 Wage under H.R. 2131	Amount of Increase Over Current Level 2 Market Wage (Towers Watson Data Services) Private Survey
Software Developers, Applications	\$96,013	+\$39,913 (+71%)	\$96,013	+\$21,313 (+29%)

Source: Towers Watson Data Services, Mercer LLC; Foreign Labor Certification Data Center Online Wage Library. If individual graduated within one year of hiring, then the new required Level 1 wage would match the “New Required Wage for Level 1 under S. 744” in Table 10. Salary figures are annual.

¹⁹ Mercer LLC, Towers Watson Data Services. ¹⁹ Foreign Labor Certification Data Center Online Wage Library. If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 10.

²⁰ Foreign Labor Certification Data Center Online Wage Library. If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 10.

²¹ Foreign Labor Certification Data Center Online Wage Library.

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Table 9
New Minimum Wages for H-1B Electrical Engineers and Software Developers in Chicago Under H.R. 2131 Compared to Current Department of Labor OES Wage Data

Chicago-Naperville-Joliet, IL Metropolitan Division	New Required Wage for Level 1 Wage under H.R. 2131	Amount of Increase Over Current OES Level 1 Wage	New Required Wage for Level 2 Wage under H.R. 2131	Amount of Increase Over Current OES Level 2 Wage
Electrical Engineers	\$88,712	+\$27,768 (+46%)	\$88,712	+\$13,874 (+19%)
Software Developers, Applications	\$96,013	+\$30,098 (+46%)	\$96,013	+\$15,039 (+19%)
Software Developers, Systems Software	\$92,144	+\$26,874 (+41%)	\$92,144	+\$13,437 (+17%)

Source: Foreign Labor Certification Data Center Online Wage Library. If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 10. Salary figures are annual.

Table 10
New Minimum Wages for H-1B Electrical Engineers and Software Developers in Chicago Under S. 744 Compared to Current Department of Labor OES Wage Data

Chicago-Naperville-Joliet, IL Metropolitan Division	New Required Wage for Level 1 Wage under S. 744	Amount of Increase Over Current OES Level 1 Wage	New Required Wage for Level 2 Wage under S. 744	Amount of Increase Over Current OES Level 2 Wage
Electrical Engineers	\$70,970	+\$10,026 (+16.5%)	\$88,712	+\$13,874 (+19%)
Software Developers, Applications	\$76,810	+\$10,895 (+10.5%)	\$96,013	+\$15,039 (+19%)
Software Developers, Systems Software	\$73,715	+\$8,445 (+13%)	\$92,144	+\$13,437 (+17%)

Source: Foreign Labor Certification Data Center Online Wage Library. Salary figures are annual.

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HOUSTON

In the Houston area, under H.R. 2131, the new required Level 1 wages for H-1B visa holders over the current DOL Level 1 would require an annual wage premium of \$29,599 (+48 percent) for electrical engineers, \$32,281 (+53 percent) for software developers (applications), and \$33,072 (+53 percent) for software developers (systems software).²² The annual wage premiums compared to current law for H-1B visa holders under the new Level 2 wages under S. 744 and H.R. 2131 would be \$14,810 (+19 percent) for electrical engineers, \$16,140 (+21 percent) for software developers (applications), and \$16,536 (+21 percent) for software developers (systems software) above current OES wages. For software developers (applications) a wage premium of \$21,026 (or 29 percent) would exist above the market wage for Level 2, according to Towers Watson, under both bills.²³

Table 11
New Minimum Wages for Level Software Developer in Houston Under H.R. 2131 and S. 744 Compared to Current Market Wage

Houston-Sugar Land-Baytown, TX MSA	New Required Wage for Level 2 Wage under H.R. 2131 and S. 744	Amount of Increase Over Current Level 2 Market Wage (Towers Watson Data Services) Private Survey
Software Developers, Applications	\$92,726	+\$21,026 (+29%)

Source: Towers Watson Data Services; Foreign Labor Certification Data Center Online Wage Library. If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 13. Salary figures are annual.

Table 12
New Minimum Wages for H-1B Elec. Engineers & Software Developers in Houston Under H.R. 2131

Houston-Sugar Land-Baytown, TX MSA	New Required Wage for Level 1 Wage under H.R. 2131	Amount of Increase Over Current OES Level 1 Wage	New Required Wage for Level 2 Wage under H.R. 2131	Amount of Increase Over Current OES Level 2 Wage
Electrical Engineers	\$91,146	+\$29,599 (+48%)	\$91,146	+\$14,810 (+19%)
Software Developers, Applications	\$92,726	+\$32,281 (+53%)	\$92,726	+\$16,140 (+21%)
Software Developers, Systems Software	\$95,285	+\$33,072 (+53%)	\$95,285	+\$16,536 (+21%)

Source: Foreign Labor Certification Data Center Online Wage Library. If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 13. Salary figures are annual.

²² Foreign Labor Certification Data Center Online Wage Library. If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 13.

²³ Towers Watson Data Services; Foreign Labor Certification Data Center Online Wage Library.

Table 13
New Minimum Wages for H-1B Elec. Engineers & Software Developers in Houston Under S. 744

Houston-Sugar Land-Baytown, TX MSA	New Required Wage for Level 1 Wage under S. 744	Amount of Increase Over Current OES Level 1 Wage	New Required Wage for Level 2 Wage under S. 744	Amount of Increase Over Current OES Level 2 Wage
Electrical Engineers	\$72,917	+\$11,370 (+18%)	\$91,146	+\$14,810 (+19%)
Software Developers, Applications	\$74,181	+\$13,736 (+23%)	\$92,726	+\$16,140 (+21%)
Software Developers, Systems Software	\$76,228	+\$14,015 (+22.5%)	\$95,285	+\$16,536 (+21%)

Source: Foreign Labor Certification Data Center Online Wage Library. Salary figures are annual.

ROANOKE

In the Roanoke, Virginia area, under H.R. 2131, the new required Level 1 wage for H-1B visa holders over the current DOL Level 1 would require an annual wage premium of \$24,399 (+56 percent) for electrical engineers, \$24,191 (+47 percent) for software developers (applications), and \$41,600 (+60 percent) for software developers (systems software).²⁴ The annual wage premiums compared to current law for H-1B visa holders under the new Level 2 wages under S. 744 and H.R. 2131 would be \$12,210 (+22 percent) for electrical engineers, \$12,106 (+19 percent) for software developers (applications), and \$20,800 (+23 percent) for software developers (systems software).²⁵

Table 14
New Minimum Wages for H-1B Electrical Engineers and Software Developers in Roanoke Under H.R. 2131

Roanoke, VA MSA	New Required Wage for Level 1 Wage under H.R. 2131	Amount of Increase Over Current OES Level 1 Wage	New Required Wage for Level 2 Wage under H.R. 2131	Amount of Increase Over Current OES Level 2 Wage
Electrical Engineers	\$67,954	+\$24,399 (+56%)	\$67,954	+\$12,210 (+22%)
Software Developers, Applications	\$75,733	+\$24,191(+47%)	\$75,733	+\$12,106 (+19%)
Software Developers, Systems Software	\$111,114	+\$41,600 (+60%)	\$111,114	+\$20,800 (+23%)

Source: Foreign Labor Certification Data Center Online Wage Library. If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 15. Salary figures are annual.

²⁴ Foreign Labor Certification Data Center Online Wage Library. If individual graduated within one year of hiring, then the Level 1 wages would match the “New Required Wage for Level 1 under S. 744” in Table 15. No private wage survey for Roanoke was readily available.

²⁵ Foreign Labor Certification Data Center Online Wage Library.

Table 15
New Minimum Wages for H-1B Electrical Engineers and Software Developers in Roanoke Under S. 744

Roanoke, VA MSA	New Required Wage for Level 1 under S. 744	Amount of Increase Over Current OES Level 1 Wage	New Required Wage for Level 2 Wage under S. 744	Amount of Increase Over Current OES Level 2 Wage
Electrical Engineers	\$54,363	+\$10,808 (+25%)	\$67,954	+\$12,210 (+22%)
Software Developers, Applications	\$60,586	+\$9,044 (+17.5%)	\$75,733	+\$12,106 (+19%)
Software Developers, Systems Software	\$88,891	+\$19,377 (+28%)	\$111,114	+\$20,800 (+23%)

Source: Foreign Labor Certification Data Center Online Wage Library. Salary figures are annual.

THE CONSEQUENCES OF REQUIRING HIGHER WAGES FOR FOREIGN NATIONALS

As noted in a discussion of another bill, inflating U.S. salaries to match the mandatory inflated salaries for foreign nationals is a possible response to the legislation, but with only so much compensation within a company to go around, it would then likely result in less hiring overall, which would not be a positive development for U.S. professionals and the overall U.S. economy.²⁶ As George Mason University economist Donald Boudreaux wrote in response to Ralph Nader's call for a 47 percent increase in the minimum wage: "From where comes the money to pay the higher wages . . . ? Mr. Nader apparently assumed that it materializes out of thin air, for he doesn't even mention the possibility that firms that are obliged to spend more on wages will spend less on inventory, factory expansion, and other activities."²⁷ Forcing employers to pay artificially higher wages for foreign talent will encourage companies to place more engineers and other skilled foreign nationals abroad, where more investment dollars will flow. That will not benefit U.S.-born professionals in the technology field.

Mandating higher wage rates for skilled foreign nationals on H-1B visas than the market wages for U.S. professionals in the same roles (and experience levels) is likely to have numerous consequences, many of them unintended. Such a policy is likely to:

- Discourage the hiring of skilled foreign nationals in the United States. This would conflict with parts of H.R. 2131 and S. 744 to increase the number of H-1B visas and employment-based green cards.
- Harm startup companies needing key personnel but unable to afford the higher wage rates, including the potential impact on the wages of current staff.

²⁶ Stuart Anderson, "Requiring Foreigners to be Paid More Than Americans," *Forbes*, March 27, 2013.

²⁷ Donald Boudreaux, Letter to the Editor, *Wall Street Journal*, April 16, 2013 (unpublished).

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- Interfere with company salary structures.
- Complicate and discourage sponsorship for green cards (permanent residence).
- Raise the possibility of legal liability for companies if they pay comparable U.S. professionals less than foreign nationals.
- Lead more employers to move work offshore to avoid the wage rules and the negative impact on their companies.
- Result in higher overall compensation costs, leading to less money available for company investment in the United States.

“These proposals require that H-1B workers be paid more than market wages and more than U.S. workers,” said Daryl Buffenstein, author of *Business Immigration: Law & Practice* (AILA, 2011). “Since it would be a bad practice to differentiate, employers will have to either not hire foreign nationals, or make similar upward adjustments for U.S. workers, too. The proposals thus effectively give the Department of Labor a mandate to set wages for the private sector – with an artificial system that guarantees that current market wages will be considered too low.”²⁸

While Congress has the authority to legislate on immigration, it would be unwise to use that authority to upend and distort the compensation policies of America’s most innovative companies. In sum, the current proposals will cause the United States to be a less attractive place for growth and investment, make U.S. companies less competitive and result in significant unintended consequences.

²⁸ Interview with Daryl Buffenstein.

APPENDIX

UNDERSTANDING INDEPENDENT NONGOVERNMENTAL WAGE SURVEYS

By Kevin Miner, Partner, Fragomen, Del Rey, Bernsen & Loewy

For many occupations and areas of the country, independent authoritative nongovernmental wage surveys provide a more accurate picture of the market wage than the Department of Labor's Occupational Employment Statistics (OES) wage survey. The most important difference between nongovernmental wage surveys and the OES wage survey is that most nongovernmental wage surveys ask employers to report what they pay workers at various education and experience levels, while the OES wage survey is based on data gathered about salaries in general, without reference to experience or education levels. While the current OES Wage Survey provides four levels of wages for each occupation, it creates those levels through a mathematical formula, not by asking employers what they actually pay employees with varying levels of experience. A Department of Labor Interim Final Rule states, "... the OES survey captures no information about actual skills or responsibilities of the workers whose wages are being reported..."²⁹

The proposed three-level OES survey in the House and Senate bills will continue to ignore what employers actually pay to employees based on the job requirements. The levels of the new three-level OES wage survey proposed in S.744 and the SKILLS Visa Act are intended to reflect entry-level wages, mid-level wages, and wages for fully competent workers. To do this, however, the government will continue to simply collect data on occupations generally, without asking employers what they pay workers with varying levels of education and experience. The government will then artificially set the prevailing wage for entry-level workers at no less than 80% of the average wage for the occupation; the prevailing wage for mid-level workers at the average; and the wage for fully competent workers at the average of the highest two-thirds of wages reported. None of this truly reflects what the market dictates for workers at varying levels of responsibility – it is instead simply a government-imposed formula for setting wages.

Independent, nongovernmental wage surveys do not use a formula and instead use actual data about what employers pay their employees at various job levels. Towers Watson, for example, surveys employers and asks survey respondents to report salaries based upon six career levels – Entry-Level, Intermediate, Career,

²⁹ <http://www.gpo.gov/fdsys/pkg/FR-2013-04-24/html/2013-09723.htm>; see also OES Wage Methodology Technical Explanation http://www.bls.gov/oes/current/oes_tec.htm. ("For each occupation, respondents are asked to report the number of employees paid within specific wage intervals.")

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Specialist, Master, and Renowned Expert.³⁰ As a result, wage data gathered by private surveys such as Towers Watson reflect actual wages paid at varying levels of experience – not a government-formula based on the average wage for the occupation overall. Consequently, for many occupations and many areas of the country, authoritative nongovernmental wage surveys provide a better picture of actual market wages for employees with varying levels of education, experience, and responsibility. In an internal Fragomen survey of an individual client out of 350 cases we found that approximately 91 percent of the time OES wages were higher than private wages survey.

By relying on a mathematical formula, rather than actual survey data, OES data can inadvertently skew wages to well above market rates for some occupations depending upon the data collected. This is an especially significant problem for occupations where more experienced workers earn significantly more than entry-level workers, because the very high wages will tend to bring the average higher overall – even if entry-level workers, in fact, earn less money at the earlier stages of their careers.

³⁰ See <https://www.twdataservices.com/public/static/na/pdf/40646.pdf> (“Survey participants match to career levels and results are presented by career level”).

CURRENT DEPARTMENT OF LABOR OES WAGE LEVELS

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered. Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. Words such as 'lead' (lead analyst), 'senior' (senior programmer), 'head' (head nurse), 'chief' (crew chief), or 'journeyman' (journeyman plumber) would be indicators that a Level III wage should be considered.

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Source: Employment and Training Administration, *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs*, U.S. Department of Labor, Revised November 2009.

ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, former U.S. Senator and Energy Secretary Spencer Abraham, Ohio University economist Richard Vedder, former INS Commissioner James Ziglar and other prominent individuals. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at www.nfap.com.