

**Employment Visas (H1B, E-3, PERM)
and New Interim Final Rules
10/15/2020 12:00 to 1:15 PM**

US Department of Labor (DOL) Interim Final Rule

Published 10/08/2020; effective 10/08/2020

30-day comment period, with comments due by November 9, 2020

Background

- H-1B, E-3 petitions, and PERM (Labor Certifications) applications require a Prevailing Wage (PW) determination and DOL Certification that the position being sponsored for H-1B/E-3/PERM meets the Prevailing Wage (ie, the offered salary is equal or higher than the PW).
- DOL wage data provides 4 wage levels, depending on the seniority of the positions or its requirements in comparison to DOL's minimum requirements for the occupation: Level 1; Level 2; Level 3; Level 4.
- For example, if DOL considers the minimum education requirement for the position as a bachelor degree; but the employer requires a master's degree, the position will be a Level 2. If the employer requires a PhD, the position will be a Level 3.
- As an exception, Postdoctoral positions are generally considered Level 1 (entry level), unless there are elements in the job description that go beyond DOL parameters and raise the wage level.
- Most Assistant Professors are Level 1 because they are considered entry level; again, unless there are elements in the job description that go beyond DOL parameters and raise the wage level

US Department of Labor (DOL) Interim Final Rule Cont'd

- To protect jobs for US workers, the Interim Final Rule (IFR) raises minimum salary levels required to sponsor H-1Bs/E-3s/PERMs.
- The rule will have significant impacts on H-1Bs, E3, PERMs.
- In many cases, the new PW requirements dramatically increase minimum wages, most of them by \$10,000 or more
- Non-teaching/faculty positions such as Postdocs are the most affected.
- Valid H-1Bs/E-3s; those pending with USCIS; those in preparation in our office, with LCA (Labor Condition Applications) already certified or submitted; are not impacted
- DOL will use the new data to determine the PW for new or pending PW requests for PERM cases.
- PERM applications already submitted with DOL are not impacted
- New H-1B/E-3 hires and extension petitions (without a valid LCA) will be impacted.

US Department of Homeland Security Interim Final Rule

- Published 10/08/2020; effective 12/07/2020; 30-day comment period, with comments due by November 9, 2020
- The IFR aims at strengthening the H-1B program by narrowing the definition of "**specialty occupation.**"
- To qualify for an H-1B, a position must be in a specialty occupation, i.e. a specialized job that requires a minimum of a bachelor degree in a specific area that is related to the job.
- The new rule requires that the degree be **DIRECTLY** related to the job
- It is estimated that 30% of jobs that were previously eligible for an H-1B will no longer be eligible.
- Delays in petition processing can be expected
- Increase in petition denials can be expected
- Well documented H-1B petitions will be required

Advocacy and Lawsuits

- The American Immigration Lawyers Association (AILA) is looking for plaintiffs, including institutions, to challenge the DOL rule
- The US Chamber of Commerce (and others) is planning to challenge the DHS rule
- Arguments include faulty methodology/stats/computation of new PWs; and argument that the current high unemployment rate and the need to protect US workers does not constitute sufficient good cause to by-pass Notice and Comments generally required to issue a new rule; ie there is not an emergency situation; there is no risk of severe harm; it is practicable and necessary that the American public is given sufficient notice and the opportunity to comment on such a significant change.
- If lawsuit is successful, query whether it's going to be a nationwide injunction vs relief for the named plaintiffs in the case; hence joining litigation as plaintiffs highly recommended.

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%

Prevailing Wage Increases- Examples

Code	Occupation	Level 1 before 10/08/20	Level 1 After 10/08/2020	Percentage Difference
25-1021 Geo 1	Computer Science Teachers	69,590	90,700	30%
25-1052 Geo 1	Chemistry teachers	59,310	78,410	32%
25-1032 Geo 1	Engineering teacher	50,480	71,720	42%
25-1022 Geo 1	Mathematics teachers	48,940	71,720	47%
25-1054 Geo 1	Physics Teachers	75,020	114,670	53%
25-1063 Geo 1	Economics Teachers	92,720	Data Not available	116%
25-1065 Geo 1	Political Science Teachers	49,410	71,720	45%
25-1011 Geo1	Business Teachers	67,720	89,640	32%
25-1021 Geo 1	Computer Science Teachers	69,590	90,700	30%
25-1052 Geo 1	Chemistry teachers	59,310	78,410	32%
25-1032 Geo 1	Engineering teacher	50,480	71,720	42%

What are our Options?

OPT/OPT STEM (Optional Practical Training)

J-1 Student- Academic Training

J-1 Scholars- Exchange Visitors

TN (for Canadians and Mexicans)

Alternative Wage Surveys

How to Determine PW-Step1: Go to OFLC Data Center



The screenshot shows a web browser window with the URL flcdatacenter.com. The page header includes the text "Foreign Labor Certification Data Center Online Wage Library" and the website URL www.flcdatacenter.com. A navigation menu on the left lists several options: "Wage Library" (with sub-links for "Quick Search" and "Search Wizard"), "Case Disclosure Data Archive" (with sub-links for "H1B Data", "H2A Data", "H2B Data", and "Perm Data"), "Also available: File Archive", "Skill Level Explanation", "SVP Explanation", and "FLC Wage Data updated October 8, 2020". The main content area features a large red heading "Foreign Labor Certification Data Center" followed by a red text announcement: "On October 7, 2020, OFLC uploaded the prevailing wage data from the Occupational Employment Survey as generated by the Bureau of Labor Statistics to implement the Interim Final Rule (IFR) published in the Federal Register on October 8, 2020. The wages are for the period from October 8, 2020 - June 30, 2021. The effective date of the IFR is October 8, 2020. Prevailing wage determinations issued from the National Prevailing Wage Center will reflect the new data." Below this, a paragraph states: "The Foreign Labor Certification Data Center is the location of the Online Wage Library for prevailing wage determinations." A section titled "Online Wage Library" contains links for "FLC Wage Search Wizard", "FLC Wage Quick Search", "SCA Search (from www.wdol.gov)", and "Download Data Files". A partially visible section titled "Disclosure Data" is at the bottom.

Step 2: Search Wizard; Louisiana; Continue


The screenshot shows a web browser window with the URL `flcdatacenter.com/OESWizardStart.aspx`. The page header features the text "Foreign Labor Certification Data Center Online Wage Library" and the website URL `www.flcdatacenter.com`. A navigation menu on the left includes "Wage Library" (with sub-items "Quick Search" and "Search Wizard") and "Case Disclosure Data Archive" (with sub-items "H1B Data", "H2A Data", "H2B Data", and "Perm Data"). The main content area is titled "Online Wage Library - FLC Wage Search Wizard" and contains a notice: "Data for 10/8/2020 - 6/30/2021 has been added to the [download page](#) and is effective 10/8/2020." Below this is a form with the label "Select a State/Territory:" and a dropdown menu currently showing "Louisiana", followed by a "Continue" button. A final instruction reads: "If you know the BLS Area Code and the OES/SOC Occupation Code or Title try using the faster [OES Quick Search](#)."

Step 3: Select 10/08/20 to 06/30/21 Higher Edu Industry; County/Parish; Key word or code; click Search

FLCDataCenter.com x +

← → ↻ flcdatacenter.com/OesWizardStep2.aspx?stateName=Louisiana

Foreign Labor Certification Data Center
Online Wage Library www.flcdatacenter.com



Wage Library
Quick Search
Search Wizard

Case Disclosure Data Archive
H1B Data
H2A Data
H2B Data
Perm Data

Also available:
File Archive

Skill Level
Explanation

FLC Data Center - FLC Wage Search Wizard [New Quick Search](#) [New Search Wizard](#)

Data for 10/8/2020 - 6/30/2021 has been added to the [download page](#) and is effective 10/8/2020.

You have requested data for Louisiana

Select a Data Source: ⓘ
10/8/2020 - 6/30/2021 ACWIA - Higher Education Database ▼

Select an area based on County/Township BLS Areas ⓘ
East Baton Rouge Parish - Baton Rouge, LA ▼

Enter a keyword or phrase: ⓘ
Physics teachers

OR Select an occupation from the list: ⓘ
▼


Search

Step 4: View Wages

flcdatacenter.com

flcdatacenter.com/OesQuickResults.aspx?area=12940&code=25-1054&year=21&source=4

Foreign Labor Certification Data Center
Online Wage Library www.flcdatacenter.com



Wage Library
Quick Search
Search Wizard

Case Disclosure Data Archive
H1B Data
H2A Data
H2B Data
Perm Data

Also available:
File Archive

Skill Level
Explanation

SVP Explanation

FLC Wage Data updated October 8, 2020

Job Zones updated October 8, 2020
See change history

FLC Wage Results [New Quick Search](#) [New Search Wizard](#)

You selected the ACWIA - Education Industry database for 10/8/2020 - 6/30/2021.

Your search returned the following: [Print Format](#)

Area Code: 12940
Area Title: Baton Rouge, LA
OES/SOC Code: 25-1054
OES/SOC Title: Physics Teachers, Postsecondary
GeoLevel: 1
Level 1 Wage: \$114,670 year
Level 2 Wage: \$165,050 year
Level 3 Wage: \$215,430 year
Level 4 Wage: \$265,810 year
Mean Wage (H-2B): \$132,990 year

This wage applies to the following O*Net occupations:

25-1054.00 Physics Teachers, Postsecondary

Teach courses pertaining to the laws of matter and energy. Includes both teachers primarily engaged in teaching and those who do a combination of teaching and research.
[O*Net™ JobZone: 5](#)
[Education & Training Code: 2-Doctoral degree](#)

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the [Skill Level page](#).

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.

Resources

- DOL rule: 150 Pages. [Read on the Federal Register site.](#)
- [DOL Frequently Asked Questions](#)
- DHS rule: 147 Pages. [Read on the Federal Register Site.](#)
- [Foreign Labor Certification Data Center](#)

Supplemental Reading – Press Releases

- [White House Press Release](#)
- [Department of Homeland Security Press Release](#)
- [US Department of Labor Press Release](#)
- [Press Release from Forbes](#)

QUESTIONS?

¿Preguntas?; Sorular?

Domande?

Câu hỏi?; Savāla?

Fragen?; Dotazy?

Preguntes?

Pytannya?

Sorular?; Maswali?

Yǒu wèntí ma?

Ερωτήσεις;

Vragen?

Perguntas?

Shitsumon wa arimasu
ka?

Kum tum?

Tanong?; Jilmun?

Kesyon?; Kit'Khvebi?

Kysymyksiä?

Mafunso?

THANK YOU

