

September 23, 2026

U.S. Citizenship and Immigration Services

Department of Homeland Security

Submitted electronically via www.regulations.gov

Re: DHS Docket No. USCIS-2026-0298; CIS No. 2861-26; RIN 1615-AD20

RE: CHRO Association Comments on Proposed Rule “Fee for Certain H-1B Petitions”

To the Regulatory Coordination Division, Office of Policy and Strategy:

The CHRO Association (“Association”) submits these comments in response to the Department of Homeland Security’s (DHS) proposed rule establishing an additional \$103,265 fee for H-1B cap-subject petitions (91 FR 54817, Aug. 25, 2026). The Association supports efforts to strengthen the American economy, expand opportunities for American workers, and foster an environment where U.S. businesses can compete and win in the global marketplace. A competitive workforce and a predictable, well-functioning legal immigration system are essential to driving U.S. innovation, growth, and leadership.

The CHRO Association is a public policy advocacy organization that represents the most senior human resources executives (Chief Human Resources Officers) at nearly 400 of the largest corporations doing business in the United States and globally. Collectively, these companies employ more than 10 million employees in the United States — nearly nine percent of the private-sector workforce — and approximately 20 million employees worldwide. Since its founding, one of the Association’s principal missions has been to ensure that laws and policies affecting human resources, including talent, are sound, practical, and responsive to the labor and employment issues arising in the workplace.

The Association and its member companies remain committed to supporting the Administration’s agenda of prioritizing American workers and advancing national prosperity. It is precisely because of that shared goal that we write to urge the Administration to withdraw this rule or, alternatively, to adopt the approaches discussed below to achieve its objectives.

Cumulative Cost Increases Are Disrupting Business Operations and Undermining U.S. Competitiveness

Employers have experienced a rapid succession of significant, largely unanticipated cost increases and procedural changes affecting employment-based immigration over the past year. This includes the \$100,000 H-1B proclamation payment announced in September 2025, which a federal court vacated in *California v. Mullin* and which remains blocked pending appeal — a status that was not disturbed when the administration extended the underlying proclamation for another twelve months, through September 21, 2027, on September 18, 2026. That same day, the administration also issued a companion executive order directing increased interagency coordination and scrutiny of employer layoffs in H-1B-related decisions, adding a further layer of uncertainty for employers even while the fee itself remains unenforceable.

Layered on top of this are the proposed increases in the prevailing wages necessary to file H-1B and related visa petitions and for the PERM program, and now this proposed \$103,265 fee — which, as drafted, DHS states would apply in addition to the proclamation payment if it is ultimately reinstated. Taken individually, and especially in combination with other pending actions discussed below, these changes are already resulting in workforce disruptions: delayed start dates, canceled offers, paused research and development projects, and difficult decisions about where to locate roles and teams.

Our member companies compete globally for a limited pool of specialized talent against employers in Canada, the United Kingdom, and other countries that are actively streamlining their skilled-worker immigration systems to attract that same talent. When the cost and unpredictability of hiring through the U.S. H-1B program rises this sharply and this quickly, employers do not necessarily replace that talent with a U.S. worker; in many cases, the role, the team, or the investment simply moves to a jurisdiction where it can be staffed more predictably. That outcome runs counter to the Administration's stated goal of ensuring the United States remains the most competitive nation in the world for advanced industries and next-generation technologies.

1. The Fee Bears No Reasonable Relationship to the Cost of Adjudicating an H-1B Petition

The proposed \$103,265 fee does not appear to be based on the actual cost of processing an individual H-1B petition. Rather, DHS arrives at the figure by dividing approximately \$8.8 billion in broad, government-wide immigration-system costs across an assumed 85,000 cap-subject petitions per year — a calculation that reflects an allocation of costs rather than an assessment of what a single petition costs to adjudicate. DHS itself acknowledges that this is a new and novel argument, and we respectfully encourage DHS to explain how the proposal matches the cost recovery authority granted to it by Congress.

We respectfully encourage DHS to reconsider asking employers to pay more than \$100,000 for an immigration benefit that costs the government only a fraction of that amount to adjudicate. This represents a meaningful shift away from the traditional user fee model, in which a fee generally bears a reasonable relationship to the service provided to the fee payer. We would welcome further explanation from DHS as to why cap-subject H-1B petitioners, rather than the broader population of immigration benefit requestors or Congress through direct appropriations, should bear the cost of activities at agencies that play no role in adjudicating their petitions.

2. DHS's Stated Rationale Is “Ability to Pay,” Not Cost of Service

DHS explains that it selected H-1B cap-subject petitioners to bear these costs based on its assessment that they are more willing and able to pay than other requestors, reasoning that the fee is modest relative to the wage obligation employers already assume. We would gently note that a group's perceived ability to pay may not, on its own, be a sufficient basis for assigning responsibility for financing unrelated government activities. We respectfully encourage DHS to

reconsider a methodology that relies on an ability-to-pay judgment in place of the traditional, service-based nexus that has long guided USCIS fee-setting, and would welcome further explanation of how this approach aligns with the Administrative Procedure Act's requirement of reasoned decision-making.

3. Existing Safeguards Already Address the Program Integrity Concerns This Fee Purports to Deter

The H-1B program already contains multiple, statutorily grounded safeguards designed to prevent misuse. Before a petition is ever adjudicated, an employer must attest, through a Labor Condition Application filed with the Department of Labor, that it will pay the required prevailing wage for the occupation and area of employment. The employer must further demonstrate that the position qualifies as a specialty occupation requiring a bachelor's degree or higher in a specific specialty. And even after clearing both of those requirements, the employer is still subject to an annual, randomized lottery that limits the program to a fixed statutory cap. These existing safeguards, taken together, already screen out the conduct — wage suppression and use of the program in place of a genuine specialty hire — that a fee of this magnitude is apparently meant to further discourage.

Given these existing protections, an additional six-figure fee does not meaningfully improve program integrity; it simply raises the cost of legitimate participation for every employer who has already cleared the wage and specialty-occupation bars and prevailed in the lottery. Any employer attempting to use the H-1B program as a lower-cost substitute for domestic hiring, rather than out of genuine need, is already constrained by the prevailing-wage requirement. By definition, the employers who continue to rely on the program despite these existing safeguards are very likely those competing in a specialized labor market where a sufficient domestic pipeline does not yet exist. Layering a \$103,265 fee on top of the wage, specialty-occupation, and lottery requirements does not address a program-integrity gap; it simply places those employers — and the positions they are struggling to fill — in a more difficult position, without a corresponding integrity benefit to justify the cost.

4. The Proposal Rests on an Untested Assumption That Filing Volume — and Employer Behavior — Will Not Change

DHS's revenue projection depends entirely on the assumption that annual H-1B cap-subject filings will hold steady at 85,000 despite a six-figure increase in the cost of filing. That assumption relies heavily on a single 2026 economic analysis (Borjas) estimating employer willingness to pay \$100,000–\$200,000 per hire, derived from an average wage gap between H-1B and comparable U.S. workers. That average does not capture how specific employers, occupations, or smaller firms will actually respond, particularly given that the fee is due at filing, before an employer knows whether the petition will be approved.

DHS further frames reduced H-1B hiring as an intended benefit of the rule, on the theory that higher costs will lead employers to substitute U.S. workers. For global companies, that is not the only available choice. If specialized talent becomes prohibitively expensive to employ in the

United States, employers may instead locate the individual, team, or project abroad — in which case the United States loses not only the worker, but the innovation, investment, tax revenue, and downstream jobs associated with that work. We ask DHS to stress-test its volume and elasticity assumptions against real-world employer data, to analyze the risk of offshoring and foregone U.S. investment, and to adopt a mechanism for refunding the fee, in whole or in part, where a petition is denied or a selected registration does not proceed to filing.

5. The Rule Threatens the Future U.S. Talent Pipeline — Not Just Current Hiring

The most serious, longer-term concern for the Association's members is not limited to today's H-1B workforce. It is the effect this rule — and the broader pattern of actions restricting access to the U.S. labor market for foreign nationals — will have on the next generation of highly educated talent choosing whether to study, and remain, in the United States at all.

This concern is particularly acute in fields such as semiconductors, where approximately 70 percent of U.S. master's and Ph.D. students in electrical engineering are foreign nationals. These students form a core part of the pipeline that domestic semiconductor and advanced-manufacturing employers rely on to staff the very onshoring and reshoring investments the Administration has prioritized. If prospective foreign students conclude that the United States has made it substantially more difficult and expensive to obtain a job here after graduation, many will choose to pursue their education, and ultimately their careers, in countries actively competing for that same talent. The United States cannot simultaneously make it more difficult to attract and hire global talent and expect to fulfill its goal of onshoring advanced manufacturing and maintaining leadership in semiconductors and other critical technologies. We urge DHS to consider this longer-term pipeline effect as part of its analysis, as it is a consequence that will not show up in near-term filing data but will materially affect U.S. competitiveness for years to come.

6. The Rule Would Disproportionately Harm Startups and Smaller Employers

A flat \$103,265 fee applies uniformly regardless of whether the petitioner is a global enterprise or a ten-person startup, and does not account for an employer's size or ability to absorb the cost. For a startup, small manufacturer, or emerging technology company, the fee could effectively foreclose access to the H-1B program altogether. Notably, DHS's own Initial Regulatory Flexibility Analysis concedes a significant economic impact on 11,051 small entities — roughly 76 percent of the small entities that filed cap-subject petitions in FY 2025. DHS has not meaningfully considered alternatives that might lessen the burden on these smaller companies. We ask DHS to reconcile that admitted harm with the Regulatory Flexibility Act's requirement to consider less burdensome alternatives for small entities, including those identified below.

7. DHS Should Assess the Cumulative Impact of Concurrent Federal Actions

Employers will not experience this fee in isolation. There are several other concurrent, related actions that compound the cost of employing high-skilled foreign talent, including DOL's

proposed rule raising prevailing-wage floors for H-1B and related categories; the CBP 9-11 biometric entry-exit fee, recently expanded to cover H-1B and L-1 extension petitions; new and increased EOIR fees required under recent legislation (H.R. 1); and the \$100,000 proclamation payment — extended for another year through September 21, 2027, though still on appeal — which DHS states would apply on top of this fee if reinstated. We ask DHS to conduct a genuine cumulative-impact analysis of these overlapping actions, rather than evaluating this rule's costs and benefits in isolation.

8. Healthcare and Other Critical Industries Should Be Excluded, and Nursing Should Be Treated as a STEM Field

If DHS proceeds with a final rule notwithstanding the concerns above, we urge DHS to exclude industries that are critical to public health and safety and of national interest — healthcare foremost among them — from the fee, in the same manner cap-exempt research and educational institutions are already excluded. Hospitals and health systems, many of which operate as nonprofit entities with thin margins and already face persistent staffing shortages, should not be asked to absorb a \$103,265 per-hire fee to fill clinical and specialty positions that directly affect patient care and public health.

This concern is heightened when viewed alongside the Administration's recently proposed changes to F-1 and Optional Practical Training (OPT). Taken together with this proposed fee, we believe DHS and its partner agencies should give serious consideration to formally treating nursing and registered nurse (RN) positions as STEM fields — including recognizing relevant nursing degree programs as STEM-designated for purposes of STEM OPT eligibility — and to making nursing positions eligible for additional visa and work-authorization pathways. The United States is in the midst of a well-documented, long-term nursing shortage, and foreign-educated and foreign-national nurses are an important part of the pipeline hospitals and health systems rely on to maintain safe staffing levels, particularly in rural and underserved areas. Treating nursing as a STEM field would allow foreign national nursing graduates to remain in the United States longer under STEM OPT, easing reliance on the cap-subject H-1B lottery and this proposed fee for a workforce that is essential to the public health and safety the Administration has prioritized.

9. Recommended Alternatives

While we would prefer that this rule be withdrawn, if DHS proceeds with a final rule, we respectfully offer the following alternatives for its consideration, consistent with Executive Order 12866 and the Regulatory Flexibility Act's requirement that agencies consider less burdensome approaches:

- Limit application of the proposed rule to new, out-of-country, cap-subject applicants seeking initial admission. Employees already in the U.S. and employed here who are seeking extensions or a change of status should not be subject to the fee;
- Tie any H-1B fee more closely to the actual, direct cost of adjudicating an H-1B petition;

- Substantially reduce the proposed surcharge to reflect only USCIS's direct adjudication-related costs;
- Phase in any significant fee increase over multiple years to allow employers to plan and adjust;
- Rely on congressional appropriations, rather than H-1B petitioners, to fund government-wide immigration activities not directly attributable to H-1B adjudication;
- Provide a refund mechanism for denied petitions and clear transition relief for petitions tied to registrations made before any final rule takes effect; and
- Exclude healthcare and other industries deemed critical from the fee, either categorically or through a national interest exception — modeled on the exception in the September 2025 H-1B proclamation (since extended through September 21, 2027), which allows the Secretary of Homeland Security to exempt an individual, a company, or an entire industry from the restriction upon determining that doing so is in the national interest and does not pose a threat to the security or welfare of the United States. Such an exception should be applied to healthcare employers and roles given their direct bearing on the availability of medical care. Additionally, DHS should formally recognize nursing/RN positions as a STEM field eligible for STEM OPT and related work-authorization pathways.

10. Additional Requests for Clarification

1. Can DHS confirm whether this fee and the \$100,000 proclamation payment — now extended through September 21, 2027 and still on appeal — would both apply to the same petition if the proclamation payment is reinstated, and provide a cumulative cost estimate reflecting that combined burden?
2. Would the fee apply to petitions already registered or selected in the FY 2027 H-1B lottery prior to the effective date of a final rule?
3. Can DHS confirm that petitions for existing H-1B workers (extensions, amendments, changes of employer) remain fully excluded from this proposed fee?
4. Given that this fee, the CBP 9-11 Biometric Fee, and the proclamation payment obligation are all being implemented on overlapping timelines, what steps is DHS taking to ensure petitioners receive clear, consolidated guidance on the total fees due for a given petition?

Closing

The proposed \$103,265 fee is not simply another incremental increase in H-1B filing costs. At this magnitude, and layered on top of other pending cost increases, it could materially change whether employers can economically justify sponsoring high-skilled workers in the United States — with consequences that extend beyond individual petitions to reduced U.S. hiring of specialized talent, diminished access to talent for smaller employers, and a weakened pipeline of future domestic talent in industries critical to U.S. competitiveness, such as semiconductors.

We sincerely appreciate DHS's consideration of the concerns outlined above. We would welcome the opportunity to meet with DHS and USCIS to discuss the cumulative impact of recent fee and policy changes on U.S. employers' ability to access the skilled talent they need, and to collaborate on approaches that support both program integrity and continued U.S. competitiveness.

Respectfully submitted,

A handwritten signature in black ink that reads "Chatrane Birbal". The script is cursive and fluid, with the first name "Chatrane" and last name "Birbal" clearly distinguishable.

Chatrane Birbal
Senior Vice President, Public Policy & Government Relations
CHRO Association