



March 15, 2023

PA-2023-08

## Policy Alert

**SUBJECT:** Certain Petitioning Employers' Ability to Pay the Proffered Wage to Prospective Employee Beneficiaries

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to address the analysis of an employer's ability to pay the proffered wage for certain employment-based immigrant petition adjudications.

### Background

Employers seeking to classify prospective employees under 1st, 2nd, and 3rd preference employment-based immigrant classifications that require a job offer must demonstrate their continuing ability to pay the proffered wage to the beneficiary as of the priority date of the immigrant petition.

The relevant regulation requires the employer to submit annual reports, federal tax returns, or audited financial statements for each available year from the priority date.<sup>1</sup> If the employer has 100 or more workers, it may instead include a financial officer statement attesting to the petitioner's ability to pay the proffered wage. An employer may also submit additional evidence such as profit and loss statements, bank account records, or personnel records.

Many employers satisfy the ability to pay requirement by also submitting payroll records demonstrating that, during the relevant time period, they have been paying the employee at least the proffered wage indicated on the Immigrant Petition for Alien Workers ([Form I-140](#)).

USCIS is updating its guidance to discuss in more detail various types of evidence and explain how USCIS reviews all evidence relevant to the employer's financial strength and the significance of its business activities.

This guidance, contained in Volume 6 of the Policy Manual, is effective immediately and applies prospectively to petitions filed on or after March 15, 2023. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

### Policy Highlights

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<sup>1</sup> See [8 CFR 204.5\(g\)\(2\)](#).

- Provides that USCIS reviews all evidence relevant to the employer's financial strength and the significance of its business activities.
- Explains that an employer must submit one of the three forms of initial required evidence listed in the regulation but may also include other types of relevant evidence.
- Discusses each form of initial required evidence listed in the regulation and several other forms of additional evidence employers might submit to establish their ability to pay the proffered wage.
- Explains how USCIS analyzes evidence and issues relevant to an employer's ability to pay the proffered wage, such as the petitioner's current employment of the beneficiary, prorating the proffered wage for the priority date year, multiple beneficiaries, successors-in-interest, and non-profit organizations.
- Adds information about types of business structures to help officers better understand the types of petitioning employers and the evidence they may submit to establish their ability to pay the proffered wage.

### **Summary of Changes**

Affected Section: Volume 6 > Part E, Employment-Based Immigration

- Revises Chapter 4 (Ability to Pay) in full.
- Adds Appendix: Business Structures.
- Removes "Business Structure" from the title of Chapter 5, leaving it reserved.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

### **Citation**

Volume 6: Immigrants, Part E, Employment-Based Immigration, Chapter 4, Ability to Pay [[6 USCIS-PM E.4](#)]; and Chapter 5, Reserved [[6 USCIS-PM E.5](#)].