

May 6, 2024

Filed via Regulations.gov

Brian Pasternak
Administrator, Office of Foreign Labor Certification
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue NW, N-5311
Washington, DC 20210

Re: DOL Docket No. ETA-2023-0006
RIN 1205-AC16
Schedule A Modernization

Dear Administrator Pasternak,

This letter is in response to the request for information (RFI) on the Schedule A shortage occupation list. We appreciate the opportunity to provide feedback to the Department of Labor (DOL) and the Employment and Training Administration (ETA), especially as the Biden Administration emphasizes the importance of American leadership in critical and emerging technology fields, like artificial intelligence, quantum computing, financial technologies, human-machine interfaces, advanced computing, renewable energy, networking technologies, biotechnology, advanced manufacturing, and semiconductor manufacturing. This RFI is the first public inquiry into the composition of the Schedule A shortage occupation list in many years. We consider it essential that DOL act to modernize Schedule A after the RFI comment period closes. This comment will focus on the importance of attracting and retaining the talented individuals that provide such a significant value to our nations' businesses and economy.

HR Policy Association members represent businesses that can only continue to create new opportunities, develop new technologies, and improve the lives of Americans if they have the capability to recruit and retain the talent required for their respective businesses. We are writing to respond to DOL's request for general comments and suggestions concerning whether any STEM occupations should be added to Schedule A and to offer guidance to DOL on the consideration of various non-STEM occupations for inclusion.

By way of background, HR Policy Association is a public policy advocacy organization that represents the most senior human resources officers (CHROs) in 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 20 million employees worldwide. Member companies of the Association are dedicated to enhancing America's competitiveness in the global economy. They achieve this by investing in growing the pipeline of domestic talent and advocating for reforms that facilitate the recruitment and retention of high-skilled foreign-born workers who compliment the U.S. workforce.

When created in 1965, Schedule A identified occupations and categories of qualifications for which there were insufficient workers who were able, willing, qualified, and available, and in which the employment of foreign nationals would not adversely affect the working conditions of similarly employed workers. Precertification of occupations through Schedule A not only streamlines processes for employers seeking to sponsor a foreign national for a position in a shortage occupation, it also provides significant benefits to the agency to assist in clearing labor certification/PERM backlogs.

Modernizing Schedule A can play a valuable role helping our members attract and retain crucial talent without negatively impacting domestic workers. Many of our members rely on international students graduating from U.S. colleges and universities to fill critical but unmet labor needs, ensuring our members' ability to innovate and improve services to the American public. Perhaps more importantly, the ability to fill significant gaps with U.S.-trained international talent allows our members to expand their operations, contributing to both job growth and expansion of the U.S. economy.

International students play particularly important roles addressing shortages in STEM fields, particularly at the advanced degree level. For example, in 2019, international students earned more than 50 percent of U.S. doctoral degrees in critical STEM fields, including 59 percent of computer science degrees, 58 percent of engineering degrees, and 51 percent of mathematics and statistics degrees.¹ At the same time, growth in STEM occupations has outpaced other areas. According to BLS data, for instance, STEM occupations are projected to grow by 10.8% by 2032, while non-STEM occupations are expected to grow only 2.3% during the same timeframe.

As demonstrated in the chart below, foreign-born college graduates have become increasingly critical to addressing labor demand in STEM fields. Given growth projections in STEM occupations and the percentage of STEM students who are foreign nationals, these trends are certain to continue.

¹ <https://nces.nsf.gov/pubs/nsb20223/international-s-e-higher-education>

Number of employed foreign-born college graduates working in STEM fields, 2010-2021

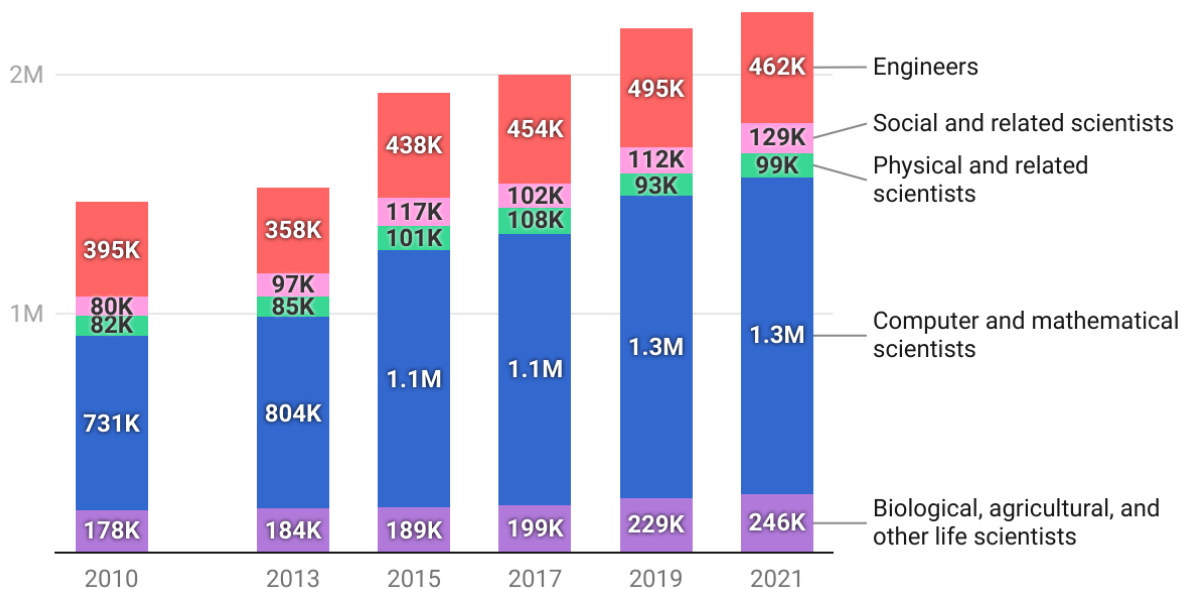


Table 6-4, Survey of Graduate Students and Postdoctorates in Science and Engineering

Source: National Science Foundation • Created with Datawrapper

Furthermore, under current DOL policy, registered nurses and physical therapists are Schedule A occupations. Pharmacists represent another health care profession that provides a critical health care access point for patients and that faces significant shortage problem, and this shortage problem is projected to significantly worsen over the next decade. As just one data point to illustrate the growing shortage of pharmacists, U.S. Bureau of Labor Statistics data shows that there will be about 13,400 unfilled pharmacist job openings each year over the next decade.² Pharmacists represent an example of a profession that DOL should consider adding to Schedule A.

Reforming Schedule A can help our members fill critical needs more effectively, while simultaneously providing other benefits. For example, systems that instill confidence in individuals regarding their future prospects in the United States are vital to maintaining the interest of prospective immigrants in selecting the U.S. as their destination to build and advance their careers.

The ability to recruit foreign talent also enhances the ability of our members, many of them global companies, to cultivate inclusive workplace cultures. CHROs within HRPAC comprehend the pivotal role these cultures play in creating environments that not only attract but also

² Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Pharmacists, at <https://www.bls.gov/ooh/healthcare/pharmacists.htm> (visited October 18, 2023).

motivate all workers (domestic and foreign) and develop the high-caliber talent required for the success of their businesses. Embracing a diverse workforce, including international hires, brings a richness of unique perspectives to our member companies. These varied viewpoints contribute to a more dynamic and innovative work atmosphere, fostering creativity and adaptability within the organization. By integrating individuals from different backgrounds and experiences, our members can better navigate the challenges of a globalized business landscape and gain a competitive edge in the marketplace where their clients and customers are located.

If Schedule A was updated in a data-driven, self-executing way, U.S. employers would be better able to ensure this valuable population can stay in the country and contribute to the economy. Currently, our immigration system imposes significant challenges on employers seeking to hire international workers, despite their possession of the exact skills and expertise required for specific roles. The existing process is not only protracted but also financially burdensome. The unpredictability of PERM labor certification processing times exacerbates the issue, leading to missed opportunities to secure essential talent that could enhance the capabilities of our businesses.

Reforming Schedule A could help reduce the volume of Prevailing Wage Determination (PWD) requests and PERM Labor Certification applications received by DOL's Office of Foreign Labor Certification (OFLC), which would help address the agency's backlogs. While processing times for PWDs have improved as of December 2023, employers can still expect to wait approximately six months. Similarly, DOL reported over 88,000 pending PERM Labor Certification applications in December 2023, with an average processing time of approximately one year; applications selected for audit by DOL are taking significantly longer. For critical or emerging sectors, those waits for workers could impact their sustainability and productivity, as well as companies' manufacturing, production or services launch time.

The proposal for a modernized Schedule A presents a promising solution to this predicament. By incorporating a data-driven and self-executing mechanism, the updated Schedule A would streamline and expedite the first part of the immigration process for some key critical skilled professionals. This enhancement would not only alleviate the burdensome uncertainties faced by employers but also fortify the nation's workforce by allowing businesses to efficiently access critical individuals in the international talent pool. The result would be a win-win situation, enabling employers to fill critical skill gaps promptly while safeguarding domestic employment opportunities. In essence, a modernized Schedule A emerges as a key component in striking a balance between supporting the needs of U.S. businesses and maintaining protections for the domestic workforce.

Policymakers should do all they can to help attract and retain the workers that U.S. companies require to compete and grow, while complimenting the domestic workforce. This is especially important as we seek to promote U.S. leadership in critical and emerging industries, such as artificial intelligence, quantum computing, financial technologies, human-machine interfaces, advanced computing, renewable energy, networking technologies, biotechnology, advanced

manufacturing, and semiconductor manufacturing. A modernized Schedule A can serve as a valuable asset in this effort. The consequences of inaction harm our national economy, communities, workers, and global competitiveness. We urge DOL to update Schedule A with a data-driven and self-executing methodology that improves predictability and certainty in the hiring process for U.S. companies.

Sincerely,

A handwritten signature in black ink that reads "Chatrane Birbal". The signature is written in a cursive, flowing style.

Chatrane Birbal

Vice President, Policy and Government Relations

HR Policy Association