

February 20, 2024

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

Dear Mr. Pasternak:

**Business Roundtable Response to
“Labor Certification for Permanent Employment of Foreign Workers in the United States;
Modernizing Schedule A To Include Consideration of Additional Occupations in Science,
Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations”
Department of Labor Docket No. ETA-2023-0006**

I. INTRODUCTION

Business Roundtable appreciates the opportunity to respond to the Request for Information (RFI) that the U.S. Department of Labor’s (Department or DOL) Employment and Training Administration (ETA) published on December 21, 2023, titled “Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A To Include Consideration of Additional Occupations in Science, Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations.”

Business Roundtable is an association of more than 200 chief executive officers (CEOs) of America’s leading companies, representing every sector of the U.S. economy. Business Roundtable CEOs lead U.S.-based companies that support one in four American jobs and almost a quarter of U.S. GDP. The organization’s mission is to promote a thriving U.S. economy and expanded opportunity for all Americans, including through continued efforts to strengthen the pipeline of American workers as well as to ensure lawmakers enact sound immigration policies that support our economy. Business Roundtable has conducted extensive research and has released multiple in-depth reports on various immigration policy issues.¹

Business Roundtable welcomes this opportunity to provide input on Schedule A revisions. Modernizing Schedule A will help advance national priorities, address workforce challenges and reduce burdens on the Department and the private sector. We encourage the Department to establish a data-driven process for regular updates that includes public input so that Schedule A can fulfill its purpose to respond to labor market demand.

II. MODERNIZING “SCHEDULE A” WILL ADVANCE IMPORTANT NATIONAL INTERESTS AND INCREASE U.S. COMPETITIVENESS

Schedule A needs updating so that it can serve its purpose as a tool for responding to labor shortages.

The purpose of Schedule A is to pre-certify job vacancies for which there is a shortage of U.S. workers and the employment of immigrants would not cause adverse effects. Though the Secretary of Labor can amend this list “at any time, upon his own initiative,” Schedule A was last updated in 2004. Today, only two groups of occupations remain: Group I includes physical therapists and professional nurses, and Group II includes immigrants of exceptional ability in the sciences, arts or performing arts.

Job vacancies today are different than they were in 2004. For example, increased automation and other technology-based shifts have changed the nature of work and the skills employers need to sustain U.S. economic growth and competitiveness.

To serve its purpose, Schedule A needs to be updated to reflect labor shortages in the modern economy.

Schedule A should advance national priorities.

From energy and infrastructure to Artificial Intelligence (AI) and cybersecurity, the public and private sectors are investing in industries and technologies that are critical to national and economic security. With these investments come new jobs, and Schedule A should be updated to support employers as they seek qualified talent to advance national priorities.

President Biden’s October 2023 Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (“AI Order”) expressed an urgent need to take action, both from a national security perspective and to ensure the United States’ ability to compete globally in critical fields. Recognizing that domestic talent alone cannot advance this national interest, the Biden Administration directed the Secretary of Labor to publish this RFI and the Secretary of State and Secretary of Homeland Security to clarify and modernize immigration pathways for experts in these fields.²

The AI Order makes clear that access to talent is critical to keeping AI innovation in the United States. The Center for Security and Emerging Technology has warned that as a consequence of the talent shortage in AI in the United States, “U.S. companies are moving AI R&D abroad.”³

Members of Congress have called on the Department to use Schedule A to streamline hiring international workers in high-demand industries such as science, technology, engineering and mathematics (STEM) and health care.⁴ The bipartisan House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party recommended that the Department add occupations critical to national security and emerging technologies and mandate that Schedule A be updated continuously to reflect the dynamic job market and current market conditions and demands.⁵

Furthermore, new federal investments – the CHIPS and Science Act, the Inflation Reduction Act, and the Infrastructure Investment and Jobs Act – means more new jobs that will require qualified workers, but domestic sources of talent are scarce. For example, a July 2023 study found that 58 percent of projected new semiconductor jobs may remain unfilled at the current trajectory.⁶ A modernized Schedule A can help employers fill in-demand jobs that will advance national priorities.

An updated Schedule A will help address U.S. workforce challenges.

The United States is facing significant workforce challenges, and Schedule A changes can help address them.

- *The aging workforce.* The labor force participation rate is alarmingly low, with just over 62 percent of working-age Americans participating in the workforce today compared to over 67 percent in 2000.⁷ Those numbers are not expected to improve anytime soon, considering that from 2012 to 2022, the over-65 population grew by 14.7 million, while the under-25 population declined by 1.8 million.⁸
- *The skills gap.* A growing number of Americans do not have the skills employers need. The speed at which new skills are becoming requisite for jobs is unprecedented, with more than a third of the top 20 skills for the average U.S. job having changed in the last eight years. This shift is even more pronounced in sectors experiencing the highest levels of disruption, where over three-quarters of the demanded skills have changed during the same period.⁹

Consequently, roughly 10 million jobs have gone unfilled across the U.S. economy for months on end – in fields that range from construction to cybersecurity. Urgency to address this skills gap has been exacerbated by the new federal investments identified earlier.

While access to high-quality education and training programs for American workers and other workforce development strategies are a large part of the solution, an updated Schedule A list would help meet employers' workforce needs. They would be able to fill in-demand jobs more quickly to meet market demands and drive productivity.

Additionally, including shortage occupations in Schedule A prioritizes those occupations¹⁰ and makes it more likely that a highly skilled foreign national will continue pursuing a career in the United States. Lengthy wait times for a green card would remain for many applicants due to annual caps and per-country limits, but allowing an employer to proceed directly to filing an immigrant petition with the Department of Homeland Security (DHS) does shorten the process by a year or more. This reduces the amount of time a foreign national must wait to secure job portability and allows their spouse to potentially resume their own career, providing greater certainty regarding their path forward in this country. These factors can determine whether an employee continues to contribute to innovation here in the United States or takes their talent elsewhere.¹¹

Modernizing Schedule A would also promote skills development within the United States, a goal specified in the AI Order. For example, placing AI- and semiconductor-related occupations on the Schedule A list, along with others the Department deems in shortage using its new methodology, would signal to U.S. workers which occupations are experiencing unmet demand. This would make it clear where skills or educational gaps exist in the domestic workforce and could result in higher numbers of U.S.-born individuals acquiring the skills and pursuing degrees needed to enter these occupations.

Schedule A updates will reduce burdens on the Department and the private sector.

Today, the government and private sector are spending significant time and money on occupations that should be on Schedule A. A FWD.us analysis of DOL data from fiscal years 2021 to 2023 identified multiple occupations for which PERM certifications were granted more than 99 percent of the time.¹² The analysis found that 9 of the top 10 occupations were in STEM.

Adding these and other occupations to Schedule A would help the Department reduce its backlogs. DOL data indicates that it takes an average of 393 calendar days to process a PERM application, and longer if an application is subject to audit.¹³ Because the Department must meet certain statutory timelines in other classifications, backlogs will continue to accumulate and worsen without Schedule A updates. Additionally, because the Department does not collect filing fees for a PERM application or a Prevailing Wage Determination (PWD) request, it must use its own appropriations, which it has acknowledged are insufficient.¹⁴ Updating Schedule A would allow the government to focus limited resources on cases that warrant a labor market test.

For the private sector, employers incur significant costs to complete the process. PERM also adds more than one year to the green card sponsorship timeline, which hinders companies' ability to retain highly skilled workers and ultimately works against the interests of the United States.

A pharmacist is a good example of an occupation that should be on Schedule A. In the first three quarters of 2023, 60,882 pharmacist job openings were identified – an 18 percent increase since 2022, which followed a 12 percent leap in these postings in 2021. However, only 13,323 new pharmacists graduated in 2022 – the largest drop since 1983. In 2023, just 9,743 students were accepted to pharmacy school by the application deadline. 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.¹⁵

III. RECOMMENDATIONS FOR MODERNIZING SCHEDULE A

The Department should establish a data-driven methodology for determining regular updates to Schedule A.

Improvements in available data sources give the Department the necessary tools to create a data-driven methodology for updating Schedule A. The RFI suggests that datasets from the sources listed in the RFI cannot indicate unmet demand and were not designed to identify potential labor shortages, which limits the Department's ability to ascertain and respond to shortages. Business Roundtable submits that since Schedule A was last updated, significant advancements in data reporting and collection in both the public and private sector should give the Department greater confidence when making determinations regarding appropriate revisions to Schedule A.

The Institute for Progress (IFP) advanced a proposed model for modernizing Schedule A in December 2023, which demonstrates that a reliable, transparent, data-driven process is possible for the Department to develop and implement. Relying primarily on the U.S. Census Bureau's American Community Survey (ACS) and Current Population Survey (CPS) data, the model considers the following indicators to identify occupations that are in shortage: percentage change in the median wage over one year, job vacancy postings per worker, percentage change in employment over one year, labor force non-participation, three-year lagged unemployment rate and job-to-job transition rate over one year. To calculate the ratio of job postings to workers in a given year for the "job vacancy posting" indicator, IFP used a combination of proprietary data from Lightcast.io and occupational employment data from the ACS because publicly available job postings data from the Bureau of Labor Statistics' Job Openings and Labor Turnover Survey (BLS JOLTS) are not available at the occupation level.

The IFP report recognizes limitations in current government data but suggests that the exercise itself of working with data to review and regularly update Schedule A "could help [the Department] identify data collection improvements to BLS or the Census Bureau that would

facilitate better decision-making around shortages.” Advancement in government data collection that could result from modernizing Schedule A would be in the public interest.

In the near term, Business Roundtable encourages the Department to incorporate other data sources to fill in these gaps and ensure the Department has a comprehensive view of the labor market. Such sources could include private-sector entities such as Lightcast, as well as nonprofit and academic institutions that are conducting the type of predictive analysis and producing granular, up-to-date data that would aid the Department in making these determinations. We also recommend that the Department explore ways to secure state and local data, such as through partnerships with governors and state governments, which could be valuable supplements to the national data sources. In addition, the Department could consider its own adjudication data in Schedule A determinations.

The Department should institute a regular cycle for reviewing and updating Schedule A that invites public input.

Given our dynamic economy, Business Roundtable urges the Department to adopt a model for updating Schedule A that responds to the labor market. To fulfill its purpose, Schedule A must be routinely reviewed and updated. The Department should look to the DHS STEM Designated Degree Program List review process as an example and consider adopting a similar annual review process that allows members of the public to submit input for review.

DHS established an annual review cycle for the list, which determines international students’ eligibility to remain in the United States and work on the Optional Practical Training (OPT) STEM extension based on the content of an educational program.¹⁶ As part of the annual review, interested parties can nominate Department of Education Classification of Instructional Programs (CIP) codes for inclusion on, or removal from, the DHS list. Submissions are evaluated to assess whether the degree is generally considered to be a STEM degree by recognized authorities, including input from educational institutions, governmental entities and non-governmental entities. Changes are published in a future update to the DHS list and announced via a Federal Register Notice, among other communication channels.

In addition to data analysis, we encourage the Department to take a holistic approach that considers information and feedback provided by stakeholders.

IV. CONCLUSION

Business Roundtable appreciates the opportunity to respond to this RFI. We urge the Department to modernize Schedule A as soon as possible to ensure it includes critical shortage fields and to establish a mechanism for regularly updating it. We stand ready to assist in these efforts and provide additional feedback. Please contact Dane Linn, Senior Vice President, Business Roundtable, at dlinn@brt.org if you have any questions.

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- ¹ Business Roundtable. (2023, July). *U.S. Immigration Policy: Lessons from Canada and Australia*. Retrieved from <https://s3.amazonaws.com/brt.org/US-ImmigrationPolicyLessonsFromCanadaandAustraliaJuly2023.pdf>. Business Roundtable. (2017, September). *Economic effects of immigration policies: A 50-state analysis*. Retrieved from <https://s3.amazonaws.com/brt.org/archive/reports/BRT%20Economic%20Effects%20Immigration.pdf>. Business Roundtable. (2014, June). *Contributing to American growth: The economic case for immigration reform*. Retrieved from <https://s3.amazonaws.com/brt.org/archive/0 immigration report/2014.06.06%20BRT%20Immigration%20Report.Contributing%20to%20American%20Growth.pdf>. Business Roundtable. (2015, March). *State of immigration: How the United States stacks up in the global talent competition*. Retrieved from s3.amazonaws.com/brt.org/archive/immigration reports/BRT immigration report.pdf. Business Roundtable. (2013, April). *Taking action on immigration: Realistic solutions for fixing a broken system*. Retrieved from <https://s3.amazonaws.com/brt.org/archive/reports/20130405 Taking Action on Immigration.pdf>.
- ² Exec. Order 14110 (2023, October). *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*. Retrieved from <https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence>.
- ³ Center for Security and Emerging Technology. (2019, September). *Strengthening the U.S. AI Workforce*. Retrieved from <https://cset.georgetown.edu/publication/strengthening-the-u-s-ai-workforce/>.
- ⁴ Hickenlooper, Cramer Call on Department of Labor to Streamline Immigration Process, Address Critical Workforce Shortages. (2023, December). Retrieved from https://www.hickenlooper.senate.gov/wp-content/uploads/2023/12/DOL_Schedule-A-Letter_FINAL.pdf.
- ⁵ The Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party. (2023, December). *Reset, Prevent, Build: A Strategy to Win America's Economic Competition with the Chinese Communist Party*. Retrieved from <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/reset-prevent-build-scc-report.pdf>.
- ⁶ Semiconductor Industry Association. (2023, July). *Chipping Away: Assessing and Addressing the Labor Market Gap Facing the U.S. Semiconductor Industry*. Retrieved from <https://www.semiconductors.org/chipping-away-assessing-and-addressing-the-labor-market-gap-facing-the-u-s-semiconductor-industry/>.
- ⁷ U.S. Bureau of Labor Statistics (2024, February). *Employment Situation Summary*. Retrieved from <https://www.bls.gov/news.release/empsit.nr0.htm>.
- ⁸ U.S. Census Bureau (2012). *Age and Sex Composition in the United States: 2012*. Retrieved from <https://www.census.gov/data/tables/2012/demo/age-and-sex/2012-age-sex-composition.html>. U.S. Census Bureau (2022). *Age and Sex Composition in the United States: 2022*. Retrieved from <https://www.census.gov/data/tables/2022/demo/age-and-sex/2022-age-sex-composition.html>.
- ⁹ The Burning Glass Institute, Business-Higher Education Forum, Wiley (2022, December). *How Skills are Disrupting Work: The Transformational Power of Fast Growing, In-Demand Skills*. Retrieved from <https://www.bhef.com/publications/how-skills-are-disrupting-work-the-transformational-power-of-fast-growing-in-demand>.
- ¹⁰ See CGFNS International, Inc. (2022, November). *CGFNS Nurse Migration Report 2022: Trends in Healthcare Migration to the United States*. Retrieved from <https://www.cgfns.org/2022nursemigrationreport/> (An organization that issues DHS-approved “VisaScreens” (VS) to foreign-educated healthcare professionals (“FEHPs”) in nine different healthcare professions, found that nurses – which are on the Schedule A list – “continue to dominate the pool of VS applicants each year and, in 2022, comprised 81% of all VS applications.” In addition, the report found foreign-educated healthcare professionals are more likely to pursue permanent residency – i.e. a green card – than a temporary visa: “While there are several immigration and visa pathways a FEHP may take to live and work in the United States, the majority of VS applicants in 2022 sought work through permanent green cards (EB visas), as opposed to other temporary visas (e.g., TN or H1-B), reflecting increased intentions of FEHPs to practice in the United States on a more permanent basis.”).

¹¹ See Glennon, Brita. National Bureau of Economic Research. (2023, February). *How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program*. Retrieved from <https://www.nber.org/papers/w27538>.

¹² FWD.us. (2024, January). *Modernizing Schedule A for Critical and Emerging Industries*. Retrieved from <https://www.fwd.us/news/schedule-a-rfi/>.

¹³ U.S. Department of Labor. (2024, January). *PERM Processing Times (as of 1/31/2024)*. Retrieved from <https://flag.dol.gov/processingtimes>.

¹⁴ U.S. Department of Labor, *FY 2024 Department of Labor Budget in Brief*, Retrieved from <https://www.dol.gov/sites/dolgov/files/general/budget/2024/FY2024BIB.pdf>.

¹⁵ See Spencer, Shawn. (2023, November). *The Pharmacist Shortage: A Tipping Point in Healthcare*. Retrieved from <https://www.pcom.edu/academics/programs-and-degrees/doctor-of-pharmacy/school-of-pharmacy/blog/the-pharmacist-shortage.html>. Bureau of Labor Statistics, U.S. Department of Labor. (2023, September). Occupational Outlook Handbook, Pharmacists. Retrieved from <https://www.bls.gov/ooh/healthcare/pharmacists.htm>.

¹⁶ Department of Homeland Security. (2023, July). *Update to the Department of Homeland Security STEM Designated Degree Program List*. 88 FR 44381. Retrieved from <https://www.federalregister.gov/documents/2023/07/12/2023-14807/update-to-the-department-of-homeland-security-stem-designated-degree-program-list>; U.S. Immigration and Customs Enforcement. (2024, January). *DHS STEM Designated Degree Program List and CIP Code Nomination Process*. Retrieved from <https://www.ice.gov/sevis/schools#dhs-stem-designated-degree-program-list-and-cip-code-nomination-process>.