

# CompeteAmerica

The Alliance for a Competitive Workforce

September 24, 2024

The Honorable Alejandro N. Mayorkas  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
Washington, D.C. 20528

[BY ELECTRONIC SUBMISSION]

Re: **Final Rule for *Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers*, Notice of Proposed Rulemaking, Department of Homeland Security Docket No. USCIS–2023–0005**

Dear Secretary Mayorkas:

The [Compete America](https://www.competeamerica.org)<sup>1</sup> coalition advocates for ensuring that the United States has the capacity to educate domestic sources of professional talent and to obtain and retain the foreign talent necessary for U.S. employers to continue innovating and creating jobs in the United States. Our coalition members include higher education associations, industry associations, the nation's largest business and trade associations, and individual employers — all working together to advance access to science, technology, engineering, and mathematics (STEM) talent, grow U.S. workforce development, and improve the U.S. high-skilled immigration system. For more than 25 years, Compete America has worked with successive administrations and Congress on issues critical to the professional global mobility of talent, as well as the functionality and integrity of the U.S. employment-based immigration system.

We are writing to urge you to finalize the Notice of Proposed Rulemaking (NPRM) that U.S. Citizenship and Immigration Services (USCIS) published on October 23, 2023, “Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers” (the “H-1B Modernization Rule”) *before the end of the 2024 calendar year*. This rule, which was proposed nearly one year ago in October 2023, aims to reform the H-1B visa program to better protect American workers, ensure fair and transparent allocation of visas, and enhance the integrity and efficiency of the H-1B visa program. We commend you for finalizing part of the proposed rule in January 2024, which modified the H-1B lottery system to be based on individual workers rather than petitions. This change was a significant improvement over the previous employer-based system and has increased the economic agency of U.S.-based STEM immigrants needed to discipline market employment practices. By prioritizing the economic agency of foreign workers, the new system better aligns the H-1B program with its original intent of

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<sup>1</sup> [www.competeamerica.org](https://www.competeamerica.org)

attracting the best and brightest foreign talent to fill undersupplied specialty occupations in the U.S. labor market while reducing fraud and misuse of the program.

We urge you to finalize the remaining portions of the proposed H-1B Modernization Rule as soon as possible, while addressing the [concerns](#)<sup>2</sup> raised by Compete America during the public comment period in December 2023. We believe that these reforms are necessary and overdue to ensure that the H-1B program serves its intended purpose of complementing the U.S. workforce with highly skilled foreign workers who contribute to the economic growth and innovation of our nation, while preserving the integrity of the program by reducing visa abuse by unscrupulous actors.

### **Key Provisions that Necessitate Immediate Finalization of the NPRM**

- **Codifying Deference**: It is essential to codify the policy requiring adjudicators to defer to prior determinations of eligibility unless there has been a material change. This policy provides more certainty to professionals and their employers and streamlines the adjudication process, while minimizing redundancies and unnecessary expenditure of USCIS resources.
- **Expanding on “Cap-Gap”**: Expanding the time available to U.S.-educated foreign students between their OPT work authorization and the start of their H-1B nonimmigrant work authorization to be consistent with current H-1B adjudication timelines will facilitate these talented individuals’ ability to continue working in the United States and remove obstacles that cause service interruption for their U.S. employers.
- **Start Date Flexibility**: Allowing flexibility with respect to an employee’s start date in certain circumstances, including when a requested validity period ends before the petitioner receives the approval, is essential in maintaining the continuity of highly skilled workforce availability.
- **Elimination of Itinerary Requirement**: Eliminating the requirement to provide a detailed itinerary in the H-1B petition will contribute to the systemic efficiency of the U.S. immigration system and should be expanded upon in terms of outdated H-1B requirement reforms.
- **Cap Exemptions for Nonprofit Research**: Revising the definitions of “nonprofit research organization” and “governmental research organization” in order to “clarify, simplify, and modernize eligibility for cap-exempt H-1B employment” will provide additional flexibility and reduce unwarranted pressure on the H-1B cap. Importantly, codifying these provisions will support the success of the President’s June 18, 2024 [initiative](#) for U.S. college-educated Dreamers.

These provisions are essential in furthering the Administration’s goal of removing unnecessary barriers to the legal immigration system and furthering our [national interest by ensuring that individuals educated in the U.S. may use their skills and education to benefit our country](#). While the content of the initially proposed rule was not perfect, we are confident that the Final Rule can reflect the feedback from stakeholders needed to ensure a more efficient and economically beneficial H-1B system for employers, U.S. workers, and foreign professionals alike. Specifically,

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<sup>2</sup> Compete America Comment on USCIS H-1B Modernization NPRM. Regulations.gov. (2023, December 21). <https://www.regulations.gov/comment/USCIS-2023-0005-1181>

we believe that the final H-1B Modernization Rule should address our comments related to the narrowing definition of specialty occupation, the definition of “material change” as it relates to amended petitions, USCIS review of the Labor Condition Applications (LCAs), analysis of third-party placements, and site visit provisions.

In closing, we would also note that this proposed rule, if left unfinished, could serve as a vehicle for implementing policy changes other than those that were originally intended by this administration. Such policies, for example, could undermine the effectiveness of the H-1B program and U.S. competitiveness around the world. As you know, key to America’s future security is our nation’s position in global markets today. Our high skilled immigration system plays an outsized role in maintaining that position, and this final rule will help further bolster America’s position as the world's most innovative economy.

We appreciate your kind attention to this important request and look forward to working with you to foster a more welcoming and competitive environment for innovation and growth through finalizing the H-1B Modernization Rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Corley", with a large, stylized flourish at the end.

Scott Corley  
Executive Director  
Compete America