

December 7, 2020

*Submitted via Regulations.gov*

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Business and Foreign Workers Division  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
20 Massachusetts Avenue, NW  
Suite 1100  
Washington DC 20529

Re: Strengthening the H-1B Nonimmigrant Visa Classification Program  
DHS Docket No. USCIS-2020-0018  
RIN 1615-AC13

Dear Division Chief Nimick,

The undersigned associations, coalitions, and groups come to you jointly to express our concerns about the Department of Homeland Security's (hereafter referred to as DHS or Department) rulemaking entitled "Strengthening the H-1B Nonimmigrant Visa Classification Program" (hereafter referred to as the new H-1B rule or Strengthening H-1B rule), published as an Interim Final Rule on October 8, 2020.

The Interim Final Rule was scheduled to be effective December 7, 2020 but on December 1, 2020 a federal court judge issued a Summary Judgment Order setting aside the rule. The court found that DHS acted contrary to the Administrative Procedure Act by failing to show good cause to dispense with notice and comment requirements.

We are filing this comment because it is unclear what DHS will do next concerning the new H-1B rule, because DHS would benefit from careful consideration of feedback from the regulated community before revisiting these issues, and because there are serious failings in the approach adopted by the Department in its Interim Final Rule that we hope would not be repeated in any future iteration of this rule.

### **Commenters' Interests**

Signatories to this comment have a well-developed and longstanding interest in helping to ensure that the U.S. immigration process effectively promotes – with appropriate integrity and security safeguards – the desirability and ability of high-skilled foreign-born professionals to be employed in our country. Despite differences in approach, sector, and membership, each signatory has found that high-skilled immigration is a key component of the ongoing ability of the United States to obtain and retain the talent necessary for the U.S. economy to continue to innovate and create jobs in the United States.

In order to address the important underlying issues the Department raises in the preamble explanation of the Strengthening H-1B rule, many of the undersigned organizations would welcome the opportunity to engage in dialogue with the Department on how to improve the integrity of the H-1B program. Many of us would also welcome formal participation in an Advance Notice of Proposed Rulemaking process that would allow the regulated community time to develop alternative suggestions that effectively and efficiently address the problems the Department highlights. Some of us would also be able to assist DHS in the conduct of studies or surveys to collect relevant information that could guide development of H-1B regulatory reform.

We believe the Department's effort to comprehensively revise the H-1B classification for specialty occupation professionals will benefit from a cross-sector assessment of some key provisions of the Strengthening H-1B rule as published, and so have assembled this comment with targeted asks for the Department's next steps.

### **The New "Always" Standard Must Be Abandoned**

To maintain the nation's strength and competitiveness, many of the nation's employers hire the talents of well-educated and highly skilled professionals who happen to be foreign-born along with the vast preponderance of U.S. workers that make up their workforce. Employers have never had to prove that a specialty degree was "always" a requirement in order to make such hires of foreign-born professionals and this departure from the agency's long-established interpretation sets up an impractical standard for employers.

The ability to hire appropriate, eligible individuals in H-1B visa status is an important complement to the hire of professional U.S. workers. Established in the 1952 rewrite of the nation's immigration laws, for over 65 years the H-1 visa classification has existed to allow U.S. employers to hire professionals born outside our country working in an occupation that typically requires the type of knowledge only obtained through completion of a university education. Since 1990, this category has been subject to numerical limits and a Labor Condition Application to protect the U.S. labor market, and designated as the H-1B visa.

Prior to the 1990 Act (IMMACT90) revisions to the Immigration and Nationality Act (INA), foreign-born professionals were admitted under the H-1 category for "aliens of distinguished merit and ability," which included member of the professions, as well individuals who were prominent in any field as well as accomplished and renowned performers, artists, and athletes. While the "specialty occupation" standard adopted by Congress in 1990 and the prior "member of the professions" standard are not identical, when legacy INS proposed its legislative rules in 1991 to implement the IMMACT90 it explained the significant revisions to H-1B as including "changing the reference to aliens who are members of the professions to aliens in specialty occupations,"<sup>1</sup> the implication being that with respect to the beneficiary's credentials there was not a significant revision and just a change in referenced name. Indeed, apparently for years *before* the 1990 amendments to the INA, the agency's practice was to determine if the offered position was "in the professions" by looking at whether a Bachelor's or higher degree was "normally" the minimum for entry into the profession, whether the degree requirement was "common" to the industry in parallel positions, whether the employer "normally" required a degree, and whether the specific duties were so complex as to require knowledge "usually" associated with receipt of a Bachelor's or higher degree.<sup>2</sup> After IMMACT90 was passed by Congress, INS promulgated legislative rules that adopted the same four-pronged set of alternatives to define when a position involved a "specialty occupation." The use of the common, usual, or typical descriptors and the four-pronged test was not even discussed by INS in either the proposed or final rule and no commenter questioned these descriptors<sup>3</sup> – it was just obvious good judgment by the agency, continuing

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<sup>1</sup> 56 Fed. Reg. 31553 at 31554 (July 11, 1991).

<sup>2</sup> See, e.g., 55 Fed. Reg. 2606 at 2606, 2623 (January 26, 1990, final rule; pre-IMMACT90). INS explained in this pre-IMMACT90 rulemaking that the final rule "consolidates into regulation policies previously set forth in precedent decisions, Operations Instructions, and other policy issuances," went on to state that the "Service's interpretation that members of a profession are aliens of distinguished ability is longstanding" and was reviewed by Congress in 1970 when the INA was amended, and then codified into regulation the longstanding approach to evaluate the job offered in terms of whether the degree requirement is "common, usual, or normal."

<sup>3</sup> 56 Fed. Reg. 61111 (December 2, 1991, final rule; IMMACT90 implementation) and 56 Fed. Reg. 31553 (July 11, 1991, proposed rule; IMMACT90 implementation).

the use of such descriptors for a specialty occupation that had long been in place in identifying members of the professions.

By now adding the brand-new requirement that a degree must “always” be required, DHS is not “clarifying” its longstanding policy as it claims<sup>4</sup> and instead is *changing* its longstanding policy. Fundamentally, the problem with this change is that it puts the employer in the often-impossible situation of having to prove a negative: that there is no one, not a single person, in an occupation that is employed without the specialty degree in question. This problem is heightened by the rewording by DHS that changes the standard from an inquiry about the employer’s job duties for the position offered to the occupation. And, there is a significant differential between sectors as to whether there would be *any* source of possible proof about this “always” requirement: in emerging fields, like artificial intelligence or other technology professions, objective evidence would be hard to secure. Even licensed occupations present a conundrum under the new “always” standard. In some licensed professions, the licensing standards might offer an opportunity to prove, at least in certain states and jobs, that a degree is always required, but in many licensed positions there are exceptions to the general rule that a given degree is a required prerequisite to licensure, thus failing the “always” test.<sup>5</sup>

→ Our request: Strike the requirement in the new H-1B rule that a specialty occupation can only be found if a degree is “always” required by adding back the references to the common, usual, or typical descriptors in the four subsections at 8 CFR 214.2(h)(4)(iii)(A)(1)-(4).

### **The New “Directly Related” Degree Mandate Must Also Be Abandoned**

Adding a new direct relatedness requirement to H-1B adjudications can only serve to create uncertainty and complexity. In part, this is because the new H-1B rule preamble offers little guidance. But the profound problem with DHS’s new rubric is that it will hinder the ability of employers to hire cross-disciplinary teams of professionals and focus on a synergistic approach to professional teams, product development, research, and other endeavors. This is new; it is not a mere continuation of the agency’s long-time requirements. One weighty trend in hiring, especially in science and technology activities, and most especially in hiring in emerging fields, is the facilitation of cross-pollination that results from selecting candidates with complementary skills. Nowhere is that trend more striking, for example, than in artificial intelligence (AI). In so-called core AI jobs, employers hire in skill clusters critical to the creation of AI, like machine learning and natural language processing, but the vast majority of AI hiring activity (89% of new hiring) is in AI-adjacent positions that encompass a broad range of skill clusters needed to integrate and use AI, like statistical software and test automation.<sup>6</sup> Some employers hire teams of AI Analysts with such disparate backgrounds as natural language processing, image processing, signal processing, computer-human interaction, deep learning, and ethics. As explained visually by Georgetown University’s Center for Security and Emerging

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<sup>4</sup> 85 Fed. Reg. 63918 at 63926 (October 8, 2020). DHS asserts that “the wording of the current regulatory criteria *creates* ambiguity.” The agency posits two justifications for its new discovery of this ambiguity-creating affect. First, DHS rationalizes the changes to the specialty occupation definition as needed because of dictionary definitions (which, like the regulation itself, have not changed since 1991). The agency explains that “normally” can be defined as “usually” which in turn can be defined as “in the way that most often happens” and that this creates a problem because “most” could also mean “anything from 51 percent to 99 percent.” Secondly, DHS points to the fact that in FY2018 USCIS issued a lot of Requests for Evidence (RFEs) to employers on the question of whether an offered job was in a specialty occupation. The fact the current administration adopted a brand-new approach in adjudications prior to its current IFR, and started issuing many more RFEs *because* of that novel interpretation, does not itself justify the agency’s efforts to now promulgate a binding regulation.

<sup>5</sup> For example, in some states one can be a licensed attorney without graduating from law school.

<sup>6</sup> Autumn Toney and Melissa Flagg, [U.S. Demand for AI-Related Talent](#) (Center for Security and Emerging Technology, August 2020) at p. 3.

Technology<sup>7</sup>, it will be difficult to justify the real-world hiring trends in AI as complying with the Department’s new vision for a qualifying specialty occupation:



In both core AI and AI-adjacent jobs, sometimes employers hire for general skills that might be honed by multiple degrees, such as Problem Solving or Communication, and general degrees, such as Business or Engineering, which often belie the very specialized or broad-based education received by graduates. This dynamic is particularly prevalent in emerging fields, cross-disciplinary teams drive innovation.

In assessing the level of confusion caused by DHS’s new direct relatedness concept, it is vital to appreciate that the DHS approach not only elevates form over substance and is disconnected from employers’ hiring practices but also ignores that it is institutions of higher education, not employers and not the federal government, that determine what programs and specialties are offered as degree-granting programs. There is huge variety and an ongoing evolution in what majors and minors are available and what courses and requirements are attached to those programs. And, those options may vary greatly between the United States and other countries where an H-1B professional’s education may have been completed.

→ Our request: Strike the requirement in the new H-1B rule that a specialty occupation can only be found if a degree is “directly related” to the job duties, by omitting the words “directly related” in the four subsections at 8 CFR 214.2(h)(4)(iii)(A)(1)-(4).

**Data Needs To Be Collected On Several Provisions Before Tailored Revisions Adopted**

Beyond the specialty occupation definition, we know there are a variety of other provisions that are disconcerting. While this is not an exhaustive list, our group of organizations will mention a few areas in the new H-1B rule where we conclude that more data could inform the best next steps.

First, we are unclear why it is necessary to restrict access to the H-1B program by entrepreneurs. While we know that there was a 2010 Employer-Employee Policy Memorandum<sup>8</sup> from DHS that, in effect, greatly restricted the ability of an entrepreneur to use the H-1B category, we also know that for the 20 years before that individuals who started a business could be sponsored by that entity for H-1B status. The former Policy

<sup>7</sup> Figure from Autumn Toney and Melissa Flagg, [U.S. Demand for AI-Related Talent Part II: Degree Majors and Skills Assessment](#) (Center for Security and Emerging Technology, September 2020) at p. 3.

<sup>8</sup> USICS Policy Memorandum entitled Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements (January 8, 2010).

Memorandum was stuck down by a federal court in 2020<sup>9</sup> as being a policy inconsistent with agency's codified regulations, but there is no need to codify a regulation barring or discouraging individuals who start new businesses in the U.S. from being sponsored by that business as an H-1B professional. Instead, the Department could adopt rules that focused on the need of such employers to be able to show they are a "going concern," with financing, contracts, or customers to support the employment of the H-1B professional. No data-based reason was provided by the Department as to why this alternative approach was ineffective or what alternatives were considered in order to better facilitate the use of the H-1B category by entrepreneurs. We believe new 8 CFR 214.2(h)(4)(iii)(3) should be stricken altogether, or surveys conducted to collect data that would inform how this subsection should be rewritten.

Second, more information needs to be assembled by DHS about the impact of what appears to be unrestricted and unregulated site visits "or other compliance reviews." We understand that the agency believes its site visit program is an important component of fraud prevention and maintaining integrity of high-skilled temporary worker programs. Given the statutory restrictions to U.S. Citizenship and Immigration Services engaging in fraud prevention that amount to investigative activities, the agency should work with stakeholders to develop a menu of alternatives that would allow DHS to improve program integrity, and thereafter revise new 8 CFR 214.2(h)(4)(i)(B)(7).

Third, the shortened petition validity approach for any H-1B beneficiary "who will be working at a third-party worksite" is far too broad because of the new, broad definition of "worksite" and injects unnecessary uncertainty into the employer-employee relationship. As published in the Interim Final Rule, this shortened validity will mean H-1B professionals and their families cannot resettle in the United States, make plans, or easily assimilate into their communities because they have significant uncertainty hanging over their heads. Especially given the very long processing times under which the agency currently operates, a one-year validity means that H-1B beneficiaries subject to this one-year limitation will always have an extension petition pending or being prepared. Among other concrete results, this will limit the ability of such H-1B beneficiaries to travel, whether for business or pleasure, to laterally move to jobs within the same employer, and to port to a new H-1B employer. Instead, 8 CFR 214.2(h)(9)(iii)(A)(1) should be revised so the sentence limiting some petitions to a one year validity is stricken. If there are certain, specific circumstances in which H-1B petitions should have shortened validity periods, DHS should collect and develop details on what those circumstances are and then new, replacement regulatory text should be drafted.

→ Our request: If the Department is going to revisit the new H-1B rule and proceed with including provisions addressing expanded site visits and shortened petition validity, DHS should collect more data before concluding how it should revise these provisions. We recommend DHS strike the limits on entrepreneurs being H-1B beneficiaries, but if those provisions need to be re-evaluated then a data-driven solution should be developed.

### **Elements For Consideration Prior To Permanent, Broad Changes To The H-1B Program**

The Interim Final Rule as published does not reflect or confirm that the Department has given due consideration to the complexity underlying promulgation of a comprehensive H-1B regulation. As such its substance would be considered arbitrary. Thus, beyond eliminating a revised definition of specialty occupation and doing more study on a few topics including site visits, shortened petition validity, and

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<sup>9</sup> A [court struck down the 2010 Policy Memorandum](#) in *ITServe Alliance v USCIS*, No. 1:18-cv-02350-RMC (D.D.C., March 10, 2020). [USCIS Rescission of Policy Memoranda](#) (June 17, 2020) followed, as required by the [settlement agreement in the case](#) (May 16, 2020).

entrepreneurs, we believe DHS must undertake a deeper and more complete consideration of key elements before proceeding with a new rulemaking. The complex issues DHS is contemplating in the new H-1B rule require the Department to explain to stakeholders its evaluation of:

#### A. Economic literature

It seems evident that the Trump administration is convinced that the H-1B visa program adversely affects American workers. In casting the background for the Strengthening H-1B rule, DHS appears to speak in a one-sided manner in this regard.<sup>10</sup> DHS did not consider, mention, cite to, or otherwise address the dominant perspective in the economic literature about the value of H-1B professionals and high-skilled immigrants, such as that reflected in the following publications:

- In a [Handbook of Regional and Urban Economics](#) book (2015), economists found that foreign-born high-skilled workers boost productivity of native-born Americans at the local level.
- In a seminal economic evaluation of [STEM Workers, H-1B Visas, and Productivity in U.S. Cities](#), published in the *Journal of Labor Economics* (July 2015) after evaluating data in 219 American cities, economists concluded that their simulations showed an increase of H-1B visa holders in a city explained increased productivity. Specifically, the economists found that “foreign STEM growth explained between one-third and one-half of the average Total Factor Productivity growth during the period” 1990 to 2010.
- A *Journal of Economic Perspectives* study on [Global Talent Flows](#) (Fall 2016) found very little displacement of U.S.-born innovators and high-skilled professionals by high-skilled immigrants, while also identifying significant boosts to innovation and productivity by such immigrants.
- An economic study on [High-Skill Immigration, Innovation, and Creative Destruction](#) (August 2018) concluded from firm-level analysis that H-1B visa petitions are associated with higher rates of product reallocation for American firms (entry of new products and exit of outdated products).
- In [An Inquiry on the Impact of Highly Skilled STEM Immigration on the U.S. Economy](#) in the *Labour Economics* journal (December 2019), economists found that the foreign-born share of STEM professionals in the United States increased from about 16% to 24% over the period 2000 to 2015 creating an estimated benefit of \$103 billion for American workers almost all “attributed to the generation of ideas associated with high-skilled STEM immigration which promotes the development of new technologies that increase the productivity and wages of U.S.-born workers.”
- An economic report on [Global Talent and U.S. Immigration Policy](#) (April 2020) highlights that when looking at the net global migration of inventors from 2000 to 2010 the U.S. dwarfs all other advanced economies in attracting innovators, with China and the United States at opposite ends of the spectrum. The H-1B program facilitates the ability to continue this trend.
- A study exploring [How Do Restrictions on High-Skilled Immigration Affect Off-Shoring?](#) (April 2020) assessed Department of Commerce data and the H-1B program and found that restrictive high-skilled immigration policies encouraged multinational companies to off-shore R&D efforts. Economists explained that “From a nationalistic perspective, this is problematic; if skilled foreign-born workers are at a U.S. firm’s foreign affiliate instead of in the U.S., the innovative spillovers that they generate will go to another country instead.”

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<sup>10</sup> 85 Fed. Reg. 63918 at 63921-63924 (October 8, 2020).

While ignoring this significant body of reasoned work might be a useful way to justify the Department's wholesale effort to reduce, complicate, and frustrate access to the H-1B category of nonimmigrant work authorization, it does not bode well for sustainable policy development or the nation's continued economic success.

#### B. Realities of the current computer-related and engineering workforce

As is well understood by employers and worker advocates across sectors, human capital is *the essential* resource. The undersigned agree that employers must provide fair compensation and be willing to participate in improving and extending the integrity of the employment-based immigration system generally and H-1B program specifically. We also agree that facilitating access to human capital is absolutely key to innovating, technological development, science and engineering research and development, applied research, and many other endeavors where H-1B professionals are employed. As explained by the National Science Foundation and the Armed Services Committee of the U.S. House of Representatives, these are the very activities that are a linchpin of the nation's security and economic well-being.<sup>11</sup> And, these activities require a robust science and engineering workforce, of the exact type that presently predominate the H-1B program. As the Department well knows, the vast majority (about 76%) of H-1B professionals work in computer-related and engineering jobs.<sup>12</sup> This is undoubtedly because numerous employers across sectors face a current scarcity of high-skilled, available candidates in professional, computer-related jobs to fill countless vacancies at all skill levels, even during a global pandemic. For example, in a recently released study of current job openings in computer-related occupations, there were 656,386 unfilled jobs posted between September 3 and October 2, 2020, in computer-related positions typically requiring a university degree,<sup>13</sup> and as of November 17, 2020 there were 731,762 active online job postings for computer occupations.<sup>14</sup> Meanwhile, unemployment in computer occupations sits at 3.0 percent, identical to unemployment in these occupations pre-pandemic, in January 2020.<sup>15</sup>

We are troubled that U.S. science and technology capacity will be diminished by a cascading series of results bred by the specialty occupation definition in the published version of the new H-1B rule. If employers are unable to hire all the computer-related and engineering professionals they need from graduating classes of U.S. universities, will the U.S. continue to educate the largest number of science and engineering doctoral degrees? If science and engineering doctoral programs have fewer participants in the U.S., how long will it take for government-sponsored basic research to falter? On a different tack, will business-funded and business-conducted applied research be able to continue at the same level if employers are unable to hire foreign-born professionals to complement U.S. staff? Will the U.S. continue the largest share of research and development-intensive industry output globally?<sup>16</sup>

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<sup>11</sup> See, National Science Board, [The State of U.S. Science and Engineering 2020](#) (January 2020) and the House Armed Services Committee, [Future of Defense Task Force Report 2020](#) (September 2020).

<sup>12</sup> [Characteristics of H-1B Specialty Occupation Workers](#) (March 2020), published by U.S. Citizenship and Immigration Services annually, see Table 11.

<sup>13</sup> Stuart Anderson, [Employment Data for Computer Occupations for January to October 2020](#) (National Foundation for American Policy, October 2020).

<sup>14</sup> Stuart Anderson, [Updated Analysis: Employment Data for Computer Occupations for January to October 2020](#) (National Foundation for American Policy, November 2020).

<sup>15</sup> *Id.*

<sup>16</sup> The United States is presently the world's leader in performing research and development, in producing science and engineering doctoral degree holders, and in generating private sector (industry) research and development output. However, China is rapidly developing its science and technology capacity. See, [The State of U.S. Science and Engineering 2020](#), *supra* note 4.

### C. Impacts to the entire H-1B eco-system

In sharing H-1B data as part of its transparency efforts,<sup>17</sup> DHS has indicated that something on the order of 49,820 unique employers receive H-1B approvals annually, to cover initial cap-subject and cap-exempt filings as well as amendments and extensions of status, and DHS has estimated that about 583,420 H-1B professionals are currently work-authorized.<sup>18</sup> Most H-1B employers, about 45,000 entities annually, receive under 10 approvals (with about 30,000 employers obtaining one, single H-1B approval); about 4,500 employers receive 10 or more H-1B approvals but less than 100; approximately 300 employers receive more than 100 approvals but not more than 1,000; and about 20 employers received more than 1,000 approvals. The impacts of the IFR will therefore be spread across tens of thousands of employers and hundreds of thousands of employees, forcing sudden increased costs upon businesses and severe disruptions to individual H-1B workers and their families who live across the United States.

An enduring weakness of DHS's analysis is that it fails to consider how the Strengthening H-1B rule will impact the vast majority of employers utilizing the H-1B system Congress created and *current* employees, and their families, who are members of their local communities but might be forced to pack and up and depart the country because of the new specialty occupation definition. DHS's preamble explanation quite simply avoids the fundamental questions about the impact to *current* H-1B holders other than to boldly suggest that any individual who no longer qualifies for H-1B status must have had their prior petition approved in error.<sup>19</sup> Likewise, DHS has not shown that it has considered the impact on its new interpretations on the majority of H-1B employers, including employers in academia, research, or not-for-profit activity, those that are start-ups, those in rural communities especially those working in the health care sector, and those that are small and medium-sized enterprises.

### D. Directly identifying benefits and costly outcomes

The normal clearance process on rules that are economically significant includes the regulating agency taking a number of detailed steps to ensure compliance with the Administrative Procedure Act that seem to have been bypassed with the new H-1B rule. For example, we do not see a preamble explanation that recognizes the adverse effects on the efficient functioning of the economy and private markets, including productivity, employment, and competitiveness, from the new specialty occupation definition, and neither do we note any analysis from DHS of the anticipated benefits such as the promotion of the efficient functioning of the economy and private markets including a quantification of those benefits.<sup>20</sup> Even though the Department did not complete its work on the Strengthening H-1B rule, the review by the Office of Information and Regulatory Affairs (OIRA) was surprisingly waived in the days leading up to the October 8, 2020 publication of the Interim Final Rule, which is unfortunate because OIRA's review is normally expected to check the regulating agency's compliance with the Administrative Procedure Act.

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<sup>17</sup> [H-1B Employer Data Hub](#) files provided by U.S. Citizenship and Immigration Services.

<sup>18</sup> [H-1B Authorized-To-Work Population Estimate](#), was published in June 2020 by U.S. Citizenship and Immigration Services.

<sup>19</sup> 85 Fed. Reg. 63918 at 63928 (October 8, 2020). As discussed supra, at pages 2-4, the new "always" and "directly related" interpretations are completely new requirements; thus, when current H-1B holders are denied an extension of status under the new rules it can be as a direct result of this dramatic departure from prior policy and regulations.

<sup>20</sup> See, [Executive Order 12866](#) at Sec. 6(a)(3)(B)-(C).



→ Our request: In publishing the new H-1B rule as an Interim Final Rule, the Department failed to provide the normal protections due the regulated community to ensure alternatives are considered, the impact to big-picture national interests in innovation are evaluated, costs and benefits are carefully measured and then weighed, and the entire landscape of impacted employers are considered. Before proceeding further, the undersigned ask that all these normal protections in rulemaking be afforded to the regulated community.

### **Conclusion**

We believe our above-listed asks would set the Department on the right track to a revised rulemaking and look forward to seeing a careful response from DHS to these requests.

The undersigned all agree that the Department's new specialty occupation definition reflected in the published Strengthening H-1B rule creates substantial uncertainty, is not workable, is a significant departure from prior agency practice, and is not a "solution" tied to any problem that needs to be solved, and thus should be stricken from any future rulemaking efforts regarding the H-1B program. Moreover, more data should be collected before shortened petition validity period, formal removal of entrepreneurs from H-1B eligibility, and program integrity provisions are revised and newly proposed. Lastly, the complexity of the new H-1B rule merits a deeper analysis of economic studies, the computer-related and engineering occupations that predominate in the H-1B program, the needs of and impact to the tens of thousands of employers across sectors that are H-1B employers, the needs of and impacts to hundreds of thousands of employees that already reside in the U.S. as H-1B employees, and the true costs and benefits of the agency's broad and permanent changes to the H-1B classification.

Thank you for the opportunity to participate in the rulemaking process.

Respectfully submitted,

Alliance of Business Immigration Lawyers  
American Immigration Lawyers Association  
American Institute of CPAs  
Association of American Universities  
BSA | The Software Alliance  
Compete America Coalition

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Information Technology Industry Council (ITI)  
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