

May 13, 2024

Submitted via Regulations.gov

Brent Parton
Principal Deputy Assistant Secretary for Employment and Training, Labor
U.S. Department of Labor
Employment and Training Administration
200 Constitution Ave NW
Washington, DC 20210
202-693-2772

RE: Request for Information, 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

Dear Mr. Parton,

I write on behalf of the Niskanen Center to provide the following response to the Department of Labor's request for information regarding 20 CFR Part 656, RIN 1205-AC16, as published in the *Federal Register* on December 21, 2023, in accordance with Executive Order 14110.

The Niskanen Center is a nonprofit public policy organization that advocates for a government that provides social insurance and essential public goods, fosters market competition and innovation, invests in state capacity, and does not impede productive enterprise. We are committed to the principles of liberal democracy and an open society that encourages engagement, cooperation, discussion, and learning.

We are committed to the premise that immigration is an irreplaceable pillar of America's economic, civic, and cultural strength. Our ability to attract the brightest minds and hardest workers worldwide has helped usher in unprecedented U.S. innovation and dynamism. Our economic health depends on newcomers who fill critical gaps in our workforce, pay billions of dollars in taxes every year, and employ millions of Americans in their businesses.

The Niskanen Center has been a vocal advocate for modernizing the list of occupations designated under Schedule A. The current Group I designations are little more than a fossilized record of American labor market needs of the early 1990s. Designated occupations should be reevaluated for ongoing eligibility, and the list should be augmented with other occupations that meet the criteria for designation and further national interests. While we continue to encourage bipartisan legislation that can modernize the entirety of the American immigration system, we welcome this opportunity to provide input on the narrow revisions possible through an update of Schedule A.

Existing regulations allow the Secretary of Labor to designate an occupation for Schedule A if there is an insufficient number of U.S. workers in that occupation and if the employment of immigrants would not adversely affect the wages and working conditions of similarly situated U.S.-based employees. Despite the Secretary's authority to update the list without Congressional direction, three decades of administrative inaction have allowed the list of designated occupations to remain stagnant since the early 1990s.

Technological advancements have transformed our economy over the past three decades and created new industries and jobs that did not exist when Schedule A was last updated. Furthermore, the occupations currently designated for Schedule A have not been evaluated since the turn of the century, and it is unclear if they would continue to satisfy the eligibility requirements for inclusion. Therefore, for the protection of U.S. workers and the U.S. economy, it is paramount that occupational designations be evaluated and updated to reflect current labor demand.

Like many developed countries, the United States faced an acute increase in labor shortages following the onset of the COVID-19 pandemic.¹ While overall market tightness has decreased somewhat, demographic trends and labor market analysis indicate that our labor challenges are far from over.² Businesses continue to limit hours of operation or productivity because they need more workers to maintain normal operations.³ Critical national security ventures, including the construction of multiple semiconductor manufacturing plants, have been put on hold or delayed due, in part, to constraints on the availability of qualified employees.⁴ While individual businesses and their customers may bear the brunt of these implications initially, ongoing labor shortages ultimately limit economic outputs and can consequently hinder overall economic growth.⁵

Despite the persistent gaps in our labor market, the U.S. has outpaced its peers in Europe, Canada, and Japan regarding recent GDP growth and post-pandemic economic recovery.⁶ Immigration—particularly the historic level of immigration that the U.S. has had over the past few years—has been instrumental to that recovery. Indeed, this level of growth would likely not have

¹ Causa, O., et al. (July 15, 2022), "The post-COVID-19 rise in labour shortages", *OECD Economics Department Working Papers*, No. 1721, Organisation for Economic Co-operation and Development, <https://doi.org/10.1787/e60c2d1c-en>.

² Weber, L. and Pipe, A. (September 25, 2023), "Why America Has a Long-Term Labor Crisis, in Six Charts", *The Wall Street Journal*, <https://www.wsj.com/economy/jobs/labor-supply-economy-jobs-charts-3285a5b7>.

³ Ramsey (December 11, 2023), "Small-Business Labor Crisis Report 2023", Ramsey Solutions, <https://www.ramseysolutions.com/business/small-business-labor-crisis#to-deal-with-labor-shortages-small-business-owners-have-resorted-to-cutting-hours-and-limiting-services>.

⁴ Ting-Fang, C. and Li, L. (March 19, 2024), "TSMC, Intel suppliers delay U.S. plants on surging costs, labor crunch", *NIKKEI Asia*, <https://asia.nikkei.com/Business/Technology/TSMC-Intel-suppliers-delay-U.S.-plants-on-surging-costs-labor-crunch>.

⁵ Guilford, G. (August 14, 2022), "Labor Shortage Is Vexing Challenge for U.S. Economy", *The Wall Street Journal*, <https://www.wsj.com/articles/labor-shortage-is-vexing-challenge-for-u-s-economy-11660469401>.

⁶ Delmore, E. (February 12, 2024), "Why US economy is powering ahead of Europe's", *BBC*, <https://www.bbc.com/news/world-us-canada-68203820>.

been possible with only the native workforce.⁷ As the U.S. continues to experience an aging population and minimal growth among its working-age population, immigration policy will need to play a critical role in our macroeconomic strategy if the U.S. intends to maintain this economic growth and bolster our competitiveness.⁸ Given immigrants' outsized importance in our economic prosperity, modernizing the U.S. immigration system to reflect current, and foreseeable, labor market needs is essential.

Schedule A provides the Department of Labor (DOL) with the unique opportunity to modernize a narrow, but impactful, part of U.S. immigration policy, without the restrictions of an equally stagnant Congressional landscape. Revising the list could also reestablish a pattern of regular review that can ensure the list's ongoing relevance to actual labor market conditions. While green card backlogs ensure that updating Schedule A will not immediately remedy labor market deficiencies, an update would allow DOL to make strategic decisions about which industries are most critical to our continued economic vitality. It would give impacted employers and their employees greater predictability, improving business continuity and fostering economic success.⁹ Employers in critical industries could dedicate their resources to building capacity more efficiently, rather than spending time and money proving that the redundant recruitment processes that data already suggest will not result in any viable candidates.

The methodology used to determine which industries qualify for a Schedule A designation is not prescribed by existing regulations. However, prior updates to the list provide examples of the data types that could be useful in making eligibility determinations today. Previous updates considered occupation-specific unemployment rates, required training times for newcomers, and rates of growth or decline predicted by the Bureau of Labor Statistics for each occupation.¹⁰ Other updates have also considered the number of recently certified applications for permanent labor certification (PERM) among targeted occupations. Niskanen looked at this indicator in particular because it can provide important insight into the types of occupations that repeatedly met DOL standards for demonstrating a lack of qualified, willing, and available American workers.

In fiscal years 2017 through 2021, the following twenty occupations were the most frequently requested occupations among certified PERM applications:¹¹

⁷ Siegel, R., et al. (February 27, 2024), "The economy is roaring. Immigration is a key reason.", *The Washington Post*,

<https://www.washingtonpost.com/business/2024/02/27/economy-immigration-border-biden/>.

⁸ Conerly, B. (November 9, 2023), "New Census Projections Show Tight U.S. Labor Market For Years", *Forbes*,

<https://www.forbes.com/sites/billconerly/2023/11/09/new-census-projections-show-tight-us-labor-market-for-years/?sh=ed7b0a962129>.

⁹ Stevenson, H. and Moldoveanu, M. (July - August 1995), "The Power of Predictability", *Harvard Business Review*, Harvard Business Publishing, <https://hbr.org/1995/07/the-power-of-predictability>.

¹⁰ Milliken, L. (September 22, 2020), "A Brief History of Schedule A: The United States' Forgotten Shortage Occupation List", *The University of Chicago Law Review*, <https://lawreviewblog.uchicago.edu/2020/09/22/milliken-schedule-a/>.

¹¹ Esterline, C. (October 17, 2022), "The Case for Updating Schedule A", Niskanen Center, <https://www.niskanencenter.org/the-case-for-updating-schedule-a/>.

- | | |
|---|---|
| 1. Software Developers | 12. Management Analysts |
| 2. Engineers | 13. Chefs and Cooks |
| 3. Computer Systems Analysts | 14. Marketing Managers |
| 4. Teachers and Professors | 15. Landscaping Workers and Supervisors |
| 5. Unclassified Computer Occupations | 16. Information Technology Project Managers |
| 6. Statisticians | 17. Market Research Analysts and Marketing Specialists |
| 7. Physicians and Surgeons | 18. Database Administrators |
| 8. Accountants and Auditors | 19. Meat, Poultry, and Fish Butchers, Cutters, and Trimmers |
| 9. Computer and Information Systems Managers | 20. Truck Drivers |
| 10. Network and Computer Systems Administrators | |
| 11. Financial Analysts | |

Even the results of this singular input align with national industry data estimating the size and scope of unmet labor needs, such as the physician shortage that is estimated to reach 86,000 by 2036 or the increasing freight demands that will necessitate the hiring of 1.2 million new truck drivers over the next decade.¹² These results also align largely with the findings of studies that have replicated the United Kingdom’s or other international allies’ methodologies for identifying labor shortages.¹³

As seen in the above list, the unmet labor needs of the U.S. are not only in science, technology, engineering, and mathematics (STEM) fields. While all qualifying occupations do not need to be included in an update of Schedule A, we urge the Secretary not to limit eligible occupations only to STEM fields. Building and maintaining an adequate workforce in STEM and non-STEM occupations is critical to national security, international competitiveness, and continued economic growth. Once eligible occupations are identified, industry input, economic and national security interests, and urgency considerations can be utilized to determine which occupations merit inclusion on the list. Geographic constraints could also be implemented to target particular areas of significant unmet need or to provide strategic assistance to initiatives of national importance, such as the construction and staffing of semiconductor manufacturing plants.

We are encouraged by the publication of this request for information and look forward to the possibility of the Secretary ending three decades of inaction on this matter. Immigrants play a

¹² AAMC (March 21, 2024), “New AAMC Report Shows Continuing Projected Physician Shortage”, Association of American Medical Colleges, <https://www.aamc.org/news/press-releases/new-aamc-report-shows-continuing-projected-physician-shortage>; ATA (May 17, 2023), “Lawmakers Introduce Bipartisan Bill to Strengthen Driver Apprenticeship Program”, American Trucking Association, <https://www.trucking.org/news-insights/lawmakers-introduce-bipartisan-bill-strengthen-driver-apprenticeship-program>.

¹³ Milliken, et al. (December 14, 2023), “Help Wanted: Modernizing the Schedule A Shortage Occupation List”, Institute for Progress, <https://ifp.org/schedule-a/#executive-summary>.

critical role in the U.S. economy and will continue to do so for the foreseeable future. Modernizing the list of eligible occupations would protect American workers by reevaluating the eligibility of current designations and would allow DOL to make strategic decisions regarding the industries and professions whose unmet labor needs are most critical to American economic interests. Therefore, we encourage the Secretary to update the current Group I designations list and rely on data-driven analysis to determine eligibility.

Thank you for your consideration and for giving me the opportunity to provide input on this matter. If you have any questions or need additional information, please do not hesitate to contact me at cesterline@niskanencenter.org.

Sincerely,

Cecilia Esterline
Immigration Research Analyst
Niskanen Center