

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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April 21, 2021

Administrator Brian Pasternak
Office of Foreign Labor Certification
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

By electronic submission: www.regulations.gov

**RE: Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States: Proposed Delay of Effective Date
86 Fed. Reg. 15154 (March 22, 2021)
RIN 1205-AC00**

Dear Mr. Pasternak:

The U.S. Chamber of Commerce submits the following comments regarding the recently proposed delay in the effective date governing the Department of Labor (DOL) final rule entitled *Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States*.¹ Businesses greatly appreciate the Department's stated desire to delay the final rule's effective date through November 14, 2022. If DOL extends this delay in the final rule's effective date as is proposed in the Department's March notice, it will avoid the significant operational and logistical challenges that the Chamber mentioned in its [prior comments](#) on this rule in the near term.

Furthermore, we appreciate the Department's willingness to work with the business community and other stakeholders to examine the data sources and the methodologies that are used by DOL to obtain the prevailing wage levels for the employment-based immigrants and nonimmigrants contemplated under the Department's final rule in a recently published [request for information](#) (RFI).² The Chamber plans to submit comments responding to DOL's RFI and we hope that it will begin a more rational, evidence-based approach to implementing regulatory changes to the OES Prevailing Wage system.

However, given the profound changes that the Department's final rule makes to the prevailing wage determination process, the delay in this rule's effective date is unlikely to avoid

¹ 86 Federal Register 15154 (March 22, 2021).

² 86 Fed. Reg. 3608 (Jan. 14, 2021)

significant operational disruptions for many businesses that rely upon various immigrant and nonimmigrant workers if it is allowed to go into effect. As the Chamber has stated before in its [prior comments](#), DOL's final rule suffers from many critical flaws. Key provisions in this final rule are inconsistent with the statutory requirements under the Immigration and Nationality Act (INA), while other provisions violate the notice-and-comment requirements of the Administrative Procedure Act (APA).

The Chamber has received consistent feedback from various member companies across a host of industries reflecting their significant concerns over DOL's final rule. The prevailing wage increases, even though they are marginally smaller than what was suggested in DOL's October IFR and will be phased in over time, remain woefully disconnected from the economic realities in the U.S. labor market. Companies are incredibly anxious about how this rule will hinder their ability to meet the current and future workforce needs of their business. These concerns are voiced by manufacturers, health care providers, technology companies, among many others. This issue is of such importance to our members that the Chamber and many other groups are continuing [litigation efforts](#) to prevent the DOL final rule from going into effect.

Various economic studies support the anecdotal evidence provided by our members. A National Foundation for American Policy [study](#) released last month found that unemployment in computer occupations fell from 3% in January 2020 to 2.3% in November 2020, corroborating the consistent information from our members that they continue to struggle to meet their IT workforce needs.³ Other NFAP studies estimate that the DOL final rule will require employers to pay, on average, 34% higher salaries at the Level 1 wage for biochemists and biophysicists, 29% higher for software developers and database administrators, and 28% more for computer programmers.⁴ Similarly, NFAP examined private wage survey data to see the effect DOL's final rule would have on specific occupations in a given area. Under DOL's new approach, NFAP found that an employer in the San Jose, California area would have to pay an electrical engineer at the OES Level 4 wage tier more than \$41,000 above the market wage.⁵ At the Level 1 wage tier, a San Jose employer would have to pay an electrical engineer more than \$36,000 above the market wage.⁶

Companies across many industries devised their long-term workforce plans based upon their reliance on DOL's prior prevailing wage system. Many valued employees of our members face an uncertain future because their businesses cannot maintain current workers under the new

³ National Foundation for American Policy, *Updated Analysis: Employment Data for Computer Occupations for January to November 2020*, January 2021, available online at <https://nfap.com/wp-content/uploads/2021/01/Updated-Employment-Data-for-Computer-Occupations-January-to-November-2020.NFAP-Policy-Brief-January-2021-1.pdf> (accessed Feb. 15, 2021).

⁴ Stuart Anderson, *DOL H-1B Visa Wage Rule: Donald Trump's Bad Parting Gift To Immigrants*, available online at <https://www.forbes.com/sites/stuartanderson/2021/01/13/dol-h-1b-visa-wage-rule-donald-trumps-bad-parting-gift-to-immigrants/?sh=466bf002774f>; (Jan. 13, 2021) (accessed on Feb. 15, 2021).

⁵ Id.

⁶ Id.

wage requirements. Several businesses have indicated they would likely move a portion of their operations offshore to better ensure continuity of operations, which would harm the U.S. economy in several ways. Simply put, if many talented foreign nationals are forced to leave the U.S. because these new wage requirements make it impractical to continue employing them in our country, the economic activity and U.S. jobs that these highly skilled foreign nationals support will be lost. [Research](#) by Britta Glennon, an assistant professor at the Wharton School of Business, suggests that these concerns are becoming more commonplace, as “policies that are motivated by concerns about the loss of native jobs should consider that policies aimed at reducing immigration have the unintended consequence of encouraging firms to offshore jobs abroad.”⁷

The Chamber appreciated DOL delaying the effective date of this final rule through May 2021 and we support the further delay it proposed in its March notice, as these decisions have avoided the significant business disruptions this final rule would cause once it is effective. However, businesses remain very concerned about the final rule’s structure and we urge DOL to abandon the approach taken under the final rule and commence a new notice-and-comment rulemaking effort that is rational, evidence-based, and better addresses the concerns of U.S. businesses.

Thank you for considering our views.

Sincerely,



Jonathan Baselice
Executive Director, Immigration Policy
U.S. Chamber of Commerce

⁷ Britta Glennon, *How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program*, available online at https://www.dropbox.com/s/tp4okwocw2pajw5/BGlennon_JMP%20Draft.pdf?dl=0 and at <https://www.forbes.com/sites/stuartanderson/2021/01/13/dol-h-1b-visa-wage-rule-donald-trumps-bad-parting-gift-to-immigrants/?sh=466bf002774f>; (accessed on Feb. 15, 2021).