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Honoring our immigrant past, shaping our immigrant future

April 23, 2024

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

Submitted via www.regulations.gov

RIN 1205-AC16

Re: 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 Administrator Pasternak:

The American Immigration Lawyers Association (“AILA”) and the American Immigration Council (“Council”) submit the following comments (collectively the “Comment”) in connection with the above-referenced Department of Labor (“DOL”) Request for Information (“RFI”) concerning modernizing Schedule A occupations to include additional occupations in Science, Technology, Engineering, and Mathematics (“STEM”) and non-STEM occupations, as published in the Federal Register on December 21, 2023.¹

Established in 1946, AILA is a voluntary bar association of nearly 17,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law.

¹ 88 FR 88290 (December 21, 2023)

Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws, including the labor certification process. Our members' collective expertise and experience make us particularly well-qualified to offer a response to the questions included in DOL's request.

The Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. The Council frequently appears before the federal courts and administrative tribunals on issues involving access to immigration benefits.

I. Importance of Modernization of Schedule A

AILA and the Council applaud the DOL on its initiative to modernize Schedule A in connection with its labor certification for permanent employment of foreign workers in the United States ("labor certification process"). Modernizing Schedule A by re-examining what STEM or non-STEM occupations should be added or removed is long overdue. Doing so is consistent with the underlying principles of the [labor certification process](#). It also better protects the U.S. labor market, offers U.S. employers more predictability, and addresses the resource issues the DOL has been facing with the number of ever-increasing labor certification applications. Further, having a Schedule A that is responsive to market conditions is consistent with the principles of other local and foreign government agencies. We recommend that the DOL adopt a non-onerous and regular process by which it may update Schedule A.

a. Better Protects the Labor Market

The underlying principle of the labor certification process is to ensure that foreign workers are not filling U.S. jobs that could otherwise be filled by qualified, available, and willing U.S. workers. To do so, employers must ensure that they offer positions at or above the prevailing wage and engage in bona fide labor market tests to ensure that no qualified, available, and willing U.S. workers exist for the offered positions. Occupations on the Schedule A list are those for which DOL believes there is already a short supply of U.S. workers. In light of the short supply, employers are permitted to bypass the labor certification process that is in place to protect U.S. workers. Not updating Schedule A risks having an outdated and inaccurate list, further hurting U.S. workers when an occupation is no longer short-staffed and U.S. employers when seeking workers in understaffed sectors.

b. Avoids a Waste of Employer Resources and Offers Employers Predictability

The end goal for U.S. employers is to find qualified talent to fill open positions. U.S. employers only participate in the labor certification process as a last resort. Based on reported DOL processing times as of April 2024, the current labor certification process takes at least six months to obtain a prevailing wage determination, two more months to test the labor market, and another thirteen months to receive the actual labor certification.² This does not even account for the processing times with the U.S. Citizenship and Immigration Services (“USCIS”) for the I-140 immigrant petition, the I-485 adjustment of status application, or consular processing with the U.S. State Department (“DOS”).³ In addition to lengthy processing times, employers must use significant human and monetary resources to comply with the regulations associated with the labor certification process, with no guarantee of the results.

While updating Schedule A to include occupations with worker shortages will not eliminate all the steps and processing delays towards permanent residency of a foreign worker, it will save an employer at least one year based on the latest processing times. Given that most employers only initiate the labor certification process for qualified and proven talent the employer has already retained, obtaining permanent residency for an employee one year sooner could be a valuable retention tool. Similarly, given the long processing times, the savings of one year could mean one less extension of the foreign worker’s nonimmigrant visa status. Currently, the cost of extending an H-1B can run up to \$5685 (i.e., \$780 for the Form I-129, \$1500 for the ACWIA Training Fee, \$600 for the Asylum Program Fee, and \$2805 for Premium Processing). This does not even take into consideration any legal fees. Further, while not a monetary cost, given that the labor certification process is job-specific, the one-year delay means that the organizational structure of the employer is frozen. An employer cannot promote the foreign worker and cannot reposition the talent on hand to address the employer’s changing business needs.

Modernizing the list of Schedule A occupations based on current job market and industry demands will help U.S. employers address immediate labor market needs and better serve as a tool for U.S. employers to deal with labor shortages in critical industries without burdensome or costly processes, while still ensuring that U.S. workers are protected. Streamlining a process that could take up to two years would provide U.S. employers with certainty in navigating the immigration process for foreign workers in high-demand occupations. This will contribute to

² DOL Processing Times, <https://flag.dol.gov/processingtimes>.

³ USCIS Processing Times, <https://egov.uscis.gov/processing-times/>.

increased productivity and global competitiveness and ensure the United States is an attractive destination for global talent.⁴

c. Addresses DOL’s Resource Concerns and Improves Processing Times

Over the years, AILA has asked representatives of the DOL for reasons underlying its lengthy processing times. Whether in processing prevailing wage determination applications, i.e., Form ETA 9141, or in processing labor certification applications, i.e., Form ETA 9089, the consistent answer has been that the number of applications have been increasing year to year without a corresponding increase in resources. The benefit of having a regularly updated Schedule A that provides a list of shortage occupations is that employers who would otherwise file both Forms ETA 9141 and ETA 9089 for shortage occupations can bypass the DOL labor certification process (not filing Form ETA 9089) and relieve the agency of unnecessary work. This will allow the DOL to focus its resources on applications for occupations requiring attention.

As of March 31, 2024, DOL reports that the average time to process a Form ETA 9089 labor certification application is 397 days – more than one year.⁵ It is evident that the burden of processing high volumes of labor certification applications has resulted in unsustainably long processing times. These lengthy processing times could not have been contemplated when the system was created. Further, these lengthy delays have a profound impact on U.S. employers, as they hinder U.S. employers’ ability to meet labor demands and do not allow for a timely test of the labor market.

II. Aligns with Concerns of State and Local Governments and Communities

Localities and the business community have long called for federal reform to update the U.S. immigration system to meet the needs of communities and the economy. Updating the Schedule A list of occupations will help address current labor market needs and tap into newcomers' skills and expertise, modernizing our economy and stimulating economic growth. This update will benefit local communities, states, and businesses alike.

Twenty states, with leadership across the political spectrum, have invested in welcoming and inclusive policies by establishing an Office of New Americans – or working towards creating one – to maximize the potential of immigrants and refugees, benefitting all residents. Many of these

⁴ Modernizing Schedule A for Critical and Emerging Industries. Jan. 30, 2024. <https://www.fwd.us/news/schedule-a-rfi/>.

⁵ DOL Processing Times, <https://flag.dol.gov/processingtimes>

offices focus on economic development. For example, Utah⁶, Colorado⁷, and Minnesota⁸ collect data to better understand their states' economic needs. Despite these efforts, states are limited by federal regulations that prevent businesses from fully tapping into the international talent pool to help address workforce shortages. The labor certification process is one such limitation as the divergence between regulatory recruitment requirements and current recruitment practices and the lengthy processing time makes it impractical for a nimble response to labor shortages.

The Council manages three business coalitions in Colorado⁹, Ohio¹⁰, and Texas¹¹. These groups are composed of business leaders who see modernizing the U.S. immigration system as a crucial pathway to foster economic growth.

As the national workforce shortage persists and is exacerbated by the nation's aging population moving into retirement, businesses nationwide are seeking solutions to address workforce needs and fill open positions.¹² Many businesses and chambers of commerce have continued to present a solution: modernizing an outdated immigration system to better meet the needs of the local, state, and national economies. One way to do this is updating Schedule A. In the meantime, businesses have found other creative solutions, including:

- In Colorado, the Office of New Americans established a Virtual, Career-Aligned English as a Second Language Program to provide career and sector-specific adult English language courses to help newcomers build the skills they need to contribute to the state's workforce.¹³
- Through the Global Talent Chamber Network also- managed by the Council and which brings together chambers of commerce from across the country who see immigrant integration as an economic growth strategy - chambers share best practices including how to recruit and retain talent.¹⁴
- More than 100 business organizations joined a sign-on letter to Congress calling on representatives to remove the current barrier to getting asylum seekers work permits quickly.¹⁵

⁶ <https://business.utah.gov/immigration/>

⁷ <https://cdle.colorado.gov/offices/office-of-new-americans>

⁸ <https://mn.gov/deed/about/what-guides-us/equity/ira/>

⁹ <https://www.cocompact.org/coalition>

¹⁰ <https://www.ohcompact.org/coalition>

¹¹ <https://www.txcompact.org/coalition>

¹² <https://www.uschamber.com/workforce/understanding-americas-labor-shortage>

¹³ <https://cdle.colorado.gov/offices/office-of-new-americans/vcesl>

¹⁴ <https://www.americanimmigrationcouncil.org/state-local-initiatives/global-talent-chamber-network>

¹⁵ https://www.americanimmigrationcouncil.org/sites/default/files/business_sign-on_letter_to_mocs_ead_v2.pdf

Chambers of commerce, businesses, and trade associations continue to seek opportunities to bring in and hire international talent. Still, barriers created by the current outdated immigration system often make the process complex, time-consuming, and sometimes infeasible.

III. Helps Maintain U.S. Competitiveness in the International Economy

AILA and the Council urge DOL to adopt a flexible approach to reviewing shortage occupations for Schedule A. For the labor certification process to be a meaningful and impactful program that protects U.S. workers and allows U.S. employers to rely on foreign workers as needed, Schedule A must reflect the employment marketplace. The system must be agile, meet real-time labor needs, and be a tool for innovation that U.S. employers can rely upon. Addressing labor shortage is not unique to the United States, nor is the idea of a list for shortage occupations. What is different, however, is that many countries do not wait for twenty years to update their list. Instead, they adopt a more flexible approach that enables them to be more responsive to labor and market needs, which can provide them a competitive edge. Echoing information shared in a recent Institute for Progress report¹⁶ on this very topic, we summarize processes utilized by the United Kingdom, Australia, New Zealand, and Singapore, to address labor shortages via their immigration systems.

The United Kingdom (UK) maintains a Shortage Occupation List (SOL). The Home Office, i.e., the agency responsible for immigration, security, and law and order, sponsors the Migration Advisory Committee (MAC).¹⁷ This is a committee of five individuals, with an additional *ex officio* member from the Home Office, who make up an independent body that advises the Home Office on immigration issues.¹⁸ The MAC was formed in 2007 and has issued many updates to the SOL.¹⁹ The two most frequent updates of the MAC were in 2020 and 2023.²⁰ During the review process, the MAC considers two main questions: (1) Is the occupation in shortage? and (2) Is it sensible to fill those shortages with migrant workers?²¹ For the first question, the MAC relies on “indicators,

¹⁶ Lindsay Milliken, Jeremy Neufeld, and Greg Wright, "Help Wanted: Modernizing the Schedule A Shortage Occupation List," Institute for Progress (Dec. 14, 2023), <https://ifp.org/schedule-a/> (last visited Apr. 22, 2024).

¹⁷ www.gov.uk/government/organisations/migration-advisory-committee/about

¹⁸ www.gov.uk/government/organisations/migration-advisory-committee/about

¹⁹ "A Guide to the Shortage Occupation List (SOL) and Companion to the SOL Call for Evidence 2023," Migration Advisory Committee, UK Government (February 27, 2023), 1.

²⁰ See "Review of the Shortage Occupation List," Migration Advisory Committee (Sept. 19, 2020); "Review of the Shortage Occupation List," Migration Advisory Committee (Oct. 3, 2023)

²¹ "A Guide to the Shortage Occupation List (SOL) and Companion to the SOL Call for Evidence 2023," Migration Advisory Committee, UK Government (February 27, 2023), 3.

from a range of datasets, which look at wages, vacancies and employment, combined with evidence from stakeholders.”²² The second question is based on input from stakeholders.²³

Australia also maintains lists referenced as the Skilled Migration Occupation Lists, which consist of the Short-Term Skilled Occupation List, the Medium and Long-Term Strategic Skills List, and the Regional Occupation List.²⁴ These lists are regularly reviewed, with the latest review conducted in 2023.²⁵ The process of reviewing and updating these lists includes a review of market data and input from stakeholders.²⁶

New Zealand maintains a Green List, which enumerates a list of occupations carrying immigration benefits.²⁷ The list is broken down into two tiers.²⁸ If one’s occupation falls under Tier 1, the individual acquires a residence visa immediately.²⁹ If one’s occupation falls under Tier 2, the individual acquires a residence visa after two years.³⁰ This list is reviewed and updated every three years.³¹

Singapore’s Ministry of Manpower also maintains a Shortage Occupation List (SOL). The ministry reviews this list to add or remove occupations once a year and performs a comprehensive review every three years.³²

The above examples join other countries that maintain a similar list such as Sweden, Denmark, Spain, and Belgium. Sweden maintains a shortage occupation list that it updates regularly, with the two most recent in 2022 and 2023.³³ Denmark maintains a shortage occupation list entitled the “Positive List for Skilled Work,” which is updated twice a year, on January 1 and July 1.³⁴ Spain maintains a list that is updated per quarter.³⁵ Belgium has regional lists that are updated

²² “Shortage Methodology Review,” Home Office and Migration Advisory Committee (Feb. 10, 2023), 1.

²³ “Shortage Methodology Review,” Home Office and Migration Advisory Committee (Feb. 10, 2023), 1.

²⁴ <https://dewr.gov.au/skilled-migration-occupation-lists>

²⁵ <https://dewr.gov.au/skilled-migration-occupation-lists>

²⁶ https://aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/SkilledVisaSystem/Report/c03

²⁷ <https://immigration.govt.nz/about-us/policy-and-law/how-the-immigration-system-operates/skill-shortage-lists>

²⁸ <https://immigration.govt.nz/new-zealand-visas/preparing-a-visa-application/working-in-nz/qualifications-for-work/green-list-occupations>

²⁹ <https://immigration.govt.nz/new-zealand-visas/preparing-a-visa-application/working-in-nz/qualifications-for-work/green-list-occupations>

³⁰ <https://immigration.govt.nz/new-zealand-visas/preparing-a-visa-application/working-in-nz/qualifications-for-work/green-list-occupations>

³¹ “Changes to Immigration New Zealand’s Green List in early 2024,” Lane Neave (Nov. 8, 2023), available at [lexology.com/library/detail.aspx?g=e712fd85-cc60-4af8-bdea-ecdd5bb01e6d](https://www.lexology.com/library/detail.aspx?g=e712fd85-cc60-4af8-bdea-ecdd5bb01e6d)

³² [mom.gov.sg/passes-and-permits/employment-\[ass/eligibility/compass-c5-skills-bonus-shortage-occupation-list-sol](https://mom.gov.sg/passes-and-permits/employment-[ass/eligibility/compass-c5-skills-bonus-shortage-occupation-list-sol)

³³ swedishimmigration.se/all-topics/working-in-sweden/shortage-occupation-list-in-sweden

³⁴ [Nyidanmark.dk/en-GB/Applying/Work/The_Positive_Lists/Positive%20List%20List%20Skilled%20Work](https://nyidanmark.dk/en-GB/Applying/Work/The_Positive_Lists/Positive%20List%20List%20Skilled%20Work)

³⁵ <https://www.sepe.es/HomeSepe/en/empresas/informacion-para-empresas/profesiones-de-dificil-cobertura/profesiones-mas-demandadas.html>

regularly, including the one for Flanders³⁶, which is updated every two years, and the one for Wallonia, which, in principle, is updated each year.³⁷

The process for reviewing Schedule A occupations must reflect our nation's economy and employment marketplace. As such, it is imperative that any process established follow the lead of other countries, like those mentioned above, that update shortage occupation lists on a regular basis.

IV. Prior Attempts by DOL To Address Shortage Occupations - Reduction in Recruitment ("RIR")

DOL has made other attempts to address shortage occupations by easing the burden of the labor certification application. An excellent example is the DOL's Reduction in Recruitment ("RIR") program. In 2002, when the current Program Electronic Records Management ("PERM") system was being discussed, AILA supported a reliance on DOL's General Administrative Letter No. 1-97, *Measures for Increasing Efficiency in the Permanent Labor Certification Process* (October 1, 1996) ("GAL 1-97"), which encouraged State Workforce Agencies and Certifying Officers to accept cases properly filed as "Reduction in Recruitment," or "RIR."³⁸ Typically, in these cases, DOL would review the bona fide recruitment undertaken by the employer in advance as part of the employer's normal to the occupation and industry and accept such labor market test efforts as adequate in lieu of a DOL-supervised recruitment campaign. RIR processing helped substantially reduce processing delays in most regions and helped reduce agency costs and staffing resources needed to process a large volume of cases. Even saving one step was a welcome improvement in helping employers while staying true to the principles of the labor certification process.

As was AILA's position almost 20 years ago, we believe that there is a need to make the labor certification process nimble and flexible to meet the needs of U.S. employers and the U.S. economy. AILA and the Council recommend that the DOL again look to GAL 1-97 and the standards for RIR in determining which occupations should be included within Schedule A. Under those standards, cases that qualified for RIR were those (1) with little or no availability, (2) with no unduly restrictive requirements, (3) that met the prevailing wage, and (4) for which the employer could show adequate recruitment through sources normal to the occupation and industry over the previous six months. Yet, RIR did not go far enough, and therefore, we applaud the DOL for going further and seeking to modernize Schedule A.

³⁶ <https://www.vlaanderen.be/en/work-permits-for-foreign-workers/work-permits-categories-and-procedures/work-permits-middle-skilled-shortage-occupations/work-permit-shortage-occupation-list>

³⁷ <https://emploi.wallonie.be/home/travailleurs-etrangers/permis-de-travail/liste-des-metiers-en-penurie.html>

³⁸ <https://www.dol.gov/agencies/eta/advisories/general-administration-letter-no-1-97>

V. Proposed Process to Regularly Update Schedule A with a Fixed Schedule

AILA and the Council recommend that DOL develop a procedure to update Schedule A regularly. As indicated above, we recognize that the DOL has limited resources. We recommend a process that allows the DOL to tap into existing resources, programs, and systems to ensure that each update is not a burden and is possible.

To make implementing modifications to Schedule A possible and less burdensome on a regular schedule, the DOL should, like what other countries have done, develop a simplified process that combines objective data points and public input for modifications to Schedule A.

a. Objective Labor Market Indicators for Revising Schedule A

DOL should consider a number of objective labor market indicators for the modernization of Schedule A. We believe that a data-driven approach, adaptable and responsive, relies on carefully examining crucial labor market indicators such as wages, job postings, unemployment rates, and demographic trends.³⁹ The labor market indicators highlighted for DOL to consider were selected based on an extensive review of the literature and the practice of labor market analyses at the Council. These methods enable the identification of sectors that urgently require additional workers. Modernizing Schedule A through meticulous labor market analytics is essential as the U.S. strives to remain a beacon of innovation and economic progress. Once a system is established, regular updates for the indicators included below should not be as burdensome. Below we provide some objective indicators for updating the Schedule A list.

Wages:

- **Overview:** Wages serve as a primary indicator of labor market tightness. Rising wages suggest employers are willing to pay more to attract and retain workers, indicative of labor shortages.⁴⁰

³⁹ Lindsay Milliken, Jeremy Neufeld, and Greg Wright, "Help Wanted: Modernizing the Schedule A Shortage Occupation List: A new data-driven method to identify gaps in the labor market," Institute for Progress, December 14, 2023, accessed February 2, 2024, <https://ifp.org/schedule-a/>.

⁴⁰ Duval, Romain, Yi Ji, Longji Li, Myrto Oikonomou, Carlo Pizzinelli, Ippei Shibata, Alessandra Sozzi, and Marina M. Tavares, "Labor Market Tightness in Advanced Economies," Staff Discussion Notes (International Monetary Fund, March 2022), 43, accessed February 2, 2024, <https://www.imf.org/-/media/Files/Publications/SDN/2022/English/SDNEA2022001.ashx>.

- **Findings:** Significant increases in median real pay suggest areas of the labor market experiencing shortages. However, wage growth is uneven across sectors and regions, highlighting the importance of sector-specific analysis.⁴¹
- **Data Sources:** American Community Survey, Current Population Survey, Department of Labor

Job Vacancies:

- **Overview:** Gathering job posting data offers a detailed and up-to-date overview of the labor market, including the specific skills employers are seeking. Combining this data with the number of unemployed individuals gives us a clear picture of labor demand compared to supply. When the ratio of job vacancies to unemployed individuals is high, it indicates a significant number of unfilled positions, pointing to labor shortages.⁴²
- **Findings:** An increase in the vacancy-to-unemployed ratio suggests growing labor market tightness, with particular industries showing acute shortages.⁴³
- **Data Sources:** Lightcast's labor market data, American Community Survey.⁴⁴

Unemployment:

- **Overview:** Employment growth rates and historical unemployment data offer insights into labor market health and the effectiveness of economic policies.⁴⁵
- **Findings:** Positive employment growth rates and decreased unemployment rates over time are generally positive indicators, but sector-specific shortages may still exist. The analysis helps identify longer-term trends and the impact of past economic conditions.⁴⁶

⁴¹ Federal Reserve Bank of Atlanta, "Wage Growth Tracker," last updated January 10, 2024, accessed February 2, 2024, <https://www.atlantafed.org/chcs/wage-growth-tracker#Tab2>.

⁴² Cammeraat, E. and M. Squicciarini (2021), "Burning Glass Technologies' data use in policy-relevant analysis: An occupation-level assessment", *OECD Science, Technology and Industry Working Papers*, No. 2021/05, OECD Publishing, Paris, accessed February 2, 2024, [https://one.oecd.org/document/DSTI/CIIE/WPIA\(2020\)2/en/pdf](https://one.oecd.org/document/DSTI/CIIE/WPIA(2020)2/en/pdf).

⁴³ Sagar Goel, Orsolya Kovács-Ondrejko, Rucha Vankudre, Scott Bingham, and Julia Nitschke, "Competence Over Credentials: The Rise of Skills-Based Hiring," Boston Consulting Group, December 11, 2023, accessed February 2, 2024, <https://www.bcg.com/publications/2023/rise-of-skills-based-hiring>.

⁴⁴ <https://kb.lightcast.io/en/articles/7932502-american-community-survey>

⁴⁵ Lindsay Milliken, Jeremy Neufeld, and Greg Wright, "Help Wanted: Modernizing the Schedule A Shortage Occupation List: A new data-driven method to identify gaps in the labor market," Institute for Progress, December 14, 2023, accessed February 2, 2024, <https://ifp.org/schedule-a/>.

⁴⁶ [Serdar Birinci and Trần Khánh Ngân, "Labor Market Tightness after the COVID-19 Recession: Differences across Industries," Federal Reserve Bank of Saint Louis, November 6, 2023, accessed February 2,](#)

- **Data Sources:** American Community Survey, Current Population Survey, Department of Labor

Demographic Trends (Aging Workforce, Migration, and Education Levels):

- **Overview:** Demographic data provide a foundational understanding of the labor force's composition and potential shifts that may affect labor supply.
- **Findings:** Aging populations, migration patterns, and education levels are critical in shaping labor market dynamics. An aging workforce and low birth rates suggest future labor shortages, while migration and education levels offer potential avenues to mitigate these shortages.⁴⁷
- **Data Sources:** American Community Survey, Integrated Postsecondary Education Data System (NCES), Current Population Survey

The interplay between wages, job postings, unemployment rates, and demographic trends offers a comprehensive view of labor market dynamics and the multifaceted nature of labor shortages. While each variable provides valuable insights, a holistic analysis incorporating all four offers the clearest picture of labor market conditions. Addressing labor shortages effectively requires targeted policies that consider these complex factors, including education and training programs, immigration policies, and industry-specific strategies.

b. Public Input for Modifications to Schedule A

For gathering public input, we point to what the DOL has already implemented for updating Appendix A to the Preamble—Education and Training Categories by Occupational Information Network (O*NET)—Standard Occupational Classification (SOC) Occupations (“Appendix A”).⁴⁸This could be an example of how to approach updating Schedule A. For updating Appendix A, after providing a Notice in the Federal Register about how DOL will determine the occupations on Appendix A, DOL indicated that it will be publishing future updates to Appendix A on the DOL’s Office of Foreign Labor Certification’s (OFLC) website, instead of through another Federal Register notice or rule. AILA and the Council recommend that DOL consider implementing a similar but modified procedure for Schedule A. Before updating Schedule A, DOL could also

2024, <https://www.stlouisfed.org/publications/regional-economist/2023/nov/labor-market-tightness-covid19-recession-differences-across-industries>.

⁴⁷ Jane Sneddon Little & Robert K. Triest, 2002. "[The impact of demographic change on U. S. labor markets](#)," [New England Economic Review](#), Federal Reserve Bank of Boston, issue Q 1, pages 47-68.

⁴⁸ 86 Fed Reg 63070 (November 15, 2021)

provide stakeholders with a period to provide recommendations for modifications to Schedule A. This simplified process could ease the burden of the process.

DOL should also look at how the U.S. Department of Homeland Security (“DHS”) Immigration and Customs Enforcement’s Student and Visitor Exchange Program (“SEVP”) updates its Science Technology Engineering and Math (“STEM”) Optional Practical Training (“OPT”) list.⁴⁹ SEVP solicits nominations to modify the STEM OPT list until August 1st of each year.⁵⁰ The process of submitting nominations is provided on SEVP’s website.⁵¹ Stakeholders submit nominations to SEVP by email, which SEVP then considers. Based upon the detailed information provided by stakeholders through this process, SEVP has modified its STEM OPT list three times and now includes 30 new major fields of study that are eligible for STEM OPT since the original 2016 list.⁵²

AILA recommends that after an appropriate Notice of Proposed Rule Making, DOL issue a regulation that sets forth a process that would combine its current Appendix A procedure with a process similar to SEVP’s STEM OPT List procedure. An example of the combined process would consist of the following three steps:

1. DOL requests Schedule A modification nominations on the OFLC website on February 1, 2025, from the public, with a submission deadline of no more than ninety days out of that same year, i.e., May 1, 2025.
2. DOL considers the nominations and, like other countries, any additional internal considerations. It then publishes a revised Schedule A list on its website by February 1 of the following year, with an effective date of May of that year, i.e., February 1, 2026, and May 1, 2026.
3. The DOL then requests Schedule A modification nominations on its website on February 1, two years after the previous request, (i.e., February 1, 2027). The agency follows the same process for the subsequent nomination and update periods. This allows for an update every two years.

A robust but simplified process with a fixed schedule would better reflect the actual labor market conditions while offering U.S. employers an opportunity to provide their input without overly burdening the DOL and tapping into its limited resources. Further, such a process would give employers more predictability without wasting valuable resources, and lead to an overall more competitive U.S.

⁴⁹ 88 Fed Reg 44381 (July 12, 2023)

⁵⁰ <https://www.ice.gov/sevis/schools#dhs-stem-designated-degree-program-list-and-cip-code-nomination-process>

⁵¹ Id.

⁵² 88 Fed Reg 44381 (July 12, 2023)

VI. Conclusion

We appreciate the opportunity to respond to this Request for Information and look forward to a continuing dialogue with DOL on this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION
THE AMERICAN IMMIGRATION COUNCIL