



# Society of Counseling Psychology

Division 17, American Psychological Association

<http://www.div17.org>

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November 5, 2020

To: Brian D. Pasternak, Administrator, Office of Foreign Labor Certification,  
Employment and Training Administration, Department of Labor

From: The Society of Counseling Psychology, Division 17, American Psychological  
Association

Re: Interim Final Rule 85 FR 63872

**This is an official statement of the Society of Counseling Psychology, Division 17 of the American Psychological Association, and does not represent the position of American Psychological Association or any of its other Divisions or subunits.**

We appreciate the opportunity to submit a formal comment regarding the Interim Final Rule 85 FR 63872, DOL Docket No. ETA-2020-0006, *Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States*. We have serious reservations about the entire Interim Final Rule (IFR) and the ensuing impact of this rule on the U.S. economy and its people.

According to a report released by the U.S. Citizenship and Immigration Services (USCIS) in 2019, there are 583,420 H-1B visa holders in the U.S. ([www.uscis.gov/sites/default/files/document/reports/USCIS H-1B Authorized to Work Report.pdf](http://www.uscis.gov/sites/default/files/document/reports/USCIS%20H-1B%20Authorized%20to%20Work%20Report.pdf)). While we join with the Department of Labor (DOL) in their rationale for this rule, that is, “to more effectively ensure that the employment of immigrant and nonimmigrant workers... does not adversely affect the wages and job opportunities of U.S. workers” (Executive Summary, Section A), we believe that this rule will likely have an adverse impact due to the crucial role that foreign-born workers play in the U.S. economy and the communities they serve. Considering the impacted conditions of the job market due to the COVID-19 pandemic and taking into account the major contributions made to the economy, including the professional service sector by H-1B visa holders, IFR 85 FR 63872 seems ill-timed and counterproductive.

We would like to impress upon the DOL the vital gaps filled by H-1B workers in the U.S. labor market, particularly in the STEM fields, health care, and social sciences. Furthermore, foreign-born workers and their contributions help create new jobs and opportunities that serve to benefit the U.S. economy. We would like to highlight some examples of the significant contributions made by H-1B workers in the U.S. Specifically, Zoom Video Communications, which has become the backbone of countless U.S. employers with their millions of U.S. employees working remotely from home during the pandemic, has been founded by Chinese-born immigrant, Eric Yuan. The Zoom platform has been adopted by most universities in the U.S. in order to continue providing education. Similarly, this platform has been used to continue to conduct research as well as health care delivery. Similarly, Instacart, a company delivering groceries to U.S. homes is founded by immigrant Apoorva Mehta; Instacart has created well over half a million new jobs in the U.S. since March 2020 (Anderson, 2020).

The presence of foreign workers in the U.S. not only has a positive economic impact in the U.S. market, it also tends to generate job opportunities for domestic workers (American Immigration Council, 2020). As a result of this, the American Immigration Council (AIC) has projected that increasing the number of H-1B visas can help create

an estimated 1.3 million new jobs which would add approximately \$158 billion to U.S. gross domestic product (GDP) by 2045 (AIC, 2020).

The Interim Final Rule seeks to change the prevailing wage standards for foreign-born workers in the current administration's efforts to protect U.S. workers and a struggling labor market during the global pandemic. However, it is likely that this rule will have the opposite effect: devastating U.S. businesses and the economy at large (American Immigration Lawyers Association, 2020). Contrary to a widely-held perspective, foreign-born workers do not compete with domestic workers for an alleged yet inaccurate "limited number of jobs" (AIC, 2020). Moreover, the inflated salaries that U.S. employers will have to pay under this rule poses a grave economic threat to U.S. employers, workers, and the American economy at-large. Additionally, this rule is likely to lead to a departure of H-1B visa holders from the U.S. This will affect international students who currently rely on the H-1B program to remain in the U.S. and work following degree completion. With lower job opportunities, international students might reconsider the U.S. as their destination for advanced graduate education. Thus, this rule will worsen an already declining international student enrollment; the enrollment numbers have waned since the 2015-16 academic year (Zak, 2020). Furthermore, this decline, if sustained, will have damaging impact on U.S. higher education and its economy; international students contribute meaningfully to the local and national economy and educational system by paying tuition and consuming goods and services out of pocket. Overall, the long-term impact of this rule will be a significant drop in the U.S.'s global position as a formidable leader in innovations (Anderson, 2020) due to foreign-born students and workers pursuing their education and contributing their scientific advances in other countries.

While this rule targets unemployment rates in affected job sectors, the sophisticated analyses conducted by some authors have found that this rule will not achieve such outcome (e.g., Anderson, 2020). Instead, it is projected to negatively affect small business owners and/or employers who are on the frontlines of lifting up the U.S. economy amidst the pandemic.

As psychologists, we would also like to highlight the important role that professionals play in the current pandemic which continues to take a toll on the collective mental health of this Nation. The American Psychological Association (APA) is the leading scientific and professional organization representing psychology in the U.S. In a recent national survey, the APA found that 78 percent of survey respondents were struggling as a result of the pandemic ([www.apa.org/news/press/releases/stress/2020/report-october](http://www.apa.org/news/press/releases/stress/2020/report-october)). Furthermore, complex stressors such as racism, unemployment/economy, and the presidential election have been found to be closely related to serious health and social consequences for the general public; consequences that are particularly relevant in today's economy. Relatedly, the Centers for Disease Control and Prevention (CDC) has found mental health disorders among the most burdensome health concerns in the U.S.

Mental health disorders and stress are indeed troublesome factors in the life of working-age Americans. As a result of the proposed, prevailing wage Interim Final Rule, the outpricing of H-1B psychologists is likely to occur, and this poses a significant threat to the precarious mental health position that the U.S. labor force is currently in. The support and essential services provided by H-1B mental health professionals can be severely disrupted if they are unable to remain in the U.S. What is even more concerning is that the current shortage of psychologists might get exacerbated by this IFR. Prior to this rule, some research estimated that the ongoing national shortage of psychologists will rise to 14,300 by 2030 (U.S. Department of Labor, Bureau of Labor Statistics); this unacceptable shortage will get intensified due to this rule. Finally, most H-1B holders are culturally responsive, multilingual professionals who are unequally qualified to address the needs of many U.S. citizens, residents, and immigrants. There is a dramatic shortage in the U.S. of culturally responsive, multilingual service providers, including psychologists, and H-1B holders help the U.S. to partially meet that need.

To impress upon you the heightened level of concern among our members, we include below excerpts of their testimonials. As you will see, they echo our message regarding the important contributions made by current H-1B visa holders as well as the harmful impact of this rule on H-1B visa holders and the communities they serve.

“For me as a non-immigrant, I have observed that my own work experiences have been favorably affected by immigrant people. My doctoral students, many of whom are from non-U.S. countries, have enriched my work *because* of their cultural world views and perspectives, and yet, I know they have faced problems in being hired because of governmental restrictions.”

“The raise in entry level salaries would severely impact, or even preclude the employment of international talents and high-skilled workers in universities, technology companies, and every fabric of the U.S. society, where they bring in unique skills, perspectives, and cultural diversity that help to facilitate communication, innovation, and the creation of a vibrant, inclusive, and creative atmosphere at work. As an immigrant worker myself currently on H-1B visa and working as an assistant professor in an R1 university, this new IRF has brought great uncertainty to my future career goals and developmental plans in the U.S., on top of the already strict governmental restrictions. I am also aware that such regulations could further deter future talented students and scholars throughout the world from seeking education and work in the U.S.”

“The impact of the IFR from DOL and DHS on H-1B visa holders would be tremendously harmful to our country of the United States of America. I work at an academic institution where the contributions of immigrant workers are crucial to the innovations in every sector of our university - from education and technology to medicine and interdisciplinary efforts on our campus. Because we have strong and deep ties to community engagement efforts locally, regionally, nationally, and internationally and H-1B visa holders are critical contributors to these efforts, the IFR on H-1B visa holders would also have a negative impact on these crucial initiatives that provide services that might not be available otherwise. Research has also shown that the contributions of H-1B visa holders manifest in increased innovation, problem-solving, and creativity in work environments, so we should not seek to increase stressors on H-1B visa holders who are helping us tremendously in so many sectors of society. We have already seen the decline of applications from international studies related to increased efforts to restrict international student study at our university. The IFR on H-1B visa holders sends the wrong message and is not in line with the values and strengths of our country.”

“The proposed IFR from DOL and DHS on H-1B visa holders is an assault on the innovation, collaboration, and diversity of thought that has allowed the U.S. to flourish with discovery in science, medicine, technology, and other intellectual, academic, and artistic endeavors. The continual message of these actions is that immigrants are unwanted here, and the U.S. will be poorer for the fact that folks will believe that message, and choose to study and work elsewhere (as is already occurring). As a healthcare provider, in a time of a global pandemic, I cannot think of anything more devastating to our healthcare system than to drive away many of the people who provide direct care to our communities, and often bring highly sought after language skills to the delivery of these vital services. While I oppose this measure on the grounds that it is just morally wrong, I would ask DOL and DHS to oppose it on the grounds that it would weaken our national infrastructure.”

“Our international colleagues and trainees are essential to a robust, global framework on the value of psychology. As the director of master’s training, I have the opportunity to connect with students and post-doctoral scholars from a variety of countries. They contribute thoughtful and creative insights and scholarship in our program and in our field. They fear being unable to complete their graduate training, practica, and internships in a climate that has become increasingly xenophobic, and I am in solidarity

with their desire to earn psychology degrees, contribute to the global field of psychology, and do so while feeling a sense of belonging and wellness in the United States. This proposed IFR adds unnecessary stress to an already targeted group of colleagues and students. I oppose it, without reservation.”

“As a former international student and current university counseling center director, I can attest that this newly proposed IFR adds so much unnecessary and unfair burden to the potential employers of international candidates for a position. The current immigration system and policies are very archaic and not functional at all. For example, as someone who holds a Ph.D. degree and can contribute to the university setting and the U.S. society in general with my professional knowledge and skills, it was a very stressful and prolonged process to go through my permanent residency application. I know that obtaining an H1-B visa and permanent residency has become even more difficult now than before. Adding this new IFR to this currently already archaic and unfair immigration system makes no sense at all when we instead as a nation actually have to work on reforming the immigration system and regulations to make them fairer and more functional, and also invite many talented international students and scholars to be part of and contribute to this country of immigrants. Therefore, I oppose the proposed IFR wholeheartedly.”

“On top of what is already an anxiety-provoking and difficult process of obtaining the H-1B visa, this change introduces even greater uncertainty of my career in the United States. The increase in nearly 50% of prevailing entry wage is an appalling proposition that very few, if any, so-called highly skilled workers would be able to command to maintain their legal employment status. For a person like me working at a public R1 institution, this kind of salary exception will never be granted given the internal restrictions. I believe it will be a detriment to hundreds of thousands of existing and future employees in the United States. The implications will severely impact the career trajectory and development of international students and scholars. More broadly, this would be an immense setback and loss to the academic communities and will undermine all of the contributions made by the international members, when their perspectives are needed more than ever.”

“As someone who has navigated the H-1B visa process, the kind of salary exception proposed in IFR would never be granted for the type of staff positions in university counseling centers that I have held in my career journey. The implications of IFR will restrict the career path for many international students and scholars. This decision would undermine the process of cross-cultural collaboration and skills that many international scholars have continuously brought to this nation and it will be a severe loss for the workforce in the U.S.”

“As a non-immigrant doctoral candidate, I have personally and professionally benefited a lot from the mentorship, collaboration, and expertise while working alongside international colleagues who hold F-1 and H-1B Visas. The implications of the proposed IFR from DOL and DHS on H-1B Visa holders would seriously undermine the productivity, innovation, and reputation of the U.S. across a variety of professions.”

“I strongly oppose the proposed IFR from DOL and DHS on H-1B Visa holders. As a former international student, I can attest to the stress and anxiety that comes with the job application process and obtaining an H-1B Visa. Now as a current faculty member at a small liberal arts university, the increase in nearly 50% of prevailing entry wage from the current proposal introduces more career uncertainty and lack of job security. This decision will not only impact me as an individual but a major setback to the U.S. economy at large due to the heavy reliance on immigrant workers in various professional fields (medical, technology, academic, to name a few).”

“I am a recently graduated international student, currently on a postdoctoral fellowship with work authorization granted for 12 months through Optional Practical Training (OPT). My fellowship provides a great opportunity to develop specialized clinical skills,

but the high wage levels required under the DOL Interim Final Rule for H-1B visas will preclude the only viable avenue I currently have to apply those skills through ongoing employment here in the U.S., where there is most certainly a need. The Rule is based on the faulty and xenophobic premise that I and other highly-trained foreign nationals seeking employment under an H-1B visa would be “low-cost” labor displacing U.S. citizens from employment. By maintaining this rule, the DOL reinforces unfounded and dangerous fears of a diverse workforce, deprives U.S. citizens of the valuable company, services, and intellectual offerings of international colleagues, places significant costs on U.S. institutions of higher education and healthcare and other important parts of the economy, and creates an unnecessary and damaging mental health strain on foreign nationals trying to navigate a life and career in the U.S. I believe the IFR should be opposed on moral, social, and economic grounds.”

“As a former international student and current faculty on H-1B visa, I can attest that the proposed IFR from DOL and DHS will place unnecessary burden on current U.S. employers of international candidates, and deter any potential employers from fairly considering and hiring highly qualified international candidates. This will cause significant detriment to the wellbeing of U.S. constituents from the loss of essential healthcare services and educational workforce, rather than protect and secure positions for U.S. citizens as the DOL and DHS claim to be their goal.

The increase from 17th to 45th percentile of prevailing wage is an appalling and unreasonable escalation that does not take into consideration the work setting and comparable salaries for an international candidate’s American counterpart. In other words, requiring such levels of compensation for an international candidate would often imply that employers would pay international employees more than, instead of equal to, what they would pay a U.S. citizen working in the same position, which is discriminatory, unjustifiable, and in fact, clearly disadvantageous to the very citizens that this administration claims to want to protect. This will particularly impact the public sector, such as the public research university where I work, where resources are already limited, further amplifying the pre-existing inequities and injustices in the access to quality education and healthcare services for students (most of whom are U.S. citizens) attending public schools and universities.

The multiplying barriers for the international community to pursue higher education and a career in the U.S. will end up diverting and funneling diverse talents to other competing nations that offer these valuable opportunities with much fewer barriers. In the long run, these policy changes will again ultimately be detrimental to the prospects of this country and its citizens, undermining the position of the U.S. as a leading nation in the critical fields of education, healthcare, science and technology. Therefore, it is in the best interest of U.S. constituents for DOL and DHS to withdraw these short-sighted amendments.”

As the above statements indicate, there are immense benefits accrued by U.S. society from the work and presence of foreign-born individuals in U.S. workspaces and home communities. These workers have enriched the tapestry of life within the U.S. and have filled serious gaps in essential functions while putting forward outstanding innovations the U.S. has benefitted from.

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