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November 3, 2020

Brian D. Pasternak
Chief, Division of Temporary Program Operations, Office of Foreign
Labor Certification
U.S. Department of Labor
Room C4312
200 Constitution Avenue NW
Washington, DC 20210

Dear Mr. Pasternak:

**Business Roundtable Comments on “Strengthening Wage
Protections for the Temporary and Permanent Employment
of Certain Aliens in the United States” Interim Final Rule
Department of Labor Docket No. ETA-2020-0006**

INTRODUCTION

Business Roundtable is an association of more than 200 chief executive officers of leading U.S. companies working to promote sound public policy and a thriving U.S. economy. Business Roundtable CEOs lead companies with nearly \$9 trillion in annual revenues and nearly 19 million employees.

Business Roundtable appreciates the opportunity to comment on the U.S. Department of Labor’s (DOL) Interim Final Rule, “Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States.” Business Roundtable shares the government’s goal of protecting U.S. workers, and our member companies are committed to complying with all safeguards under the Immigration and Nationality Act (INA), regulations, and DOL guidance. At the same time, Business Roundtable believes that putting the rule into effect immediately upon publication did not provide our membership with proper notice or a meaningful opportunity to comment. For this reason, Business Roundtable requests that DOL pause implementation of the rule and provide additional time for the public to comment on these changes. The Business Roundtable also requests that the agency provide additional information about its wage methodology and address substantive concerns with the rule. Further details and recommendations follow.

BUSINESS ROUNDTABLE AND IMMIGRATION

Business Roundtable supports immigration policies that promote a healthy economy – accelerating growth, encouraging hiring, and creating American jobs. Business Roundtable has conducted extensive research and released in-depth reports that examine immigrants' contributions to the American economy,ⁱ compare U.S. immigration policies to those of other countries,ⁱⁱ and propose realistic solutions for fixing the country's immigration system.ⁱⁱⁱ

Regulations intended to improve existing work visa categories are no replacement for immigration legislation that addresses the core structural problems with the current immigration system. Business Roundtable will therefore continue to encourage Congress to fix America's broken immigration system and pass laws that will help keep America secure and that support a healthier economy.

RECOMMENDATIONS FOR CONTINUED STAKEHOLDER ENGAGEMENT

Business Roundtable shares the government's goal of creating jobs for American workers and ensuring that immigrant and nonimmigrant programs do not disadvantage American workers. As the agency states in the regulation, safeguards for American labor, and DOL's role in administering them, have been a foundational element of the statutory scheme since Congress enacted the INA in 1952. Business Roundtable member companies are committed to complying with both the spirit and letter of the law, and the Roundtable welcomes the opportunity to engage with the government in its efforts to strengthen these important safeguards. Business Roundtable offers the following comments regarding the process the agency followed in issuing the Interim Final Rule (IFR):

DOL should not make significant changes to these vital programs through an Interim Final Rule.

DOL acknowledges in the rule that existing wage levels "have been in place for over 20 years, and that many employers likely have longstanding practices of paying their foreign workers at the rates produced by current levels." This regulation overhauled the wage requirements for the H-1B, H-1B1, and E-3 programs and permanent labor certifications (PERM) without providing our member companies with any advance notice or opportunity to comment before those changes went into effect. By DOL's own estimates, the regulation will result in an increase in employer costs of approximately \$23 billion in the first year alone.

Though DOL cites the current rates of unemployment due to COVID-19, unemployment rates remain low in computer-related fields, and the majority of high-skilled immigrants work in those fields.^{iv} In fact, the shift to remote work and learning during the pandemic has increased demand for computer skills and caused unemployment rates to decline in these occupations. Bureau of Labor Statistics (BLS) data contradicts the agency's claim that high unemployment rates in the U.S. give the agency good cause to bypass the notice-and-comment process.

When an agency overturn decades of law and regulations affecting programs that are this important, it must do so thoughtfully. Business Roundtable urges DOL to provide additional time for members of the public to comment on the rule, and to then consider these comments from stakeholders and give companies and employees sufficient time to prepare, *before* enacting sweeping changes to these vital programs. It is especially important to provide U.S. companies and their employees with proper notice of changes in the current economic environment.

The agency should provide more information about its wage methodology and allow additional time to resolve substantive concerns with the rule.

The INA and DOL regulations require employers to pay the greater of “the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question” or “the prevailing wage level for the occupational classification in the area of employment.” DOL guidance states, “The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment.”^v The new wage requirements that were released *after* DOL published the regulation raise serious concerns about the methodology the agency used in restructuring the wage requirements for these programs. The agency should not enforce this regulation until it can address these concerns.

For example, the new rule would require employers to pay a minimum of \$100 per hour, or \$208,000 per year, for over 18,000 combinations of occupations and geographic labor markets, regardless of the skill level or position.^{vi} This requirement bears no relationship to the occupational classification or area of employment and has no basis in the INA.

In addition, the rule sets the Level 1 “entry level” wage requirement using the comparator of an individual with a master’s degree with no work experience. This necessarily excludes from the prevailing wage calculation both similarly employed H-1B workers and U.S. workers within an occupation who do not possess a master’s degree. Excluding workers who do not meet this new standard – which exceeds the requirements for an H-1B specialty occupation visa – is inconsistent with the INA.

Intentionally placing wage requirements far above the prevailing wage for an occupation in a geographic area is contrary to the statute and the intent of Congress in creating the high-skilled visa categories. These changes would result in harm to Business Roundtable companies and the U.S. economy. If implemented as written, the rule would force companies to terminate existing workers and would be disruptive to the U.S. economy.

Business Roundtable urges DOL to halt implementation of the rule, provide more information about its methodology, and allow additional time for the public to comment.

We appreciate the opportunity to comment on this rule and look forward to continued communication with the agency on these and other issues surrounding the U.S. immigration system. Please contact Dane Linn, Vice President, Business Roundtable at dlinn@brt.org if you have any questions.

ⁱ Business Roundtable. (2017, September). *Economic effects of immigration policies: a 50-state analysis*. Retrieved from <https://s3.amazonaws.com/brt.org/archive/reports/BRT%20Economic%20Effects%20Immigration.pdf>.

Business Roundtable. (2014, June). *Contributing to American growth: the economic case for immigration reform*. Retrieved from

https://s3.amazonaws.com/brt.org/archive/0_immigration_report/2014.06.06%20BRT%20Immigration%20Report.Contributing%20to%20American%20Growth.pdf.

ⁱⁱ Business Roundtable. (2015, March). *State of immigration: how the United States stacks up in the global talent competition*. Retrieved from <https://s3.amazonaws.com/brt.org/BRT-immigrationreport-2.pdf>.

ⁱⁱⁱ Business Roundtable. (2013, April). *Taking action on immigration: realistic solutions for fixing a broken system*. Retrieved from https://s3.amazonaws.com/brt.org/archive/reports/20130405_Taking_Action_on_Immigration.pdf.

^{iv} National Foundation for American Policy, *Employment Data for Computer Occupations for January to September 2020* (October 2020), <https://nfap.com/wp-content/uploads/2020/10/Employment-Data-for-Computer-Occupations-January-to-September-2020.NFAP-Policy-Brief.October-2020.pdf>.

^v *Prevailing Wages (PERM, H-2B, H-1B, H-1B1, and E-3)*, U.S. Department of Labor, Employment and Training Administration, available at <https://www.dol.gov/agencies/eta/foreign-labor/wages/prevailing-wage>.

^{vi} *Analysis of the DOL H-1B Wage Rule*, National Foundation for American Policy (October 2020), available at <https://nfap.com/wp-content/uploads/2020/10/Analysis-of-DOL-H-1B-Wage-Rule.NFAP-Policy-Brief.October-2020.pdf>. We request that the agency review and consider all economic, policy, and legal issues identified in this policy brief (enclosed) as part of our company's regulatory comment.