



UNIVERSITY OF ILLINOIS SYSTEM

**Comments of the University of Illinois System
Re. “Strengthening Wage Protections for the Temporary and Permanent
Employment of Certain Aliens in the United States”
DOL Docket No. ETA–2020–0006
November 2020**

Summary

The University of Illinois System strongly opposes the Department of Labor’s (DOL) Interim Final Rule (IFR) on “Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States,” DOL Docket No. ETA–2020–0006, published in the Federal Register on October 8, 2020. The IFR imposes unsupportable and unjustifiable costs on employers that seek to sponsor certain categories of foreign nationals for temporary employment, while further discouraging international students from attending US universities. With universities already facing unprecedented fiscal and enrollment challenges due to the COVID-19 pandemic, the IFR is particularly ill timed and ill advised. Should the IFR remain in effect, it will jeopardize the globally engaged universities of the University of Illinois System in their role as international leaders in research, scholarship and innovation, and in addressing the challenges of the 21st century.

About the University of Illinois System

The University of Illinois System is Illinois’ largest system of higher education, with more than 90,000 students at three universities in Urbana-Champaign, Chicago, and Springfield, an annual operating budget of around \$7 billion and an annual economic impact on the state of \$17.5 billion. This impact depends, in part, on our continued ability to attract the best and brightest individuals from around the world to study and work at the University of Illinois System. International students and employees make major contributions to the knowledge, research and cultural diversity of our universities, while also creating jobs and economic growth in the communities where they live.

The University of Illinois System has over 500 employees in active H-1B status, including postdocs, junior researchers, adjunct faculty, physicians, and medical residents and fellows, as well as tenure system faculty. These employees provide essential services in all aspects of teaching, research, and health care delivery. Our faculty members on H-1B visas teach in the fields of medicine, nursing, computer science, brain and cognitive sciences, biological sciences, physics, engineering, economics, humanities and social sciences, and mathematics. The University of Illinois System also has over 15,000 international students, many of whom go on to make important contributions to US employers and to our country’s research enterprise.

Concerns regarding the IFR

1. The IFR makes it significantly more—and in many cases, prohibitively—expensive to hire high-skilled foreign nationals

By dramatically increasing prevailing wage determinations across occupations and experience levels, the IFR requires employers to pay significantly higher wages for H-1B holders and any individuals being sponsored for permanent residency under the Department of Labor’s permanent labor certification process. Under the new rule, Level 1 (entry level) wages are determined by a calculation of the prevailing wage for entry-level workers who have “comparable levels of education, experience, and responsibility to the foreign workers” in the covered visa categories. Level 2 and 3 wages under the IFR are determined by applying existing statutory formula (calculated based on Level 1 and Level 4 wages), while Level 4 wages are now established by taking the arithmetic mean of the wages paid to the most highly paid workers in the OES distribution. The result of these changes is a 45% to 95% increase in wage determinations based upon the DOL wage level.

A [study by the National Foundation for American Policy](#) (NFAP) documents that employers will have to pay much higher wages for employees under the IFR—the average increase for Level 1 biochemists and biophysicists will be 57.6%, for example, while the corresponding number for entry-level computer and information research scientists will be 48.9%. The authors of the study conclude that “[t]he new DOL wage rule appears designed to inflate the salaries of H-1B visa holders and employment-based immigrants to price their services out of the U.S. labor market.”

These higher wages will severely impact the University of Illinois System’s ability to sponsor H-1Bs or move forward with sponsorship for permanent residency under the DOL certification process. For example, the Grainger College of Engineering at the University of Illinois at Urbana-Champaign uses the occupation category of “Engineering Teachers, Postsecondary” most frequently to appoint staff with teaching responsibilities. Under the IFR, the entry level (Level 1) wage in this category will increase by over two-thirds, from \$74,600 per year to \$125,000. Level 3 wages will more than double, from \$102,163 to \$208,000.

Similarly, the University of Illinois at Chicago (UIC) employs an Assistant Professor of Clinical Pediatrics/Physician Surgeon whose H-1B visa must be renewed by January 22, 2021. The individual currently earns approximately \$155,000, which is more than the DOL’s pre-IFR July 1 (“pre-IFR”) wage of \$82,530. Under the new rule, however, DOL will require wages of \$179,680, a more than 15% increase from the individual’s current salary and more than double the July 1 level. UIC also has a Senior Research Specialist who will need to change their status to H-1B by March 4, 2021. The individual currently earns approximately \$78,000, which is slightly higher than the DOL’s pre-IFR wage of \$77,334. Under the new rule, however, DOL will require a salary of \$103,854, a more than 24% increase.

Furthermore, the impact of the IFR will not be limited to foreign nationals. As noted above, new H-1B hires under the IFR are likely to make considerably more money than current employees. The University of Illinois System has a strong commitment to non-

discrimination and equity in our human resources policies with respect to employees' citizenship or nation of origin. This commitment will require the University of Illinois System to give serious consideration to adjusting the wages of other similarly situated employees who are not on an H-1B visa, adding to the considerable financial burdens already facing our System.

The IFR puts the University of Illinois System in an extremely difficult situation. While the universities in the System regularly compensate above DOL pre-IFR wage levels, the increases of the IFR are unreasonable and untenable, especially when considered in the aggregate. When employees currently sponsored under the H-1B non-immigrant visa category come up for renewal, the rule will obligate the University of Illinois System to increase their salaries by amounts ranging up to 100%. Absent new sources of funding, in many cases we may be forced to end our employment relationships with valued and critical employees. The DOL rule thus disrupts important employment relationships and undermines critical ongoing research, teaching and clinical services.

2. The IFR will damage the US economy and the response to the pandemic without helping US workers

Employees on H-1B visas and other high-skilled international workers play a critical role in the US labor market, particularly in the STEM fields. According to the [National Science Board](#), 30% of workers in science and engineering occupations are foreign-born. Without them, many U.S. universities and companies would struggle to meet their workforce needs. International workers are particularly important to universities. Foreign scientists fill 49 percent of the mid-level positions—mostly postdocs—that make up the backbone of the scientific labor force at U.S. research universities. [NSB S&E Indicators 2018](#).

Now is a particularly bad time to be cutting back on employers' ability to hire foreign-born workers. From performing research to providing medical services, employees on H-1B visas are an essential part of our nation's COVID-19 response and economic recovery. As the American Immigration Council notes:

“The skills that H-1B workers bring with them can be critical in responding to national emergencies. For instance, over the past decade (FY 2010-FY 2019), eight companies that are currently trying to develop a coronavirus vaccine—Gilead Sciences, Moderna Therapeutics, GlaxoSmithKline, Inovio, Johnson and Johnson Pharmaceuticals, Regeneron, Vir Therapeutics, and Sanofi—received approvals for 3,310 biochemists, biophysicists, chemists, and other scientists through the H-1B program.” <https://www.americanimmigrationcouncil.org/research/h1b-visa-program-fact-sheet>

Moreover, while DOL asserts that it is attempting to help US workers, evidence shows that high-skilled foreign workers actually create jobs and economic growth without negatively impacting the wages of US workers. According to the American Immigration Council, cited above, “[r]esearch shows that H-1B workers complement U.S. workers, fill employment gaps in many STEM occupations, and expand job opportunities for all.”

Furthermore, DOL acknowledged in the rule that its changes to wage levels could result in a 7.74% reduction in labor demand, which will harm workers and further damage our already struggling economy.

3. The new wage requirements of the IFR do not reflect actual market wages

DOL fails to provide an adequate explanation of how it is calculating the newly required wages, or why the new prevailing wage determinations are so much higher than either previous calculations or actual market wages. The NFAP study finds that “[t]he private wage surveys employers use to evaluate the appropriate compensation for jobs in different geographic locations show the new minimum salaries mandated in the DOL wage rule ... do not reflect market wages.” The study goes on to note that “[t]he annual salary required by DOL under the new rule for a computer programmer in the Chicago area would be nearly 63% higher or approximately \$86,000 a year more than the market wage at Level 4.”

4. The IFR will do particular damage to higher education by further discouraging international students from attending US universities

The H-1B program is the main pathway for high-skilled foreign nationals, including international students, to work long term in the United States. People who never obtain an H-1B are unlikely ever to gain permanent resident status in the United States. Like all other students, international students make decisions about whether and where to pursue an education based, in part, on how that education will advance their economic prospects. If international students know that they are unlikely to have the opportunity to obtain an H-1B visa, they will be less likely to attend US universities. This, in turn will undermine the ability of universities like ours to recruit talented international students, and jeopardize our ability to prepare our domestic students to become global citizens.

5. The IFR will exacerbate the fiscal and enrollment pressures facing universities because of the pandemic

The IFR comes at a time when higher education in the United States is particularly vulnerable. The fiscal impact of the pandemic on the University of Illinois System is over \$400 million and rising, and that figure does not include the impact on our hospital in Chicago. These numbers include refunds for room and board; reductions in revenue from auxiliary services; and costs for cleaning, supplies, hardware and software for online classes, and the extensive COVID-19 testing regimen that the University of Illinois System has implemented for its students and employees. Now is not the time to be adding further costs and complicated regulatory changes that increase the burden on higher education in this country.

6. DOL fails to provide justification for bypassing the regular rulemaking process

By bypassing the opportunity for notice and comment prior to implementation of the new rule, DOL has circumvented the law and harmed the regulated community. DOL cites an

emergency need to address unemployment as a reason for bypassing the normal rulemaking process. According to [one analysis](#), however, approximately two-thirds of H-1B visa holders work in computer-related occupations, and the U.S. unemployment rate for individuals in computer occupations was just 3.5% in September 2020, only slightly higher than the 3% unemployment rate in January 2020. The IFR is thus unlikely to address the unemployment problem that DOL cites as justification for putting the rule in place without consulting those who will be impacted by it.

Conclusion

For the reasons discussed above, the University of Illinois System strongly opposes the DOL IFR and urges the Department to rescind the rule immediately. Please do not hesitate to contact Paul Weinberger, Director of Federal Relations for the University of Illinois System, at paulw3@uillinois.edu for further information.