CENTER FOR IMMIGRATION STUDIES

May 13, 2024

Brent Parton
Principal Deputy Assistant Secretary
Employment and Training Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20010

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*; DOL Docket No. ETA–2023–0006; RIN: 1205-AC16.

Dear Mr. Parton,

The Center for Immigration Studies (CIS) submits the following public comment to the U.S. Department of Labor (DOL), Employment and Training Administration (ETA) in response to the request for information titled *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*, as published in the Federal Register on December 21, 2023 and extended on February 15, 2024.

CIS is an independent, non-partisan, non-profit, research organization. Founded in 1985, CIS has pursued a single mission – providing immigration policymakers, the academic community, news media, and concerned citizens with reliable information about the social, economic, environmental, security, and fiscal consequences of legal and illegal immigration into the United States. CIS is the nation's only think tank devoted exclusively to the research of U.S. immigration policy to inform policymakers and the public about immigration's far-reaching impact. CIS is animated by a unique **pro-immigrant, lower-immigration** vision which seeks fewer annual admissions but a warmer welcome for those admitted.

I. Background

Federal law generally requires employers who wish to petition for an immigrant worker to conduct a labor market test and submit a permanent labor certification application to the DOL Employment and Training Administration (ETA) in a process known as PERM.[1] This process, when completed, allows an employer to hire a foreign worker to work permanently in the United States and allows that foreign worker to receive a green card (i.e., obtain lawful permanent

[1] INA § 203(b)(2) and § 203(b)(3)(c); 20 C.F.R. § 656.

resident status). Green card holders may eventually become citizens or may live and work in the United States as LPRs indefinitely if they choose not to naturalize.[2]

The purpose of the PERM labor certification is to both protect the U.S. labor market from unfair competition and to maintain the working conditions of domestic jobs.[3] While the PERM program is far from perfect and subject to substantial fraud,[4] it is the main tool used by the U.S. government to prevent U.S. workers from being replaced with foreign workers benefiting from the employment-based immigrant visa categories. (The PERM process does not apply to foreign workers seeking to enter the United States on nonimmigrant (temporary) visas.)[5]

Employers participating in the PERM program are notably required to test the labor market before their PERM application can be certified.[6] To test the market, regulations require that employers attempt to hire a U.S. worker first by advertising the open position in a local paper as a recruiting announcement for the opportunity twice. The employer must also place a job posting for 30 days with the State Workforce Agency. After the pre-filing recruitment process is completed, the employer must prepare a report describing the steps taken and the results achieved, including the number of hires and number of applicants rejected, categorized by reasons for any rejection.

For certain occupations, however, DOL has predetermined that there are not sufficient U.S. workers who are able, willing, qualified, and available to fill positions in these occupations. These occupations are referred to as "Schedule A" occupations. Employers, in these cases, may bypass the DOL certification process and, instead, submit their PERM labor certification application directly to USCIS.[7]

Currently, DOL has designated two groups of occupations under Schedule A: registered nurses and physical therapists; and beneficiaries with exceptional ability in the science or arts (except performing arts) and beneficiaries with exceptional ability in the performing arts subject to certain conditions.[8] DOL has also determined that sheepherders are eligible for this type of processing. DOL regulations define a science or art broadly, as "any field of knowledge or skill

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[2] INA § 316(a).

[3] *Pai* v. *U.S. Citizenship Immigration Servs.,* 810 F. Supp. 2d 102, 110 (D.D.C. 2011) ("The plain language of [8 U.S.C. 1182(a)(5)(A) and 1153(b)(3)] reflects a concern to protect the interests of workers in the United States."); *Fed'n for Am. Immigration Reform, Inc.* v. *Reno,* 93 F.3d 897, 903 (D.C. Cir. 1996) (explaining that the INA's various limits on immigration, such as in the allocation of visas in the EB–2 and EB–3 preference categories, "reflect a clear concern about protecting the job opportunities of United States citizens."). *See generally Texas* v. *United States,* 809 F.3d 134, 181 (5th Cir. 2015) (quoting *I.N.S.* v. *Nat'l Ctr. for Immigrants' Rights, Inc.,* 502 U.S. 183, 194 (1991) ("The INA's careful employment-authorization scheme `protect[s] against the displacement of workers in the United States,' and a `primary purpose in restricting immigration is to preserve jobs for American workers.' ").

[4] *See* Office of the Inspector General, Department of Labor, *REPORT TO THE EMPLOYMENT AND TRAINING ADMINISTRATION AND WAGE AND HOUR DIVISION, OVERVIEW OF VULNERABILITIES AND CHALLENGES IN FOREIGN LABOR CERTIFICATION PROGRAMS* (Nov. 2020).

[5] *See, e.g.,* Foreign Labor Application Gateway, U.S. Department of Labor, H-*2B, Temporary Labor Certification for Non-Agricultural Workers* (last visited May 13, 2024).

[6] 20 C.F.R. § 656.

[7] *See* 20 C.F.R. § 656.15 and § 656.16.

[8] 20 C.F.R. § 656.5.

in which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill".[9]

The regulation clarifies that an alien "need not have studied at a college or university in order to qualify for the Group II occupation".[10] The beneficiary, however, must demonstrate "exceptional ability" in their occupation by providing evidence of widespread acclaim and international recognition by experts in their field to qualify, as well as meet other eligibility requirements, such as demonstrating that the intended job in the United States will require exceptional ability.[11]

DOL issued this RFI to solicit input, including data, statistical metrics or models, and other relevant information to establish "reliable, objective and transparent methodology" to determine whether DOL should revise "Schedule A" to include STEM and other non-STEM occupations that are experiencing "labor shortages."[12] The RFI further invited the public to answer a number of questions in their responses that would assist ETA in making this evaluation, including how to define "STEM occupations."[13]

II. "Labor Shortages" Should Not Exist in Free Market Economies.

"Labor shortages" should not exist in free market economies as large as the United States's economy. The term "labor shortage" implies that there are not enough workers to fill jobs in the United States. As long as prices are free to adjust, the market will generally match supply with demand.[14]

If employers are struggling to find workers within a free market economy, employers should raise wages and offer better benefits and working conditions. This concept is well understood with regard to the price and availability of goods. If the demand for a particular good or service increases, buyers will be willing to pay a higher price, which causes more suppliers to come into the market. It is only when prices are not allowed to rise that businesses get genuine shortages. In the labor market context, therefore, businesses' refusal to pay workers higher wages (or offer workers benefits increases or quality of life improvements) should be considered the cause of the lower-than-desired participation in a particular occupation.

Business lobbyists, however, have resisted this solution knowing that such a strategy may either hurt their bottom lines or require businesses to raise prices of their goods or services.[15] As a result, many corporations have turned to lobbyists to demand for increased immigration levels or placement on the "Schedule A" list to allow employers of these occupations to circumvent the

[9] *Id*.
[10] *Id*.
[11] *See* 20 C.F.R. § 656.15(d)(2).
[12] *See* 88 Fed. Reg. 88290 (Dec. 21, 2023).
[13] *See* 89 Fed. Reg. 11788 (Feb. 15, 2024).
[14] Richwine, Jason, Center for Immigration Studies, *There is No 'Labor Shortage'* (Apr. 2019); Cass, Oren, the Atlantic, *The Labor-Shortage Myth, Things are finally looking up for the American worker. Why does the government see that as a crisis?* (Jun. 2023).
[15] *See* Fang, Lee, Lee Fang, *After Mass Layoffs, Silicon Valley Renews Lobbying Biden to Lift Cap on Foreign Workers* (Jun. 2023); Birnbaum, Emily, Politico, *Tech spent big on lobbying last year* (Jan. 2022); Gomez, Alan, Schouten, Fredreka, USA Today, *Tech companies driving the lobbying on immigration* (Apr. 2013).

PERM process's mandatory labor market test, which is designed to protect American workers, including immigrant and nonimmigrant workers already working in the United States, from displacement.

While emergency circumstances, such as a war or pandemic, could result in a short term "labor shortage," these circumstances are rare and typically short-lived. Congress, however, has already contemplated when immigration programs can be used to address brief or temporary shocks to the labor market with the creation of numerous nonimmigration visa categories, which allow for the admission of temporary workers to the United States.[16]

For example, Congress created the H-2B nonimmigration visa to allow employers to bring in foreign workers when there are not enough U.S. workers who are able, willing, qualified, and available to do temporary or seasonal non-agricultural work.[17] The H-2A program was created to fill labor needs in agricultural work.[18] There are no minimum education requirements for workers seeking these types of nonimmigrant visas.

Congress has also tightly regulated the admission of high-skill labor with the creation of the H-1B nonimmigration visa program. This program allows employers to hire foreign workers who wish to perform services in a specialty occupation, services of exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project, or services as a fashion model of distinguished merit or ability and may be available to many STEM employers. To obtain an H-1B nonimmigrant worker, the occupation must require a theoretical and practical application of a body of highly specialized knowledge and require the attainment of a bachelor's degree or higher in the specific specialty (or its equivalent) as minimum entry to the occupation in the United States.[19]

Business lobbyists, in response to these arguments, often fall back to the trope the there are "jobs Americans won't do." This too is also a myth. In 2018, CIS analyzed DOL data to determine that of the 474 civilian occupational categories, only six are majority immigrant (comprised of either authorized or unauthorized foreign workers).[20] These six occupations[21] account for one percent of the total U.S. workforce. Moreover, native-born Americans still comprise 46 percent of workers in these occupations.[22]

Assertions by employers that is impossible to hire Americans should therefore be treated with skepticism. Certain jobs often do not offer wages or conditions high enough for most Americans

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[16] *See* U.S. Citizenship and Immigration Services, *Working in the United States, Temporary (Nonimmigrant) Workers* (Jan. 2022).
[17] INA § 101(a)(15)(H)(ii)(B).
[18] INA § 101(a)(15)(H)(ii)(A).
[19] *See* INA § 101(a)(15)(H)(i)(B); INA § 214(i).
[20] Camarota, Steven, Richwin, Jason, and Ziegler, Karen, Center for Immigration Studies, *There Are No Jobs Americans Won't Do, A detailed look at immigration (legal and illegal) and natives across occupations* (Aug. 2018).
[21] The six occupations are agricultural graders and sorters (census code 6040); misc. personal appearance workers (census code 4520); plasterers and stucco masons (census code 6460); sewing machine operators (census code 8320); tailors, dressmakers, and sewers (census code 8350); and misc. agricultural workers (census code 6050).
[22] *Id*.

to want to do them. Given the large number of U.S.-born workers who already do jobs associated with foreign workers and given the 44.3 million working-age Americans who are not currently in the labor force,[23] it seems that increasing wages and benefits, improving working conditions, and modernizing recruitment practices would go a long way toward securing needed workers.

III. Methods to Determine Whether Labor Demands Exceed Supply.

DOL should base any determination of a "labor shortage" on wage trends. Wage trends are a key measure of labor demand. As DOL is already aware, wage trend data is contained within the American Community Survey (ACS). One clear sign that the demand for workers in a particular occupation exceeds the supply of available workers would be rapidly rising wages. Employers must compete to recruit and retain the limited number of workers available in a tight labor market.

Additionally, when considering whether high-skill occupations are experiencing a "labor shortage," DOL should also consider the number of working age Americans who possess relevant degrees and the share of such degree holders who currently work in the pertinent occupations. If a very large share of workers with STEM degrees are not employed in the areas for which they received training. That is an indication that the wages and benefits are such that the jobs in this field are unattractive or not competitive relative to other occupations for which they may be qualified.

CIS disagrees with commenters who argue that a low unemployment rate within an occupation demonstrates a need to import foreign workers. Businesses and their lobbyists are quick to report that the current employment rate of 3.9 percent is historically low. However, this statistic without more context is misleading. This is relevant to immigration policy because one of the arguments for immigration levels, or in the context of Schedule A – allowing employers to hire foreign workers without first testing the labor market – is that the low unemployment rate, along with the aging of the U.S. population, means there are not enough workers. But this argument ignores the enormous increase in the number of working-age people not in the labor force who do not show up as unemployed because they are not actively looking for work.

As explained above, there may be numerous reasons workers choose to exit certain occupations. Moreover, because the unemployment rate only describes the proportion of the labor force that does not have a job and has actively looked for work in the prior four weeks and is currently available for work, unemployment alone is misleading.[24] The U.S. Bureau of Labor Statistics clarifies that "passive methods of job search …do not qualify as active job search methods," and therefore, working-age Americans who are passively searching for employment are not counted as unemployed. Similarly, Americans who are underemployed relative to their experience and level of education and Americans who are taking, for one reason or another, temporary (short-term or long-term) breaks from working are excluded from this data point.

[23] Camarota, Steven and Ziegler, Karen, Center for Immigration Studies, *Working-Age, but Not Working, A look at the decades-long decline in labor force participation among the U.S.-born and its implications for immigration policy* (Aug. 2023).
[24] U.S. Bureau of Labor Statistics, Department of Labor, *Labor Force Statistics from the Current Population Survey, How the Government Measures Unemployment* (Oct. 2015).

CIS also disagrees with commenters who have recommended that DOL base "Schedule A" determinations on the average number of days that a position goes unfilled in a given occupation. Again, there may be a variety of reasons why an employer is unable to fill a position for an extended period. It could be possible that the opportunity does not pay enough to cover housing or childcare; does not pay enough to compensate for the tediousness associated with the job; does not provide adequate flexibility to allow a parent to fulfill child rearing needs; or the business could have a reputation for mistreating or exploiting their employees.

It is in American workers' interests – and consistent with DOL's mission to "foster, promote and develop the welfare of wage earners" – that businesses have sufficient incentives to increase the attractiveness of the employment opportunities they offer.[25] Allowing employers to not even try to hire an American worker before they offer a job to a foreign worker will adversely affect the quality of employment opportunities in the United States.

IV. Conditions in the United States Do Not Support Adding STEM Occupations to the "Schedule A" List.

Neither theory nor evidence supports the existence of a "labor shortage" in STEM occupations. As discussed above, when employers complain of a "shortage," they really mean a shortage of people willing to work for the (low) wage that employers would like to pay or work under the conditions that employers are happy to pay to provide their employees. The idea that the United States has run out of STEM workers is a fallacy perpetrated by business lobbyists.

As already indicated, rapidly raising wages in a sector of the economy is the best indicator that workers are in short supply. Analysis of wage data from the ACS, however, shows a general decline in wages among most STEM occupations – not an increase. The table below reports annual wages for workers in STEM fields in 2017 and 2022. The 2022 ACS is the most recent year the survey is available.

[25] U.S. Department of Labor, *About Us, Our Mission* (last visited May 13, 2024).

No Wage Growth in STEM Occupations 2017 to 2022 (in 2022 dollars)				
STEM Occcupations	Average annual wages 2017	Average annual wages 2022	Change in Annual Wages 17-22	Average annual Change in Wages 2017 to 2022
Technology	$125,031	$127,149	1.7%	0.3%
Math	$112,635	$106,677	-5.3%	-1.1%
Engineering	$127,515	$121,188	-5.0%	-1.0%
Science	$102,657	$95,555	-6.9%	-1.4%
All STEM workers	$122,664	$119,971	-2.2%	-0.4%
All College or more	$106,871	$102,594	-4.0%	-0.8%
Source: Pubic use 2017 and 2022 public use American Community Survey, wages and salary income. Analysis limited to full-time year-round workers with a bacchelor's degree or more ages 21 and older.				

The table shows that real wages (adjusted for inflation) between 2017 and 2022 declined for three out of the four major STEM categories — Math, Engineering and Science. It also declined 2.2% for STEM workers overall. Only in the technology sector did wages increase, but the increase was just 1.7% over the five-year period or .3% on an annualized basis. None of this is an indication that employers are desperate for STEM workers. If they were, we would expect to find significant growth in wages as employers struggle to find new workers or hold on to the ones they already have. The supply of STEM workers was sufficient to prevent wages from increasing significantly from 2017 to 2022.

Of course, many STEM occupations are high-skilled occupations and work in STEM fields often requires significant formal training. The number of potential STEM workers, at least in the short term, depends on the number of people with STEM education. It is therefore also possible to judge the supply of workers by looking at the number and share of people with STEM degrees working in a STEM job. If a very large share of workers with STEM degrees are not employed in the areas for which they received training, it is an indication that the wages and benefits are such that the jobs in this field are unattractive. That is, compensation in these fields is such that those who can do this type of work are choosing not to do so.

Using a standard definition of STEM occupations and undergraduate STEM degrees, Table 1 (below) uses the 2022 ACS to look at the number of U.S.-born workers with each type of degree and where they are employed. The top of the table reports figures for the U.S.-born, the middle of the table reports figures for immigrants, and the bottom of the table is for both groups together. The table reads as follows: In 2022 there were 887,000 U.S.-born American workers with technology degrees (typically computer related) working in a technology occupation. Of course, the skills for one STEM job often overlap with another.

Table 1 shows that there were also 29,000 U.S.-born workers with technology degrees working in math occupations, and so on across the row. In total, there were slightly more than one million U.S. workers with a technology degree working in a STEM job of some kind and another 859,000 with this type of degree working outside of any STEM field. Of all U.S.-born workers with a STEM degree, only about one-third (3.8 million) work in a STEM occupation of any kind, while 7.2 million work outside of STEM.

Table 1. Employment by Occupation and Degree for U.S.-born and Immigrant Workers with a Bachelor's Degree or more in 2022
in 1,000s

U.S.-born

	Occupations								
Degree	Technology Job	Math Job	Engineering Job	Science Job	Any STEM Job	Job but not STEM	Total Working Who have STEM Degree	Unemployed	Not in labor force <65 years of age
Technology	887	29	76	13	1,004	859	1,863	59	184
Math	104	41	22	11	179	539	718	17	89
Engineering	416	32	1,344	56	1,848	2,021	3,869	73	365
Science	169	38	117	469	793	3,737	4,530	93	575
STEM Degree	1,576	141	1,558	549	3,824	7,156	10,980	241	1,213
Non STEM degree	1,378	262	418	303	2,361	38,598	40,959	n/a	n/a

Immigrants

	Occupations								
Degree	Technology Job	Math Job	Engineering Job	Science Job	Any STEM Job	Job but not STEM	Total Working Who have STEM Degree	Unemployed	Not in labor force <65 years of age
Technology	451	15	48	9	523	342	865	21	119
Math	50	15	6	6	78	136	214	6	38
Engineering	473	29	449	46	996	982	1,978	50	222
Science	74	14	33	175	295	787	1,082	27	171
STEM Degree	1,048	72	536	236	1,892	2,247	4,139	104	551
Non STEM degree	305	57	86	81	530	5,993	6,523	n/a	n/a

U.S.-Born

	Occupations								
Degree	Technology Job	Math Job	Engineering Job	Science Job	Any STEM Job	Job but not STEM	Total Working Who have STEM Degree	Unemployed	Not in labor force <65 years of age
Technology	1,338	44	124	22	1,527	1,201	2,728	80	304
Math	155	57	28	17	256	675	931	23	127
Engineering	889	61	1,793	101	2,844	3,003	5,847	123	588
Science	242	52	150	645	1,089	4,524	5,613	119	746
STEM Degree	2,623	213	2,095	785	5,716	9,403	15,119	346	1,765
Non STEM degree	1,683	320	504	384	2,891	44,591	47,482	n/a	n/a

Source: Public use file of the 2022 American Community Survey (ACS). Analysis confined to those with a Bachelor's degree or higher.

Occupation codes in the ACS from IPUMS codebook are as follows **Technology:** 151221, 151211, 151212, 151251, 151252, 151253, 151254, 151255, 151230, 15124X, 151244, 151241, 151299, 113021. **Math:** 152031, 1520XX. **Engineering:** 171020, 172011, 172041, 172051, 172061, 172070, 172081, 172110, 172121, 172131, 172141, 1720XX, 1721YY, 173031, 173011, 17301X, 173023, 17302X, 1721XX, 419031, 119041. **Science Occupations:** 191010, 191020, 191030, 1910XX, 192010, 192021, 192030, 192041, 19204X, 192099, 194010, 194021, 194031, 1940XX, 1940YY, 119121

The degree codes for the ACS can be found in Apendix Table A2 in this report, *Is There a STEM Worker Shortage: A look at Employment and Wages in Science, Technology, Engineering, and Math* , Center for Immigration Studies 2012.
https://cis.org/sites/cis.org/files/STEM-a2.jpg

Table 2 (below) takes the information in Table 1 (above) and calculates the percentages of those with STEM degrees working in their field. Like Table 1, the top of the table reports figures for natives, the middle of the table reports figures for immigrants, and the bottom of the table is for both groups together. Table 2 reads as follows: 47.6 percent of U.S.-born workers with a technology degree have a technology job. The light green boxes show the share of those working in the same field as their undergraduate degrees. Thus, only 5.8 percent of U.S.-born workers with a math degree have a math job, only 34.7 percent of the U.S.-born with an engineering degree work as an engineer, and 10.4 percent of those with a science degree have a job in science.

As already discussed, most Americans with STEM undergraduate degrees do not work in the field in which they earned their undergraduate degrees. The last column in Table 2 reports the share of those with each type of degree working in any STEM job. The table shows only 34.8 percent of all U.S.-born workers with an undergraduate STEM degree hold a job in a STEM field. It is worth adding that all these percentages would be lower if we included those with STEM degrees who are unemployed or are of working-age but out of the labor force entire — neither working nor looking for work.

Table 2. Share of Degree Holders Working In and Out of their Field in 2022

	U.S.-born				
	Occupations				
Degree	Technology Job	Math Job	Engineering Job	Science Job	Any Stem Job
Technology	47.6%	1.6%	4.1%	0.7%	53.9%
Math	14.5%	5.8%	3.0%	1.5%	24.9%
Engineering	10.8%	0.8%	34.7%	1.4%	47.8%
Science	3.7%	0.8%	2.6%	10.4%	17.5%
Stem Degree	14.3%	1.3%	14.2%	5.0%	34.8%
	Immigrants				
Degree	Occupations				
Technology	52.2%	1.7%	5.6%	1.0%	60.4%
Math	23.5%	7.2%	2.9%	2.7%	36.3%
Engineering	23.9%	1.4%	22.7%	2.3%	50.4%
Science	6.8%	1.3%	3.0%	16.2%	27.3%
Stem Degree	25.3%	1.7%	13.0%	5.7%	45.7%
	U.S.-born & Immigrants				
Degree	Occupations				
Technology	49.0%	1.6%	4.5%	0.8%	56.0%
Math	16.6%	6.1%	3.0%	1.8%	27.5%
Engineering	15.2%	1.0%	30.7%	1.7%	48.6%
Science	4.3%	0.9%	2.7%	11.5%	19.4%
Stem Degree	17.4%	1.4%	13.9%	5.2%	37.8%

Source: Public use file of the 2022 American Community Survey (ACS). Analysis confined to those with a Bachelor's degree or higher. See Table 1 for occupation and degree codes.

Tables 1 and 2 make clear that a very large share of both U.S.-born and immigrant workers with STEM degrees do not work in the field in which they received their degree. In fact, most STEM degree holders do not even work in a STEM job of any kind. Taken together, only 37.8 percent of all U.S.-born and immigrant workers with a STEM degree are employed in a STEM occupation. A total of 9.4 million workers with STEM degrees are not employed in a STEM occupation.

This is an indication that there is a huge supply of potential workers for employers to draw on. Given the enormous number of STEM degree holders employed outside of their degree field, or even outside of any STEM occupation, improving compensation, working conditions and other

characteristics of these jobs could go a long way in attracting the U.S.-born and immigrants already in the United States who have STEM degrees to STEM occupations.

The ACS is a very large survey, and this allows for much more detailed analysis than done in Tables 1 and 2. This type of analysis, including a detailed look at particular types of work, should be undertaken whenever the argument is made that there is a shortage of STEM workers.

Accordingly, adding STEM occupations to the "Schedule A" list directly conflicts with Congress's mandate that aliens are not admissible if DOL certifies "(1) there are insufficient U.S. workers at the place where the foreign worker would be employed who are able, willing, qualified and available for the job the foreign worker seeks; and (2) employment of the foreign worker would not adversely affect the wages and working conditions of U.S. workers in similar jobs." DOL cannot in good faith certify either proposition if wages in STEM occupations have remained so stagnant despite the large number of Americans with STEM degrees working in non-STEM occupations.

V. DOL Should Define STEM Occupations for Immigration Purposes Narrowly to Protect U.S. Workers.

Because Congress designed section 212(a)(5)(A) of the Immigration and Nationality Act as a measure to protect American workers from displacement,[26] DOL Should define any occupation that becomes exempt from these protections narrowly. Moreover, if DOL determines that STEM occupations should be added to "Schedule A," DOL must determine that each specific STEM occupation warrants Schedule A designation, given the significant diversity of occupations and labor conditions in STEM fields.

CIS recommends that DOL limit the definition of STEM occupation to occupations that require at least a bachelor's degree and to those occupations that are integral to scientific research and development. While it is possible to define STEM occupations more broadly to include lower-skill occupations or occupations that are not traditionally considered STEM, such as teachers, social scientists, and data analysts, CIS believes that, for immigration purposes, DOL should limit the definition of STEM narrowly.

CIS believes that limiting the definition of STEM occupations to those that require at least a bachelor's degree is reasonable because it limits the types of workers who may compete unfairly with U.S. workers to at least those with higher skill levels, for whom demand is presumably highest.

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[26] *See Pai* v. *U.S. Citizenship Immigration Servs.,* 810 F. Supp. 2d 102, 110 (D.D.C. 2011) ("The plain language of [8 U.S.C. 1182(a)(5)(A) and 1153(b)(3)] reflects a concern to protect the interests of workers in the United States."); *Fed'n for Am. Immigration Reform, Inc.* v. *Reno,* 93 F.3d 897, 903 (D.C. Cir. 1996) (explaining that the INA's various limits on immigration, such as in the allocation of visas in the EB–2 and EB–3 preference categories, "reflect a clear concern about protecting the job opportunities of United States citizens."). *See generally Texas* v. *United States,* 809 F.3d 134, 181 (5th Cir. 2015) (quoting *I.N.S.* v. *Nat'l Ctr. for Immigrants' Rights, Inc.,* 502 U.S. 183, 194 (1991) ("The INA's careful employment-authorization scheme `protect[s] against the displacement of workers in the United States,' and a `primary purpose in restricting immigration is to preserve jobs for American workers.' ").

CIS disagrees with commenters who argue that DOL should expand the definition of a STEM occupation to include occupations that have traditionally fallen outside the scope of traditional STEM fields, such as social scientists, general health care professionals, teachers, or managers for the purpose of immigration policy. These types of professionals are typically not engaged in work supporting research and development and tend to be easier to train. Social scientists, for instance, often participate in research in the constituent fields (e.g. anthropology or political science) and employ qualitative or even normative work product, well beyond what is typically considered science. While health care professionals may possess biology degrees, they are typically employed as practitioners, such as nurses or physicians.

VI. Conclusion

Allowing DOL to exempt employers from testing the labor market before hiring foreign workers puts a finger on the scale in favor of employers' bottom lines to the detriment of workers' interests. CIS strongly urges DOL to exclude STEM occupations from the "Schedule A" list in order to allow wages and conditions in these occupations to grow, consistent with DOL's mission to "foster, promote, and develop the welfare of wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights."

Additionally, for purposes of "Schedule A" eligibility, CIS recommends that DOL define STEM narrowly and reminds DOL that it must determine that there is in fact a "labor shortage" in each STEM occupation that it considers adding to "Schedule A."

Sincerely,

Elizabeth Jacobs
Director of Regulatory Affairs and Policy