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Submitted via www.regulations.gov

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

Re: DOL Docket ETA-2023-0006, “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:

FWD.us is committed to advancing immigration policy that provides safety, opportunity, and access to the American Dream, while also helping sustain a robust and resilient economy and a dynamic and competitive workforce. In this spirit, we submit these comments in response to the Department of Labor’s (DOL) Request for Information (RFI) 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.”

FWD.us supports modernizing Schedule A to strengthen American competitiveness, reduce bureaucracy and save taxpayer dollars. Specifically, FWD.us recommends that the Schedule A list be updated to: **provide more certainty and predictability** to global talent and U.S. employers alike; to **include occupations in semiconductors, artificial intelligence (AI)** and other critical and emerging technology sectors; and to **recognize credentials and qualifications** beyond strict lists of occupation titles.

A. FWD.us is a leading advocacy organization working to reform the outdated immigration system

FWD.us brings together business leaders, policy experts, and advocates, including many individuals whose lives and futures are directly affected by these policies. We believe our country is stronger when all of us have the opportunity to live up to our full potential, which means ensuring that our nation’s immigration laws and policies are administered effectively and fairly, and that legal immigration options are accessible to everyone who qualifies.

After a decade of research, analysis, and advocacy on immigration issues, we understand that immigration is one of the United States’ greatest competitive advantages. Crafted and implemented thoughtfully, smart policies that increase access to legal immigration avenues will increase prosperity, shrink inflation, reverse downward demographic trends, create jobs, and keep the U.S. economically competitive on a global scale.¹ But if our immigration policies are too restrictive or take a narrow, shortsighted view, they will undermine that advantage² and put our global competitiveness and national security at risk.³

FWD.us is especially attentive to the importance of immigration policies to attract and retain individuals with advanced education and specialized training in critical industries,⁴ including emerging industries like artificial intelligence, advanced manufacturing,⁵ microelectronics, quantum computing, clean energy, and biotechnology, among many others. We look closely and critically at immigration policies that affect individuals with education and training in STEM fields, including international students⁶ who pursue their education at U.S. colleges and universities.

B. Modernizing Schedule A would strengthen American competitiveness by providing more certainty and predictability

Establishing an objectively measurable, self-executing filter, so that intensive processes like permanent labor certification (PERM) are only required when necessary to protect U.S. workers, would strengthen America’s hand in the global competition for talent by providing more

¹ FWD.us, “To lower inflation, America needs more immigration to alleviate national labor shortages,” May 2023, <https://www.fwd.us/news/immigration-inflation>.

² FWD.us, “Reducing Immigration Means a Smaller, Poorer, Weaker America,” May 2021, <https://www.fwd.us/news/reducing-immigration>.

³ National Security Leaders, “Letter to House Select Committee on CCP,” May 2023, <https://s3.documentcloud.org/documents/23813309/national-security-leaders-letter-to-house-select-committee-on-ccp.pdf>.

⁴ FWD.us, “Strengthening America’s Competitiveness and Security by Welcoming More Immigrants With STEM Skills,” April 2023, <https://www.fwd.us/news/stem-immigrants>.

⁵ FWD.us, “The U.S. Semiconductor Industry Needs Skilled Workers for Thousands of Open Jobs. Retaining International Graduates is a Solution,” October 2023, <https://www.fwd.us/news/semiconductors>.

⁶ FWD.us, “Retaining U.S. International Student Graduates Could Help the U.S. Win the Global Talent Race,” February 2022, <https://www.fwd.us/news/us-international-students>.

predictability for highly educated and skilled STEM experts considering job opportunities in the U.S., and for the companies seeking to hire them.⁷

The United States has long been the top destination for global talent, in part because it is home to the world's greatest universities and research institutions, successful companies, and revolutionary technological advancements. In turn, immigrants help start new companies⁸ and drive innovation.⁹

But now this attractiveness, which has historically been one of America's greatest competitive advantages, faces challenges. As new industries and innovations quickly emerge, experts with specialized skills and education, particularly in STEM fields, are in increasing demand around the world, and other countries' governments are competing to recruit them, in part by offering faster and easier immigration pathways.¹⁰

In the U.S. however, the immigration system is often more of a hindrance than a lure. Employment-based immigration processes take years to complete, cost thousands of dollars, and require significant legal guidance to navigate. They can feel overwhelming and unpredictable, consuming employers' and employees' time and resources. If immigration processes become even more uncertain, the U.S. will be less attractive as a destination for global talent and this long-standing competitive advantage will diminish.

If the U.S. falls behind in attracting talent, this will also negatively impact the *global* advancement of science and technology. Research shows that individuals who come to study and work in the U.S. produce substantially more knowledge and innovation than those who stay in their home countries, and even more than individuals who migrate to partner and allied countries, like the United Kingdom.¹¹

Lack of certainty and predictability hurts the U.S.'s ability to attract and retain global talent

⁷ While we are not proposing a specific methodology for creating or implementing such a filter, we encourage the Department to seriously consider proposals put forward by experts such as the Institute for Progress (see for example Institute for Progress, "Help Wanted: Modernizing the Schedule A Shortage Occupation List," December 2023, <https://ifp.org/schedule-a>).

⁸ American Immigration Council, "New American Fortune 500 in 2022: The Largest American Companies and Their Immigrant Roots," June 2022, <https://www.americanimmigrationcouncil.org/research/new-american-fortune-500-2022>.

⁹ Shai Bernstein, Rebecca Diamond, Abhisit Jiranaphawiboon, Timothy McQuade & Beatriz Pousada, "The Contribution of High-Skilled Immigrants to Innovation in the United States," *National Bureau of Economic Research (NBER)*, December 2022, <https://www.nber.org/papers/w30797>.

¹⁰ Organisation for Economic Co-operation and Development, "Talent Attractiveness 2023," <https://www.oecd.org/migration/talent-attractiveness>.

¹¹ Ruchir Agarwal, Ina Ganguli, Patrick Gaulé & Geoff Smith, "Why U.S. immigration matters for the global advancement of science," *Research Policy Vol. 52 Issue 1*, January 2023, <https://www.sciencedirect.com/science/article/pii/S004873322001809>.

Certainty and predictability in immigration policy—or a lack thereof—have a real impact on individuals’ decisions to come and remain in the U.S.

For example, research shows that international student enrollment and interest respond to changes in immigration policy. Dr. Kevin Shih, a FWD.us Immigration Fellow, and colleagues found that expanding access to postgraduate Optional Practical Training (OPT) work authorization for STEM degree holders led to an increase in international student enrollments, more students moving into STEM majors, and students enrolling in more esteemed and selective educational opportunities.¹² In other words, the certainty of postgraduate work opportunities motivated international students to enroll at top U.S. schools and pursue in-demand degrees.

However, *restrictions* in U.S. immigration policy have had opposite effects. In 2016, after decades of growth, international student enrollments began to decline, due in part to the Trump administration’s rhetoric and efforts to limit and eliminate legal immigration avenues, and sharply accelerated by the COVID-19 pandemic.¹³ The unpredictability about what options would be available to students after graduation diminished their interest in coming to the U.S. in the first place.

A recent survey of scientists at research-intensive universities found that nearly 90% of respondents indicated that current immigration policies hindered the attraction of top talent to U.S. universities, the development of the scientific workforce, and the strength of high-tech industries in the U.S.¹⁴ The study found that current immigration policies were “significant indicators” of faculty members’ intention to leave the U.S., as well.

At the same time, improvements in immigration policy in countries like Canada have led to increased international enrollments. A survey commissioned by FWD.us revealed that majorities of students who were likely to study in Canada (64%) and Australia (52%) said a straightforward process to live permanently in the country after graduation was important when selecting their country of study.¹⁵

Immigration policies and processes also influence immigrants’ choices to *remain* in the U.S. or to seek opportunities in other countries. For example, hundreds of thousands of highly skilled immigrants and their families are waiting decades in temporary status until a green card is

¹² Catalina Amuedo-Dorantes, Kevin Shih & Huanan Xu, “International Student Enrollments and Selectivity: Evidence from the Optional Practical Training Program,” March 2021, http://kevinyshih.weebly.com/uploads/5/5/8/7/5587146/opt_manuscript.pdf.

¹³ FWD.us, “International student enrollments have dropped and long term trends are worrying,” May 2021, <https://www.fwd.us/news/international-student-enrollment-trends>.

¹⁴ Mary K. Feeney, Heyjie Jung, Timothy P. Johnson, & Eric W. Welch, “U.S. Visa and Immigration Policy Challenges: Explanations for Faculty Perceptions and Intent to Leave,” March 2023, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9986046/#Sec9>.

¹⁵ FWD.us, “Retaining U.S. International Student Graduates Could Help the U.S. Win the Global Talent Race,” February 2022, <https://www.fwd.us/news/us-international-students>.

available for them. This is largely because of country-specific caps that limit the number of green cards issued annually to individuals from a single country, creating massive backlogs for immigrants from India and China (who also make up the lion's share of high-skilled visa recipients). The projected wait times can change every month, and in the meantime they are limited in their ability to change employers, advance their careers, or travel abroad.

A 2018 survey of immigrants from India who are waiting in green card backlogs found that 93.4% were “very concerned” about the backlogs and 70% were seriously thinking about moving to a country with a more accessible immigration system (30% had already applied).¹⁶ “Uncertainty” was the fourth most common word to appear in open-ended survey responses, after “family,” “India,” and “employer.” Similarly, a 2018 survey of spouses of backlogged green card applicants found that nearly 90% of respondents said that access to work authorization was “very important” to their decision to remain in the U.S.¹⁷ Recently, Canada attempted to capitalize on this uncertainty by launching a program that offered a fast-track immigration pathway for H-1B visa holders who are stuck in backlogs, and hit its application target within 48 hours.¹⁸

Immigration policy also influences employers' decisions and can lead to work and production moving outside of the U.S.

U.S. companies also have to make tough decisions when faced with uncertain immigration policies, and when there are insufficient workers available in the U.S. to fill critical roles, this can mean employment and production move overseas. A 2020 analysis by Dr. Britta Glennon showed that companies responded to policy restrictions on high-skilled visas in the U.S. by moving their hiring abroad, particularly in China, India, and Canada.¹⁹

Similarly, a recent analysis from FWD.us Immigration Fellows Drs. Shih and Francesc Ortega, along with other colleagues, determined that when H-1B access was restricted, public companies saw reduced employment, profits, and R&D expenditures.²⁰ On the other hand, initial research in

¹⁶ Pooja B. Vijayakumar & Christopher J. L. Cunningham, “An Indentured Servant: The Impact of Green Card Waiting Time on the Life of Highly Skilled Indian Immigrants in the United States of America,” *Industrial and Organizational Psychology Translational Research and Working Papers*, January 2019, <https://scholar.utc.edu/cgi/viewcontent.cgi?article=1002&context=iopsy>.

¹⁷ Ike Brannon & M. Kevin McGee, “Repealing H-4 Visa Work Authorization: A Cost-Benefit Analysis,” *SSRN*, April 2019, <https://ssrn.com/abstract=3349786>.

¹⁸ Darren Major, “Program to attract tech workers from the U.S. hits capacity one day after opening,” *CBC News*, July 2023, <https://www.cbc.ca/news/politics/h-1b-program-canada-applications-full-1.6910448>.

¹⁹ Britta Glennon, “How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program,” *NBER*, July 2020, <https://www.nber.org/papers/w27538>.

²⁰ Anna Maria Mayda, Francesc Ortega, Giovanni Peri, Kevin Y. Shih & Chad Sparber, “Coping With H-1B Shortages: Firm Performance and Mitigation Strategies,” *NBER*, August 2020, https://www.nber.org/system/files/working_papers/w27730/w27730.pdf.

a working paper from Dr. Shih finds that companies that are more successful in the H-1B lottery expand in terms of employment and revenue.²¹

Additional research has shown that the launch of the Canadian Startup Visa program, paired with the lack of immigration options for immigrant entrepreneurs in the U.S., increased the likelihood that U.S.-based immigrants would have a start-up in Canada by 69%.²²

For all these reasons, updating Schedule A would help mitigate uncertainty for highly skilled workers and employers in industries facing significant and persistent labor challenges and bolster the U.S.’ attractiveness for global talent.

C. DOL should include semiconductor and AI jobs requiring advanced degrees in Schedule A updates

DOL’s RFI requests input on specific occupations and fields that could be added to Schedule A. While certainly not the only industries with qualifying occupations, FWD.us analysis shows that there is a strong case for adding occupations related to the semiconductor and artificial intelligence sectors, particularly those requiring advanced degrees, to Schedule A.

Experts are warning that a deficit of individuals with the necessary STEM skills and education could constrain the growth of critical and emerging industries like semiconductors and AI.²³ The RFI echoes this warning, explaining that “the United States [is] facing headwinds in developing enough U.S.-born students pursuing STEM careers to replace those entering retirement, [and] broader market trends also suggest that the need for STEM workers will increase in future years.” There are numerous reasons for these gaps, including the fact that these industries are relatively new and changing quickly, so the educational and workforce pipeline in the U.S. is not fully established, and there are not sufficient numbers of U.S.-born students enrolled in the educational programs that do exist.

The U.S. government has a literal vested interest in the success of the semiconductor industry. Congress has provided \$50 billion in federal funding, matched by hundreds of billions of dollars more pledged by companies, to build new plants, expand production of advanced

²¹ Parag Mahajan, Nicolas Morales, Kevin Y. Shih, Mingyu Chen, & Agostina Brinatti, “The Impact of Immigration on Firms and Workers: Insights from the H-1B Lottery,” *SSRN*, March 2024, <https://ssrn.com/abstract=4431106>.

²² Saerom (Ronnie) Lee & Britta Glennon, “The Effect of Immigration Policy on Founding Location Choice: Evidence from Canada’s Start-up Visa Program,” *NBER*, August 2023, https://www.nber.org/system/files/working_papers/w31634/w31634.pdf.

²³ McKinsey Digital, “McKinsey Technology Trends Outlook 2023,” July 2023, <https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/the-top-trends-in-tech#new-and-notable>.

semiconductors, and create thousands of jobs for U.S. workers at all skill levels.²⁴ But these historic investments could be squandered if manufacturers cannot hire the qualified and skilled talent they need.

The Semiconductor Industry Association, a leading trade group for the industry, projects that 67,000 semiconductor jobs risk going unfilled by the end of 2030, including 27,300 engineering jobs, two-thirds of which will require advanced STEM degrees.²⁵

Fortunately, immigrants—tens of thousands of whom are already living and working in the U.S.—can help reduce this labor shortfall. A FWD.us report released found that 5,000 international students will likely graduate with semiconductor-related advanced degrees in 2024 and nearly 4,000 of those students would like to remain in the U.S. for some time after graduation. Even if only some of these graduates took jobs in the industry, it would be a significant step toward closing the some 18,000 open jobs gap for advanced degree engineers.²⁶

The U.S. is also committed to maintaining international leadership in the AI sector, but must grapple with related challenges. A report from the Center for Security and Emerging Technology cautions that “there is a significant talent shortage in AI, both domestically and globally.²⁷ One consequence of U.S. talent shortages is that U.S. companies are moving AI R&D abroad.”

In 2024, some 25,000 international students will likely graduate with AI-related advanced degrees, including computer science and computer engineering, according to FWD.us analysis of National Center of Education Statistics (NCES).²⁸ And likely nearly 19,000 of those students would like to remain in the U.S. for some time after graduation, based on a FWD.us survey of prospective international students of advanced degrees.²⁹ As with other specialized STEM fields, immigrants currently make up a significant share of the U.S. AI workforce, and protecting and

²⁴ “FACT SHEET: One Year after the CHIPS and Science Act, Biden-Harris Administration Marks Historic Progress in Bringing Semiconductor Supply Chains Home, Supporting Innovation, and Protecting National Security,” *The White House*, August 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/09/fact-sheet-one-year-after-the-chips-and-science-act-biden-harris-administration-marks-historic-progress-in-bringing-semiconductor-supply-chains-home-supporting-innovation-and-protecting-national-s>.

²⁵ Semiconductor Industry of America, “Chipping Away: Assessing and Addressing the Labor Market Gap Facing the U.S. Semiconductor Industry,” July 2023, <https://www.semiconductors.org/chipping-away-assessing-and-addressing-the-labor-market-gap-facing-the-u-s-semiconductor-industry>.

²⁶ FWD.us, “The U.S. Semiconductor Industry Needs Skilled Workers for Thousands of Open Jobs,” October 2023, <https://www.fwd.us/news/semiconductors>.

²⁷ Remco Zwetsloot, “Strengthening the U.S. AI Workforce,” *Center for Security and Emerging Technology (CSET)*, September 2019, <https://cset.georgetown.edu/publication/strengthening-the-u-s-ai-workforce>.

²⁸ FWD.us analysis of detailed NCES' Integrated Postsecondary Education Data (<https://nces.ed.gov/ipeds/datacenter/InstitutionByName.aspx?goToReportId=1&sid=c9c6e05f-e27f-428c-b929-599adf07b562&rtid=1>), based on the average number of advanced international student graduates in AI-related degree subjects from 2017 to 2021.

²⁹ FWD.us, “Retaining U.S. International Student Graduates Could Help the U.S. Win the Global Talent Race.”

improving their ability to contribute will be essential to strengthening U.S. leadership in this industry.³⁰

Leadership in these critical and emerging industries is fundamental to protecting U.S. competitiveness and national security. That is why the bipartisan House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party included Schedule A updates in its strategic recommendations,³¹ and why the president's recent executive order on AI directed (section 5.1) DOL to begin this rulemaking process.³²

Semiconductor and AI jobs are a perfect fit for Schedule A. There is a clear and documented lack of ready and available U.S. workers to fill these jobs, and there are also thousands of international students ready to graduate from U.S. colleges and universities who could be encouraged to contribute their education and skills here to these endeavors.

D. Schedule A should recognize credentials and qualifications, not just job titles

The RFI requests feedback on “defining and determining which occupations should be considered as falling under the umbrella of STEM, and why.” In order to effectively address the workforce needs of critical and emerging industries, **we recommend that DOL allow foreign-born workers to qualify for Schedule A on the basis of specialized credentials and qualifications, instead of basing eligibility exclusively on occupational titles.**

Schedule A does not have to be limited to occupational titles

Immigration law does not expressly limit Schedule A to occupations. Under the statute, DOL's responsibility is to certify that “there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.”³³

³⁰ Zachary Arnold, “Immigration Policy and the U.S. AI Sector,” *CSET*, September 2019, <https://cset.georgetown.edu/publication/immigration-policy-and-the-u-s-ai-sector>.

³¹ The Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, “Reset, Prevent, Build: A Strategy to Win America's Economic Competition with the Chinese Communist Party,” <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/reset-prevent-build-scc-report.pdf>.

³² “Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence,” *The White House*, October 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence>.

³³ 8 U.S. Code § 1182(5)(A)(i).

The original rulemaking that implemented Schedule A in 1965 described “categories of employment,” not occupations, and included “persons upon whom an advanced degree has been conferred at least equivalent to the Master’s degree conferred by accredited U.S. colleges and universities and who have been gainfully employed for at least two years in an occupation related to and dependent upon their area of academic specialization,” as well as “persons whose education or experience is equivalent to the baccalaureate degree conferred by accredited U.S. colleges and universities” in certain fields that today would be classified as STEM.³⁴

DOL should consider restoring a component of Schedule A that recognizes categories of credentials and qualifications. Such categories could be grouped according to educational level, specific fields of study, or skill sets—not just job titles following the Standard Occupational Classification codes. This is particularly important for critical and emerging industries like semiconductors, A.I., and quantum computing; these industries are growing and evolving rapidly, and it can take many years for degree and occupational titles to catch up.

This point was echoed by employers and industry experts in response to the Department of Homeland Security’s proposed changes to the H-1B visa program, where comments flagged the public policy risk of using merely job titles or degree labels especially in critical and emerging technology fields.³⁵ As FWD.us explained in its public comment, “many employers seek to hire individuals to do work that is innovative, groundbreaking, and unprecedented. They will apply and build on what was covered in their formal education—but also go beyond it. As such, there may not always be a neat, direct match between the name of their degree and the position they will hold.”

STEM skills are a common denominator among many critical and emerging technology sectors

The discussion in the RFI reflects how difficult it will be to effectively and comprehensively identify all occupations for which insufficient U.S.-born workers are ready, willing, and able to fill the roles. However, the RFI also acknowledges that certain skills and training, particularly in STEM, are a common denominator among many critical and emerging occupations and industries that are a high priority for the administration, and that international student graduates will continue to make up a significant share of this skilled workforce today and into the future.

³⁴ “Immigration; Availability of, and Adverse Effect on, American Workers,” *Federal Register Volume 30 Number 233*, December 1965, https://archives.federalregister.gov/issue_slice/1965/12/3/14973-14984.pdf.

³⁵ See, for example, the “Comment Submitted by Multi-Sector Comment from 74 Organizations on Specialty Occupation Definition,” <https://www.regulations.gov/comment/USCIS-2023-0005-1199>.

According to FWD.us analysis of NCES data, international graduates have earned nearly half of all STEM advanced degrees awarded in the U.S. over the last decade.³⁶ In other words, when U.S. companies are seeking to hire STEM graduates, half of available workers in the U.S. could be foreign-born. As the RFI acknowledges, “many of these foreign-born, U.S.-educated and trained students entering the U.S. workforce have become U.S. permanent residents or U.S. citizens, leading the [National Science Board] to conclude that ‘immigration represents a key component to building the capacity of the U.S. STEM workforce.’”

Individuals with this level of education and training also earn high wages, and oftentimes, immigrants are earning more than their U.S.-born counterparts. The fact that foreign-born workers are earning significantly higher salaries suggests that employers are paying a premium to hire them and that they are not undercutting wages for domestic workers, a key test for PERM and Schedule A. For example, FWD.us analysis that identifies H-1B holders in the 2022 American Community Survey shows that annual mean income before taxes for H-1B visa holders is \$158,000 a year, which is \$15,000 greater than the mean income for U.S.-born advanced degree holders in STEM.³⁷

Schedule A could be highly effective if it included individuals on the basis of these credentials and qualifications, such as advanced education in STEM fields or significantly higher wages. DOL should also consider including relevant data on the current and future workforce pipeline in determining if there are and will be sufficient U.S.-born workers to meet hiring needs in these critical industries.

E. Modernizing Schedule A will cut red tape, save taxpayer money, and strengthen American competitiveness

Updating Schedule A could save millions in taxpayer dollars annually, and could significantly expedite the immigration process for some foreign-born workers in critical and emerging technologies.

By reducing the PERM workload for DOL, this expedited process would save taxpayer dollars as well. According to FWD.us analysis, an annual average of about 70,000 PERM applications were filed for workers in occupations that we classified as STEM over the last three years. If

³⁶ “Number and percentage distribution of science, technology, engineering, and mathematics (STEM) degrees/certificates conferred by postsecondary institutions, by race/ ethnicity, level of degree/certificate, and sex of student: Academic years 2011-12 through 2020-21,” *National Center for Education Statistics*, September 2022, https://nces.ed.gov/programs/digest/d22/tables/dt22_318.45.asp.

³⁷ FWD.us, “FWD.us Methodology for Estimating the Immigration Status of the 2023 U.S. Immigrant Population,” January 2024, <https://www.fwd.us/wp-content/uploads/2023/12/Methodology-ACS-2022-immigrant-assignment.pdf>.

these STEM occupations had been included on Schedule A, this would have saved nearly \$6.2 million on average annually to process the applications.³⁸

Similarly, expanding the list to include healthcare professionals beyond nurses and physical therapists would help address the pressing shortages of doctors and physicians that are forcing hospitals to close and leaving elderly and medically fragile people with no support, particularly in rural communities.³⁹ Including healthcare practitioners and support occupations in Schedule A would have saved hundreds of thousands of additional dollars in taxpayer money each year and would have expedited processing for more than 13,500 healthcare workers.

The PERM process, which requires employers to demonstrate to the Department of Labor that they could not find a U.S.-born worker to fill a specific job, is particularly lengthy and laborious. Employers are required to file detailed applications, advertise job openings in newspapers and other media, and secure a prevailing wage determination, which can take many months.

DOL is currently averaging more than 350 days to certify PERM applications.⁴⁰ If the applications are subject to an audit, the processing time can take 150 additional days. And approval involves many steps that are disconnected from the real-world recruitment strategies employers rely on to engage in a talent search to fill jobs in the United States, leading to confusion, inconsistent employer practices about form requirements, and then agency effort, sometimes unsuccessful, to attempt consistent adjudications.

Further, employers repeat the process for DOL PERM certification over and over again for the same occupation, even when, for example, a graduate degree in a STEM field is the minimum requirement for the job duties, the very definition of redundant effort that would be ameliorated by modernizing Schedule A.

FWD.us analyzed PERM filings over fiscal years 2021, 2022, and 2023 to identify any trends that might be evident in the data from employers that file the largest numbers of PERM

³⁸ Analysis is based on Department of Labor data (<https://www.dol.gov/agencies/eta/foreign-labor/performance>) reporting the number of applications processed each year. The cost-saving analysis was produced by estimating the share of DOL's Office of Foreign Labor Certification annual budget allocation (<https://www.dol.gov/general/budget>) that went towards processing PERM applications, and applying that cost to the share of PERM determinations that were for STEM and Healthcare occupations. PERM filings were sorted by their Standard Occupational Classification (SOC) according to the Bureau of Labor Statistics; for STEM, we included all occupations classified under SOC 15 (Computer and Mathematical Occupations), SOC 17-2000 (Engineers), and SOC 19 (Life, Physical, and Social Science Occupations); for healthcare, we included SOC 29 (Healthcare Practitioners and Technical Occupations) and SOC 31 (Healthcare Support Occupations). The calculations were based on annual averages for fiscal 2021, 2022, and 2023.

³⁹ Annalise Mantz, "8 statistics that explain the rural doctor shortage," *Incredible Health*, February 2023, <https://www.incrediblehealth.com/blog/news/8-statistics-that-explain-the-rural-doctor-shortage>.

⁴⁰ Department of Labor, "Prevailing Wage Determination Processing Times (as of 05/01/2024)," May 2024, <https://flag.dol.gov/processingtimes>.

applications for advanced degree holders.⁴¹ Looking at the employers who filed at least 500 PERM requests over the three most recent fiscal years for positions where a Masters or above was the minimum educational requirement, there are a number of occupations for which PERM certifications were *granted* more than 99% of the time. And nine out of the top ten of these occupations are STEM jobs. Occupations like these would be strong candidates for consideration in an updated Schedule A list.

Top 10 Occupations Requiring Advanced Degrees With <1% Denial Rates for PERM Certification Filings, FY 2021-2023

SOC Code	Occupational Title	Total Certified	Denied	Denial Rate
15-1132	Software Developers, Applications	15,572	80	0.51%
15-1133	Software Developers, Systems Software	10,812	88	0.81%
15-1199	Computer Occupations, All Other	3424	14	0.41%
17-2072	Electronics Engineers, Except Computer	2836	25	0.87%
15-1121	Computer Systems Analysts	2795	16	0.57%
15-2041	Statisticians	2401	21	0.87%
17-2131	Materials Engineers	843	1	0.12%
15-1252	Software Developers	657	1	0.15%
17-2061	Computer Hardware Engineers	593	6	1.00%
11-3071	Storage and Distribution Managers	567	1	0.18%

Allowing an alternative to PERM through Schedule A would reduce the chances for delays or administrative challenges, offering more certainty for individuals considering the years-long immigration process.

F. Conclusion

Modernizing Schedule A policy would provide more certainty and predictability to U.S. companies and prospective employees alike, strengthening the U.S.’s ability to attract and retain top global talent. Schedule A could be one more policy tool to demonstrate that the U.S. welcomes the contributions of foreign-born STEM experts and plans to lead the world in the industries of the future.

⁴¹ FWD.us analysis of Department of Labor PERM Disclosure Data (accessed at <https://www.dol.gov/agencies/eta/foreign-labor/performance>) for fiscal years 2021, 2022, and 2023. Data are filtered to show PERM certification filings for occupations requiring at least a Master’s degree, and by employers who submitted at least 500 certification filings for such occupations over fiscal years 2021-2023.

We strongly support the calls from administration officials and bipartisan leaders in Congress to modernize Schedule A, and we commend DOL for beginning that process with this RFI. We urge you to continue advancing the rulemaking process to fully restore the benefits of this important policy, and to consider some of our recommendations, particularly those relating to critical and emerging industries, in the implementation of these changes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Schulte', written in a cursive style.

Todd Schulte
President
On behalf of FWD.us
