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November 9, 2020

Brian D. Pasternak  
Office of Foreign Labor Certification  
Employment and Training Administration  
Department of Labor  
Box #12-200  
200 Constitution Avenue NW  
Washington, DC 20210

RE: Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States (DOL Docket No. ETA-2020-0006)

Submitted online via [www.regulations.gov](http://www.regulations.gov).

Dear Administrator Brian D. Pasternak:

On behalf of the 11,000 Postdocs and Academic Researchers represented by UAW Local 5810 and employed at the University of California and the Lawrence Berkeley National Laboratory, I write in opposition to the Department of Labor's Interim Final Rule (IFR), ETA-2020-0006; RIN 1205-AC00, published October 8, 2020.

UAW Local 5810 represents Postdoctoral Scholars and Academic Researchers (Project Scientists, Specialists, Professional Researchers, and Coordinators of Public Programs), and many of these academic employees, including approximately 70% of Postdocs, are in the U.S. on non-immigrant visas. Their scholarship is central to the research and educational prestige of the University of California, including the university's ability to foster innovative research, provide a top-tier education, and attract scholars from an international pool of applicants.

**This rule is based on a false premise that international workers depress wages and take away job opportunities for U.S. workers, ignoring evidence that H-1B employment boosts wages of US-based workers**

This rule dramatically changed the way prevailing wage is determined for H1-B visa holders and employment-based immigrants. The rule will impact many international students and scholars who contribute to the U.S. and fill a critical need in the U.S. labor market. They teach hundreds of thousands of students a year at U.S. universities, conduct critical research that is a vital driver of U.S. industry and technology, and bring billions of dollars in research funding into their universities and local economies. The Department of Labor ignores evidence that shows that high-skilled international workers bolster innovation<sup>1</sup>, create jobs<sup>2</sup>, drive economic growth, and do not negatively impact the wages of US-born workers, with multiple studies showing a positive impact on wages overall in occupations with large numbers of high-skilled foreign workers.

Many international students and scholars are also on the front lines of research pursuing vaccines and therapies for COVID-19. At a time of health and economic crisis, this rule is a step in the wrong direction. Instead, the U.S. should be increasing recruiting efforts around the world to

incentivize people to participate in our shared global fight against COVID-19 and in many other ways improve our quality of life, create jobs, and grow the economy.

**This rule creates a wage system well above market wages for international workers, thereby pushing them out of the US**

After completing their research program at UC, a large portion of our international members will seek temporary employment at a different US institution or private company to continue their research and training. This rule will negatively impact these individuals to gain employment in often highly-specialized fields, because the rule will price out H1-B or employment-based permanent resident professionals due to inflated prevailing wage levels. An analysis<sup>3</sup> by the National Foundation for American Policy found that the rule “increases the required minimum salary by a substantial margin across all wage levels for H1-B visa holders and employment-based green card applicants. For all occupations and geographic locations, the new minimum salary that employers are required to pay when compared with the system in place prior to the new DOL wage rule is, on average, 39% higher for Level 1 positions, 41% higher for Level 2, 43% higher for Level 3 and 45% higher for Level 4.” The authors also found that “the new wages mandated by DOL bear little relationship to the current market wage rates reflected in private wage surveys that are widely used by employers and considered valid by the Department of Labor for determining the appropriate wage.” The authors concluded that “The Department of Labor has created a new wage system that compels employers to pay well above market wages if they wish to employ a foreign-born professional in H1-B status or sponsor an individual for permanent residence”

**The lack of a notice and comment opportunity prior to implementation of this new rule was unlawful and harmful to H-1B workers and employers**

DOL rushed to finalize this rule under the guise of the pandemic-stricken economy, despite the administration's many assertions to the contrary. To do so, DOL refused to provide the proper notice and opportunity for comment to impacted employers and workers before dramatically altering the manner in which the agency calculates prevailing wage rates for temporary and permanent employment. Notably, the new rule went into effect immediately upon publication, without so much as giving those impacted by the rule adequate opportunity to voice their concerns or notice to adjust their business practices accordingly. The agency assertions that it has good cause for bypassing statutory rulemaking procedures are unsubstantiated and unreasonable.

For all the reasons outlined above, I strongly oppose the agency's IFR and urge the Department of Labor to rescind this rule immediately.

Sincerely,



Anke Schennink, PhD  
President, UAW Local 5810

<sup>1</sup> <https://crsreports.congress.gov/product/pdf/IF/IF11347>

<sup>2</sup> <https://www.businessroundtable.org/policy-perspectives/immigration/economic-impact-curbing-optional-practical-training-program>

<sup>3</sup> <https://nfap.com/wp-content/uploads/2020/10/Analysis-of-DOL-H-1B-Wage-Rule.NFAP-Policy-Brief.October-2020.pdf>