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April 20, 2021

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

Dear Mr. Pasternak:

**Business Roundtable Comments on "Strengthening Wage
Protections for the Temporary and Permanent Employment of
Certain Immigrants and Non-Immigrants in the United States:
Proposed Delay of Effective and Transition Dates; Request for
Comments,"
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) "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States: Proposed Delay of Effective and Transition Dates," published on March 22, 2021. 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 DOL must provide the public with proper notice and a meaningful opportunity to comment, especially when making changes to longstanding regulations. For this reason, Business Roundtable urges DOL to finalize its proposal to delay implementation of the rule and to thoughtfully consider input from stakeholders as it determines its path forward. Further detail 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 welcome, but they 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 support a healthier economy.

SUPPORT OF PROPOSED DELAY

Under the previous administration, DOL overhauled the wage requirements for the H-1B, H-1B1, and E-3 programs and permanent labor certifications (PERM) through an Interim Final Rule (IFR) that took effect immediately, without providing our member companies with any advance notice or opportunity to comment. DOL is now taking a more measured approach to making changes to wage requirements for these programs. Business Roundtable welcomes this change in course and thanks DOL for its commitment to approaching the issue in a thoughtful manner. Business Roundtable urges the agency to finalize this proposal to delay the effective date and transition dates of the wage rule, so that it can fully review the legal issues and consider additional information provided by the public.

Business Roundtable encourages DOL, after reviewing this and other comments, to finalize the delay as soon as possible to provide adequate notice to the public. Higher wages are currently scheduled to phase in starting July 1, and companies need sufficient time to plan and ensure compliance with all legal requirements governing these immigration programs.

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. Our member companies are committed to complying with both the spirit and letter of the law, and Business 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 should follow in reforming wage levels:

DOL should fully review the rule and consider information provided by the affected community before implementing changes to these programs.

DOL proposed to delay the rule to give the agency sufficient time to complete its comprehensive review and to take further action as needed to complete the review. On April 2, DOL published a Request for Information (RFI) on the sources of data and methodologies for determining prevailing wage levels. The agency stated that it will consider the information in its review of the wage rule, which "may result in the development of a future notice of proposed rulemaking to revise the computation of prevailing wage levels in a manner that more effectively ensures the employment of certain immigrant and nonimmigrant workers does not adversely affect the wages of U.S. workers similarly employed."

Business Roundtable applauds this action by the agency to gain an understanding of all sources of data and methodologies for determining prevailing wage levels, so that DOL can address substantive concerns with the methodology underlying the current rule. DOL must consider the rule's impact on companies across industries, of all sizes, and in all geographic areas throughout the U.S. that rely on these programs. It is vital that DOL take into account the realities of how employers compensate their employees.

Business Roundtable urges DOL to address substantive concerns with the methodology in the current rule before implementing any changes to prevailing wage requirements. Though the January 14, 2021 Final Rule included some welcome changes, such as a phase-in period to higher wages, the methodology remains flawed and has no basis in the statute.

For example, 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 our member 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. It would also negatively impact U.S. universities and companies' talent pipelines by limiting work opportunities for foreign graduates, including those studying in high-demand science, technology, engineering, and mathematics (STEM) fields.

The agency should continue to follow all procedural requirements under the Administrative Procedure Act (APA).

When an agency overturns decades of law and regulations affecting programs that are this important, it must do so thoughtfully and provide employers and employees with sufficient time to prepare for changes. Business Roundtable encourages DOL to carefully consider all data and input it receives in response to the RFI. If DOL chooses to issue a new proposed rule with revised wage levels, Business Roundtable requests that the agency provide a full 60-day comment period, and then consider 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.

Business Roundtable thanks DOL for approaching this issue in a measured way and urges the agency to finalize the delay as soon as possible, to provide certainty to companies regarding the legal requirements. Business Roundtable encourages DOL to fully review the rule and consider all information and data it receives in response to the RFI, and to issue any new proposal in full compliance with the APA.

Business Roundtable appreciates the opportunity to comment on this proposal and looks 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.