

NAFSA: Association of International Educators
Updated June 2021

U.S. Department of Labor (DOL)

Below are specific recommendations for advancing international education:

- **Rescind the Recent Final Rule That Radically Changed the Way Prevailing Wages Are Determined.**

On January 14, 2021, DOL published a final rule titled “Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States”, at 86 FR 3608, in response to federal courts having set aside an October 8, 2020, interim final rule of the same title. The January 14, 2021, final rule set a new effective date of March 15, 2021, with a phased implementation plan to begin until July 1, 2021, or after. While welcome, the implementation delay does not fix the flaws in the application of the four-tier wage-level system when Occupational Employment Statistics (OES) data used as the wage data source for prevailing wage determinations. This results in significantly higher prevailing wage determinations in each OES-based wage level that are inconsistent with wages actually paid to U.S. workers. We urge the Department to rescind and withdraw the rule.

UPDATE: On June 23, 2021, the U.S. District Court for the Northern District of California issued an order in Chamber of Commerce, et al. v. DHS, et al., No. 4:20-cv-07331, which nullified or “vacated” the January 14, 2021 final rule, and sent the matter back to DOL. This court action was in response to DOL’s request to withdraw the rule. On June 29, 2021, DOL announced on its website: “In light of these delays and now the June 23, 2021 order vacating the Final Rule, the operative version of the regulations at 20 CFR 656.40 and 20 CFR 655.731 continues to be the version in place on October 7, 2020, prior to the publication of the IFR.”

- **Limit the Period for Auditing a Labor Certification Application to 90 Days.**
The current audit processing time is approximately 19 months, clearly indicating that DOL’s audit process is not only inefficient and ineffective, but punitive for employers. This unreasonably lengthy process greatly restricts academic institutions’ access to qualified faculty and researchers. DOL’s audit provisions should be revised to allow DOL a 90-day period to process an audit once it has received the required information and documentation from the employer. An application should be approved if DOL has not completed its review within this reasonable time period. **20 CFR 656.17(b)**

- **Update and Refine Occupational Categories, Descriptors, and/or Data, such as the Standard Occupational Classification (SOC) System Used in DOL's O*NET System (<http://www.onetonline.org>) to Better Align the Prevailing Wage Determination Process for Visa Categories with the Evolving U.S. Job Market. Specifically:**
 - **Amend the SOC to Add New “Detailed Occupations” for Medical, Pharmacy, and Veterinary Residents and Fellows as Follows:**
 - Under 29-1020 (Dentists)
 - Add 29-1025 (Dentistry Residents, Fellows, and Interns)
 - Under 29-1210 (Physicians)
 - Add 29-1225 (Medical Residents, Fellows, and Interns)
 - Under 29-1240 (Surgeons)
 - Add 29-1244 (Surgical Residents, Fellows, and Interns)
 - Under 29-1050 (Pharmacists)
 - Add 29-1052 (Pharmacy Residents, Fellows, and Interns)
 - Under 29-1130 (Veterinarians)
 - Add 29-1131 (Veterinary Residents, Fellows, and Interns)
 - **Add “Detailed Occupations” for Postdoctoral Fellows and Research Associates.**

Amend the SOC to include the “detailed occupation” Postdoctoral Fellows and Research Associates under each of the Life, Physical, and Social Science Occupations.
 - **Revise Category 11-9033 Education Administrators, Postsecondary.**

The SOC category “11-9033 Education Administrators, Postsecondary” is simply too broad to be accurate or useful. For example, the category would apparently include both a Provost and a Program Administrator. The occupation should be further divided or delineated to remedy the problem. For example, the category might be divided based on the amount of management and supervision of others involved, such as Education Administrators, Postsecondary (managerial) and Education Administrators, Postsecondary (non-managerial).
 - **Add New Interdisciplinary Occupations.**

The current SOC does not include many relatively new interdisciplinary occupations such as Bioinformatician, Biotechnologist, and Geobiologist, among many others. This often leads the Office of Foreign Labor Certification to consider these “combinations of occupations” and provide inaccurate prevailing wage determinations. The Bureau of Labor Statistics (BLS) should research emerging interdisciplinary occupations and create categories for them. When this is not possible or practicable, BLS should update the Direct Match Title List (https://www.bls.gov/soc/2018/soc_2018_direct_match_title_file.pdf) extensively to associate new occupations with the correct category and encourage proper use of the SOC.

➤ **Provide a Thorough Explanation of the “All Other” Category.**

BLS should better articulate the usefulness of the “all other” category as an essential element of the SOC structure. It currently uses terminology such as “residual” to define these occupations, which might lead public and private users of the SOC to undervalue the occupations associated with the “all other” coding. We recommend revising SOC classification principle no. 8 to remove the word “residual,” and add a new clause to the second-to-last sentence in the paragraph, such as, “...when it is determined that the detailed occupations comprising a broad occupation group do not account for all of the workers in the group, even though such workers perform a distinct and important role.”

UPDATE: On June 25, 2021, DOL announced a delay in the implementation of the 2018 SOC code changes until July 2022. This delay is a needed first step to implementing NAFSA’s above recommendation to “Update and Refine Occupational Categories, Descriptors, and/or Data, such as the Standard Occupational Classification (SOC) System Used in DOL’s O*NET System to Better Align the Prevailing Wage Determination Process for Visa Categories with the Evolving U.S. Job Market” because instead of providing increased specificity to match the U.S. job market, the 2018 SOC code changes would aggregate occupations and geographical locations. For example, the 2018 SOC code change would aggregate the detailed postsecondary teaching occupations, which are currently surveyed separately, into a single “postsecondary teachers” category. Smaller geographical data groupings would be aggregated into larger geographical groupings.