



December 19, 2023

Charles L. Nimick
Chief, Business and Foreign Workers Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Submitted Electronically via regulations.gov.

RE: Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers (USCIS-2023-0005)

Dear Chief Nimick:

As the voice of all things work, workers and the workplace, [SHRM](#) is the foremost expert, convener and thought leader on issues impacting today's evolving workplaces. With 325,000 members in 165 countries, SHRM impacts the lives of more than 235 million workers and families globally. SHRM's membership of HR professionals and business executives sits at the intersection of all things work, workers and the workplace, helping to set positive collaboration and workplace cultures where workers and employers thrive together. As such, SHRM welcomes the opportunity to submit the following comment in response to the proposed rule by U.S. Citizenship and Immigration Services ("USCIS") within the Department of Homeland Security ("DHS") to amend its regulations governing H-1B specialty occupation workers (the "Proposed Rule").

I. Introduction.

In 2023, SHRM marked its 75th anniversary and is looking toward its centennial year by advancing policy recommendations that will make the world of work better. The Immigration and Nationality Act (INA) is in dire need of updating, as the entire culture of work has shifted drastically since the last major amendment more than 30 years ago. Therefore, SHRM welcomes the Proposed Rule as it seeks to modernize and improve the efficiency of the H-1B program, add benefits and flexibilities, and improve integrity measures, all of which are in alignment with SHRM's data-driven [Workplace Immigration Policy Recommendations](#). SHRM's [2023 Workplace Immigration Research](#) confirms that while employers have positive experiences overall with their foreign-born workers, that stands in contrast to the levels of positive experiences with the system as a whole. Additionally, a majority of employers agree that the United States is losing out on talent because of its immigration system, with support for that sentiment spread relatively evenly across various regions, employer sizes and industries.

Overall, SHRM applauds the various elements of the Proposed Rule that help ensure flexibility in key parts of the H-1B life cycle, which in turn work to better align H-1B standards with the growing importance of skills-based hiring. SHRM respectfully submits this comment in the hopes that USCIS appreciates the importance of the U.S. immigration system for U.S. employers and the critical need for a flexible strategy to allow U.S. employers to have access to top global talent when implementing their organizational missions.

II. Applauding the introduction of flexibility and offering suggestions for further continuation of this important goal.

SHRM would like to acknowledge USCIS's efforts to introduce flexibility into a classically rigid system. According to SHRM's comprehensive workplace immigration research, employers see workplace immigration as a solution to workforce challenges and a driver of economic growth for the U.S. to remain competitive, but the U.S. immigration system holds them back. In particular to H-1B participants and the program itself, most organizations report positive experiences with high-skilled workers on H-1B visas (92%), but only (74%) of organizations report positive experiences with the H-1B program. SHRM would like to acknowledge and voice support for USCIS's proposed clarification, as it relates to H-1B classifications and degree attainment, that "normally" does not mean "always" within the criteria for a specialty occupation. This simple change will create greater clarity and consistency for our membership and U.S. employers at large.

As USCIS moves toward the final rule, we are hopeful that it will look to maximize flexibility in other aspects of the rule. One area of particular concern to many of our members is the seeming reduction in flexibility that will result from the proposed change at 8 CFR 214.2(h)(4)(iii) (A)(3), which would require that an H-1B employer normally require a "U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent, for the position." Per the Proposed Rule, "the additional phrase about a 'degree in a directly related specific specialty' would reinforce the existing requirements for a specialty occupation, in other words, that the position itself must require a directly related specialty degree, or its equivalent, to perform its duties." This proposed change may be interpreted to state, for example, that degrees in business administration are general degrees that fail to provide graduates with sufficient specialization to qualify for H-1B. Degrees such as business administration should not be excluded from the definition of a "specific specialty," as business administration degrees are generally characterized by depth and complexity, which do indeed provide their graduates with relevant specialized knowledge and are highly sought-after by U.S. employers. SHRM expresses concern that the above provision may not be in conformity with how hiring managers view those particular degrees when assessing a candidate's application. Since, by law, U.S. employers must show that the hiring practices for H-1B beneficiaries and American workers are identical, this restriction will impose artificial and unnecessary burdens on the hiring of both U.S. workers and H-1B beneficiaries, which does not further the objective of ensuring that only those in specialty occupations will qualify for H-1B approval. USCIS should not seek to restrict educational requirements beyond what was intended in the INA and in a manner that is inconsistent with specific content ordinarily included in these degree programs.

Another area for increased flexibility, which will only seek to create greater clarity and consistency for U.S. employers, would be to automatically extend F-1 status and related employment

authorization to April 1 of the relevant fiscal year, rather than October. By allowing for status and work authorization to extend beyond October 1, visa holders and employers alike will have greater certainty that the visa holder is legally authorized to work during all relevant periods of employment, which may include onboarding or the holder's completion of a degree. This is an important step, as more than 2 in 3 employers (68%) agree that they would benefit from a more streamlined process to access American-educated foreign-born talent. Additionally, American universities were by far the most-cited source for the recruitment of foreign-born workers. U.S. employers depend on American universities to source educated talent to meet their workforce needs. Allowing simple flexibility as they pertain to a start date will allow for better recruitment efforts, as it will reduce uncertainties that a foreign-born worker would inadvertently fall out of status.

Finally, SHRM welcomes USCIS' proposal to modernize the definition of employers who are exempt from the annual statutory limit on H-1B visas. The proposal to change the definition of "nonprofit research organization" and "governmental research organization" by replacing "primarily engaged" and "primary mission" with "fundamental activity" to permit a nonprofit entity or governmental research organization that conducts research as a fundamental activity but is not primarily engaged in research or where research is not a primary mission, to meet the definition of a nonprofit research entity. This change would introduce greater flexibility regarding the types of organizations that can utilize the cap exemption. That, in turn, would increase the number of legally authorized foreign-born workers and aligns with SHRM research that found that 57% of responding organizations report they would benefit from an increase in legally authorized workers on visas.

III. Enabling the U.S. workplace immigration system to allow for greater utilization of skills-based hiring.

While the labor market continues to cool, organizations are still competing for talent. Beyond the scramble for talent, 2 in 5 organizations report that the positions they've hired for in the last 12 months have required new skills.¹ This means that to evaluate candidates and find the necessary talent, organizations must incorporate holistic, well-rounded views that go beyond mere degree attainment.

Understanding that U.S. employers are still citing skills gaps among applicants in the categories of both "hard" and "soft" skills, employers must have the opportunity to assess their needs and employ all reasonable criteria to find the right candidate. SHRM advocates for the H-1B and degree attainment clarification in the final rule to include alternative training programs, such as apprenticeships, as this would better align H-1B rules with the growing importance of skills-based hiring. SHRM's Talent Trends Research found that of organizations that already offer registered or customized apprenticeship programs, 57% plan to expand their programs over the next five years. Further, companies that are utilizing apprenticeships are seeing a return on investment, with 3 in 4 organizations with apprenticeship programs saying these have been somewhat (53%) or very effective (22%) in addressing talent shortages in their organization. Additionally, among the 90% of organizations that offer apprenticeship programs, 52% of respondents say their apprentices have better retention rates compared with workers from traditional backgrounds. For U.S. employers to

¹ [Talent Trends: Recruitment Challenges, Skills Shortages, Skills-Based Hiring, and AI in HR.](#) SHRM.

thrive in today's modern workplace, they must be afforded the opportunity to assess and judge talent in ways that work best for their organization. This includes allowing organizations to employ tactics that may have been considered "nontraditional" just five years ago, e.g., skills-based hiring and apprenticeship programs, which are now vital to meet organizational needs. SHRM believes that such practices must be included in modernizing the U.S. workplace immigration system, including the H-1B program.

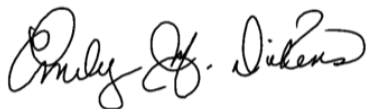
IV. Recognizing safeguards and integrity measures to ensure the security of the immigration system.

While SHRM will continue to advocate for the U.S. workplace immigration system to remove arbitrary or antiquated barriers to accessing talent, SHRM and its membership are invested in the integrity and security of the U.S. immigration system. According to SHRM Research, more than two-thirds (68%) of survey respondents say that the screening process to allow foreign-born workers to remain and work in the United States should be strenuous to address potential security concerns. This high level of review is consistent with USCIS's inclusion of several integrity measures within the proposed rule, particularly the change in the cap selection process to select registrations by unique beneficiary. This measure promises to remedy abuses of the cap selection process that have resulted in considerable unfairness to many employers who followed the rules of the process and were honest in their responses on petition forms and yet may not have had an application selected through the cap selection process.

V. Conclusion.

SHRM appreciates the work of USCIS and the opportunity to offer assistance as USCIS finalizes regulations to modernize the H-1B system. SHRM shares USCIS's and DHS's interest in an immigration system that is honest, efficient, fair and transparent, and that advances the interests of all. SHRM has long advocated for workplace immigration initiatives that remove arbitrary barriers to recruiting, hiring, transferring and retaining top talent, especially workers educated and trained in the United States. To grow our economy, employers must be able to recruit the most qualified candidates for open positions. As always, SHRM is committed to elevating the collective experience and expertise of our membership to assist USCIS and DHS in creating policies that protect work, workers and the workplace.

Sincerely,

A handwritten signature in black ink that reads "Emily M. Dickens". The signature is written in a cursive, flowing style.

Emily M. Dickens
Chief of Staff, Head of Public Affairs & Corporate Secretary