

April 21, 2021

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

Re: Employment and Training Administration [DOL Docket No. ETA-2020-0006]
RIN 1205-AC00 Strengthening Wage Protections for the Temporary and Permanent
Employment of Certain Aliens in the United States: Proposed Delay of Effective Date and
Transition Dates

Submitted online via www.regulations.gov.

Dear Administrator Brian D. Pasternak:

On behalf of the National Foundation for American Policy (NFAP), a nonpartisan policy research organization, I submit this comment to support the proposed delay of the effective date for the rule entitled “Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States” to November 14, 2022.

We agree with the Employment and Training Administration (ETA) that the additional extension of the effective date is necessary to provide adequate time to review this regulation, per the Presidential directive as expressed in the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review” directing agencies to consider delaying the effective date for regulations for the purpose of “reviewing questions of fact, law, and policy” raised therein.

In support of this review, we have attached a February 2021 report by the National Foundation for American Policy that analyzes the significant problems with the underlying rule and the many issues of “fact, law and policy” that the rule raises.

Among the questions of fact, law, and policy relevant to review in considering whether to delay the effective date to undertake a review are events or developments that have occurred since the Department of Labor published the final rule. That includes the Biden administration revoking the Trump administration’s “Buy American and Hire American” executive order which was cited as a primary authority for issuing the rule. It is cited in the “Need for Regulation” and the “Objectives of and Legal Basis for the Final Rule” and also as the justification for the “Amendments to the Computation of Prevailing Wage Levels Created by the Final Rule.”

In addition, to justify a significant departure in how DOL sets minimum salary levels for H-1B visa holders and employment-based immigrants, the final rule cited a controversial computer programmer memo that the Biden administration withdrew following a loss in the 9th Circuit on

the definition of a specialty occupation. In short, in addition to other problems, the DOL final rule was based on an executive order and a policy memo that both have been withdrawn.

Sincerely,

[Signature Redacted]

Stuart Anderson
Executive Director
National Foundation for American Policy