



April 20, 2023

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Biden:

On behalf of the American Council of Engineering Companies (ACEC) – the national voice of America’s engineering industry – I am requesting your assistance in ensuring that engineering firms can access the workforce they need to design the vital projects that are funded by the Infrastructure Investment and Jobs Act (IIJA), the Inflation Reduction Act (IRA), and the CHIPS and Science Act.

Founded in 1906, ACEC is a national federation of 51 state and regional organizations representing more than 5,500 engineering firms and nearly 600,000 engineers, surveyors, architects, and other specialists nationwide. ACEC member firms drive the design of America’s infrastructure and built environment.

Data from the Bureau of Labor Statistics shows that the engineering workforce was at full employment before implementation of IIJA, IRA and the CHIPS and Science Act. The ACEC Research Institute highlighted concerns about capacity in its most recent quarterly engineering business sentiment study when it reported that 49 percent of firms have turned down work specifically due to workforce shortages.

ACEC supports expanded STEM education as a long-term solution to the workforce needs of America’s engineering industry. Near term, it is also essential to enable firms to hire global talent when qualified Americans are not available. There are not enough U.S. citizens or permanent residents to meet the workforce needs of engineering firms. At the same time, a significant number of engineering students at U.S. universities come from abroad, a point underscored by a 2019 American Society for Engineering Education study that found that over half of engineering master’s and doctoral degrees awarded by U.S. universities were earned by international students.

Our member firms use F-1 Optional Practical Training (OPT), H-1B visas, and employment-based green cards to supplement their workforce when qualified Americans are not available. There is an insufficient supply of these visas to meet overall demand

and ACEC is working with Congress to increase the number of H-1B visas and recapture unused employment-based green cards from past years.

As we work with Congress, ACEC would appreciate any steps the Administration can take to prioritize engineers designing the infrastructure funded by IIJA, IRA, and the CHIPS and Science Act within existing employment-based visa program. We are also asking the Administration to improve the OPT, H-1B and green card programs. We greatly appreciate the Administration's recent action to allow immediate premium processing of National Interest Waiver petitions and we would like to make the following suggestions for additional improvements.

H-1B and Other Specialty Occupation Workers

- Modify Material Change Amendment Requirements. Filing amended petitions with USCIS is very expensive and time consuming for U.S. employers. Currently, a change in worksite location (outside the already approved metro area) or a minor reduction in hours is deemed a material change requiring an amendment to be filed with USCIS.

When there is a change to a new worksite location outside the metro area approved in the initial petition, a new LCA must be posted, filed with DOL, and a new H-1B amendment petition filed with USCIS. DOL and USCIS could provide that when an employer files a new LCA with DOL for a new worksite outside the previously approved metro area, where all other pertinent data remain the same, including the job title, job description, and standard occupational classification, an H-1B amendment petition need not be filed with USCIS. USCIS does not certify or confirm prevailing wage, therefore, USCIS's review of such amendment petitions is minimal, and arguably unnecessary.

This would also serve to assist employers with remote and hybrid work requests. In some instances, remote and hybrid work requests arise after H-1B petition approval, and such work may be from home or other location outside the metro area approved in the initial petition. Again, an amended petition requirement is costly, and it is unclear what additional purpose is served when a new LCA is filed with DOL, and USCIS is reviewing a petition that is identical in all respects, except for an LCA certified by DOL with a new worksite location and prevailing wage.

Similarly, a minor reduction in hours can trigger the need for filing a new LCA and amended H-1B petition with USCIS. Regulations could be amended to provide greater "tolerance," perhaps of a certain percentage, that would not trigger the need for new filings in the case of a minor reduction in hours.

- Specialty Occupation Guidance for Engineers. In an effort to reduce costs (both monetary and time) associated with unnecessary requests for evidence (RFEs), we

recommend USCIS issue guidance confirming that any engineering degree will support any engineering position to meet the definition of specialty occupation. RFEs questioning the ties among various engineering major fields are counterproductive, expensive, and may ultimately lead to U.S. employers not finding the talent they require. U.S. employers of engineers know the requirements for the roles they seek to fill, and they are clearly specialty occupations – individuals with degrees in unrelated fields (such as literature, history, sociology, etc.) will not qualify.

- Prohibit multiple entries in the lottery for the same individual. The electronic registration process that was started in 2020 has important benefits for employers. However, we have also seen a sharp increase in the number of registrations, and it appears that some individuals are being entered in the lottery multiple times by separate companies. Although we expect that there will continue to be more registrations than available visas, prohibiting multiple entries in the lottery for the same individual would better align the lottery process with the number of H-1B visas.
- Return to LCA instant certification. We recommend a return to instant certification of Labor Condition Applications (LCAs). DOL regulations require the agency to review LCAs for completeness and obvious errors or inaccuracies. In the past, DOL used to instantly certify electronic LCAs based on automated review. In certain cases, a bounce back for further administrative review would be issued by DOL's electronic system where issues were automatically identified with the LCA (e.g., private wage survey name not recognized). Currently, DOL takes one week in each LCA case before issuing certification. It is unclear how much DOL staff review occurs during this one-week period.

That saved week would be invaluable to U.S. employers in change of employer cases. The change of employer process typically requires weeks to accomplish before a worker is employment authorized with a new employer. A return to full immediate electronic LCA certification by DOL would provide a substantial benefit to U.S. employers. Electronic systems, as they did previously, can flag any LCAs requiring additional manual review by DOL staff.

F-1 Optional Practical Training (OPT)

- Expand STEM OPT. F-1 OPT allows foreign students to work for just one year following graduation from a U.S. university. The Obama Administration expanded OPT eligibility to U.S. STEM graduates for an additional two-year period.

The large increase in new H-1B registrations has made it more difficult for recent graduates of our universities to secure H-1B status after graduation and build their careers in the U.S. To increase the likelihood of recent STEM graduates of U.S.

universities to be able to remain in the United States and work for U.S. employers that critically require their talents, we urge the Administration to extend the available period of work authorization an additional two-year period, for a total eligibility of five years. This will provide recent graduates with additional time to potentially win a spot in the H-1B lottery and a pathway toward H-1B work authorization in the United States.

- Dual Intent. We recommend expanding the dual intent concept to F-1 student visa holders so that they may pursue permanent residence in the United States, potentially without the need to secure H-1B status. This would be very helpful for employers to retain recent noncitizen graduates.

Employment Based Green Cards

- Expand DOL Schedule A Shortage Occupations. DOL could expand the list of Schedule A shortage occupations beyond professional nurses and physical therapists to include engineers. This would permit employers to bypass the lengthy and costly PERM labor certification process for engineers and expedite the issuance of permanent residence.
- Premium Processing for Additional Steps. The availability of premium processing for additional parts of the permanent residence process would facilitate the availability of workers. Premium processing of I-485 Adjustment of Status applications, I-765 EAD applications, and DOL processes (Prevailing Wage Determinations, PERM applications) would greatly reduce the time required to secure permanent residence, which can require years.

Thank you for your consideration and please let us know how we can assist in this matter.

Sincerely,

A handwritten signature in black ink, reading "Linda Bauer Darr". The signature is fluid and cursive, with the first name "Linda" being the most prominent.

Linda Bauer Darr
President & CEO