



**April 1, 2022**

**Ms. Lindsey Baldwin**  
**Director**  
**National Prevailing Wage Center (“NPWC”)**  
**U.S. Department of Labor**  
**Employment and Training Administration**  
**Office of Foreign Labor Certification**  
**200 Constitution Ave NW**  
**Room N-5311**  
**Washington, DC 20210**

**RE: Prevailing Wage Determinations**

Dear Ms. Baldwin:

We write today to request the Department of Labor (DOL) to take specific actions to help an industry in crisis. Specifically, we are requesting the DOL to improve its process/timeliness of issuing prevailing wage determinations for Schedule A petitions, which is limited to physical therapists and registered nurses.

We do not need to explain the labor shortage to you. Your agency long ago recognized registered nurses and physical therapists as a shortage occupation for purposes of the permanent residence immigration process, designating those two occupations as “Schedule A.” The nursing shortage has become critically worse as Covid-19 has led many to leave the nursing field and as more nurses reach the age of retirement.

While petitioning employers of registered nurses and physical therapists get to bypass the “PERM” labor certification process, employers must still obtain a prevailing wage determination from the DOL. We do not object to this requirement. However, we believe there should be a more streamlined process for wage determinations for registered nurse and physical therapist positions.

We know the DOL “has a long-standing policy of not expediting any applications” on a case-by-case basis; however, the DOL does currently prioritize types of prevailing wage requests. Specifically, the DOL has different queue for H-1b, H-2b, PERM in which processing times vary depending upon the category. The chart below shows the categories and processing dates.<sup>1</sup>

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<sup>1</sup> In practice, our members have noted some prevailing wage requests are taking longer than the stated processing time.

Processing Queue	OES Receipt Date <sup>i</sup>	Non-OES Receipt Date <sup>i</sup>
CW-1	January 2022	N/A
H-1B	August 2021	June 2021
H-2B	January 2022	January 2022
PERM	September 2021	June 2021

We believe the DOL should create a separate category for “Schedule A” instead of lumping Schedule A cases under the PERM processing queue. This is warranted because of the occupation shortage and the relative simplicity in the wage analysis needed for registered nurse occupations.

- **Shortage occupation:** The DOL has recognized registered nurses and physical therapists as a shortage occupation, yet it still treats that occupation on the same par as every other occupation in which a petitioner/employer submits a prevailing wage request. This is even more problematic for registered nurses because the waiting period for a prevailing wage determination for a registered nurse not only delays the permanent residence process but also delays the start of employment. Since there is not a feasible temporary visa option for nurses,<sup>2</sup> most prospective employers of foreign-educated registered nurses must rely on the permanent residence route in which the nurse completes the immigrant process abroad before entering the U.S. to begin employment. In contrast, the majority of prevailing wage requests for other occupations (under the PERM process) are filed by companies who are sponsoring permanent residence for current employees who already have the benefit of working in the U.S. during the processing of the permanent residence application.
- **Simplicity of wage analysis:** There is only one category for Registered Nurses (SOC 29-1141) under the DOL wage survey. Thus, unlike other occupations, the DOL does not have to do extensive analysis to assign the proper occupation (SOC 29-1141). Furthermore, the duties and requirements for a registered nurse (degree and license) are standard, so it does not require extensive analysis to assign the appropriate wage level.<sup>3</sup> The same applies to physical therapists: there is only one occupational classification under the DOL wage survey for physical therapists and the job duties are standard such that it doesn’t require extensive analysis to assign the appropriate wage level.

The prevailing wage determination is the one bottleneck that delays employers in filing an Immigrant Petition for registered nurses. Creating a separate queue and a more reasonable timeframe for wage determinations for registered nurses would not only help the healthcare industry but would also benefit the DOL. Because of the long, unpredictable processing time for a prevailing wage determination, petitioners are submitting multiple filings which is creating additional work for the DOL. For example, petitioners often do the following:

1. File a prevailing wage request for all the locations where the organization may possibly file for a nurse: A lot of foreign-educated nurses are unwilling to accept an offer with an organization that does not already have a prevailing wage determination in place and ready to file the I-140

<sup>2</sup> The TN category is limited to only Canadian citizens and Mexican citizens.

<sup>3</sup> While petitioners subject to a collective bargaining agreement involves more complexity, those applications represent a relatively small number of the prevailing wage requests for registered nurses.

Immigrant Petition, because nurses are unwilling to wait the 5 to 6 months that it takes to get a wage determination. Thus, a prospective employer usually needs a current prevailing wage determination at the time of recruitment to be able to get the nurse to commit to that organization, otherwise the nurse will choose a different employer.

2. File duplicate prevailing wage requests between January and March: healthcare petitioners with current prevailing wage determinations try to plan ahead to get a new prevailing wage determination before the June 30<sup>th</sup> expiration date. However, if the prevailing wage determination is issued before July 1<sup>st</sup> it is valid for only 90 days, meaning the employer has to file another prevailing wage request valid through June 30<sup>th</sup> the following year. To try to avoid a gap in time when an employer has no valid prevailing wage (between expiration of current pwd and issuance of the next pwd), employers often file duplicates to try to stagger the validity periods. Because of the uncertainty of whether a prevailing filed in January or February will be issued before or after the new wage survey is released on July 1<sup>st</sup>, employers try to file duplicates to avoid a gap in prevailing wages. Thus, an employer may file a new prevailing wage request in January (expecting it to be approved in May or June for a 90-day validity) but then follow up with a new prevailing wage request in March (expecting it to be issued after July 1<sup>st</sup>).

The above are valid, justifiable practices based upon the employer need. However, they create additional work for the DOL that would not exist if the DOL had a more timely, predictable processing time to issue prevailing wage determinations for registered nurses and physical therapists. Thus, we are calling on the DOL to help the healthcare industry and also provide a way for the DOL to lighten its already heavy caseload.

Sincerely,



**Mark Parkinson**  
President & CEO  
American Health Care Association



**LaShuan Bethea**  
Executive Director  
National Center for Assisted Living



**Katie Smith Sloan**  
President & CEO  
LeadingAge



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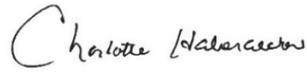
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