Two Issues to Consider for Your Comment on the H-1B Modernization Proposed Rule

On October 23, 2023, the Department of Homeland Security published a notice of proposed rulemaking to modernize certain aspects of the H-1B program. Comments are due on December 22, 2023.

While the proposed rule includes a broad range of changes on which the Presidents’ Alliance, Niskanen Center, and others will be commenting, there are two issues that would benefit greatly from direct institutional input and examples. This is a timely and much-needed opportunity for colleges and universities to inject important context into the conversation surrounding the definition and criteria of specialty occupations and their connections to students’ degrees and courses of study. If your campus is considering submitting a public comment, we wanted to bring two specific issues to your attention.

Issue #1: Problematic language re: general degrees
The proposed rule would add language stating that “a general degree is insufficient” to qualify for a specialty occupation. In particular, the proposal states that, “a position is not a specialty occupation if attainment of a general degree, such as business administration or liberal arts, without further specialization, is sufficient to qualify for the position.”

- Why is this concerning? Colleges and universities have great autonomy over the naming and curricula of their degree programs; names of degree programs evolve over time; and general degree programs can include specific minors, concentrations or courses of study that are not reflected in the degree name itself. Basing an evaluation of specialty or skill on the name of a degree program could potentially minimize the qualifications of many knowledgeable graduates. For example, a 2020 Report listed “business administration/management” as among the top 5 degrees listed in job postings for AI/Al adjacent positions.
- What can higher education institutions provide in a comment? Colleges and universities could provide examples and details of how their students are able to specialize, whether formally through concentrations or informally through course selection, or develop key skills through their degree programs, including through more broadly named programs, such as business administration or liberal arts, or show the evolution of degree names. Information about the career paths of graduates from these programs may be helpful as well.

Issue #2: Problematic language re: field of study being directly related to the position to be filled
The proposed rule codifies the requirement that the field of study be directly related to the position to be filled. In particular, it reads, “A position may allow a range of degrees or apply
multiple bodies of highly specialized knowledge, provided that each of those qualifying degree fields or each body of highly specialized knowledge is directly related to the position."

- **Why is this concerning?** The requirement on the “direct relationship” between the degree and job ignores that degree titles often do not describe students’ courses of study, the positions they are qualified for, and the job duties they perform. A footnote explains that while the proposal’s examples refer to degree titles for expediency, if the rule were enacted, USCIS would still evaluate the course of study, rather than merely the title. However, the proposed language fails to capture that intention and does not direct USCIS to look at the relationship that is truly of interest – the relationship between the duties to be performed and the course of study, which includes the classes taken, skills and training acquired, and knowledge obtained. This mismatch of language and intention could later be misinterpreted as requiring a relationship between the position title and degree name.
  ○ For example, a [2020 Declaration](https://example.com) by an Amazon representative notes “Amazon employs a data scientist who possesses a degree in psychology with substantial coursework in statistics and economics . . . a software engineer who possesses a degree in chemical engineering . . . a Senior Product and Customer Insights Manager who possesses a degree in Public Administration, Applied Economics, and Finance . . .”

- **What can higher education institutions provide in a comment?** Higher education institutions are best positioned and qualified to provide examples of the diversity of skills or courses encapsulated in a single degree program. This information may be critical in encouraging DHS to align the language of its rule with the practices that it intends to continue in this regard - including adding references to *courses of study* and, relatedly, *job duties*.

**Articles/Resources**

[USCIS Changes H-1B Visa Lottery, Extends Cap-Gap For Students](https://example.com) by Stuart Anderson *(Forbes)* - discussion of proposed rule

[Weak revisions to skilled worker visas do little for US businesses](https://example.com) *(The Hill)* - opinion piece on proposed rule