**heather** stewart@acip.com
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To: John F. Morrall III/OMB/EOP@EOP

cc:
Subject: Comment for 67 Federal Register 15014

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John Morrall
Office of Information and Regulatory Affairs
Office of Management and Budget
NEOB
Room 10235
725 17th Street, NW
Washington, DC20503

Dear Mr. Morrall,

Attached, please find ACIP's comment to the Notice from the Office of Management and Budget, Draft Report to Congress on the Costs and Benefits of Federal Regulations (67 Federal Register 151014). Please let me know if you are unable to open this document of if I may provide any further information.

Best regards,
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ATTACHMENT
(See attached file: OMB Reg. FINAL.doc)

- OMB Reg. FINAL.doc

May 28,2002

**VIA COURIER AND EMAIL**

John Morrall
Office of Information and Regulatory Affairs
Office of Management and Budget
NEOB
Room 10235
725 17th Street, NW
Washington, DC20503

**Re: Draft Report on the Costs and Benefits of Federal Regulations (67 Fed. Reg. 15014, (March 28,2002))**

Dear Mr. Morrall,

The American Council on International Personnel (ACIP) is pleased to have the opportunity to provide comments regarding the costs and benefits of federal regulation. We will address regulations governing the nonimmigrant and immigrant visa programs, the alien labor certification process, and the I-9 employment verification process. While many other INS and DOL regulations impose unnecessary costs and burdens on U.S. employers and could be made much more effective and efficient, we deemed the few rules discussed below to be the ones having the greatest impact on U.S. employers.

ACIP is an organization of 300 corporate and institutional members with an interest in the movement of personnel across national borders. Each of our members employs at least 1,000 employees worldwide; and in total ACIP members employ millions of U.S. citizens and foreign nationals in all industries throughout the United States. ACIP sponsors seminars and produces publications aimed at educating human resource professionals on compliance with immigration laws, and works with Congress and the Executive Branch to facilitate the movement of international personnel. Our comments on the H-1B program and permanent labor certification are similar to those addressed by the U.S. Chamber of Commerce.

# A. DEPARTMENT OF LABOR

## 1. H-1B PROGRAM

**Regulating Agency:** Department of Labor (DOL)

**Citation:** Interim Final Rule on 20 CFR Parts 655 and 656, Labor Condition Applications and Re4equirements for Employers Using Nonimmigrants on H-1B Specialty Occupations and as Fashion Modes; Labor Certification for Permanent

Employment of Aliens in the United States, 65 Federal Register **245** (December 20, 2000)(RIN 1215-AB09)

**Authority:** 8 U.S.C. Section 1101 *et. seq*.

**Description of the Problem:**
On December 20,2000, the Department of Labor (DOL) issued an Interim Final Rule (IFR) regarding the H-1B program. Approximately 300,000 H-1B petitions are filed annually by employers seeking to initially hire H-1B nonimmigrants or extend or change the status of existing H-1B employees. The mandates imposed by the IFR exceed the statutory authority provided by the Immigration Act of 1990, the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) and the American Competitiveness in the *2* 1st Century Act (AC21) and impose confusing, unnecessary and burdensome paperwork requirements on U.S. employers.

Eighteen months after implementation, DOL has not issued the promised explanatory guidance to assist employers in complying with this complex regulation. The legislative history of ACWIA clearly limits DOL's ability to burden employers with detailed paperwork requirements. DOL, however, micromanages business practices. The inordinate records requirements impose significant costs on employers without counterbalancing benefits to U.S. workers or the public. The IFR presents further difficulties for employers in the areas of short term placement, traveling employees, wage and benefits issues, and an overall disregard for normal business practices or necessities.

**Proposed Solution:**
ACIP urges the DOL to rescind the IFR and issue a Notice of Proposed Rulemaking that addresses the issues mentioned above, as well as the comments received by the Department in response to the IFR. At a minimum, the Administration should promulgate a new Interim Final Rule that is easier for employers to understand and that more carefully balances the costs and benefits of the requirements placed on employers.

**Economic Impact:**
Approximately 300,000 H-1B petitions are filed annually, by applicants who include employers seeking to initially hire and H-1B employee and extensions and change of status requests for existing H-1B employees. Addressing the above mentioned concerns would greatly reduce the costs associated with the process.

## 2. PERMANENT LABOR CERTIFICATION

**Regulating Agency:** Department of Labor (DOL)

**Citation:** Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System, amending 20 CFR Parts 655 & 656; Proposed Rule, 67 Federal Register 30466 (May 6,2002) (RIN 1205-AA66)

**Authority:** 8U.S.C. Section 1101 *et. seq.*

**Description of the Problem:**
ACIP fully supports efforts to streamline and automate the permanent labor certification program and to eliminate the current backlogs and lengthy delays confronting employers seeking to sponsor needed employees. The proposed rule, however, does not accomplish these goals.

The proposed rule reimposes outmoded processes of testing the labor market, does not take full advantage of technology, and ignores individual business needs. The proposed rule discourages companies from training and promoting their best employees in that it does not allow for experience gained with an employer. Penalty provisions do not target "willful" or "intentional" violations of law nor allow for corrective measures for those employers who attempt good faith compliance.

**Proposed Solution:**
**A** final regulation must adopt a new paradigm for labor certification. DOL should explore avenues that would present efficiencies of scale such as pre-certifying established U.S. sponsors or multiple openings. The Department also could improve the current proposed rule by incorporating practices it accepts in the current Reduction in Recruitment program that has been operating successfully for several years, and by recognizing legitimate employer recruitment efforts as a baseline requirement.

**Economic Impact:**
Developing a reasonable streamlined permanent labor certification program would save tremendous resources for the government and employers alike. The present backlog of cases may be greatly reduced with a workable streamlined process.

## B. IMMIGRATION AND NATURALIZATION SERVICE

### 1. 1-9 EMPLOYMENT VERIFICATION

**Regulating Agency:** Department of Justice, Immigration and Naturalization Service

**Citation:** Proposed Rule, Reduction in the Number of Acceptable Documents and other Changes to Employment Verification Requirements, 63 Federal Register 5287 (February 2, 1998)(RIN 1115-AE94)

**Authority:** 8 U.S.C. Section 1324a

**Description of the Problem:**
ACIP has long supported an employment verification system that is uncomplicated, fair, minimizes uncertainties and is efficient for both employers and employees. We strongly

support minimizing the number of acceptable documents and the use of clear, concise and user friendly forms and regulations. The Proposed Rule reducing the number of documents acceptable for 1-9 purposes was issued in 1998. ACIP believes that this rule must move forward to allow employers to have clear guidance regarding acceptable documents for employment verification.

Generally, those persons engaged in completing 1-9 forms are not attorneys, nor are they skilled in the nuances of immigration law and procedures. Large employers make tremendous efforts and are forced to spend huge amounts of money to comply with I-9 requirements. Many have extensive in-house training programs devoted solely to this issue. Most large employers have also instituted a system of manpower to implement intensive regular self-audits. Smaller employers often do not have such resources at their disposal. Despite employers' best efforts, personnel tasked with the employment verification process do not always understand all of the variations on status a work-authorized person may hold and mistakes are frequently made. Any efforts the Service makes to simplify the process would be welcome.

**Solution:**
The vast majority of the end-users of the form 1-9 will only see the form and its instructions. Because of this reality, ACIP believes it is most important that the form itself and the accompanying instructions and employer manuals be clear, concise and consistent. The INS must issue interim rule reducing the number of documents available for I-9 purposes. The instructions must be updated to reflect the new requirements and the changes in available documentation for verification purposes.

**Economic Impact:**
On June 23, 1999, the INS estimated that the average employer would require nine minutes to fill out the Form 1-9, with record keeping requiring four minutes. (64 Federal Register 33520). The total public burden was estimated at 13,020,000 hours. (Id.) ACIP believes that the burden is grossly underestimated and does not reflect employer experience. Employers must know what documentation is available for employment verification purposes. Clarification of the I-9 requirements will save employers money by easing compliance. **A** new I-9 and updated instructions will allow employers more easily and quickly train employees on the requirements.

2. **JOINT FILING OF THE FORM 1-140, IMMIGRANT PETITION FOR ALIEN WORKER, AND FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS.**

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|---|---|
| **Regulating Agency:** | Department of Justice, Immigration and Naturalization Service |
| **Citation**: | **8** CFR 204, 8 CFR 245 |
| **Authority:** | 8 U.S.C. Section 1101; 8 U.S.C. Section 1103; 8 U.S.C Section 1153; 8 U.S.C. Section 1154, 8 USC Section 1182; |

8 USC Section 1186a; 8 USC Section 1255; 8 U.S.C. Section 1641.

**Description of the Problem:**
Presently when an employer files the INS Form 1-140, Immigrant Petition for Alien Worker, a separate filing must be made for the Form I-485 Application to Register Permanent Residence or Adjust Status. **INS** has discussed "concurrent" filing of these forms for a number of years. Filing these forms separately creates additional work and delays for the government and the employer.

**Proposed Solution:**
**A** regulation must be promulgated allowing the joint filing of the I-140 and 1-485. At the very least, INS should issue a policy memo allowing such joint filings and instructing the field offices on proper adjudication of these petitions.

**Economic Impact:**
Joint filing of the 1-140 and the 1-485 would save the **INS** valuable staff resources, allowing an Ajudications Officer to review both filings simultaneously. Separate review of both forms duplicates INS Adjudications Officers efforts, straining already thin resources. Joint filing would also eliminate the need to file for advance parole, work authorization and other documents necessary to maintain the foreign national's status simply because of the lag in processing from the I-140 to the 1-485.

ACIP applauds the OMB's effort to solicit public comment on the costs and benefits of federal regulations. We are happy to work with you further on this issue. If you have any questions concerning our comment, please contact me at (202)371-6789. or by email: lynn_shotwell@acip.com.

Sincerely,

Lynn Shotwell
Legal Counsel and Director of Government Relations