



Engagement Summary
Buy American and Hire American Listening Session
Thursday, April 18, 2019
2 to 4 p.m. Eastern

Overview

On April 18, U.S. Citizenship and Immigration Services (USCIS) hosted a listening session on the implementation of the Buy American and Hire American (BAHA) Executive Order and efforts to strengthen protections for U.S. workers. Officials from USCIS, the Department of Labor (DOL), and the Department of Justice (DOJ) gave remarks and listened to feedback from the public.

During this listening session, USCIS and other attendees heard from displaced U.S. workers, industry leaders, practitioners, and academics. Their input will enable USCIS to determine the effectiveness of its efforts to implement the BAHA Executive Order. Participants from across the country attended in person or by phone. Twenty members of the public attended in person and approximately 500 members of the public called in.

Summary

The listening session moderator was Kathryn Rexrode, Associate Director, External Affairs Directorate, USCIS. The speakers included L. Francis Cissna, Director, USCIS; Mary Thomas, Deputy Assistant Attorney General, DOJ; Molly Conway, Acting Assistant Secretary, Employment and Training Administration, DOL; Keith Sonderling, Acting Administrator, Wage and Hour Division, DOL; and Michael Hoefler, Chief, Office of Performance and Quality, USCIS.

The full remarks by Director Cissna and the presentation by Michael Hoefler are posted separately on the USCIS Electronic Reading Room. Below is a summary of the listening session.

As moderator, Associate Director Rexrode started the listening session by outlining the purpose of the engagement as an opportunity to hear feedback from various members of the public to help USCIS determine the effectiveness of its efforts to implement the BAHA Executive Order.

She stated that while feedback provided during the engagement might pertain to ongoing rulemakings that directly or indirectly relate to this executive order, comments specific to any of the open rulemakings should be submitted consistent with the instructions in the applicable Federal Register notice. She also noted that while feedback or questions might come up during the listening session, USCIS would not be commenting on any of the open rulemakings or other matters that relate to ongoing litigation.



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Lastly, Associate Director Rexrode reminded everyone not to share case-specific information in their comments and that USCIS wished to listen to the valuable feedback from the public, but would not respond to the comments during the session.

In Director Cissna's welcome remarks, he contextualized the progress USCIS has made in implementing the BAHA Executive Order since its issuance in 2017. Director Cissna discussed USCIS BAHA accomplishments in the last two years, as well as agency goals for the future.

Deputy Assistant Attorney General Mary Thomas provided information on the enforcement of the BAHA Executive Order undertaken by DOJ. Acting Assistant Secretary Molly Conway and Acting Administrator Keith Sonderling provided perspectives on DOL's initiatives to implement, regulate, and enforce provisions of the BAHA Executive Order under their department's labor and wage jurisdiction. Lastly, Chief Michael Hoefer gave a presentation on the USCIS H-1B Employer Data Hub, illustrating the agency's goal of increased transparency.

The listening session portion of the engagement began with remarks from two members of the public. Ron Hira, Associate Professor at Howard University, summarized data from his research and published academic work on the economic impact on the U.S. economy of business visas. Sara Blackwell, an attorney from The Blackwell Firm, gave remarks based on her professional experience with clients negatively impacted by businesses employing foreign nationals who replaced U.S. workers.

The session was then opened for comments from the 20 members of the public who attended the engagement in person. They represented points of view from the perspective of displaced U.S. workers, industry leaders, practitioners, and academics.

The first member of the public to provide feedback stated that "Americans should be the priority in America." She stated that while the BAHA Executive Order was initially consistent with what U.S. workers hoped for, she felt disappointed in the implementation of it.

A reoccurring theme from a few members of the public was "citizenship-based discrimination in employment" leading to U.S. workers being deterred from applying for jobs for which they would otherwise be qualified. They said some employers preferred to hire H-1B workers, failing to consider equally qualified U.S. workers.

Consistent with Professor Hira's presentation was the suggestion to implement an initiative to protect U.S. workers by establishing a Memorandum of Agreement between DOJ and other agencies, including the USCIS Fraud Detection and National Security Directorate, DOL, and Department of State to share information on employers who were targeting U.S. workers for citizenship-based employment discrimination. It was suggested that DOJ and DOL collaborate more closely to fine-tune investigations and prosecutions against employers who use the temporary visa programs to discriminate against U.S. workers.



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Attendees also spoke on the labor certification process, including a need for closer scrutiny of evidence of advanced degrees, minimum salary exemptions, and H-1B workers employed at secondary sites. Frustration was expressed about the theory that 99% of H-1B dependent employers rely on the statutorily-based \$60,000 salary minimum requirement exemption, established by Congress, to justify hiring H-1B workers instead of U.S. workers. Requests were made for more vigorous enforcement under BAHA of all temporary worker visa requirements.

One representative of a labor organization stated that while USCIS has made admirable progress to satisfy the BAHA Executive Order, there has not been enough enforcement. It was suggested that DOJ and DOL need to broadly target industry to let them know they will be punished for not hiring more U.S. workers. It was asserted that industry is using low unemployment rate statistics as an excuse for increasing business visas.

Another member of the public stated that Optional Practical Training (OPT) should not exist and the OPT regulations should be abolished. The person requested more transparency in publically available data on the number of H-1B and L-1 workers, and employer information of all foreign workers.

A representative of technology workers expressed the view that it is in the United States' interest to keep graduates from top American universities from other countries working in the United States. In this person's view, dramatically cutting back on OPT would negatively impact the nation's ability to retain foreign national graduates.

Praise was expressed for the USCIS H-1B Employer Data Hub available online. One member of the public stated that worksite data is usually only available to the public via Freedom of Information Act requests, therefore additional transparency on this topic is appreciated.

One member of the public focused feedback on STEM education programs, stating it is a myth that there are not enough qualified U.S. citizen tech workers. The participant expressed the belief that American children are being forced out of STEM education programs and expressed the view that educational institutions are finding foreign students more attractive, putting U.S. students at a disadvantage to get education, jobs, and internships. The participant observed that American companies are going to other countries, requiring U.S. workers to train their replacements in another country, and then firing the U.S. workers. The participant suggested that the law should be changed to allow Americans to work as contractors to allow them to be more attractive to U.S. employers in the STEM field.

A few members of the public who were displaced U.S. workers shared their perspective on having to train a foreign worker replacement. Two members of the public stated they failed to speak out about being displaced because of their severance agreement.



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At the conclusion of the listening session, Associate Director Rexrode reminded everyone that additional feedback could be shared through USCIS' Public Engagement mailbox at public.engagement@uscis.dhs.gov