H-1B Executive Order Communication

On April 17, 2017, President Trump signed a new Executive Order (EO), entitled “Buy American and Hire American.” This is the second EO signed by the President which directly addresses and has the potential to impact immigration policy.

This latest EO focuses on the H-1B Specialty Occupation Visa program, a visa which Lawrence Berkeley National Laboratory (Berkeley Lab) utilizes, when deemed appropriate, to secure work authorization for some of foreign national employees in highly skilled positions.

This is a two-pronged order, addressing aspects of the H-1B program, along with a focus on federal procurement regulations, aimed at ensuring preference is given to U.S. workers securing federal contracting jobs, over that of foreign bidders.

Specifically, and of most notable interest to our current and future population, is Section 5(a), which states:

“Ensuring the Integrity of the Immigration System in Order to ‘Hire American.’
(a) In order to advance the policy outlined in section 2(b) of this order, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, and consistent with applicable law, propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of United States workers in the administration of our immigration system, including through the prevention of fraud or abuse.”

Further, Section 5(b) states that in order to promote the proper functioning of the H-1B visa program, “the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.”

The above outline language aims to ensure a thorough review of the H-1B program in its entirety and enact subsequent reform of the overall program. However, the EO itself does not contain substantive content to address how exactly this will occur, beyond stating that within 150 days from the date the EO was signed, the findings of the Department of Homeland Security and other related federal agencies will be reported back to the President for review.

At present time, detailed aspects of the plans associated with the EO are unknown; however, it is anticipated that President Trump intends to utilize aspects of the H-1B visa program to send a “powerful message” to the world that America will put American workers first. This message will be reinforced, in part, via a comprehensive review of the H-1B program itself, including ensuring that: a) the most highly skilled, most qualified,
and most highly remunerated applicants are afforded the visa, and b) that the visa is not used as a means to replace U.S. workers. Essentially, this is to return the H-1B program to its historical and original intentions of use, which is to hire specialty occupation workers.

**What does this mean for our population of current and future H-1B visa holders?**

We have consulted with our immigration law firm to analyze potential impacts as a result of this development. For the time being, we do not anticipate any immediate impact or need for immediate changes. We intend to continue utilizing the H-1B visa program as we are currently. Our current employees are not in jeopardy of losing their status or work authorization, nor are they restricted from requesting to extend their status in or to the H-1B category. Also, hiring managers may continue to hire foreign nationals who may require sponsorship of an H-1B visa for work authorization.

Berkeley Lab selects and hires the most qualified candidates for positions at the Lab, regardless of background and nationality. As such, we are confident that we are meeting the requirements and intention of the H-1B program. Berkeley Lab hires the best and brightest, adhering to its mission of bringing science solutions to the world with the understanding that this can only be accomplished by hiring a diverse and widely-disciplined workforce.

Additionally, Berkeley Lab adheres to all regulations associated with the H-1B visa program, including ensuring that we meet or exceed the prevailing wage determination set forth by the U.S. Department of Labor for each applicant’s salary.

Finally, Berkeley Lab is not an H-1B-dependent employer and will not become one. We have a small percentage of our foreign national population who hold this visa type, relative to our entire workforce and foreign national population. Unless we are advised otherwise, we will continue to be afforded the ability to remain exempt from the annual cap limitation associated with the H-1B visa. This cap exemption is provided to non-profit research and government research organizations, and those having an affiliation with an institute of higher education.

We understand that the specific mention of the H-1B program included in the EO may prompt questions and speculation. It is important to note that, at present time, there is no demonstrated change to the program itself or how we administer it at Berkeley Lab. The HR Shared Services’ International Researchers and Scholars Office (IRSO) continues to maintain close contact with our external immigration attorneys to remain informed and knowledgeable regarding any updates that may be forthcoming regarding this EO. Any questions should be directed to a member of the IRSO staff by email at irso@lbl.gov or by calling 510-486-4474.