NO LONGER IN USE: HOW CHANGES IN SOC SYSTEMS AFFECT EMPLOYMENT-BASED IMMIGRATION

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The Standard Occupation Classification (SOC) is a [federal statistical standard](#) used by federal agencies to classify workers into occupational categories. [The Office of Management and Budget (OMB) coordinates the Federal statistical system, including the SOC](#). The SOC Policy Committee assists the OMB in the SOC revision process, and [is comprised of Federal agencies](#) including the Bureau of Labor Statistics, Department of Labor. Most notably, SOC codes are used to categorize nonimmigrant and immigrant workers on the Permanent Employment Certification ("PERM" or Form ETA 9089, used to file most I-140s), the Labor Condition Application ("LCA", necessary to file H-1Bs and other visas) and the ETA 9142B for H-2B workers. The SOC system was created in order to facilitate job classification. It therefore collects occupational data and enables comparison of occupations across data sets.

In assigning the correct SOC code for employment-based petitions, one must compare the proffered position's job duties and its requirements against the system. In addition, the requirement to pay prevailing wages as a minimum salary is mandatory for some employment-based visas. In order to determine the prevailing wage of a geographic area, one must look up the SOC code in the Foreign Labor Certification Data Center Online Wage Library ("[OWL](#)") which is run by the U.S. Department of Labor.

According to the Department of Labor, the SOC serves as the framework for information being gathered through the Department of Labor's Occupational Information Network ([O*NET](#)). The O*NET database includes detailed information on tasks, skills, tools used, credentials, and other information associated with the occupations. Much like the OWL, the information found on

O*NET is listed by the occupation's SOC codes.

Many may not realize the SOC codes exist, however, its use is integral to some employment-based visas and therefore, can result in a denial if not used properly. These codes are based on statistics, however, what happens when the system is updated? The SOC has been revised four times: 1980, 2000, and then again ten years later in 2010. The most recent update is the 2018 SOC system, which was deemed to be a "multi-year process" by the U.S. Bureau of Labor Statistics. In November 2020, the O*NET *25.1* Database incorporated the O*NET-SOC 2019 Taxonomy, which aligned with the 2018 SOC system. It stated, "updates and added new and emerging occupations ensure that the O*NET-SOC taxonomy not only represents the SOC structure, but reflects changes occurring in the world of work due to advancing technologies, innovative business practices, and the new organization of work." However, the OWL still has not caught up with all of the SOC codes listed in the 2018 SOC system. Although the OWL states it integrated O*NET *25.3* on July 1, 2021, (which is later than version 25.1) it still does not reflect all of the changed SOC codes in the 2018 SOC system.

The Problem

In an effort to transition between the different SOC systems and SOC codes, "crosswalks" were developed to portray the changes of that year's update. The crosswalks show which SOC code was replaced by a different title and/or SOC code number. The crosswalk from the 2000 SOC to the 2010 SOC can be found here. The crosswalk from the 2010 SOC to the 2018 SOC can be found here. As stated above, the OWL fails to keep up with the changes in the SOC codes. This causes huge discrepancies. Although not always detrimental to a case, it may cause unnecessary delays such a Request For Evidence ("RFE").

For instance, "15-1031, Computer Software Engineers, Applications" is no longer in use and it was replaced by "15-1132 Software Developers, Applications" in the 2010 SOC system. Then, the 2018 SOC system changed the SOC code again to, "15-1252, Software Developers." But what happens when a PERM was filed in 2011 which used the SOC code based on the 2010 SOC system? Then, 10 years later, the foreign national wants to downgrade their I-140 to take advantage of EB-3 priority dates? Which SOC code should be used on the I-140 form? Use of the 15-1031 SOC code would patch the previously filed PERM, however, it is no longer in use so that may raise flags. Use of the new SOC code

may be effective, however, it may trigger a Request for Evidence. Even if there is an RFE, it could be overcome by explaining that 15-1132 (Software Developers, Applications) has replaced 15-1031 (Computer Software Engineers), which in turn has most recently been replaced by 15-1252 (Software Developers).

Not only are immigrant visas affected by this but the H-1B system also relies heavily on SOC codes. What happens when an SOC code like 15-1132 is used on an LCA because the new SOC code 15-1252 is not reflected in the OWL and thus, one cannot reference the most relevant information to determine the position? Although usage of the "older" SOC codes on LCAs seem to be permitted by the USCIS, there is significantly less detailed information on the OWL for each SOC code than O*NET. While the O*NET provides detailed explanations for each SOC code based on the 2018 SOC System, we are left using the 2010 SOC system to determine prevailing wage information. In responding to specialty occupation RFE's, this system forces individuals to not only argue the specialized nature of the position, but that the O*NET also sees it as a specialty occupation in order to strengthen the argument. In some cases, this requires one to dig into the O*NET archives to find the older 2010 SOCs.

In an occupation like technology it is understandable that SOC codes require changes. However, the impact of these changes on petitions filed by employers for immigrant and nonimmigrant visa classifications are not formally addressed, and therefore, require us to connect the SOC code dots.

Finally, it should be noted that the Office of Foreign Labor Certification Data Center ("OFLC) has delayed the implementation of the 2018 SOCs to July 1, 2022. While O*NET has updated its system to the 2018 SOCs, the 2010 SOCs are archived in O*NET. Stakeholders can only use the 2010 SOCs until July 1, 2022, when the OFLC makes them go live in the Foreign Labor Application Gateway (FLAG), OWL, and in the PERM portal.

(This blog is for informational purposes and should not be viewed as a substitute for legal advice).

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