

March 13, 2023

Samantha Deshommès  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue, NW  
Washington, DC 20529

**Re: DHS Docket No. USCIS 2021-0010**

Dear Ms. Deshommès:

On behalf of the American Council on Education and the undersigned higher education associations, I write to offer comments on the proposed rule from the Department of Homeland Security (DHS) published in the *Federal Register* on January 4, 2023, Docket No. USCIS 2021-0010. We appreciate the opportunity to comment on the proposed rule to adjust certain immigration and naturalization benefit request fees charged by the U.S. Citizenship and Immigration Services (USCIS).

We realize that USCIS is primarily funded by fees charged to applicants and petitioners for immigration and naturalization benefit requests, and we appreciate that the agency has not adjusted the fee schedule since 2016. We support the efforts of USCIS to waive fees for certain categories of immigrants, including refugees, certain Afghan refugees, and Deferred Action for Childhood Arrivals recipients, and to reduce the cost for asylum seekers.

The United States welcomed over 948,500 international students in the 2021-22 academic year, a rebound from a historic drop during the COVID-19 pandemic. International scholars and faculty have returned to our campuses following the transition to online classes during the pandemic, and campuses are starting to return to normal. However, under this proposed rule, USCIS is seeking an almost 40 percent overall increase in fees to many of the programs important to U.S. higher education and to our international students, faculty, and staff. We are concerned that the severity of these fee increases will deter these international scholars.

Moreover, USCIS continues to suffer under slow adjudication times, which has resulted in processing times increasing from 30-90 days up to 120+ days, which is not a reasonable timeframe. We are in favor of reasonable fee increases if this will result in more regular processing for our institutions, as well as our international students and faculty. However, we are also concerned that funding USCIS programs through large fee increases is no longer a sustainable model and recommend that USCIS request a congressional appropriation that funds its humanitarian programs.

In addition, this proposed rule would create separate forms, processes, and new fees based on specific classifications for different applicants. Future H-1B applications could include up to

four separate forms, duplicating information and increasing the chance of errors and substantially increasing the burden on applicants, including our campuses. We ask that USCIS seek to simplify these processes as opposed to making them more complicated.

Below are specific concerns regarding the proposed rule that will impact the U.S. higher education community, including increases for international students, impact on institutions as employers, and changes to premium processing.

### *Impact on International Students*

Increased competition with nations such as China threatens the United States' position as a global leader in scientific innovation and economic growth. However, our complicated and costly immigration system is increasingly impacting students' decisions about whether to study here. U.S. colleges and universities are part of a worldwide network of learning, research, and education, and our institutions enroll millions of students from all over the world in undergraduate, graduate, and professional degree programs, as well as hire and collaborate with highly skilled international faculty and staff. Many of these international students and scholars have gone on to invent groundbreaking technology, start thriving businesses, and create jobs for American workers.

Many of our international students are attracted to the quality and opportunity of our postsecondary education, as well as the ability to participate in Optional Practical Training (OPT), which allows them to stay and gain work experience for up to three years after the conclusion of their studies. In the 2021-2022 academic year, over 184,000 international students participated in OPT.<sup>1</sup> While colleges and universities value OPT because it is a key component for many international students' postsecondary education and a powerful incentive that encourages students to study here, the U.S. business community also relies on OPT to recruit and employ talented individuals.

International student enrollment at U.S. institutions of higher education has only just started to rebound following the COVID-19 pandemic and is further bolstered by this administration's concerted efforts to deliver a more welcoming message to international students. However, we face continued and growing competition for international talent from other countries, such as Canada and the UK, which have recently introduced new immigration laws to make studying and working in those countries more desirable.

OPT remains an enormous draw for international students seeking to study in the United States. As part of this proposed rule, the filing fee for the I-765, Application for Employment Authorization, would increase from \$410 to \$650, or by 59 percent. We are concerned that this large increase will discourage international students and make the OPT program less attractive. We ask that students applying for OPT or STEM OPT be exempted from the proposed increase for Form I-765 fees.

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<sup>1</sup> 2022 Open Doors data: <https://opendoorsdata.org/>

### *Impact on highly skilled employees and employers*

Collectively, tens of thousands of H-1B nonimmigrants are employed by U.S. colleges and universities, which rely on these highly skilled professionals in campus classrooms, research settings, interdisciplinary study, and university hospitals and clinics. These individuals contribute to groundbreaking research, provide medical services to underserved and vulnerable populations, offer specialized and advanced training programs, and enable language study. They also hold critical jobs maintaining the infrastructure necessary for the institutions' operations, including serving as information technology professionals, grant writers, and facilities professionals.<sup>2</sup> In 2019, colleges, universities and professional schools sponsored over 27,700 people for H-1B status.<sup>3</sup>

Institutions seeking to hire nonimmigrant workers, including H-1B workers, must file an I-129, Petition for a Non-Immigrant Worker. In this rule, DHS is now proposing different fees for Form I-129 based on the nonimmigrant classification being requested in the petition, the number of beneficiaries on the petition, and, in some cases, according to whether the petition includes named or unnamed beneficiaries. The current base filing fee for Form I-129 is \$460. The Form I-129 for H-1 classification would increase from \$460 to \$780 (a 70 percent increase) and would include an additional \$215 fee for electronic registration (increased from a \$10 fee in the previous rule). While the fee increase for the H-1B classification is lower than the other nonimmigrant classification increases, it is still substantial. This sudden increase for H-1B filings will have significant budgetary impact on many of our institutions that rely on H-1B visa holders for many positions, including continued academic and research activities.

USCIS also proposes to fund the asylum program with a \$600 fee “paid by any employers who file either a Form I-129, Petition for a Nonimmigrant Worker, or Form I-140, Immigrant Petition for Alien Worker.” While we support efforts to support asylum seekers, we believe it would be far more equitable to share the cost with other nonimmigrant classifications, not just the I-129 fees. If spreading the cost to other categories is not possible, then we ask that USCIS exempt institutions of higher education from the additional \$600 fee. There is a precedent for such an exemption, as the *American Competitiveness and Workforce Improvement Act of 1988* exempted colleges and universities from H-1B fees used to fund a new program to support scholarships for STEM students.<sup>4</sup>

### *Impact on Premium Processing*

We appreciate USCIS efforts to address the current backlog and processing delays and support the use of premium processing fees to address these issues. However, continuing to raise the premium processing fee—which has become the standard for many applicants due to continuing delays—is not a sustainable model. Premium processing has also come at the expense of regular cases languishing in exceedingly long queues. Some institutions of higher

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<sup>2</sup> See October 30, 2020 higher education amicus brief in support of plaintiffs in *Purdue University vs. Eugene Scalia, Secretary of Labor*: <https://www.acenet.edu/Documents/Amicus-brief-DDC-H1B-visas.pdf>

<sup>3</sup> 2019 H-1B visa report: <https://www.myvisajobs.com/Reports/2019-H1B-Visa-Category.aspx?T=IN>

<sup>4</sup> See Sec 414 Collection and Use of H-1B Nonimmigrant Fees for Scholarships for Low-Income Math, Engineering, and Computer Science Students and Job Training of U.S. Workers.

education submit almost 100 percent of H-1B cases under premium processing because campuses need predictability for staffing and teaching purposes.

We are concerned that the proposed rule is seeking to extend the premium processing timeline from 15 calendar days to 15 business days, which will cause further delays for applicants. It would be especially helpful if the administration would publicly commit to maintaining premium processing without the service interruptions that have characterized this essential option in the past. This option is especially important in connection with I-539 Applications to Extend/Change Nonimmigrant Status and I-129 Petitions for Nonimmigrant Worker for those in H-1B status.

We look forward to continuing to work with the Department of Homeland Security and USCIS to support and strengthen pathways for our international students and scholars to study and work at our U.S. institutions of higher education.

Sincerely,



Ted Mitchell, President

On behalf of:

ACPA-College Student Educators International  
American Association of Collegiate Registrars and Admissions Officers  
American Association of Community Colleges  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Universities  
Association of Catholic Colleges and Universities  
Association of Governing Boards of Universities and Colleges  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities  
College and University Professional Association for Human Resources  
Consortium of Universities of the Washington Metropolitan area  
Council of Graduate Schools  
Council on Social Work Education  
EDUCAUSE  
ETS  
NAFSA: Association of International Educators  
National Association for College Admission Counseling  
National Association of Colleges and Employers  
National Association of College and University Business Officers  
National Association of Independent Colleges and Universities  
Presidents' Alliance on Higher Education and Immigration