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May 19, 2021

Samantha Deshommès, Regulatory Coordination Division Chief  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
5900 Capitol Gateway Drive  
Camp Springs, MD 20746

Re: Docket No. USCIS-2021-0004

Dear Chief Deshommès,

The American Council on Education (ACE) and the undersigned higher education associations submit these comments in response to Docket Number: USCIS-2021-0004 concerning how U.S. Citizenship and Immigration Services (USCIS) can reduce administrative and other barriers and burdens within its regulations and policies, including those that prevent foreign citizens from easily obtaining access to immigration services and benefits. We appreciate USCIS efforts in this area, as our students, international scholars, and faculty have been greatly impacted by the overall slowdown of processing and the addition of new and proposed requirements over the past several years.

U.S. colleges and universities are part of a worldwide network of learning, research, and education. Our institutions enroll millions of students from all over the world in undergraduate, graduate, and professional degree programs. Many of these students and scholars have gone on to invent groundbreaking technology, start thriving businesses, and create jobs. The over one million international students that currently attend U.S. colleges and universities add to the United States' intellectual and cultural vibrancy, while also yielding an estimated economic impact of \$38.7 billion and support for over 415,000 U.S. jobs during the 2019-2020 academic year.<sup>1</sup> However, even with the important economic impact and academic contributions of our international students and scholars, we started to see drops in new international student enrollment, even before the COVID-19 pandemic. The shift in tone and visa-related policies put in place by the former administration sent a troubling message that we no longer welcome members of the international community who wish to study at American campuses, and exacerbated a longer-term decline in U.S. competitiveness. The declining enrollment numbers for 2020 will unfortunately contribute to the challenges our economy confronts as we rebuild from the global pandemic.

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<sup>1</sup> <https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2>

Over the past several years, we believe core problems for prospective international students and scholars include the lack of predictability that surrounds the visa and immigration process, as well as the extremely long processing times and increased fees. Students need assurance that the rules will not suddenly change so they can make plans. Employers also need certainty so they can engage in appropriate workforce planning. The current lack of clarity makes it more challenging for schools to globally compete for international students and advise them about training and employment opportunities.

### ***Strengthen Deferred Action for Childhood Arrivals (DACA):***

We are grateful that President Biden has issued an Executive Order to protect and fortify the Deferred Action for Childhood Arrivals (DACA) program. This is incredibly important given the cloud of uncertainty DACA recipients and Dreamers have been forced to live under since the September 2017 rescission of the DACA policy by the Trump administration. Protections for Dreamers has been a long-standing priority for the higher education community. We have seen these remarkable people up close on our campuses as our students, colleagues, and friends. These individuals are U.S. educated and grew up with American values and traditions, making them American in every way except immigration status, and have made valuable contributions to our country's security and economy. They work and pay taxes. They serve in the military and teach in our schools. Thousands of Dreamers work on the COVID-19 frontlines and tens of thousands of Dreamers have earned or are striving to earn a college degree in institutions across the country. The United States cannot afford to shut the door to an entire generation of individuals who seek to contribute their best to America. We are looking forward to seeing and commenting on a proposed DACA rule.<sup>2</sup>

### ***Withdrawing and Ending Problematic Proposed and Final Rules:***

#### *Duration of Status Proposed Rule*

We respectfully request USCIS completely withdraw the proposed regulations that would limit a fixed duration of admission for international students and restore "duration of status." In our Oct. 26, 2020 comments<sup>3</sup> on the proposed rule, we noted our serious concerns and strong opposition to this proposed rule which would limit the ability of our institutions to recruit and retain F-1 students, as well as J-1 exchange visitors that include scholars, trainees, physicians, and researchers. In withdrawing this rule, the administration should also clearly signal that international students are welcome in the United States and that the new administration will ensure certainty and stability.

#### *Wage-Based Selection Process for H-1Bs*

We also ask that the Department of Homeland Security (DHS) withdraw the rule, which was finalized in the last administration, regarding the creation of a wage-based selection process for H-1Bs. While this rule has been delayed until Dec. 31, 2021, we continue to be concerned that this final rule would have an enormous negative impact on our graduating international students. It would dramatically reduce access to the H-1B visa program for early-career

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<sup>2</sup> March 26, 2021 Statement by Secretary Mayorkas: <https://www.dhs.gov/news/2021/03/26/statement-homeland-security-secretary-mayorkas-daca>

<sup>3</sup> Oct. 26, 2020 higher education comments on DHS Docket No ICEB-2019-0006: <https://www.acenet.edu/Documents/Comments-DHS-Duration-of-Status-102620.pdf>

professionals, including those who have completed master's or doctoral degrees at U.S. institutions of higher education. In addition, foreign-born doctors who have recently graduated and have entered their residency would have no chance of obtaining an H-1B visa under this new rule. While the goal of the rule is laudable, recent U.S. international graduates contribute significantly to the U.S. economy, innovation, and health care. Setting a wage-based cap does not recognize the realities of the positive impact of new graduates that would not be eligible for the highest wages. Furthermore, this would also discourage new international student enrollment at U.S. colleges and universities, which has a direct impact on the overall U.S. economy.<sup>4</sup>

### ***Delays and Issues in Processing:***

#### *Addressing delays for Optional Practical Training (OPT)*

The OPT program is an important part of why foreign students are interested in studying in the United States and further enhances a student's learning and creativity while helping to fuel America's economic innovation. We urge the Biden administration to strengthen OPT and retain the 24-month extension for eligible STEM degree holders. This will allow talented individuals from abroad, trained by U.S. colleges and universities, to continue to make meaningful contributions to the U.S. economy. We continue to be concerned about the slowdown in work authorization processing that over the past four years has caused confusion and problems for international students. We call on DHS to address these processing slowdowns and provide appropriate flexibilities to students and graduates who have submitted timely applications.<sup>5</sup> We appreciate the flexibility extended to applicants to allow for online submissions of the I-765 form, and ask that USCIS consider extending that flexibility permanently.<sup>6</sup>

In addition, the current USCIS practice of not cooperating with designated school officials (DSOs) to reconsider or approve work authorization applications related to OPT when the agency is at fault is a growing concern. The current practice, rather than a simple review and correction of error per DSO request, is that students are required to resubmit a new work authorization application (if their F-1 status is still within the 60-day grace period) or file an I-290B Notice of Appeal or Motion with all associated fees. Both options are costly and lengthy processes, and previously DHS used to work with DSOs to make corrections when USCIS was at fault. This USCIS practice inflicts severe hardship to international students – e.g. financial, loss of employment opportunities, and reduced duration of the authorized OPT period.

#### *Revise Request for Evidence (RFE)/ Notice of Intent to Deny (NOID) Policy*

We ask that USCIS consider revising the current RFE and NOID policy,<sup>7</sup> which slows down review of applications and duplicates evidence already provided. In addition, under the 2018

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<sup>4</sup> See Dec. 2, 2020 higher education comments on DHS Docket NO. USCIS-2020-0019: <https://www.acenet.edu/Documents/Comments-DHS-H1B-Cap-Changes-120220.pdf>

<sup>5</sup> Jan. 26, 2021 higher education comments on OPT delays and request for flexibilities: <https://www.acenet.edu/Documents/Letter-DHS-OPT-Delays-012621.pdf>

<sup>6</sup> April 12, 2021 USCIS announcement for F-1 students seeking OPT: <https://www.uscis.gov/news/news-releases/f-1-students-seeking-optional-practical-training-can-now-file-form-i-765-online>

<sup>7</sup> July 13, 2018 USCIS Policy Guidance for RFEs and NOIDs: <https://www.uscis.gov/news/news-releases/uscis-updates-policy-guidance-for-certain-requests-for-evidence-and-notices-of-intent-to-deny>

updated policy, the adjudicator is granted full discretion to deny applications, petitions, and requests without first issuing an RFE or a NOID, when appropriate. We ask that USCIS review this policy and consider updating it to reflect the need for RFEs, and using them judiciously to avoid duplication of effort and overall slowdown of processing.

### *Increases of processing fees*

We support efforts to ensure USCIS is adequately resourced to permit timely processing of requests. However, we believe any future fee increases should be allocated to increasing efficient processing (hiring more staff, etc.) to address the slow-downs in DHS processing. We have expressed concerns that previous proposals were excessive and burdensome, as well as sending an unwelcoming message to prospective international students.<sup>8</sup> Any proposed increased fees should balance the need to send a welcoming message, along with the need to increase efficiency in processing times.

### *Examination of social media in applications*

In 2020, the Trump administration added new collection information requirements for DHS applications regarding social media.<sup>9</sup> We believe this has contributed to the overall slow-down and increase in denials of applications. We believe there are sensible steps the administration can take to communicate predictability and ensure that our nation can continue to compete successfully for top international talent. We do not seek to undermine a full vetting of a prospective student to protect legitimate U.S. security interests. Rather we ask only that the administration commit to doing this more expeditiously.

### *Restore Premium Processing*

In 2020, USCIS announced the suspension of premium processing for petitions in several categories, including H-1Bs due to the COVID-19 pandemic.<sup>10</sup> We believe that now, as our nation reopens following the pandemic, is the time to restore premium processing, especially as our campuses begin to reopen for the fall 2021 semester and visa processing starts once again.

### ***Restore an Advisory Committee for Higher Education***

We ask that DHS restore a specific advisory committee for higher education to allow for regular communications and conversations. The Obama Administration had previously established the Homeland Security Academic Advisory Committee (HSAAC), which was sunset in 2018. The Trump Administration had established an academic subcommittee under the Homeland Security Advisory Committee (HSAC). However, HSAC included very few members of the higher education community. HSAAC included members of the higher education community, as well as interagency representatives (the Departments of State, Education, and others). When the Committee was functional and held public meetings, it allowed DHS to engage with higher

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<sup>8</sup> See Dec. 23, 2019 higher education comments on Docket Number USCIS-2019-0010:

<https://www.acenet.edu/Documents/Comments-USCIS-visa-fees-122319.pdf>

<sup>9</sup> See Nov. 4, 2019 higher education comments on Docket Number DHS-2019-0044:

<https://www.acenet.edu/Documents/Comments-DHS-social-media-proposed-rule.pdf>

<sup>10</sup> March 20, 2020 USCIS announcement suspending premium processing:

<https://www.uscis.gov/news/alerts/uscis-announces-temporary-suspension-of-premium-processing-for-all-i-129-and-i-140-petitions-due-to>

education stakeholders on a range of relevant topics in a regular manner, including concerns related to international students. HSAAC should be restarted with the same structure as during the Obama administration, with a clear focus on higher education and international students.

We look forward to continuing to work with USCIS on these important issues.

Sincerely,



Ted Mitchell  
President

On behalf of:

Achieving the Dream  
ACPA-College Student Educators International  
American Association of Colleges for Teacher Education  
American Association of Collegiate Registrars and Admissions Officers  
American Association of Community Colleges  
American Association of State Colleges and Universities  
American Association of University Professors  
American Council on Education  
American Dental Education Association  
APPA, "Leadership in Educational Facilities"  
Association of American Universities  
Association of Catholic Colleges and Universities  
Association of Community College Trustees  
Association of Governing Boards of Universities and Colleges  
Association of Independent Colleges and Universities in Massachusetts  
Association of Independent Colleges and Universities in Pennsylvania  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities  
College and University Professional Association for Human Resources  
Connecticut Conference of Independent Colleges  
Council for Advancement and Support of Education  
Council for Christian Colleges & Universities  
Council of Graduate Schools  
Council of Independent Colleges  
Council on Social Work Education  
EDUCAUSE  
EnglishUSA  
ETS  
Higher Education Consultants Association

Hispanic Association of Colleges and Universities  
NAFSA: Association of International Educators  
National Association of College and University Business Officers  
National Association of Colleges and Employers  
National Association of Independent Colleges and Universities  
National Association of Student Financial Aid Administrators  
Phi Beta Kappa Society  
Presidents' Alliance on Higher Education and Immigration