

November 9, 2020

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 20529-2140

Re: DHS Docket No. USCIS-2020-0018

Dear Chief Deshommès,

The American Council on Education (ACE) and the undersigned higher education associations submit these comments in response to Department of Homeland Security (DHS) Docket Number: USCIS-2010-0018 regarding the interim final rule “Strengthening the H-1B Nonimmigrant Visa Classification Program.” The interim final rule (IFR) rewrites multiple regulatory definitions to restrict the eligibility for H-1B visas holders for various jobs, restricting and in a number of instances largely eliminating the ability of colleges and universities to hire these visa holders for important faculty and research positions. In addition, we remain concerned that this major and impactful change is being done through an interim final rule, thereby bypassing the regular rulemaking process.

In FY 2019, more than 21,000 H-1B visa holders¹ worked at colleges and universities, filling essential faculty and research positions, making this an important part of the academic workforce on many college campuses. H-1B visa holders fill crucial positions for our campus communities, including faculty, clinical faculty, researchers, physicians, scholars, medical residents, fellows, and professional staff, in the areas of medicine, science, engineering, dentistry, liberal arts, language study, and public health, among others. Many of the H-1B faculty often teach in the high-needs STEM fields, and are essential to the education and training of the next generation of U.S. scientists and researchers.

Most concerning for institutions of higher education, the DHS IFR will change the definition of specialty occupation. Section 2 of the IFR, “Amending the Criteria for Specialty Occupation Positions,” states: “To conform to the statutory definition of a ‘specialty occupation’ and promote consistent adjudications, DHS is eliminating the terms ‘normally,’ ‘common,’ and ‘usually’ from the regulatory criteria.” This change

¹https://www.uscis.gov/sites/default/files/document/reports/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf

means that the petitioner will have to establish that the bachelor's degree in a specific specialty or its equivalent is a minimum requirement for entry into the occupation in the United States by showing that this is "always the requirement for the occupation as a whole, the occupational requirement within the relevant industry, the petitioner's particularized requirement, or because the position is so specialized, complex, or unique that it is necessarily required to perform the duties of the specific position."

In addition, the IFR under (A), "Criteria for a Specialty Occupation," states that the candidate must hold, "A U.S. baccalaureate or higher degree in a directly related specific specialty." This is concerning because institutions of higher education hire for faculty positions in broad departments that include many subspecialties, such as engineering, which can include several degrees. This will impact our ability to attract a broad group of candidates for a faculty position in many important fields. For instance, a posting for a faculty position may not require a degree in a specific subspecialty and could be filled by someone with a degree in more than one discipline, such as different types of engineering degrees. As another example, a posting may include similar language to "...requires that the individual holding this position possess a Bachelor's degree or higher in Mechanical Engineering, Computer Science or a related technical or engineering field (or the equivalent)."

Further, the IFR provides that "where the beneficiary will be working at a third-party worksite, the maximum validity period for an approved petition is 1 year." This could impact clinical faculty, residents, and fellows placed at teaching hospitals, as well as researchers collaborating with colleagues on research projects. We ask the Department to clarify that such activities would not be subject to this 1-year limit.

The harm from this IFR will be felt by students, hospital patients, researchers, and faculty and it will hurt the critical work of U.S. colleges and universities. It will affect existing programs and research projects that can no longer be adequately staffed, lead to limitations in or the discontinuance of certain courses of study, narrow the pipeline for continued growth in high- and emerging-technology fields, and deter foreign students from coming to study in the United States. In addition, we remain concerned that this major and impactful change is being done through an interim final rule. We ask DHS to withdraw this harmful IFR before it can impact hiring at U.S. colleges and universities, as well as have long-term negative consequences on the education of our students and important research activities in support of the U.S. economy, health care field, and innovation.

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 Association of University Professors
American Council on Education
American Dental Education Association
American Psychological Association
APPA, "Leadership in Educational Facilities"
Association of American Colleges and Universities
Association of American Medical Colleges
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
Council for Advancement and Support of Education
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council of Graduate Schools
Council of Independent Colleges
Council on Governmental Relations
EDUCAUSE
ETS
Hispanic Association of Colleges and Universities
NAFSA: Association of International Educators
NASPA - Student Affairs Administrators in Higher Education
National Association for Equal Opportunity in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
State Higher Education Executive Officers Association