

January 2, 2019

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

Electronically submitted to www.regulations.gov

RE: Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens
83 Fed. Reg. 62406 (December 3, 2018)
RIN 1615-AB71

Dear Chief Deshommes:

As associations representing our nation's public and private nonprofit institutions of higher education, we write in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM) concerning the "Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens" (Docket Number No. USCIS-2008-0014 dated December 3, 2018).

The administration is right to examine ways to retain more international talent with advanced degrees from U.S. universities. These graduates are particularly critical to our nation's economic growth, innovation, and international competitiveness. According to Bureau of Labor Statistics data, jobs requiring an advanced degree are projected to grow the fastest. However, a number of policy changes in the proposed rule, combined with inadequate data and opportunity to study the impact, raises significant concerns.

We respectfully request that the comment period be extended and that U.S. Citizenship and Immigration Services (USCIS) engage in a consultative process with all relevant stakeholders – including the higher education community – before implementing significant changes that might disrupt the petition process for the upcoming FY2020 application season beginning on April 1, 2019. We appreciate the agency's stated intention of modernizing and streamlining the H-1B petition process. While we are pleased to see the agency's recognition that advanced-degree graduates from U.S. universities are essential to the U.S. workforce, we respectfully submit that the 30-day comment period is insufficient to ensure the receipt of meaningful feedback on this complex and important matter.

While the proposed rule would only impact H-1B cap-subject employers, which by definition does not include colleges and universities as employers, we believe the rule could foreclose opportunities for some international students to contribute to our economy after graduation. Specifically, we are concerned that the short timeline for implementation of the pre-registration requirement would have unintended consequences that could potentially harm the ability of

international students to secure employment following graduation. If USCIS moves forward with the proposed rule, **we request a delay of implementation to the FY2021 cap season to mitigate any disruption the new requirements could cause.**

We are particularly concerned about the proposed implementation timeline and the uncertainty that the proposed rule creates for “cap-gap” status for F-1 visa holders seeking to adjust their status to an H-1B. As you know, “cap-gap” allows F-1 students to remain in the United States lawfully under their F-1 visa status should their H-1B visa not be issued before their October 1 start date for employment. Under current practice, the cap-gap period begins once the petition for an H-1B visa is pending or conditionally approved. Under the proposed rule, a cap-subject employer must wait to file its petitions during a designated 60-day period assigned by USCIS. We are concerned that the framework put forward in this NPRM does not adequately address how students on F-1 status will be protected by a comparable “cap-gap” to account for the differentiated timeline in H-1B issuance. As a result of USCIS’ August 9 policy memorandum that changed the way the agency calculates unlawful presence for international students, there are very serious consequences if a student falls out of status. **We urge you to explicitly address this issue and ensure that cap-gap protections take effect once a *pre-registration* is filed – preceding the official *petition* filing – on behalf of the student beneficiary.**

While colleges and universities are exempt from the pre-registration process, we are concerned that under the proposed policy, a student or graduate might be penalized for unintentional or unknown errors made in the pre-registration submitted on their behalf. The NPRM notes that no corrections or amendments can be made once a pre-registration has been electronically submitted. Should a pre-registration application omit a signature or misspell the beneficiaries’ name, for instance, or contain any other similar clerical error, there is no recourse to cure the mistake or challenge a finding. We share the request put forward in comments from the Compete America Coalition asking that the agency develop protocols for reasonable corrections of information.

While the proposal to reverse the selection process will expand opportunities for university graduates with a master’s degree or higher, the ramifications for graduates with less than a master’s degree are uncertain. The tight turn-around time of both the comment period and the implementation period does not allow for the careful data analysis required to confirm that the proposed change will not result in a drastic decrease in H-1B visas for highly-skilled bachelor’s degree holders from U.S. institutions. Should petitions for all eligible advanced degree holders from U.S. institutions be granted before the 85,000 cap is reached, the agency should ensure the remaining visas are made available to other eligible applicants until all visas in the lottery are honored. We are concerned that uniquely qualified, U.S.-educated, bachelor’s graduates with specialized knowledge or technical expertise might be significantly disadvantaged under the proposed selection process. International students seeking to pursue an undergraduate education in the United States may be dissuaded from doing so if they believe their employment prospects post-graduation will be diminished. This has the potential to further exacerbate the alarming downward trend in international student enrollment and ultimately undermine the intent of the proposed rule to retain the world’s very best talent.

Our organizations have long supported efforts to expand employment opportunities for domestic and international graduates from U.S. universities so they can contribute to our economy.

For international graduates, we recognize that the most impactful changes to permit them to contribute to our economy must come from Congress by expanding the total number of H-1B visas available and exempting graduates from U.S. universities from green card limits.

Thank you for your consideration of our views. Please do not hesitate to reach out to Hanan Saab at hsaab@aplu.org if we can be helpful as you consider promulgating a final rule.

Sincerely,

Association of Public and Land-grant Universities
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
National Association of Independent Colleges and Universities