

December 22, 2023

Charles L. Nimick, Division Chief  
Business and Foreign Workers Division  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
5900 Capital Gateway Drive  
Camp Springs, MD 20746

Re: DHS Docket No. USCIS-2023-0005

Dear Division Chief Nimick,

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-2023-0005, the proposed rule “Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers.” We appreciate that the administration is seeking to modernize and improve the H-1B system for specialty occupation workers. U.S. institutions of higher education are impacted under this proposed rule as employers as well as institutions educating international students who graduate and then seek to remain in the U.S. as highly trained professionals.

Collectively, tens of thousands of H-1B visa holders are employed by colleges and universities, which rely on these highly skilled professionals in campus classrooms, research settings, interdisciplinary study, and university hospitals and clinics, among other places. These professionals 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 by serving as information technology professionals, grant writers, and facilities professionals.

Provisions we support:

**H-1B Registration Process:** Within the proposed rule we support the change to a beneficiary-centric lottery system. This change is not only beneficial for individual international students but is also critical in addressing and mitigating potential fraud within the H-1B program. The current lottery system, with its capacity for multiple registrations per beneficiary, inadvertently opens doors for manipulation and abuse. Such practices can disadvantage genuine applicants, including international students who depend on a single application for their chances at an H-1B visa. By focusing on unique beneficiaries rather than the number of registrations, the proposed system promotes a more equitable and transparent process. By reducing opportunities for abuse and ensuring a level playing field, we believe the beneficiary-centric system proposed will help

individuals applying through the lottery.

**Deference:** We also support codifying the deference policy (8 CFR.1(c)(5)), already in use by DHS under the USCIS Policy Manual, which “instructs officers to consider prior determinations involving the same parties and facts” when there are not material changes or new information that would adversely impact the application. Codifying this practice will uphold consistency and reliability in decision-making and can be helpful in speeding up the processing of applications. For higher education institutions, which often file repeated petitions for the same individuals, such as faculty or researchers, this policy can significantly reduce the administrative burden with the USCIS filing process.

**Normally Does Not Mean Always:** We support the introduction of the new regulatory subsection at 8 CFR 214.2(h)(4)(iii)(A)(5), which establishes a clear guideline for adjudicators that the term ‘normally’ in specialty occupation criteria does not equate to an ‘always’ requirement. This amendment aligns with current agency practices and legal precedents, ensuring a more nuanced approach to determining the qualifications necessary for specialty occupations. This is particularly beneficial for higher education institutions, where the variety and complexity of roles often do not fit into a rigid ‘always required’ framework for specific degrees. By codifying this flexible interpretation, the amendment provides greater certainty and clarity in the H-1B visa-adjudication process, enabling higher education institutions to effectively utilize the program for attracting and retaining a diverse range of global talents essential for academic and research excellence. While we support the revisions at 8 CFR 214.2(h)(4)(iii)(A)(5) for their clarity and alignment with existing practices, we note that there are other aspects within 8 CFR 214.2(h)(4)(iii)(A) related to the definition of specialty occupation that we believe require further refinement. These concerns are detailed in a subsequent section of our comments.

**CAP-GAP Extension:** We strongly support the “automatic extension of authorized employment under 8 CFR 214.2(f)(5)(vi)” and DHS’s efforts to make the “CAP-GAP” extension more flexible for our graduating students. The CAP-GAP extension has been in place since 2008 and extends the period of authorized stay and the work authorization for qualified non-immigrants moving from Optional Practical Training into an H-1B position until the start of the fiscal year (Oct. 1). The proposed rule would provide an automatic extension until April 1 of the relevant fiscal year for which H-1B status is being requested. This will allow flexibility for our international graduates, as well as for employers seeking to retain and hire our students.

**Itinerary Requirement:** DHS is proposing to eliminate the itinerary requirement (under proposed 8CFR 214.2(h)(2)(i)(B) and (F)), which currently states that “a petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with USCIS...” We support this change and agree that it is largely duplicative of information already provided by the petitioner. This change will be especially helpful for graduates performing medical residencies under H-1B since they may be working at different sites.

Provisions of concern:

**Changes to “Specialty Occupation”:** As educators and employers, we are very concerned about the proposed changes contained in amending the definition of a “specialty occupation” and in “determining whether a position involves a specialty occupation” and the determination of a “specific specialty requirement.” From the proposed rule:

“If the minimum entry requirement for a position is a general degree without further specialization or an explanation of what type of degree is required, the “degree in the specific specialty (or its equivalent)” requirement of INA section 214(i)(1)(B), 8 U.S.C. 1184(i)(1)(B), would not be satisfied. For example, a requirement of a general business degree for a marketing position would not satisfy the specific specialty requirement. In this instance, the petitioner would not satisfactorily demonstrate how a required general business degree provides a body of highly specialized knowledge that is directly related to the duties and responsibilities of a marketing position.”

This language is similar to language proposed by the previous administration in 2020, which was opposed by higher education in our community comments and eventually withdrawn.<sup>1</sup> As we stated in those comments, this change 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. The proposed change would negatively impact our ability to attract a broad group of candidates for faculty positions 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).” The goal is to attract and hire the best qualified person to educate the next generation of American students. The proposed “specific specialty requirement” would limit U.S. higher education’s ability to meet this goal.

We are also concerned that these changes to the specialty occupation definition will narrow the pipeline for continued growth in high- and emerging-technology fields and deter foreign students from coming to study in the United States, 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, healthcare field, and innovation. We also support the more detailed comments regarding this proposed change submitted by 74 member institutions, organizations, and concerned coalitions.<sup>2</sup>

In light of these considerations, we respectfully request a reconsideration of the proposed changes to the specialty occupation definition, particularly those that unduly narrow the scope of what constitutes a specialized field of study or specific specialty requirement. It is essential that the H-1B visa regulations continue to reflect and accommodate the evolving dynamics of professional education and the modern workforce, ensuring that the United States remains a hub for innovation and a preferred destination for skilled professionals from around the world. We look forward to working with the administration on strengthening the U.S. economy and

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<sup>1</sup> <https://www.acenet.edu/Documents/Comments-DHS-Interim-Final-Rule-H1B-110920.pdf>

<sup>2</sup> <https://ifp.org/wp-content/uploads/IFP-Multi-Sector-Joint-Comment-on-Spec-Occupation-12-21-2023.pdf>

continuing our pursuit of education and research missions through the use of the H-1B program.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Mitchell".

Ted Mitchell, President

On behalf of:

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 Public and Land-grant Universities

Career Education Colleges and Universities

College and University Professional Association for Human Resources

Consortium of Universities of the Washington Metropolitan Area

Council for Advancement and Support of Education

Council of Graduate Schools

EDUCAUSE

NAFSA: Association of International Educators

NASPA-Student Affairs Administrators in Higher Education

National Association of College and University Business Officers

National Association of Colleges and Employers

National Association of Independent Colleges and Universities

Presidents' Alliance on Higher Education and Immigration