

February 21, 2023

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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: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; CIS No. 2687-21 DHS Docket No. USCIS-2021-0010 Proposed rule; NAFSA comment on the proposed rule**

Dear Ms. Deshommes,

I write on behalf of NAFSA: Association of International Educators to express serious concerns about the proposed rule to increase U.S. Citizenship and Immigration Services (USCIS) filing fees published at 88 FR 402 (January 4, 2023), titled U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements. I urge USCIS to reconsider the proposal and adopt improvements based on the recommendations in this comment letter.

NAFSA is the world's largest association of international education professionals with over 10,000 members nationwide and around the world. International students and scholars, along with the U.S. colleges and universities that educate and employ them, file tens of thousands of petitions and applications with USCIS annually. The United States is a nation of immigrants that is continually renewed by and benefits from new immigrants. We value community engagement by all who live in the United States, and welcome those who wish to become U.S. citizens.

**International students and scholars benefit the United States**

As expressed by President Biden, the United States reaps immeasurable benefits—for our foreign policy, our students' education, our economy, our competitiveness, and our public diplomacy—from attracting the best and brightest minds and the next generation of world leaders to America's educational institutions. Yet at the regulatory level, too often unnecessary barriers and disincentives are placed in their way. Increasing fees is an example of another costly roadblock to international students and scholars.

At a time when competitor nations are focused on attracting and retaining international students and scholars, we cannot afford to price these benefits out of reach for those who want to come

here to study, teach, and contribute to our communities and economy. While each federal agency acts in isolation, international students and scholars experience the U.S. visa and immigration system as a whole. The cost of study in the United States and opportunities after graduation are not only in dollars, but in the time, frustration, and uncertainty interwoven into the system.

NAFSA appreciates USCIS' recently announced [FYS 2023-2026 Strategic Plan](#) which seeks to strengthen the legal immigration system through developing and implementing plans to modernize and improve the work of the agency. We support your efforts to make the agency more efficient and eliminate backlogs because this will make the United States more welcoming to international students, scholars, and others. However, instead of adopting historically steep fee increases in support of these objectives, we urge USCIS to actively seek alternate funding sources through appropriations and consider all available and anticipated funds, such as premium processing fees, while implementing critical efficiencies and cost-effective innovations. However, if fees must increase, we urge USCIS to exempt U.S. higher education and related nonprofits from the proposed asylum program fee.

### **USCIS Should Seek Alternate Funding Sources and Implement Efficiencies**

**1. Appropriated funds are needed as USCIS develops and implements new systems and efficiencies.** The USCIS [Agency Mission Statement](#) is that “USCIS upholds America’s promise as a nation of welcome and possibility with fairness, integrity, and respect for all we serve.” As a nation of immigrants, the immigration process should be seen as a shared national commitment through the investment of appropriated funds. We appreciate that USCIS has huge backlogs, unrelenting high numbers of filings, and demand for services that has and will not abate. While adjudicating these filings, USCIS must develop and implement new processes, procedures, and update antiquated technology. However, the cost to meet the challenges faced by USCIS far outstrips what is reasonable to expect to be paid in filing fees. USCIS is in dire need of appropriated funds to fulfill the agency’s mandate.

NAFSA understands that immigration law (INA section 286(m), [8 U.S.C. 1356\(m\)](#)) allows DHS to set fees “for providing adjudication and naturalization services... at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.”

As explained in the preamble to the proposed rule, “[i]n recent years... USCIS costs have surpassed the fees it collects.” It is therefore unfair to pass along mismanagement of prior administrations to current and future filers. Furthermore, it is unreasonable to expect USCIS to achieve what it has not been able to achieve in the past: sustain its functions through fee funding in a manner that meets the needs of the filers and the American people. As a nation of immigrants, it is beyond time for our country to prioritize the facilitation of services to immigrants through consistent appropriated funds to USCIS.

**2. Fee funding deters innovation and cost-effective approaches.** Reliance on fee funding deters innovation and cost-effective approaches and has discouraged USCIS from acting as good stewards of the fees paid by applicants and beneficiaries. During the prior administration, USCIS policies focused on adding additional steps to processing, overturning long-standing efficient policies and severely reducing engagement with impacted communities. While the current administration has taken strides to re-implement effective policies such as allowing deference to prior adjudicatory decisions, reducing the dependence on fee funding will incentivize further innovation.

**3. Establish and implement streamlined processes.** More money alone is not the answer to the persistent backlogs and unacceptably longer and longer processing times. Previous fee increases have not been accompanied by an increase in timeliness or accuracy of services. In fact, as fees have increased, service has declined. USCIS could realize important savings to pass on to filers by focusing on establishing streamlined processes and smart enforcement of U.S. immigration laws. For example:

**a. Continue development and implementation of a “trusted employer” program.**

Treating well-established and well-known employers who file many petitions annually as if they are filing a petition for the very first time is expensive and inefficient. As envisioned by a proposed rule that was included as a Long-Term Action in the Spring 2019 through the Spring 2022 Unified Agenda (RIN 1615-AC35 “Implementing a Known Employer Program for Certain Employment-Based Nonimmigrant and Immigrant Visa Classification”), the abstract stated that USCIS expected a known employer program “would promote simplicity and efficiency in the benefit application process for employers, while allowing USCIS to further protect benefit integrity and ensure consistency with respect to adjudications.” We note the absence of this item in the Fall 2022 regulatory agenda, even as a long-term action. NAFSA urges USCIS to seek input from the user community and implement such a program to streamline processing. Once implemented, the need for fraud detection at the individual petition/benefit request level (such as Administrative Site Visit and Verification Program site visits) should be reduced for that group of employers, and that savings could then be passed on to those employers in the form of a discounted base fee.

**b. Address the profusion of added pages to USCIS forms while moving more rapidly to online filing and case management.** USCIS forms have grown in length and complexity without realizing a benefit for the agency or filer. The ability to move to online filing has been stymied by the antiquated information system. Recognizing and addressing these two problems would create efficiencies that would accrue to USCIS and its filers. Further, USCIS states in the preamble to the proposed rule that “[e]stablishing more limited fees to account for estimated future efficiency could result in a deficient funding.” However, eliminating current inefficiency should not be viewed as the same as building future efficiency. Filers should not be penalized now with higher fees because of the excessive length of USCIS forms and other current inefficiencies.

**4. Appropriated funds should be available for asylum and non-adjudicatory functions.** The United States has a domestic and international legal obligation to provide asylum to people who meet the legal requirements for that protection. Higher education also has a crucial role in acting for the benefit of the public, and fully supports the ideals of the asylum program. Therefore, the cost of that responsibility should not rest on the immigrants and nonimmigrants who are applying for USCIS benefits and services. Appropriated funds should be used to fund asylum adjudications, consistent with American values. Additionally, providing adjudication services should not be seen to include costs associated with fraud detection and prevention, compliance, enforcement, and infrastructure. Rather, those non-adjudicatory activities should also be supported through appropriated funds. Although these changes likely require Congress to amend the law, it is necessary to address these realities when responding to the proposed changes to USCIS fees.

**5. If asylum adjudications are not funded by appropriated funds, U.S. higher education and related nonprofits should be exempt from the proposed asylum program fee.** USCIS 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.” USCIS justifies this in part by asserting that I-129 petitions “are generally submitted by petitioners who have more ability to pay.” This unsupported generalization does not recognize the impact that an extra \$600 fee will have on U.S. higher education and related nonprofits with funding that often comes from public funds and specific, limited research grants. This was a prime reason why U.S. higher education institutions were placed in their own wage pool for purposes of prevailing wage determinations that are part of the labor condition application and permanent labor certification programs. ([INA 212\(p\)\(1\) \[8 USC 1182\(p\)\]](#).) Former U.S. Senator Spencer Abraham (R-MI) described the basis for this separation as follows:

“Paragraph 212(p)(1) provides that the prevailing wage level at institutions of higher education and nonprofit research institutes shall take into account only employees at such institutions. The provision separates the prevailing wage calculations between academic and research institutions and other non-profit entities and those for for-profit businesses. **Higher education institutions and nonprofit research institutes conduct scientific research projects, for the benefit of the public and frequently with federal funds, and recruit highly-trained researchers with strong academic qualifications to carry out their important missions.** The bill establishes in statute that wages for employees at colleges, universities, nonprofit research institutes must be calculated separately from industry...” (See [144 Cong. Rec. No. 151, p. S12,756](#) (daily ed. Oct. 21, 1998), emphasis added).

In addition to the separate wage calculation, U.S. higher education and nonprofit organizations related to or affiliated with institutions of higher education are exempted from the American Competitiveness and Workforce Improvement Act (ACWIA) training fee. The ACWIA training fee is \$750 for companies that have 25 or less full-time employees in the United States, or \$1500 for companies that have 26 or more full-time employees in the United States. Exemption from the fee recognizes the role of U.S. higher education in providing the education and training of

Americans as the fees paid to USCIS are ultimately paid by students through tuition and fees. This same logic applies to the proposed \$600 fee. If U.S. higher education institutions and related or affiliated nonprofits are required to pay a new fee, that fee will be passed on to students. Like the ACWIA training fee, higher education and nonprofit organizations related to or affiliated with institutions of higher education should be exempted from the proposed \$600 fee.

### **Fee Increases are Unprecedented with Negative Impacts for Higher Education**

Providing the best education to Americans requires U.S. higher education institutions to recruit and hire the most qualified individuals as faculty, staff, researchers, and other key functions on campuses. If the most qualified individuals are foreign nationals, there can be considerable cost and time commitment to hiring because of USCIS and other legal fees. It is reasonable to expect to pay for filings with USCIS, however the fee increases proposed do not compare with prior fee increases; the scale is unprecedented with significant disparities among categories. For example, there is a 70% fee increase for Form I-129 H-1B petitioners who are highly educated foreign professionals working in “specialty occupations” versus a 121% increase for NAFTA TN petitioners who are citizens of Canada or Mexico working for U.S. or foreign employers under the North American Free Trade Agreement (NAFTA) versus a 129% increase for O-1 petitioners who are by definition individuals of extraordinary ability or achievement. U.S. institutions of higher education often utilize these categories to bring the world’s best and brightest academics to the United States in today’s competitive economy. These increases will negatively impact U.S. higher education as more funds will need to be allocated for immigration fees and away from the educational mission of the institutions.

In the case of some categories, the fee increase does not make sense given the relative amount of adjudicative work that takes place. For example, the TN category is a straightforward schedule-based category that does not require the type of analysis to determine whether someone qualifies as compared to the more subjective H-1B “specialty occupation” standard. In that case, the fee for TN I-129 processing should be less than that of H-1B processing. Instead, USCIS proposes charging \$235 more to adjudicate a TN petition versus an H-1B petition. This will disproportionately affect the hiring of Mexican citizens under the United States-Mexico-Canada Agreement (formerly NAFTA), since TN I-129 petitions are mandatory for Mexican beneficiaries coming from abroad but optional for Canadian beneficiaries coming from abroad.

To reduce the proposed fees, USCIS should include the additional funds generated from premium processing. USCIS recognizes in the preamble that the Emergency Stopgap USCIS Stabilization Act, included in the Continuing Appropriations Act ([Public Law 116-159](#) (Oct. 1, 2020)) allows USCIS to establish and collect additional premium processing fees and use them for additional purposes. USCIS decided not to include the premium processing fees when calculating available revenue for the proposed rule stating it may reconsider this decision if the revenue collection becomes more significant and certain before it publishes the final rule. Given the significant increases being proposed in this rule, NAFSA urges USCIS to consider all available and anticipated funds when determining final filing fees.

## **Conclusion**

Ultimately, increasing fees is not the answer to the ongoing challenges USCIS faces in meeting the needs of those who seek immigration benefits. USCIS must innovate and employ new processes. Further, excessive fees will act as disincentives for international students, scholars, and others to come to our country and remain here and receive the benefits and services they need to become full participating members of our communities. We request USCIS reconsider the proposed fee schedule and adopt improvements based on the recommendations in this comment letter.

Thank you for the opportunity to comment.

[Signature redacted]

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Interim Executive Director and CEO