



PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION



# Higher Education Immigration Policy And Action Guide

**Spring 2019**

*Immigration policies, regulations, and legislation  
impacting the higher ed community*

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# ACTIONS TO CONSIDER

## *Actions to consider to support the immigration-related needs for students, faculty, and staff in your campus community*

**Prioritize support for undocumented/Dreamer students on campus**, including providing support for undocumented student services, access to legal and financial support for DACA renewals, counseling support, and information about post-graduate opportunities. DACA recipients on campus should be informed of the critical importance of renewing their DACA as soon as possible if they have not yet done so. The May 2019 California Community Colleges Dreamers Project outlines ways institutions can support undocumented student success, and includes a variety of recommendations that public and private institutions across the nation can adopt to support their immigrant students.

**Create a cross-campus immigration task force encompassing undocumented and international students** including those tracked in SEVIS and those who are not, such as H-4 students), TPS recipients, refugees, and other immigrant populations - which brings together administrators/staff, faculty, and students to share information and resources on campus, and identify emergent campus and student needs. A very useful set of policy recommendations for federal, state, and local policymakers, as well as for educational institutions, on what is needed to support undocumented/DACA students can be found in the October 2018 [TheDream.US report and survey](#).

**Engage in federal advocacy to support DACA/Dreamer students and international students** Utilize the Alliance's [toolkit on the Dream and Promise Act of 2019](#) to encourage Congress to pass Dream legislation. The toolkit contains sample scripts, information on contacting Members of Congress, sample tweets, partner resources, and more. Consider joining an amicus brief supporting DACA or international students (the Alliance will share information about future opportunities as they arise). Look for national Higher Education Call-In Days to support DACA- and Dreamer-related federal legislation. The Alliance partners with NAFSA in advocacy efforts to support international students.

**Audit institutional scholarships, privately-funded scholarships, national, and non-government scholarships** to identify whether their eligibility includes undocumented students. If not, consider whether the eligibility criteria can be changed.

**Engage at the state level to [support policies that are beneficial to DACA recipients and undocumented students](#)**, including expanding access to in-state tuition, financial aid, driver's licenses, and professional licensure to undocumented residents, which can help undocumented students access and succeed in post-secondary education.

**Evaluate and prioritize support services for international students on campus**, which may require more resources, as well as a review of policy training for faculty and staff on how best to support students and respond to changing policies. Engage your international offices for faculty, staff, researchers, and students to understand the magnitude of filings with USCIS submitted by campus officials or outside counsel.

**Collect campus-specific data and stories about immigrant and international students, staff, faculty, and leadership** as a key part of gaining a better understanding of how immigration policy impacts your institution. This also can be helpful as you engage in advocacy or draft opinion pieces or public statements. Writing opinion pieces or otherwise sharing the stories of the countless contributions that immigrant and international students, faculty, and staff make to your institution highlights the promise and power of higher education and the importance of immigrant and international students to your education mission and success.

# POLICY SPOTLIGHT: DACA

## “Deferred Action for Childhood Arrivals” Executive Order (2012) DACA Court cases related to the September 5, 2017 rescission of DACA Dream Act legislation and other legislative proposals

### SUMMARY

On September 5, 2017, the Trump Administration announced it would terminate the Deferred Action for Childhood Arrivals (DACA) program created in 2012 by the Obama Administration, putting about 800,000 hardworking young people at risk of losing their work authorization and being deported. Since then, DACA recipients have been living court case to court case, protected only temporarily by injunctions of President Trump’s attempted termination of the program and under constant threat of losing their protections. Only Congress can remedy this uncertainty by passing a permanent legislative solution.

For now, U.S. Citizenship and Immigration Services (USCIS) is accepting and processing applications for DACA renewals, including those for current DACA recipients whose protections expire in more than 150 days, or applications from individuals who previously had DACA benefits. No new or initial applications are being accepted for individuals seeking to apply for DACA for the first time, including high school students who would now be aging into the program (see [eligibility criteria](#)). It’s strongly suggested that eligible individuals apply to renew their DACA as soon as possible.

As of January 2019, [USCIS reports](#) approximately 680,000 active DACA recipients.

### IMPACT ON HIGHER EDUCATION

DACA has allowed approximately 800,000 undocumented youth to access more affordable higher education, work opportunities, driver’s licenses, bank accounts, professional and occupational licenses (in some states), and more. For students, alumni, staff, faculty, and their families and others who rely on it, the loss of DACA [would be devastating](#) for individuals as well as across campuses and the entire country. Additionally, it would result in [staggering economic losses](#).

An end to the DACA program would lock tens of thousands of students out of in-state tuition or the ability to access higher education at all due to restricted access to in-state tuition and financial aid that comes with being undocumented making college unaffordable for many. It would also strip individuals of their work authorization, raising the burdens of the cost of higher education and causing some students to take longer to graduate, or forcing them to drop out entirely.

Should students be stripped of their DACA protections, their [ability to pay in-state tuition](#) will be impacted in Massachusetts, Ohio, and Virginia. They may be barred from even accessing higher education in Alabama and South Carolina, as well as at certain universities in Georgia, if they don’t have the DACA program to establish that they are lawfully present in the U.S. In-state tuition could also be denied for previous DACA recipients in other states without tuition equity policies.

## DACA (cont.)

Recipients will also lose access to driver's licenses in a majority of states, impacting their ability to commute to school. Few states [make driver's licenses available to all undocumented residents](#) or have passed proactive legislation that will allow DACA recipients to retain their licenses even if the DACA program is ended.

Beyond current DACA recipients, many other Dreamers and immigrant youth are also in urgent need of legislative protections. [A new MPI report](#), commissioned by the Presidents' Alliance, estimates that 98,000 undocumented students graduate from high school every year, a dramatic increase from the commonly used estimate of 65,000 students per year. Many of these immigrant youth did not have the opportunity to apply for DACA for the first time before the program was rescinded in fall of 2017. Although a majority of these students arrived in the U.S. prior to the age of six and were raised and educated in our country, without DACA, these students cannot work, are vulnerable to arrest and deportation, and face even greater barriers in accessing higher education.

### TIMELINE

#### June 15, 2012

The Department of Homeland Security (DHS) announces the creation of the Deferred Action for Childhood Arrivals (DACA) program

#### August 15, 2012

DHS officially rolls out the application process and delineates the eligibility criteria for DACA. From the start of the program until the Trump Administration stops approving initial DACA applications, DHS approves a total of 824,068 initial DACA applications. In the fall of 2017, MPI estimates that 18% (approximately 124,164) of the nearly 800,000 active DACA recipients were enrolled in a post-secondary institution, and another 20% (137,960) were enrolled in secondary school. Under the program, DACA recipients could also apply for "Advance Parole," which would allow them to participate in study-abroad programs, or go abroad for other educational, work, or humanitarian reasons. DHS approved nearly 46,000 Advance Parole applications by DACA recipients from FY2012 through FY2017.

#### September 5, 2017

The Trump Administration repeals DACA and gives Congress 6 months to act before the program fully expires in March of 2018.

#### January - April 2018

Court-issued injunctions in California, New York, and D.C. compel the federal government to continue accepting and adjudicating DACA renewal applications. First-time applicants remain barred from submitting applications.

#### February - June 2018

Multiple efforts in Congress to address legislative protections for Dreamers fail, including votes in the Senate and a Republican-led effort in the House of Representatives via a [discharge petition](#).

#### August 2018

Texas-based District Judge Andrew Hanen rules against Texas Attorney General Ken Paxton's Texas-led lawsuit; denies states' request to end DACA while suggesting that the DACA program could still be found unconstitutional. Plaintiffs in the DC lawsuit drop their request to re-open DACA to new applicants.

# DACA (cont.)

## October 2018

Multiple cases are still moving forward, including appeals, with potential to advance as high as the Supreme Court.

## November 2018

The Department of Justice (DOJ) takes the unusual step of [petitioning for certiorari](#) to the Supreme Court to bypass three Federal Courts of Appeals. This filing shows the DOJ is moving ahead to what they promised two months prior: to “take every lawful measure” to terminate the DACA program.

A few days later, the Ninth Circuit issues its ruling in the pending DACA appeal, upholding the lower court’s decision finding the termination of DACA unlawful, and affirming the lawfulness of the preliminary injunction.

## January 2019

The Supreme Court took no action on DOJ’s request to hear the case, meaning that, for now, DACA continues as litigation in the lower courts proceeds.

[Follow NILC for timely updates](#) on pending cases.

## RESOURCES

[Informed Immigrant](#) and [Inmigrante Informando](#)

[Go Fund Me](#) - Help DACA recipients renew their applications. If you are a DACA recipient, set up your own fundraiser.

Presidents’ Alliance [FAQs](#) for campuses

[ACE Protect Dreamers Higher Ed Coalition](#)

[HACU](#) DACA resources

[NILC](#) Educational resources

[Niskanen Center](#) FAQs on Immigration

[My Undocumented Life](#) information for undocumented students

[United We Dream](#) resources

[ULead Network Map](#): State Policies

[Immigrants Rising](#)

[TheDream.Us](#) resources

Migration Policy Institute (MPI) analyzed how the [Spring 2018 Senate](#) and [June 2018 House](#) legislative proposals related to DACA and the Dream Act would impact undocumented young people.

[Migration Policy Institute and Presidents’ Alliance](#) - Fact sheet on graduation rates for undocumented immigrants

[Presidents’ Alliance Joint Statement of Support of the Higher Education Dream Act of 2019](#)

# POLICY SPOTLIGHT: TEMPORARY PROTECTED STATUS (TPS) AND DEFERRED ENFORCED DEPARTURE (DED)

## SUMMARY

Congress created Temporary Protected Status (TPS), a form of humanitarian protection that can be granted by the Secretary of the Department of Homeland Security (DHS). It is provided to individuals in the U.S. who are nationals of countries designated by the Secretary as TPS countries who cannot return to their home countries due to violent conflict, natural disaster, or other extraordinary conditions. The TPS designation provides recipients temporary refuge in the United States and makes them eligible for work authorization. The United States currently provides TPS for more than [300,000 foreign nationals](#).

[Deferred Enforced Departure \(DED\)](#) is another form of temporary relief from removal that allows individuals from countries and regions facing political or civic conflict or natural disaster to stay in the United States. This relief is granted by the President. Right now, the only country designated with DED is Liberia, however it is in "wind-down" mode.

Neither TPS or DED are automatically conferred on individuals from designated countries living in the U.S. Qualified individuals must apply, pass screenings, and pay a fee to be covered under these programs. Additionally, neither TPS nor DED provide their own pathway to permanent legal status or citizenship.

The current Administration has demonstrated a disinclination to extend or redesignate countries' TPS and DED designations as they near their expiration dates.

## IMPACT ON HIGHER EDUCATION

Many TPS recipients have been in the country for a decade or more. They are a crucial part of the U.S. workforce, including at many colleges and universities, and have U.S. citizen children in our higher education system. Some students who are DACA recipients or are undocumented may also live in mixed-status families where a parent or sibling is a TPS holder.

Both TPS and DED holders are students at higher education institutions. Like DACA recipients, TPS holders must also apply to renew their status and work authorization regularly. This can be cost-prohibitive for students, and a college or university could provide assistance with renewal fees to better support affected students. TPS and DED students [like Yatta](#) also face the uncertainty of not knowing whether their country's designation will be renewed.

## TIMELINE

**September 2017** - Acting Secretary of Homeland Security Elaine Duke [announces TPS for Sudanese nationals will end](#) in November 2018.

**November 2017** - Acting Secretary of Homeland Security Elaine Duke announces [TPS for Haitians will end](#) July 22, 2019.

**January 2018** - Secretary of Homeland Security Kristjen Nielson announces that [TPS for El Salvador will terminate](#) on July 22, 2019.

# TEMPORARY PROTECTED STATUS (TPS) AND DEFERRED ENFORCED DEPARTURE (DED) *(cont.)*

**March 2018** - Activists filed a lawsuit claiming that the Administration's termination of TPS for El Salvador, Nicaragua, Haiti, and Sudan violated the law. Additionally, on March 27, 2018, President Trump [issued a memo](#) announcing that he would not extend DED for Liberians and began a 12-month wind-down period for DED holders to depart the U.S.

## **October 2018**

A federal district judge in San Francisco [issues](#) a preliminary injunction temporarily halting the Administration's termination of TPS for El Salvador, Nicaragua, Haiti, and Sudan. The government appealed the ruling, but is complying with the injunction in the meantime, and TPS holders will retain their status while the preliminary injunction remains in place.

## **February 2019**

As the TPS lawsuit filed in March 2018 did not cover all countries losing their TPS designations, a group of Nepali and Honduran TPS holders filed a [lawsuit](#), claiming that the termination of those two countries' TPS designations violated the law.

## **March 2019**

DHS issues in the Federal Register stating that while the preliminary injunctions remain in place for foreign nationals of Sudan, Nicaragua, Haiti, and El Salvador, the affected TPS holders will retain their status and work permits through January 2, 2020. DHS will continue to extend the validity of their immigration documents in nine-month intervals.

The President also issues a [new memo](#) extending the wind-down period for Liberian DED for another 12 months with a new program termination date of March 31, 2020.

## **RESOURCES**

National Immigration Forum  
[Fact Sheet on TPS](#)

National Immigration Forum  
[Fact Sheet on DED](#)

# POLICY SPOTLIGHT: UNLAWFUL PRESENCE FOR F, J, AND M NONIMMIGRANTS

## Policy memo (extra-regulatory)

### SUMMARY

USCIS has implemented [revised guidance](#) via policy memorandum for how “unlawful presence” (ULP) will be counted for F and M foreign students and J exchange visitors. It was challenged in a [lawsuit](#) filed October 2018 and is currently being heard in the Middle District Court of North Carolina ([Guilford College v. USCIS](#))

As of August 9, 2018, USCIS began counting unlawful presence for F and M students and J exchange visitors at the moment they violate or fall out of status (rather than at the point USCIS denies a benefits application on the basis of a status violation or an immigration judge determines a status violation). Even if the violation is discovered years down the line, unlawful presence will be calculated retroactively, meaning students and exchange visitors (and any of their dependents) could unknowingly accrue unlawful presence, and be subject to 3- or 10-year bars for re-entry into the United States.

The unlawful presence policy is currently paused as a result of a [nation-wide injunction](#) from the ongoing court case, Guilford College v. USCIS.

### IMPACT ON HIGHER EDUCATION

This policy can have a substantial impact on those in F, J, and M status, including thousands of international students, researchers, medical residents, and others who inadvertently fall out of status.

The policy targets higher education, research institutions, and international students for this enhanced immigration enforcement, even though F, M, and J categories are already highly tracked in SEVIS.

It impacts not only members of campus communities, but also imposes new, unpredictable liability on higher education institutions. This new ‘backdating’ rule introduces considerable uncertainty into the calculation of unlawful presence and [needlessly exposes international students to the devastating re-entry bans \(3 and 10 year bars\)](#), creating additional barriers to their being able to secure and begin jobs in the U.S. following graduation.

### TIMELINE

#### May 2018

USCIS issues a draft memo outlining its intent to change the unlawful presence policy for F, J, and M visa holders and opens a window for public comments until June 11, 2018.

#### August 2018

USCIS implements a new policy memo on the accrual of unlawful presence for F, J, and M nonimmigrants.

#### October 2018

Four colleges [file a federal suit](#) against USCIS in the U.S. District Court for the Middle District of North Carolina to challenge the unlawful presence policy.

# UNLAWFUL PRESENCE FOR F, J, AND M NONIMMIGRANTS *(cont.)*

## Policy memo (extra-regulatory)

### December 2018

The complaint is amended to include the American Federation of Teachers, and two individuals - both MAVNIs - as plaintiffs (the "Military Accessions Vital to the National Interest" [program](#) allowed certain non-citizens legally present in the United States to join the U.S. military and apply immediately for U.S. citizenship). The counsel for the case (Paul Hughes, Mayer Brown LLP) also requested a preliminary injunction, a request made even more compelling with the addition of the two MAVNI plaintiffs. 65 institutions and one higher education system Board [joined an amicus brief](#), coordinated by the Presidents' Alliance, to support the legal challenge to the new policy.

### January 2019

The court granted a temporary restraining order barring application of the unlawful presence policy change to the MAVNI individuals who are plaintiffs, until the hearing date.

### April 2019

The court hears oral arguments on the plaintiffs' pending motion for a preliminary injunction and motion for partial summary judgment. The government also advanced its motion to dismiss for lack of jurisdiction.

### May 2019

On May 3, U.S. District Judge Loretta Biggs [issued a nationwide preliminary injunction](#) temporarily blocking the government from enforcing the new unlawful presence policy, and ordered an accelerated schedule for summary judgement briefing.

The nationwide preliminary injunction applies to the more than one million international students, scholars and others on F, J, and M visas. In her opinion, Judge Biggs concluded that the plaintiffs will likely succeed on the merits of both procedural and substantive arguments, namely, that the government failed to follow notice and comment procedures, and that the policy memo substantively conflicts with underlying federal immigration law.

## RESOURCES

NAFSA has provided a series of [resources](#) for campuses regarding ULP and other recent guidance.

NAFSA/Connecting our World provides a range of [Advocacy resources](#) to support international students.

Higher education, business, immigration coalition [August letter](#) to the Senate Judiciary Committee regarding unlawful presence and other sub-regulatory policy changes.

[To Leave Or Not To Leave: The Devastating Impact of USCIS's Unlawful Presence Policy on Foreign Students](#)

Cyrus Mehta summarizes the impacts of the new policy and provides a useful timeline in this [Insightful Immigration Blog post](#).

# POLICY SPOTLIGHT: NOTICE TO APPEAR (NTA)

*released on June 28, 2018*

## REQUESTS FOR EVIDENCE (RFE)

## & NOTICE OF INTENT TO DENY (NOID) *released on July 13, 2018*

### Policy guidance memos (extra-regulatory)

#### SUMMARY

A Notice to Appear (NTA) is the first step in the deportation/removal process. [New policy guidance](#) announced this in July of 2018 requires USCIS to issue NTAs with unprecedented frequency, undermining its mission to adjudicate on helping immigration benefits. Contrary to decades of precedent, the NTA guidance could lead significant numbers of immigrants who are denied a benefit to end up in immigration court in removal proceedings. This will put individuals' lives on hold, and may subject them to being barred from the U.S. for 3 or 10 years as a result of court backlogs.

Experts estimate that, if fully implemented, the new policy could result in as many as 260,000 NTAs issued annually, nearly tripling current figures.

Additionally, the following week, USCIS released [new guidance on Requests for Evidence \(RFE\) and Notices of Intent to Deny \(NOID\)](#), which establishes that USCIS has the authority to deny applications and petitions without first issuing an RFE or NOID.

Prior to the change in the RFE policy, those requesting immigration benefits and those filing for them were able to provide additional or clarifying information in support of benefits requests. The new RFE guidance broadens USCIS' authority to deny applications and petitions without RFEs. This could lead to an increase of denials without giving the petitioner or applicant an opportunity to provide clarifying information even when the evidence initially submitted fails to establish eligibility for the benefit requested.

Denial without a NOID forecloses the option for the applicant to seek other legal immigration status that may be available to avoid falling out of status and potentially accruing unlawful presence.

The combination of the two memos is especially damaging because not only are immigrants, schools, families, and businesses faced with increased costs and stress to refile erroneous denials that were not issued RFEs or NOIDs, but they are also more likely to be subjected to the immigration court process, which already faces a backlog of over 700,000 cases.

#### IMPACT ON HIGHER EDUCATION

The new NTA guidance, especially when compounded with the unlawful presence policy (detailed above), will have significant impacts on nonimmigrant students seeking to change their status or apply for a new visa.

While USCIS indicated that it will not yet implement the NTA Policy Memo with respect to employment-based petitions, it is anticipated that employment-based petitions will also soon be subjected to the memo. This is especially alarming because USCIS is denying H-1Bs at an unprecedented rate. In the [first quarter](#) of FY2019, the denial rates for H-1B visas rose to 32% from 24% in 2018, and up from 6% in FY2015. These trends impact higher education institutions directly as employers, as well as their international alumni who join the U.S. workforce upon graduation.

If the narrow criteria used to adjudicate H-1Bs continues to result in denials without RFEs or NOIDs, NTAs can also be expected to increase, resulting in more university alumni in removal proceedings.

# NOTICE TO APPEAR (NTA) *released on June 28, 2018* REQUESTS FOR EVIDENCE (RFE) & NOTICE OF INTENT TO DENY (NOID) *released on July 13, 2018 (cont.)*

## Policy guidance memos (extra-regulatory)

In addition, the number of NTAs issued to international students is also expected to increase if the new unlawful presence policy becomes permanent. (See Unlawful presence for F, J, and M nonimmigrants on page 9) This is because those in F, J, and M status will be counted as accruing unlawful presence as soon as a status violation occurs, even if it is inadvertent. A status violation could include a student dropping a class and therefore falling out of a full-time course load, moving without updating their address in SEVIS, or working while in school without authorization. If an individual is deemed to be unlawfully present when seeking a new status, they almost certainly will be denied and likely served an NTA for failing to maintain their status.

RFEs are now common practice. For example, the rate of RFEs jumped to 60% in H-1B petitions in the first quarter of FY2019, and had already risen significantly in FY18 compared to prior years when RFEs were requested in less than a quarter of H-1B petitions. With the implementation of the new guidance, campuses will likely be negatively impacted as faculty and other personnel are denied benefits that would otherwise be granted if additional information was provided.

## TIMELINE

### In effect.

The USCIS RFE and NOID guidance went into effect on September 11, 2018 while the NTA guidance went into effect on October 1, 2018.

## RESOURCES

NAFSA has provided [provided resources](#) on understanding and responding to recent USCIS guidance on unlawful presence, NTAs, RFEs, and NOIDs.

[Compete America coalition letter](#) to USCIS Director Francis Cissna regarding sub-regulatory changes.

# POLICY SPOTLIGHT: DREAMER, TPS, AND DED LEGISLATION IN THE HOUSE AND SENATE

## THE AMERICAN DREAM AND PROMISE ACT OF 2019 (H.R. 6)

In March of 2019, Representatives Lucille Roybal-Allard (CA-40), Nydia Velázquez (NY-7), and Yvette Clarke (NY-9) introduced H.R. 6, the Dream and Promise Act. The Dream and Promise Act is an expansive piece of legislation that would provide permanent relief and a path to citizenship to [more than 2.6 million](#) DACA-eligible individuals, TPS holders, and DED recipients whose lives have been in limbo and who need a long-term solution. There is broad bipartisan agreement around protecting these vulnerable populations. [According to the National Education Association](#), “[u]nder current law, without H.R. 6 in place, some educators and students will lose their protected status. Consequently, educators will lose their work permits. These losses will cause the removal of hundreds of thousands of teachers, education support professionals (ESP), and others from schools and classrooms. In addition, educators will lose their ability to support their families, pay their mortgages, and maintain their employer-provided health insurance. Ultimately, they will be at risk for deportation.”

The Dream and Promise Act of 2019 has more than 220 cosponsors. The House is now poised to take an important step forward by passing the Dream and Promise Act, which would create an earned pathway to citizenship for more than 2 million Dreamers and TPS holders. This is historically significant and would be only the third time in more than 30 years that major immigration legislation will pass even one chamber of Congress. The passage of the Dream and Promise Act would add new pressure on the Senate to protect Dreamers and TPS holders, who have lived, worked, and in many instances, built families in the U.S. for decades.

On May 23, 2019, the House Judiciary Committee voted to report the bill to House floor for a vote, which will likely occur in June or July of 2019.

## THE DREAM ACT OF 2019 (S. 874)

Senator Lindsey Graham (R-SC) and Dick Durbin (D-IL) reintroduced the bipartisan Dream Act in the Senate in March of 2019, which is identical to the bill they introduced in 2017. The Dream Act would provide young undocumented immigrants who were brought to the United States as children and have lived in the United States for most of their lives protection from deportation and an opportunity to obtain legal status if they meet certain requirements. These protections would extend to nearly 700,000 current DACA recipients (down from 800,000 at the height of the program) as well as another [at least 1.4 million eligible Dreamers](#).

## THE SECURE ACT OF 2019 (S. 879)

The Safe Environment from Countries Under Repression and Emergency (SECURE) Act was introduced by Senator Chris Van Hollen (D-MD) in March of 2019. This bill would create a pathway for TPS and DED holders to apply for lawful permanent resident (LPR) status to obtain a green card if they meet certain criteria.

# ANNOUNCED ADMINISTRATIVE CHANGES

## DENIALS AND DELAYS OF NON-IMMIGRANT AND IMMIGRANT VISA APPLICATIONS

Denials of non-immigrant and immigrant visa applications have [increased dramatically](#) under the Trump Administration, along with reports of increased delays in visa processing for international students and scholars. New international new student enrollments fell by 6.6% in 2017-18 compared to the year before. Trends, including at the [graduate level](#), continue to decline. Overall, international student enrollments have [declined 2.7%](#) March 2018 to March 2019, confirming the trends identified by the [2018 Open Doors report](#). Further, under the implemented travel ban, the U.S. State Department [denied thousands](#) more visas, including from scholars and others.

A May [letter](#) from 29 New Jersey university presidents and chancellors to the New Jersey congressional delegation addressed the processing delays and artificial barriers created of late at USCIS. The letter states, “[A]s it becomes more difficult for foreign students and academics to study and work in the United States, many of them are turning to other options, weakening not just our individual institutions, but American higher education as a whole, and, by extension, our country’s global competitiveness.”

## OPTIONAL PRACTICAL TRAINING (OPT)

The Administration has continued to signal that it will issue regulatory changes to the OPT program. While we do not at present know what the Administration intends to accomplish, it could seek reduced availability of OPT and/or STEM OPT for international students. OPT has already faced challenges. In spring 2018, USCIS posted changes on its website that [reduced](#) eligible STEM OPT sites leading to a [lawsuit](#) filed in July; in August, USCIS reversed course and updated its website to provide new clarifications regarding the OPT extension. There is also an [ongoing court case](#) brought by the “Washington Alliance of Technology Workers” (Washtech), represented by an anti-immigration group, the Immigration Reform Law Institute, which is challenging the legality of OPT as a whole. If the lawsuit by Washtech succeeds, the result could end all OPT, including STEM OPT. In fall of 2018, the National Association of Manufacturers, the U.S. Chamber of Commerce, and the Information Technology Industry Council (ITIC) [filed a motion](#) motion to intervene in the Washtech case, citing the importance of the OPT program as a “crucial bridge” between the student visa status and employment and longer term immigration status, and that their interests were not “adequately represented” by the government, which has already taken steps to reconsider a revision of the program. Two reports from the [Niskanen Center](#) and [NFAP](#), both released in March of 2019, analysed the positive economic impacts of OPT.

## H-1B VISA RESTRICTIONS

DHS has signaled its intention to enact [a new rule](#) (regulatory change) that would limit who would qualify for an H-1B visa, and restrict which companies would be eligible to hire H-1B workers. This is expected to impact employers and entry-level foreign national workers disproportionately, including international students, as the H-1B is one of the only accessible avenues for international students and highly-skilled foreign nationals to work long-term in the United States. Advocates continue to expect that this regulatory change could be introduced this year.

## SEVP FEE INCREASES

SEVP (Student and Exchange Visitor Program) [posted a notice in the summer of 2018](#) of increased fees for international students and visitors (F, M, J visas) as well as for institutional certifications. This regulatory change includes an increase from \$200 to \$350 for F and M visas, an increase in the initial school certification fee that SEVP charges new F and M schools, and adds a new \$1,250 fee for F and M school recertification. This [rule](#) goes into effect June 24, 2019.

# ANNOUNCED ADMINISTRATIVE CHANGES *(cont.)*

## DURATION OF STATUS

DHS announced a plan in the fall of 2018 to replace the current duration of status (D/S) policy for international students (F) and exchange visitors (J) and replace it with an exact date of expiration of status. The stated policy goal for this change is to reduce the perceived high number of international students overstaying legal status, but the [perception](#) is based on faulty data (see [analysis](#) by demographer R. Warren). Further, the change will create significant new problems for DHS and international students.

### **What is Duration of Status (D/S)?**

While most nonimmigrants are given an expiration date on which their status expires, F-1 international students and J exchange visitors are given a period of stay that extends through the time it takes for them to complete their studies. This is called "duration of status" or D/S.

This means as long as international students and exchange visitors are complying with all status requirements, they are legally allowed to be in the country.

D/S provides the flexibility necessary for a student to progress through various levels of study and transfer to a new school as necessary without leaving the United States or undertaking a long and complicated government process.

D/S does NOT allow international students and exchange visitors to legally stay for years on end outside of their school program - they must remain enrolled full-time (or engaged in optional practical training) and ensure complete compliance with all requirements of this status. International students are allowed a grace period to enter the United States 30 days before beginning study and 60-days after completion of study.

### **Why does a change in D/S matter to higher education?**

D/S was instituted as policy that best aligns with the realities of academic study. It is common for both international and domestic students to seek additional degrees (such as moving on from a BA to a master's program or master's to Ph.D.) and to take longer (or at times shorter) than anticipated to complete a degree or program.

A date-certain expiration date for international students has been tried in the past and abandoned. Before DHS was created in 2002, all immigration functions were conducted by the Immigration and Naturalization Service (INS). INS struggled with the inclination to monitor international students constantly, as well as with the day-to-day workload created by an exact date of status expiration. As technology improved to track international students, a date-certain became less necessary. The agency confronted the reality of how academic study is conducted and the sheer amount of work involved in requiring multiple filings by students and found D/S to be the best policy.

Ending D/S would create significant burdens on DHS and its institutions including USCIS and ICE. USCIS will be overwhelmed with filings and will be unable to timely adjudicate the filings that a change of D/S policy would generate. USCIS already struggles with long backlogs and delays. Ending D/S would exacerbate an existing problem by adding an enormous number of new extension of status filings by each international student who extends a period of study or seeks another degree.

### **How many international students will be impacted if this change is implemented?**

This will apply to every international student and exchange visitor and every higher education institution that admits or sponsors them. International education is already under enormous pressure with unwelcoming immigration policies. This is another policy that will push international students and exchange visitors away from choosing to study in the United States.

# ANNOUNCED ADMINISTRATIVE CHANGES *(cont.)*

## H-4 VISA WORK AUTHORIZATION

The Administration has indicated it still plans to rescind the ability of spouses of H-1B visa holders to apply for work authorization, including those on our campuses (see this [American Immigration Council fact sheet](#) on H-4 Visas), though the Office of Information and Regulatory Affairs has taken months in its review of the proposal, and could be sending DHS' initial proposal back for revision and strengthening. Advocates have been briefing the Administration on the [high costs and virtually non-existent benefits](#) of ending the rule. While the proposal could be published any day now, advocates expect the passback and other unrelated activity at DHS and USCIS could delay the rule further into 2019. Meanwhile, the Save Jobs USA case is moving forward - all briefs have been filed, and we are now waiting for a response from the judge. A number of organizations, including the President's Alliance, are working hard to defend the rule - you can learn more and sign up to stay updated at [SaveOurFuture.us](#).

## CAP GAP

Cap gap is meant to provide an extension of duration of status to international students awaiting a decision from USCIS on H-1B petitions. Last fall, [NAFSA](#) received numerous reports regarding concerns with "cap gap" because of concerns USCIS would not complete the adjudications of the H-1B petitions filed on behalf of international students by prospective employers before September 30, the last day of cap gap protections. The cap gap situation is especially concerning given the delays in processing H-1B petitions and the implementation of new policy guidance, including the new unlawful presence policy. (See Unlawful presence for F, J, and M nonimmigrants on page 9)

## VISA RESTRICTIONS FOR CHINESE STUDENTS

Chinese students and scholars face heightened scrutiny. Starting in June of 2018, the State Department has been [restricting visas for Chinese graduate students](#) studying in sensitive research fields to one year, while offering them the chance to reapply every year. Chinese nationals were previously able to apply for five-year visas. This is an extra-regulatory change, and [news reports](#) have indicated delays in visa approvals for Chinese students.

## REFUGEE ADMISSION

In September, the Administration set the FY2019 refugee ceiling at 30,000. This is the lowest cap since the creation of the U.S. Refugee Admissions Program in 1980. Refugee students and scholars historically have greatly enriched higher education in the United States, and colleges and universities historically have been integral environments for welcoming, educating, and integrating refugees.

## H-1B LOTTERY CHANGES

In February, DHS began [implementing a new rule](#) changing the selection order for H-1B cap-subject petitions, announcing that they would select petitions subject to the 65,000 general cap first, including those who qualify for the advanced degree exemption - the master's cap - and then do the additional 20,000 for that exemption, a reverse of prior practice. The intention was to increase the share of H-1Bs that would be awarded to applicants with advanced degrees from U.S. colleges and universities. USCIS [claims](#) the new process increased this share by 11% this year. The agency also announced that it would delay implementation of its digital pre-registration system for at least one year. Once implemented, a simple online sign-up will replace the practice of sending in full petitions for April 1 - only those who are selected from the online signup will be required to prepare and file petitions. USCIS [publishes](#) data on all new and continuing H-1B visa petitions, approvals, denials by employer, including academic institutions.

# ANNOUNCED ADMINISTRATIVE CHANGES *(cont.)*

## PUBLIC CHARGE

The public comment period for the proposed [public charge rule](#) ended on December 10, 2018. The rule received more than 260,000 comments on the federal register submitted by organizations, institutions of higher education, policymakers, elected officials, and the general public. Most of the comments were made in opposition to the rule. The high volume of comments has impacted DHS's ability to quickly clear the rule.

- The public charge rule would expand the definition of “public charge” to immigrants as well as to nonimmigrants who receive one or more public benefits (in contrast to the current definition which refers to a person who is considered likely to become primarily dependent on the government for assistance). The new definition significantly expands it to include not only cash assistance for basic income assistance, but also Non-Emergency Medicaid, SNAP/Supplemental Nutrition Assistance Program (formerly food stamps), Medicare Part D Low Income Subsidy, and Housing Assistance (public housing or Section 8 housing vouchers and rental assistance).
- [Researchers estimate](#) that the proposed changes will create significant and lasting harm to the health and well-being of immigrant students, children, parents, and families, as lawfully present immigrants decide to forego enrollment for themselves and/or their families out of fear of harming their future eligibility to stay in the United States.
- While Pell Grants and other non-cash benefits that provide education, child development, employment, and job training are not included in the specified public benefits, the proposed regulations will diminish prospects for immigrant students' success and deter enrollment and retention in post-secondary programs, including English Language Learners (ELL), job-training, and certification programs.
- Other concerns for higher ed include that the public charge rule would:
  - Apply to international students, visitors, and workers seeking to extend or adjust their status.
  - Affect changes in the U.S. talent pipeline that would ultimately undermine our nation's global competitiveness.
  - Create significant administrative burdens on institutions and college advisors, as well as increased uncertainty about use of braided funding for education and career pathway programs.

A useful timeline and overview of all immigration-related policy changes under this administration can be found in a May 2019 MPI report, [“Immigration-Related policy Changes in the First Two Years of the Trump Administration.”](#)

# ADDITIONAL IMMIGRATION LEGISLATION

## HIGHER EDUCATION DREAM ACT OF 2019

In February of 2019, Representatives John Lewis (D-GA) and Ruben Gallego (D-AZ) introduced the [Higher Education Dream Act of 2019](#), which would establish a uniform framework whereby higher education institutions will have the freedom to make decisions concerning admission and financial aid regardless of a student's immigration status. Under the bill, eligible immigrant youth who satisfy all of a state's residency criteria would have access to in-state tuition in the state where they reside. Moreover, the bill would expand federal aid eligibility for these students. Discussions with congressional offices on how to improve the bill regarding obligations of and restrictions on higher educational institutions are ongoing. The bill has 48 cosponsors and is awaiting review by committee.

## HR 1044 (PER-COUNTRY CAPS)/S 386

The [Fairness for High-Skilled Immigrants Act](#) has been re-introduced in the House and the Senate, this time led by Immigration and Citizenship Subcommittee's Chair Zoe Lofgren (D-CA) and Ranking Member Ken Buck (R-CO) in the House, and Mike Lee (R-UT) and Kamala Harris (D-CA) in the Senate. This bill would eliminate the "[per-country caps](#)" for employment-based green cards, which limit the number of green cards that can go to individuals from any one country each year at 7%. It would also raise per-country caps for family-sponsored green cards to 15%. The goal of these moves is to [reduce - and eventually eliminate - backlogs](#) that keep individuals from certain countries (mostly India and China for employment, and Mexico and Philippines for family) waiting decades to adjust their status. While future green card applicants from non-backlogged countries may have longer wait times than today, no one currently waiting for a green card would see their wait time changed because of the bill, and [analysts expect](#) that the backlog would be cleared and the system operating on a first-come, first-served basis within five to seven years. The House bill already has over 290 bipartisan co-sponsors and is awaiting review by the committee.

## STARTUP BILL

[The Startup Act](#), reintroduced by a bipartisan group of senators in January of 2019, would create entrepreneur and STEM visas for highly-qualified individuals allowing them to remain in the United States to promote new ideas, fuel economic opportunity, and create jobs. This would include a conditional permanent resident status for master's graduates and other advanced degree holders in STEM fields. The Startup Act would also provide additional resources and funding to institutions of higher education that are conducting research that could lead to new ventures.

# ADDITIONAL IMMIGRATION LEGISLATION *(cont.)*

## NO BAN ACT (TRAVEL BAN)

Senate and House Democrats [introduced](#) legislation ([S1123](#) and [H.R. 2214](#)) on April 10, 2019 to rescind the executive orders implementing the travel ban, the asylum ban, and the extreme vetting of refugees. The current ban applies to citizens of Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen. The State department has [rejected](#) thousands of immigrant and visitor visa applications due to the travel ban.

## RAISE ACT

In April of 2019, Senators Tom Cotton (R-AR), David Perdue (R-NC), and Josh Hawley (R-MO) reintroduced the [RAISE Act](#) (S.1103, the Reforming American Immigration for Strong Employment Act), legislation that would permanently reduce legal immigration to the United States by 50% by eliminating the diversity visa, eliminating or restricting eligibility for immediate family and close relatives of U.S. citizens and permanent residents, and imposing a permanent cap on refugees; the bill would also replace the current employment-based system with a points-based system. In a [June 2018 letter](#) to the House and Senate, the Presidents' Alliance called on Congress "to reject proposals to reduce levels of legal immigration to this country including the diversity lottery. Researchers and economists have documented that such cuts would have devastating economic and community impacts, particularly as the U.S. native born population ages and our birth rates decline." A robust immigration system instead brings diverse skill sets that keep our workforce flexible, help companies grow, and increase the productivity and job opportunities of American workers. You can read more expert analysis of the RAISE Act [here](#).

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*The non-partisan Presidents' Alliance on Higher Education and Immigration brings together college and university leaders dedicated to increasing public understanding of how immigration policies and practices impact our students, campuses and communities, and supporting policies that create a welcoming environment for undocumented, immigrant, and international students. The Alliance is comprised of over 420 presidents and chancellors of public and private colleges and universities, serving over four million students in 41 states, D.C. and Puerto Rico.*

*FWD.us is a bipartisan political organization that believes America's families, communities, and economy thrive when more individuals are able to achieve their full potential. For too long, our broken immigration and criminal justice systems have locked too many people out of the American dream. Founded by leaders in the technology and business communities, we seek to grow and galvanize political support to break through partisan gridlock and achieve meaningful reforms. Together, we can move America forward.*