Overview of Biden Executive Actions on Immigration Related to Higher Education and Students¹
February 8, 2021

I. INTRODUCTION

President Joe Biden announced executive actions on immigration, many of which will impact immigrant and international students, staff, and faculty in higher education. These actions include a variety of mechanisms, including presidential proclamations, executive orders, and memoranda, that direct agencies to issue regulations, review processes, or update existing guidance. The Presidents’ Alliance created this resource to provide a guide to those executive actions with specific implications for immigrant and international populations in higher education.

II. EXECUTIVE ACTIONS

1. Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA) (January 20, 2021)

This White House memorandum to the U.S. Department of Homeland Security (DHS) Secretary directs him to preserve and strengthen DACA. In response, the Secretary will likely: (a) officially rescind the July 28, 2020, memorandum Reconsideration of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children” narrowing the scope of DACA; (b) implement some of the recommendations discussed in Letter to President-Elect Biden and Secretary-Designate Alejandro Mayorkas with DACA Recommendations; and (c) may possibly issue a new memorandum updating and expanding the criteria for the 2012 DACA memorandum. The decision will benefit over 645,000 current DACA recipients as well as an additional 1.3 million people who meet the criteria to apply. Of note, due to court decisions in the latter part of the previous administration, DACA is currently open to initial and renewal requestors; along with the ability to travel with advance parole.

2. Proclamation on Ending Discriminatory Bans on Entry to The United States (January 20, 2021) (Reversing the Muslim and Africa bans)

This presidential proclamation revokes Executive Order 13780 (permission for states and localities to refuse refugees) and Proclamations 9645, 9723, and 9983 (bans on visas for largely African and Muslim-majority countries). The Secretary of State is also directed to reconsider all applications denied under these proclamations. Over 42,000 people were unable to enter the United States since 2017 due to the bans, and thousands of families were separated. For more information, see Travel Ban: NAFSA Resources by NAFSA and the FAQ by PennState Law Center for Immigrants’ Rights Clinic & partners.

¹ For questions regarding this overview, please contact info@presidentsalliance.org.
3. **Freeze and Review of All Pending Regulations** (January 20, 2021)

This White House memorandum directs the Director of the Office of Management and Budget (OMB) to direct all agencies to freeze the implementation of any pending Trump regulations in order to check and remedy them for “substantial questions of fact, law, or policy.” This means that all proposed rules from the previous administration will not be published or finalized, including proposed regulations to eliminate duration of status and efforts to revise the accrual of unlawful presence. All final rules already published to the Federal Register, but not yet in effect, are to be postponed for 60 days, including H-1B visa rules and the H-1B visa lottery rule (wage-based selection).

4. **Reinstating Deferred Enforced Departure (DED) for Liberians** (January 20, 2021)

This White House memorandum to the DHS Secretary announces the extension of DED for Liberia through June 30, 2022, and directs the Secretary to equally extend work authorization for Liberians who held DED as of January 10, 2021. It also directs the Secretary to ensure that U.S. Citizenship and Immigration Services (USCIS) facilitates ease of application and timely adjudication for Liberians applying for residency under the Liberian Refugee Immigration Fairness (LRIF) program. While the number of Liberians who held DED by January 10, 2021, is unclear, USCIS estimates that though 10,000 Liberians were originally eligible for DED by the Bush administration, about 3,600 were likely beneficiaries and roughly 2,532 have now applied for LRIF. The memorandum only applies to Liberians who still held DED on January 10, 2021.

5. **Reversing Trump’s Executive Order Excluding Undocumented Immigrants from the 2020 Census Reapportionment Count** (January 20, 2021)

This Executive Order reverses the previous memorandum on *Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, which attempted to exclude the roughly 10.5 million undocumented immigrants living in the United States from the 2020 Census apportionment count used to calculate the number of representatives in the U.S. House of Representatives. The order also directs that all counts reported to state governors and those responsible for drawing districts to include all residents regardless of immigration status.

6. **Revising Civil Immigration Enforcement Policies and Priorities** (January 20, 2021)

This executive order revokes Trump’s previous executive order *Enhancing Public Safety in the Interior of the United States* that directed harsh immigration enforcement in the interior. The order directs the DHS Secretary to implement civil enforcement priorities that align with the values of border security, humanitarian issues, and public health and safety. In response, the Secretary will likely implement enforcement priorities that reflect Obama era policy, which largely targeted those with serious criminal backgrounds for immigration enforcement. If followed strictly, it would provide a degree of protection from deportation for an estimated 87 percent of undocumented immigrants, or over 9 million people.
7. **Modernizing Regulatory Review** (January 20, 2021)

This memorandum directs all agencies to identify opportunities for improving and modernizing regulatory review (e.g., the drafting, publication, notice and comment, and final issuance). This memorandum will likely lead to processes that will bolster the rescission of various regulations promulgated during the previous administration and that will implement a more fact- and data-based analysis that will lead to positive rule and regulation outcomes for immigrants and higher ed institutions.

8. **Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans** (February 2, 2021)

This Presidential Action directs the creation of the Task Force on New Americans to develop policies to promote integration and naturalization of immigrants. This action also directs the Secretaries of State and Homeland Security; and Attorney General to conduct a full review and issue recommendations to: (a) reduce barriers to accessing the legal immigration system, including pathways available to H-1B visa holders, and relevant to international and immigrant students, alumni, staff, faculty and their families in higher education; (b) reduce barriers and develop strategies for promoting naturalization; and (c) expand access to benefits for immigrants, including directing the rescission of the currently enjoined increases in USCIS fees for immigrants. Finally, the action directs all appropriate agencies to review the implementation of and likely rescind overall the public charge regulation.

9. **Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration** (February 4, 2021)

This Presidential Action directed the rebuilding of the nation’s refugee program, including directing agencies to begin the process to expand and expand our country’s refugee program; establishing non-discrimination protections for refugees seeking relief; rescinding a variety of anti-refugee Executive Orders issued by the previous administration; directing the promulgation of regulations and guidance to expand the refugee program; not deny refugee status based on discrimination; setting the foundation to increase the refugee cap for this coming year; and various other regulatory and administrative directives.