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February 28, 2022

The Honorable Rena Bitter  
Assistant Secretary  
Bureau of Consular Affairs  
U.S. Department of State  
2201 C Street, NW  
Washington, D.C. 20520

**Re: Federal Register Doc. 2021-28010 [RIN 1400-AF33], DOS-2021-0019 -  
Proposed Rule: Schedule of Fees for Consular Services-Nonimmigrant and Special  
Visa Fees**

Dear Ms. Bitter,

We submit this comment letter in response to the request for public input from the U.S. Department of State (DOS): Proposed Rule: Schedule of Fees for Consular Services-Nonimmigrant and Special Visa Fees, RIN 1400-AF33, on proposed adjustments to the Schedule of Fees for Consular Services (Schedule of Fees) of the Bureau of Consular Affairs (CA) for several nonimmigrant visa (NIV) application processing fees, the Border Crossing Card (BCC) for Mexican citizens age 15 and over, and the waiver of the two-year residency requirement (J-Waiver) fee.

We write on behalf of the nonpartisan, nonprofit Presidents' Alliance on Higher Education and Immigration, which brings college and university presidents and chancellors together on the immigration issues that impact higher education, our students, campuses, communities, and nation. We work to advance just and forward-looking immigration policies and practices at the federal, state, and campus level that are consistent with our heritage as a nation of immigrants and the academic values of equity and openness. The Alliance is composed of more than 530 presidents and chancellors of public and private colleges and universities, enrolling more than five million students in 43 states, D.C., and Puerto Rico. Although international students and scholars are considered non-immigrants per immigration law, we recognize that our visa and immigration systems greatly impact our ability to welcome, attract, and support them during their academic programs and beyond. The proposed rule must be evaluated within this broader context.

## **I. The Value of International Students and Scholars to our Campuses, Communities, and Country**

Welcoming international students is a core strategy of U.S. foreign policy and ensuring our economic vitality. As noted in the Joint Statement of Principles issued by the U.S. Departments of Education and State, the "robust exchange of students, researchers, scholars, and educators, along with broader international education efforts between the United States and other

countries, strengthens relationships between current and future leaders. These relationships are necessary to address shared challenges, enhance American prosperity, and contribute to global peace and security.”<sup>1</sup> We commend the U.S. government for its commitment to work to:

- A. “Welcome international students, researchers, scholars, and educators to the United States in a safe and secure manner and encourage a diversity of participants, disciplines, and types of authorized schools and higher education institutions where they can choose to study, teach, or contribute to research.”
- B. “Implement policies, procedures, and protocols so as to facilitate international education and authorized practical experiences while promoting program integrity and protecting national security.”
- C. “Clearly communicate policy guidance and implement fair, efficient and transparent support processes while maintaining national security and upholding the law.”

In particular, we urge the State Department to ensure that all U.S. visa policies, processing, and communications signal to international students and scholars that they are welcome here, and that facilitating their admission and entry into the United States is a priority for our campuses, communities, and government.

International students create jobs and can help us build back better. For every three international students we welcome, one U.S. job is created or supported.<sup>2</sup> According to NAFSA’s latest data, international students and their families contributed \$28.4 billion to the U.S. economy and supported more than 306,000 jobs during the 2020-2021 academic year.<sup>3</sup>

International students, scholars, and alumni are key to our science and innovation agenda. Our graduate science programs in particular are dependent on the presence of international students and scholars. We need the exchange of people and ideas to ensure we have the science needed to fight the next pandemic or global threat. International students and scholars also help us build relationships with other countries, and U.S. national security and foreign policy leaders have often called them our best foreign policy asset.

But data show that students have many other choices of where to pursue their higher education aspirations, and they are increasingly savvy about which countries offer the most competitive options for them. Unfortunately, we continue to lose our market share of international students (down 8% since 2001) while many other countries are making gains.<sup>4</sup> The latest State Department and Institute of International Education (IIE) Open Doors report indicates that we have seen new international student enrollment decline for the fifth consecutive year. This

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<sup>1</sup> *Joint Statement of Principles in Support of International Education - Reengaging the World to Make the United States Stronger at Home: A Renewed U.S. Commitment to International Education*, EducationUSA, U.S. Department of Education, and U.S. Department of State, accessed February 17, 2022, <https://educationusa.state.gov/us-higher-education-professionals/us-government-resources-and-guidance/joint-statement>.

<sup>2</sup> “NAFSA International Student Economic Value Tool,” NAFSA: Association of International Educators, accessed February 18, 2022, <https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2>.

<sup>3</sup> Id.

<sup>4</sup> “U.S. at Risk of Losing the Benefits of Talented International Students,” NAFSA: Association of International Educators, November 11, 2021, [https://www.nafsa.org/sites/default/files/media/document/20-024\\_Update\\_US\\_At\\_Risk\\_v01-11-20-2021.pdf](https://www.nafsa.org/sites/default/files/media/document/20-024_Update_US_At_Risk_v01-11-20-2021.pdf).

matters not just because international students make our classrooms more global and diverse and expand opportunities for U.S. students, but also because they represent an important component of our research agenda, economic well being, and foreign policy agenda.

## II. The Impact of the Proposed Rule

It is important for the Department to have adequate resources to process visa applications, particularly for those students and scholars who are on tight timelines for obtaining their visas to arrive on time for the academic term. However, given the value of international students to our nation and the intense global competition for these students, we urge the State Department to ensure that any increases in visa fees are commensurate with improvements in visa services, and to continue to find ways to create efficiencies while maintaining security.

We are particularly concerned about substantial fee increases such as the 53% increase in Machine Readable Visa (MRV) fee for F-1, J-1, and other non-petition-based visas, the 63% MRV fee for petition-based categories such as H-1B and O visas, and the staggering increase (325%) for applications for a waiver of the INA 212(e) two-year home residency requirement to which many J-1 exchange visitor participants are subject. Without policy and processing improvements that help us to welcome international students and scholars, these proposed increases, if implemented, will have a harmful impact on the ability of students from a diversity of backgrounds, fields of study, and countries of origin to study and learn in the United States.

## III. Visa Processing Improvements Needed

The State Department and relevant agencies should continue to improve visa application processing for students and scholars. In particular:

- A. Students and scholars must be given prioritization for visa appointments and processing during high-peak application seasons, as their timely arrival on campus affects both their own academic success as well as the ability of campuses to reliably plan for enrollment, teaching, and research.
- B. Periodic communications should be issued both to consulates abroad and the higher education community as a reminder of these policies and practices, particularly during peak application seasons, as has been done in the past. These reminders should include how to interpret “residence abroad” and “present intent to depart.”
- C. Attendance at a lesser-known college, English language program, or a community college is not, in itself, a reason for refusing a student visa applicant.<sup>5</sup> The State Department should leave questions of academic choice and qualifications to be decided between the student and the institution, instead focusing on evaluating whether the student meets the requirements of a bona fide student. Denial of a visa should not occur based on English-language competency, as it is the purview of the institutions to evaluate language proficiency and to provide English-language training programs (either in-house or outsourced) to help students succeed.
- D. When assessing financial means, consular officials should not ask for proof of multiple years of funding. Just like U.S. students, many students and their families will pay for their education as they go. Proof of funding for the entire duration of the program is not reasonable and should not be required.

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<sup>5</sup> 9 FAM 402.5, “(U) STUDENTS AND EXCHANGE VISITORS – F, M, AND J VISAS,” available at <https://fam.state.gov/fam/09FAM/09FAM040205.html>.

#### IV. Continuously Implementing Efficiencies

There are many additional cost-saving efficiency measures that could be implemented to reduce overall costs and time spent on visa processing without sacrificing security. For example:

- A. We commend the State Department for continuing its policy through December 2022 of waiving in-person visa interviews for those who have already been approved in the past and for Visa Waiver Program country participants. This measure reduces costs all around, and improves security by allowing the State Department to spend more time reviewing those applications that merit special scrutiny. We encourage the continuance of this policy. The State Department should continue and expand such efficiencies.
- B. We also applaud the December 20, 2021 updates made to the Foreign Affairs Manual (FAM) to clarify “residence abroad” and “present intent to depart.”<sup>6</sup> These changes, when implemented broadly, will help to reduce repeat visa interviews and save vital resources all around for students and consular offices. By requiring consular officers to consider the “inherent difference” between a young F-1 visa applicant and a short-term B visa applicant (prohibiting visa denials if the present intent to depart is subject to change or even likely to change) and clarifying that the the intent to depart does not infer the need to return to the country from which they hold a passport, the State Department has issued much-needed and valuable guidance that complies with immigration law while providing real-life flexibility.
- C. We strongly encourage the State Department to consider other secure, efficient visa processing improvements, including virtual interviews where necessary and practical, and reinstating a successful pilot program to process visa renewal applications in the United States, rather than requiring a trip abroad for renewals.
- D. We have serious concerns about the staggering increase (325%) for applications for a waiver of the INA 212(e) two-year home residency requirement that many J-1 exchange visitor participants are subject to. We strongly urge the State Department to consider other efficiencies in administering 212(e) waivers, such as the blanket policy of waivers for Afghan Fulbrighters and scholars as recommended by Members of Congress in their February 4th letter.<sup>7</sup>

#### V. Improving Predictability and Transparency and Reducing Uncertainty

The unpredictable timeframe for security clearances and administrative processing runs counter to the critical needs of time-sensitive experiments and research. The lack of transparency when applications take longer than 60 days further frustrates the ability of scientists and researchers to do their work. The COVID-19 pandemic has led to yet greater uncertainties, as institutions and prospective students seek reassurance that our consulates will be able to process visa applications in time for the 2022-23 academic year.

- A. The State Department should reduce the length of time required to issue visas to students and scholars to a maximum of 30 calendar days and provide for a special review

<sup>6</sup> “DOS Restores Helpful F Student Residence Abroad Guidance to FAM,” NAFSA: Association of International Educators, December 23, 2021, <https://www.nafsa.org/regulatory-information/dos-restores-helpful-f-student-residence-abroad-guidance-fam>.

<sup>7</sup> Representative John Garamendi et al. to U.S. State Department Secretary Antony J. Blinken and U.S. Department of Homeland Security Secretary Alejandro Mayorkas, February 4, 2022, available at [https://www.presidentsalliance.org/wp-content/uploads/2022/02/Letter-StateDHS\\_AfghanFulbrighters-from-Rep.-Garamendi-et-al.pdf](https://www.presidentsalliance.org/wp-content/uploads/2022/02/Letter-StateDHS_AfghanFulbrighters-from-Rep.-Garamendi-et-al.pdf).

process to resolve instances in which the length of time required to issue visas exceeds 45 calendar days. We urge the State Department to establish consistent and clear time-frames for visa processing to correspond with any increases in visa fees.

- B. In order to better understand reasons for visa denials, the State Department should provide prospective students a clear written explanation for denials. When prospective students are denied visas, they are often left to guess what aspects of their application may have led to the denial.
- C. The Secretary of State and appropriate staff should actively participate in the reconstituted Homeland Security Academic Advisory Council and should establish an interagency group to review the Technology Alert List at least once every two years. As part of its assessment, the interagency review group should consult with academic experts and companies that manufacture and distribute the items on the Technology Alert List.

## VI. Other Important Considerations for Key Student Groups

- A. The State Department should consider how proposed increases in international student visa fees could impact U.S. students who will be subjected to reciprocal increases in study abroad visa fees.
- B. The State Department should also consider how fee increases could impact underrepresented international students, students on short-term programs, and all students who have many more options of where they might study, and mitigation measures should be introduced to minimize the impact on these populations.

## VII. CONCLUSION

The Department of State has a great opportunity to alleviate long-standing and potential barriers to benefits and services for students and scholars pursuing higher education opportunities in the United States, and we thank you for actions taken to date and those yet to come.

If you have any questions on these barriers or other issues regarding higher education and immigration, please feel free to contact Miriam Feldblum ([miriam@presidentsalliance.org](mailto:miriam@presidentsalliance.org)) or Jill Welch ([jill@presidentsalliance.org](mailto:jill@presidentsalliance.org)).

Thank you,



Miriam Feldblum  
Executive Director  
Presidents' Alliance on Higher Education and Immigration

**CC: Johanna Cruz, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, U.S. Department of State**