

Administrative Agenda for Immigration and Higher Education¹

Last updated February 2023

Introduction

For generations, U.S. colleges and universities have been engines of opportunity and innovation where individuals of every background—foreign and domestic—receive the education they need to rise as high as their talents will take them. Yet today, undocumented, international, and refugee students and scholars face daunting obstacles in pursuit of higher education, a career, and a stable life in the United States.

This is an enormous loss for all involved—students, their families, higher education, the economy, and society at large. The United States advances when we remain true to our heritage as a land of opportunity for those who dream of a better life for themselves and their families. Today's undocumented, international, and refugee students are resilient and talented. They are ambitious—for themselves and the world—and they deserve fair, forward-looking, and common-sense immigration practices and pathways. Their future depends on it, and so does ours.

Indeed, U.S. higher education and our national economy need the contributions and talents of all three of these student groups and their families, especially with the 2020 census showing U.S. population growth at its slowest in generations, with more projected declines. Expanding efforts to increase access and equity for immigrant and refugee students and attract and retain international students will serve multiple purposes: meeting equity and diversity commitments, addressing the global demand for high-quality education, and filling critical human resource and labor market needs.

This document represents the Presidents' Alliance on Higher Education and Immigration's recommended actions for the Biden administration to support undocumented students, international students, refugee students, and other immigrant students. Broken down by population and by relevant agency, these recommendations outline how the administration can use existing statutory and regulatory authority (guidance, regulations, policy memoranda, and other mechanisms) to make positive, measurable differences in the lives of students, scholars, and their families. During the first half of the Biden administration, the higher education community has celebrated crucial first steps taken for our immigrant, international, and refugee students and scholars—though we note the need for continued progress to create a safe, equitable, and just immigration system for all.² While only Congress can provide true permanent relief and paths toward greater opportunity for all of these populations, the recommendations in this document serve as a critical down payment for future legislative action. Collectively, these recommendations would allow the administration to design and

¹ For questions regarding undocumented students and scholars (including those with DACA), please contact Diego Sánchez at diego@presidentsalliance.org. For questions regarding international students and scholars, please contact Jill Welch at jill@presidentsalliance.org. For questions regarding refugee students and scholars, please contact Laura Wagner at laura@presidentsalliance.org.

² "Coalition of 500+ College and University Leaders Mark Progress and Room for Growth for Undocumented, Refugee, and International Students in the First Year of Biden Presidency," the Presidents' Alliance on Higher Education and Immigration, last updated March 16, 2022, <https://www.presidentsalliance.org/press/coalition-of-500-college-and-university-leaders-mark-progress-and-room-for-growth-for-undocumented-refugee-and-international-students-in-the-first-year-of-biden-presidency/>

implement an immigration and higher education strategy focused on legalization, accessibility, and retention for undocumented, international, and refugee students and scholars.

The Presidents' Alliance on Higher Education and Immigration

The nonpartisan, nonprofit [Presidents' Alliance on Higher Education and Immigration](#) 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, forward-looking immigration policies and practices at the federal, state, and campus levels that are consistent with our heritage as a nation of immigrants and the academic values of equity and openness. The Alliance is composed of over 550 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 43 states, D.C., and Puerto Rico.

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Administrative Agenda for Undocumented Students and Scholars³

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Introduction

Undocumented immigrants (including DACA recipients) are essential community members, both on and off campus. These students, scholars, staff, and their families pay taxes and graduate to start businesses and build careers in key industries. According to Census data, over 427,000 students in higher education are undocumented, or approximately two percent of all higher education students in the United States.⁴ The majority of undocumented students pursuing higher education do not have DACA. Students with DACA or who are DACA-eligible constitute a subset of approximately 181,000 students, or 0.8 percent of all students in higher education.⁵ Nearly 100,000 undocumented students are graduating high school annually, and only a quarter of them are estimated to be eligible for DACA.⁶ As we await legislative immigration reform, these individuals need continued support to pursue their degrees and achieve successful and fulfilling careers. There are significant opportunities for administrative change with a significant positive impact on the lives and education of undocumented students, scholars, and staff.

The Presidents' Alliance on Higher Education and Immigration

The nonpartisan, nonprofit [Presidents' Alliance on Higher Education and Immigration](https://www.presidentsalliance.org) 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, forward-looking immigration policies and practices at the federal, state, and campus levels that are consistent with our heritage as a nation of immigrants and the academic values of equity and openness. The Alliance is composed of over 550 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 43 states, D.C., and Puerto Rico.

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⁴ “Undocumented Students in Higher Education: How Many Students are in U.S. Colleges and Universities, and Who Are They?” Presidents’ Alliance on Higher Education and Immigration and New American Economy, March 2021, <https://www.higheredimmigrationportal.org/research/undocumented-students-in-higher-education-updated-march-2021/>.

⁵ Id.

⁶ See Jie Zong and Jeanne Batalova, “How Many Unauthorized Immigrants Graduate from U.S. High Schools Annually?” Migration Policy Institute, April 2019, <https://www.higheredimmigrationportal.org/research/migration-policy-institute-fact-sheet-on-number-of-dreamers-graduating-from-high-school/> (commissioned by the Presidents’ Alliance); Phillip Connor, *The Post-DACA Generation is Here*, FWD.us, May 25, 2022, <https://www.higheredimmigrationportal.org/research/the-post-daca-generation-is-here/>.

Recommendations

I. For the White House

A. Employment

1. Modify Executive Order 11935 to expand civil service jobs to all work-authorized immigrants, including DACA recipients.

Currently, certain agencies and departments are prohibited from hiring noncitizens, including those with deferred action, under Executive Order 11935.⁷ The administration can rescind or modify the order and instruct administrative agencies like the Office of Personnel and Management (OPM) to promulgate regulations to the effect. As DHS and other federal agencies “demonstrate [a] commitment to inclusive diversity as a top priority,” opening hiring to include noncitizens will serve that goal.⁸

2. Submit a budget request to rescind all appropriations restrictions on the hiring of noncitizens within the federal government, aside from where prohibited by existing statute.

Currently, the Consolidated Appropriations Act of 2021 and subsequent appropriations legislation prohibit the use of funds to employ noncitizens, even those with work permits.⁹ Your administration should include language in the next budget request to authorize the use of funds for any work-authorized immigrant, aside from where prohibited by other existing statutes.

II. For the U.S. Department of Homeland Security (DHS)

A. Reallocate funds within DHS to provide application financial assistance to DACA recipients who need it and fund the use of the existing fee waivers for DACA applicants.

Unlike many other USCIS application forms, DACA recipients cannot apply for the usual I-912 fee waiver to assist with the cost of applying.¹⁰ DACA recipients must meet narrower criteria than the usual fee waiver and receive the exemption *before* they submit their application, adding time to an already delayed process. Almost half of DACA recipients surveyed had to receive financial help from family or other sources to afford application fees, and 36 percent of applicants reported delaying their application in order to raise funds.¹¹ Funds should be

⁷ U.S. Office of Personnel and Management, “Federal Hiring,” accessed February 8, 2023, <https://www.opm.gov/frequently-asked-questions/employment-faq/federal-hiring/>.

⁸ U.S. Department of Homeland Security, *DHS Inclusive Diversity Strategic Plan for Fiscal Years 2021 – 2024: Elevating the Human Experience*, December 30, 2022, https://www.dhs.gov/sites/default/files/publications/20_1230_ochco_dhs-inclusive-diversity-strategic-plan_fy21-24_1_1.pdf.

⁹ Consolidated Appropriations Act, 2021, Public Law 116–260, December 27, 2020, 116th Congress, *available at* <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>.

¹⁰ U.S. Citizenship & Immigration Services, U.S. Department of Homeland Security, “I-821D, Consideration of Deferred Action for Childhood Arrivals,” last updated January 10, 2023, <https://www.uscis.gov/i-821d>; U.S. Citizenship & Immigration Services, U.S. Department of Homeland Security, “I-912, Request for Fee Waiver,” last updated December 21, 2022, <https://www.uscis.gov/i-912> (“You may not file Form I-912 if you are requesting consideration of Deferred Action for Childhood Arrivals (DACA). There are no fee waivers for DACA.”).

¹¹ Tom K. Wong and Carolina Valdivia, *In Their Own Words: A Nationwide Survey of Undocumented Millennials*, United We Dream 4 (May 20, 2014), *available at* https://docs.wixstatic.com/ugd/bfd9f2_4ac79f01ab9f4247b580aeb3afd3da95.pdf.

reprogrammed and transferred from border operations and U.S. Immigration and Customs Enforcement (ICE) to DACA recipients who need financial assistance.

B. Allow the preprocessing of INA 212(d)(3) waivers to allow certain undocumented students and other Dreamers to apply for nonimmigrant visas without temporary intent.

DHS should issue guidance to more fully utilize the 212(d)(3), or d3, waiver of the three- and ten-year unlawful presence to provide a pathway for Dreamers (including DACA recipients) to apply for nonimmigrant visas that do not require temporary intent. Many Dreamers will earn a bachelor's level degree or higher in the United States, and most could be eligible for nonimmigrant status in the H-1B or L-1 categories. However, most Dreamers do not choose to exit the United States to seek d3 authorization because that is a subjective process that takes months. We suggest that a pre-screening of d3 authorization requests (leading to a provisional waiver) within the United States could provide a path for Dreamers to move into lawful nonimmigrant status and serve the three- or ten-year bar here. This new guidance may be useful for undocumented students, particularly as many may currently be unable to obtain DACA benefits (or those with DACA who face an uncertain future). An approved §212(d)(3) waiver removes that bar for temporary visa purposes, allowing the Dreamer to apply for a nonimmigrant visa, such as an H-1B, at a consulate or port of entry, and then—if the visa is granted—enter the United States in valid nonimmigrant status with work authorization.

III. For U.S. Citizenship and Immigration Services (USCIS)

A. Adjudications and Application Processing

1. Provide automatic, temporary renewal upon receipt of a DACA renewal application for six months.

Automatic renewal will prevent lapse of status for DACA applicants while USCIS adjudicates the request. USCIS was forced to cut services and staff to remain open during the concurrent pandemic and USCIS budget crisis, increasing the case backlog and wait times tremendously.¹² Applicants have also faced a variety of COVID-19 barriers, including difficulty in paying filing fees, limited to no access to legal service providers, and the virus itself.

2. Provide an *optional* “backdating” of deferred action grants for applicants whose DACA expires and who later apply for initial or renewal of DACA.

Optional backdating would prevent applicants from accruing unlawful presence should their grant expire due to USCIS adjudication delays or other barriers to renewal. The backdating should be optional, as some applicants may prefer not to cut their two-year grant “short” by backdating the start time or have already accrued unlawful presence prior to DACA.

3. Utilize existing biometrics in processing renewal applications rather than requiring DACA recipients to resubmit for each renewal.

There is no clear rationale for requiring applicants to travel to Application Support Centers (ASCs) to resubmit biometrics (which cannot physically change between applications) with every renewal. USCIS has successfully used existing biometrics for certain forms during

¹² Sarah Pierce and Doris Meissner, “USCIS Budget Implosion Owes to Far More than the Pandemic,” MPI, June 2020, <https://www.migrationpolicy.org/news/uscis-severe-budget-shortfall>.

ASC closures for COVID-19, again demonstrating that resubmission is not necessary.¹³ Reuse of biometrics would also reduce administrative burden for USCIS officers, who would not have to receive, record, and re-validate biometrics at every renewal.

4. Issue sequential instead of overlapping grant periods of DACA for renewal requests.

With sequential grants, DACA recipients receive full two-year periods of deferred action rather than one grant “cutting” into the next as they overlap, creating grants of one year and 8-11 months, for example. The Obama administration piloted a program (which the Trump administration ended) making this change, which should be resumed and expanded.

5. Update existing policy regarding expired DACA applications to treat any subsequent application as a renewal.

Currently, USCIS considers DACA renewal applications filed within one year of expiration “renewal requests,” while considering applications filed more than one year after expiration as “initial requests.” We strongly recommend USCIS consider *all* applications filed after the expiration of a DACA request as “renewal requests” to reduce the burden on requestors who, due to economic or other barriers, are unable to file within one year. This change would also decrease administrative burden on USCIS adjudicators, as renewals require less information and supporting documentation than initial applications.

6. Automatically extend work authorization for DACA requests for 180 days from expiration.

USCIS is currently experiencing a significant backlog in approving DACA requests, leading to many individuals losing their status. An automatic extension of employment authorization—currently accomplished in a variety of other contexts for other immigration statuses—would help alleviate the negative impact of these expirations.

7. Establish an administrative “statute of limitations” for consideration of convictions in the DACA application process that occurred five or more years before the application date.

The criminal justice system at its best is about second chances, the ability to rehabilitate oneself, and our commitment as a nation to reintegrate those who have received their due punishment back into society. DACA-eligible youth have developed deep ties to family and community in the United States, and they deserve the chance to reenter society and contribute like anyone else.

8. Include DACA recipients in post-conviction relief, including expunged and sealed convictions.

In the criminal justice system, an expunged conviction is removed from the system entirely. However, a person can still be found inadmissible due to an expunged conviction in the immigration system.¹⁴ The definition of “conviction” for immigration purposes in the DACA adjudication context should not include an adjudication or judgment of guilt that has been dismissed, expunged, deferred, annulled, invalidated, withheld, sealed, vacated,

¹³ See “USCIS to Continue Processing Applications for Employment Authorization Extension Requests Despite Application Support Center Closures,” U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, last reviewed/updated March 30, 2020, <https://www.uscis.gov/news/alerts/uscis-to-continue-processing-applications-for-employment-authorization-extension-requests-despite>.

¹⁴ Emily Kendall, “Do Expunged or Sealed Records Show Up For Immigration Purposes?,” AllLaw, 2020, <https://www.alllaw.com/articles/nolo/us-immigration/expunged-sealed-criminal-records-show.html>.

or pardoned, an order of probation without entry of judgment, or any similar rehabilitative disposition.

9. Allow pre-processing of temporary visa waivers from the United States, similar to the Obama-era plan for green card waivers.¹⁵

While most DACA and DACA-eligible people would get a waiver of unlawful presence based on the “balancing test” (the risk of having them in the United States vs. the benefit of having them in the United States), the only way to apply for the waiver is to leave the United States and wait five months. If the waiver could be processed in the United States rather than abroad, graduated students could then consider applying for an H1-B visa through consular processing rather than taking the risk of leaving the United States without knowing if they would be able to return.

B. Parole

1. Broaden the grounds for advance parole to include any reason for travel, similar to Temporary Protected Status (TPS).

Currently, DACA recipients must request advance parole only on employment, educational, or humanitarian grounds, despite there being no such statutory or regulatory restriction of advance parole for others.¹⁶

2. Utilize humanitarian parole to allow deported immigrant youth to return to the United States on a case-by-case basis.

Even though unaccompanied minors were eventually exempt from Title 42 expulsions,¹⁷ hundreds of children have been swiftly deported with little due process since the beginning of the pandemic and should be given the opportunity to return to the United States to fairly argue their case.¹⁸

3. Establish a new parole-in-place program that allows DACA recipients and other undocumented immigrants with U.S. citizen sponsors to apply for parole and adjust their status to lawful permanent resident (LPR).

Many DACA recipients may adjust their status but do not have an admission or parole that would allow them a path to permanent legal status or citizenship. One iteration of this parole-in-place program could be for undocumented students enrolled or who graduated from a higher education institution.

IV. For the U.S. Department of Education (Ed)

A. Promulgate and Update Guidance

1. Update 2015 Ed Resource Guide: Supporting Undocumented Youth.

The Department of Education should update its October 2015 resource guide, *Supporting Undocumented Youth*, which is a resource for educators, counselors, and institutions to

¹⁵ U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, “I-601A, Application for Provisional Unlawful Presence Waiver,” last reviewed/updated December 23, 2022, <https://www.uscis.gov/i-601a>.

¹⁶ U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, “I-131, Application for Travel Document,” last updated January 23, 2023, <https://www.uscis.gov/i-131>.

¹⁷ “Title 42 Termination with Respect to Unaccompanied Noncitizen Children,” Center for Disease Control and Prevention, U.S. Department of Health and Human Services, March 12, 2022, <https://www.cdc.gov/media/releases/2022/s0311-title-42-termination.html>.

¹⁸ Caitlin Dickerson, “10 Years Old, Tearful and Confused After a Sudden Deportation,” *New York Times*, May 20, 2020, <https://www.nytimes.com/2020/05/20/us/coronavirus-migrant-children-unaccompanied-minors.html>.

support undocumented youth at the secondary and postsecondary school levels.¹⁹ The guide was used by non-profit organizations and higher education institutions to develop support policies and programs for undocumented students. However, the guide has not been revised in seven years. An update to the guide should include updated information on DACA, how DACA provides lawful presence in the United States, how that expands eligibility to certain state and local programs, the current litigation challenges to DACA, and updates on state policies on in-state tuition and state aid for undocumented students with and without DACA.²⁰ An update would allow higher education institutions to consider new developments and create programs to meet new challenges.

2. Issue Guidance to States on Best Practices for Undocumented Students in Higher Education.

We encourage the Department of Education to promulgate guidance highlighting successful state policies that help undocumented students obtain higher education credentials and gain professional experience.

a) Tuition Equity and Support.

Undocumented students can access in-state tuition and state aid in 17 states and D.C. Six additional states provide access to in-state tuition, but not state aid. The remaining 27 states offer a patchwork of policies, including seven states that provide in-state tuition only to DACA recipients and five states that actively block access to in-state tuition.²¹ Ed should issue guidance that encourages states to expand access to in-state tuition and state financial aid to the state's undocumented students, including those with and without DACA. The guidance should also highlight innovative ways to expand access to state aid, including expanding a state's Promise Program to undocumented youth. We encourage Ed to highlight a key example from New Mexico, which passed The Opportunity Scholarship Act in 2022—one of the most far-reaching promise programs in the country—that covers all tuition costs for New Mexico undergraduates seeking a trade certificate, associate degree or bachelor's degree in an in-state public college or university.²² New Mexico's Opportunity Scholarship appears to be inclusive of the state's undocumented students. Ed should encourage other states that utilize promise programs to be equally inclusive of all state residents, including undocumented students.

b) Professional Licensure.

Policies that provide individuals with access to professional, commercial, and business licenses, regardless of their immigration status, generally aid the state's economy. Undocumented individuals can access all or most occupational and professional licenses in seven states (CA, CO, IL, NM, NJ, NV, OR). Eleven additional states provide access to certain professional licenses to undocumented individuals or, in some cases,

¹⁹ "Resource Guide: Supporting Undocumented Youth," U.S. Department of Education, October 20, 2015, <https://www2.ed.gov/about/overview/focus/supporting-undocumented-youth.pdf>.

²⁰ You can see the most up-to-date information on state tuition equity policies on the Higher Ed Immigration Portal at: "Portal to the States," Higher Ed Immigration Portal, accessed February 8, 2023, <https://www.higheredimmigrationportal.org/states/>.

²¹ Id.

²² Edward Conroy, "Governor Lujan Grisham's Free College Plan for New Mexico Boosts Enrollment," Forbes, November 6, 2022, <https://www.forbes.com/sites/edwardconroy/2022/11/06/governor-lujan-grishams-free-college-plan-for-new-mexico-boosts-enrollment/>.

only individuals with work authorization, including DACA recipients.²³ Ed should issue guidance that encourages states to permit all occupational and professional licensing entities in the state to grant occupational and professional licenses to the state's undocumented residents. This guidance should include a recommendation to allow individuals without a Social Security Number to provide an Individual Tax Identification Number (ITIN) when seeking a professional license.

c) **Non-Employment Based Opportunities.**

Ed should highlight innovative state programs that provide non-employment based opportunities for skills development and serve as alternatives to work authorization. While these alternatives are limited, they are still very important for professional development. As mentioned in the memo's introduction, over the next three years, 75 percent of undocumented students who graduate high school will not be eligible for DACA and the work authorization that comes with the program. Ed should highlight programs, like the California Service Incentive Grant²⁴ and the California Community College Corps,²⁵ that provide undocumented students with an opportunity to continue their career development, education, and civic engagement. In addition, state or local entities can also create and provide funding for non-registered apprenticeship programs, outside of the Department of Labor process, similarly targeted to provide income and training opportunities for undocumented immigrants.

3. Issue Guidance on FERPA and Protecting Undocumented Students.

The Personally Identifiable Information (PII) of undocumented or DACA students (as well as other students) is protected by the Family Educational Rights and Privacy Act (FERPA).²⁶ We believe campuses should provide training and information to students and campus personnel on how FERPA protections of undocumented students' personally identifiable information still apply regardless of any court decisions that might eliminate DACA. The Department of Education should promulgate guidance to higher education institutions highlighting that FERPA effectively prohibits schools from releasing educational records or most personally identifiable information without consent unless presented with a "subpoena issued for a law enforcement purpose[.]"²⁷ The guide should encourage institutions to ensure FERPA training for campus staff, faculty, and students should include this information, and campuses should ensure that all staff, faculty, and students are provided information on campus protocols regarding immigration enforcement officers coming onto campus. It is important that higher education institutions acknowledge and are aware of the presence of their undocumented students so as to best serve them, and to do so in a way that protects their privacy and educational journey.

²³ "Portal to the States," Higher Ed Immigration Portal.

²⁴ California Service Incentive Grant: Encourages California Dream Act Applicant (CADAA) students to perform community or volunteer service. The California Student Aid Commission (CSAC) awards up to \$4,500 per academic year (up to \$2,250 per semester or up to \$1,500 per quarter) to 1,667 eligible students. See: <https://www.csac.ca.gov/dsig>.

²⁵ California College Corps: Fellows earn \$10,000 for community service and education, receive ongoing training, and become part of a statewide cohort of young leaders across California. See: <https://www.californiavolunteers.ca.gov/californiansforall-college-corps-for-college-students/>.

²⁶ "Family Educational Rights and Privacy Act (FERPA)," U.S. Department of Education, August 25, 2021, <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

²⁷ 20 U.S.C.S. § 1232g(b)(1)(J)(ii) (LexisNexis 2019).

4. Guidance on Expanding Eligibility for External Fellowships and Programs, and Advocating for Updates to State Policies.

Issue guidance for local, field-specific, and national scholarship programs that students may apply to and encourage those scholarship organizations to expand eligibility to all undocumented students to ensure that DACA recipients will still have access to those programs if the program is revoked, as well as undocumented students without DACA. Given that the majority of undocumented students in higher education do not have DACA, we encourage Ed to examine tangible examples of inclusive eligibility requirements, as noted in the Presidents' Alliance fellowships and scholarships letter to institutions.²⁸

B. Federal Regulations

1. Review and Broaden Criteria for Programs to Include Undocumented Students.

The Department of Education should assess and review criteria for higher education programs and services to determine if they can be updated to be inclusive of undocumented students. There are opportunities for federal agencies to update eligibility for specific programs to include DACA recipients, undocumented students, or other undocumented individuals, specifically those related to racial equity advancement. We encourage Ed specifically to review and broaden the criteria for the following programs:

a) Allow TRIO programs to serve undocumented students.

Existing requirements state that TRIO students must be U.S. citizens or in the United States for other than a temporary purpose, effectively excluding DACA recipients,²⁹ Temporary Protected Status (TPS) holders, and other undocumented students. TRIO works to provide first-generation and economically disadvantaged students the opportunity to prepare for higher education by providing a support system from middle school through college.³⁰ Ed should issue regulations that broaden eligibility to TRIO for all domestic students, regardless of immigration status. We encourage Ed to continue to request more funding for TRIO programs, since increased funding would ensure that the quality of services provided is enough to meet the needs of new students receiving services.

b) Expand Access to CTE Programs for Undocumented Students.

While undocumented students can easily participate in *secondary* Career and Technical Education (CTE) programs given the Supreme Court's *Plyler v. Doe* ruling on access to K-12 education, access to *postsecondary* CTE programs is more complex. While undocumented students face certain restrictions to CTE programs at the postsecondary level, the Department should explore the extent to which CTE programs at the postsecondary level can be configured or eligibility criteria reconsidered so that

²⁸ "Fellowships & Scholarships: Creating Inclusive Eligibility Requirements for Undocumented Students," Higher Ed Immigration Portal, August 10, 2022, https://www.higheredimmigrationportal.org/effective_practice/fellowships-scholarships-creating-inclusive-eligibility-requirements-for-undocumented-students/.

²⁹ "Programs: Student Support Services Program: Frequently Asked Questions," U.S. Department of Education, last modified August 18, 2011, accessed February 8, 2023, <https://www2.ed.gov/programs/triostudsupp/faq.html>.

³⁰ See Kat Trejo and Amy Patricia Morales, "Policy Brief: Expanding TRIO to Be Inclusive of All Students Regardless of Immigrant Statuses and Providing Federal Financial Aid Funding for Undocumented, TPS, and DACA Students," UnidosUS and Avanzando Fellowship, August 2021, https://www.unidosus.org/wp-content/uploads/2021/08/kattrejo_amypatriciamorales_expandtrio_lafpb.pdf.

undocumented students can participate in such programs as they transition to college, pursue their postsecondary education, and continue to build their skills. This is especially important given that under the Strengthening Career and Technical Education for the 21st Century Act (commonly known as Perkins V), many CTE “programs of study” are designed for students to move seamlessly from two years of secondary education to two years at the postsecondary level.³¹ To the greatest extent possible, undocumented students should have the same opportunities as their documented peers to participate in a full CTE program of study.

V. For the U.S. Department of Defense (DOD)

A. Open DOD general enlistment to DACA recipients.

There are DACA holders that want to put their expertise and U.S. education to use in the military that are currently unable to do so. The Military Accessions Vital to National Interest (MAVNI) program was a pilot program that allowed certain non-citizens temporarily legally present in the United States with needed skills to join the military and later apply for citizenship.

³² The MAVNI program was narrow in scope only to those with certain skills, but your administration should open DOD enlistment and naturalization programs to *all* otherwise qualified noncitizens who would like to enlist.

VI. Temporary Protected Status

Students, scholars, and staff with Temporary Protected Status (TPS) are also essential members of our campus communities and experience unique issues due to their status. The Biden administration has designated a record number of countries in the past two years, and we urge the continued use of TPS for all eligible countries in crisis. In addition to the above recommendations for DACA and undocumented students, we also recommend the following to improve TPS:

A. Conduct a timely review of the country conditions of all countries that may meet the statutory criteria for Temporary Protected Status.

B. Make subsequent timely TPS designations for all qualifying countries.

Qualifying countries include (but are not limited to): the Democratic Republic of the Congo, Guatemala, Lebanon, Mali, Mauritania, Nicaragua, and Pakistan. It is also important to coordinate a simultaneous announcement of SSR for every TPS designation, and we encourage the administration to continue to issue them together.

C. Release timely a Federal Register Notice (FRN) in conjunction with an announcement of initial, extended, or redesignation of TPS or DED.

³¹ Adam K. Edgerton, *Strengthening Career and Technical Education for the 21st Century Act (Perkins V): A Primer*, R47071, Congressional Research Service, April 15, 2022, <https://sgp.fas.org/crs/misc/R47071.pdf>.

³² “What is MAVNI? Information for Designated School Officials,” U.S. Department of Homeland Security, accessed February 8, 2023, <https://studyinthestates.dhs.gov/schools/additional-resources/what-is-mavni-information-for-designated-school-officials>.

Administrative Agenda for International Students & Scholars³³

Last updated February 2023

Introduction

International students and scholars make significant contributions to their campuses and the United States, intellectually, culturally, and economically.³⁴ Recent analysis finds that international students studying at U.S. colleges and universities contributed \$33.8 billion and supported more than 335,000 jobs in the U.S. economy during the 2021-2022 academic year.³⁵ For every three international students in the United States, one U.S. job is created.³⁶ However, international student enrollment at U.S. universities has been falling in recent years. Even prior to the COVID-19 pandemic, enrollment declined 7.2 percent between the 2016 and 2020 academic years.³⁷ Once the pandemic hit, U.S. international student enrollment dropped another 22.7 percent from 2019 to 2021, and though it has begun to increase, we still have not reached pre-pandemic levels.³⁸ We urge the administration to build on its *Joint Statement of Principles in Support of International Education* and other achievements to develop and implement a policy agenda and corresponding communications strategy that publicly and clearly affirms the importance of welcoming international students and scholars to our campuses and communities.³⁹ We need policies that enhance our ability to recruit, support, and retain these talented individuals, particularly as we continue to face increasing global competition from other countries with coordinated strategies. Below, we provide our recommendations in support of international students and scholars, with an eye toward updating regulations, guidance, and policy to lay the foundation for a robust international student recruitment and retention strategy.

The Presidents' Alliance on Higher Education and Immigration

The nonpartisan, nonprofit [Presidents' Alliance on Higher Education and Immigration](https://www.presidentsalliance.org) 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, forward-looking immigration policies and practices at the federal, state, and campus levels that are

³³ For questions regarding undocumented students and scholars (including those with DACA), please contact Diego Sánchez at diego@presidentsalliance.org. For questions regarding international students and scholars, please contact Jill Welch at jill@presidentsalliance.org. For questions regarding refugee students and scholars, please contact Laura Wagner at laura@presidentsalliance.org.

³⁴ "How International Students Contribute to our Campuses, Communities, and Country," Presidents' Alliance on Higher Education and Immigration, January 18, 2022, <https://www.presidentsalliance.org/how-international-students-contribute-to-our-campuses-communities-and-country/>.

³⁵ "New NAFSA Data Reveal International Student Economic Contributions to the U.S. Still Below Pre-Pandemic Levels," NAFSA: Association of International Educators, November 14, 2022, <https://www.nafsa.org/about/about-nafsa/new-nafsa-data-reveal-international-student-economic-contributions-us-still-below>.

³⁶ *Id.*

³⁷ "Analysis of U.S. and Canadian International Student Data," National Foundation on American Policy, March 2022, <https://nfap.com/wp-content/uploads/2022/03/Analysis-of-International-Student-Data.NFAP-Policy-Brief.March-2022.pdf>.

³⁸ *Id.*

³⁹ "Joint Statement of Principles in Support of International Education," U.S. Department of Education, U.S. Department of State, and EducationUSA, July 27, 2021, <https://educationusa.state.gov/us-higher-education-professionals/us-government-resources-and-guidance/joint-statement>.

consistent with our heritage as a nation of immigrants and the academic values of equity and openness. The Alliance is composed of over 550 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 43 states, D.C., and Puerto Rico.

Recommendations

I. For the White House

We encourage the President and other executive officials to continue efforts to better coordinate welcoming policies for international students and scholars. We recommend the following specific actions:

- A. Communicate the power of international students and scholars to build a stronger economy, solve global and local challenges, and strengthen our security.**
President Biden, Vice President Harris, Cabinet Secretaries, and Administrators, as well as officials in the Domestic Policy Council, National Security Council, and the Office of Science, Technology, and Policy, can help remind the American people and the world how much we gain when international students come here to learn, create jobs, drive innovation and research, enrich our classrooms, share ideas and culture, and benefit our local communities.
- B. Appoint a White House-level office to coordinate efforts between agencies.**
Coordination between agencies greatly impacts students' ability to both come to the United States and/or remain here after graduation.
- C. Facilitate students' and scholars' ability to study and conduct research in the United States.**
For example, we commend the White House's action in January 2022 to issue National Interest Exceptions for students whose country of origin was under COVID-19 related travel restrictions to attract STEM talent and strengthen our economic competitiveness.⁴⁰ We encourage further actions that will facilitate access to higher education opportunities in the United States for refugee learners and other international students.

II. For the U.S. Department of State (DOS)

- A. Continue to articulate the importance of international students and scholars.**
We urge DOS to be a champion for policies and practices that help implement the *Joint Statement of Principles* issued by the U.S. Departments of Education and State.⁴¹ In particular, we urge DOS to continue to ensure that all U.S. visa policy, 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.
- B. Continue to improve visa application processing for students and scholars.**
U.S. consular officials have indicated that recent improvements to administrative processing should reduce uncertainty and lengthy timeframes. This should help us to better meet the critical needs of time-sensitive experiments and research. We urge the State Department to monitor applications carefully to ensure that they do not take longer than 60 days.

⁴⁰ "Fact Sheet: Biden-Harris Administration Actions to Attract STEM Talent and Strengthen our Economy and Competitiveness," White House, January 21, 2022.

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/21/fact-sheet-biden-harris-administration-actions-to-attract-stem-talent-and-strengthen-our-economy-and-competitiveness/>.

⁴¹ "Joint Statement of Principles in Support of International Education," U.S. Department of Education.

C. Continue issuing annual guidance to consulates to prioritize students (F and J) and other academic-related visas (H, J, and O) during high-volume seasons and share that outreach with the higher education community.

D. Continue to remind consular officers that attendance at a lesser-known college, English language program, or community college is not, in itself, a reason for refusing a student visa applicant.

DOS 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. Furthermore, 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), if necessary, to help students succeed.

E. Continue to ensure the consistent application of consular guidance and/or provide training on how to assess financial means and travel documents.

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. The language of the Foreign Affairs Manual updated on May 27, 2021 gives the appropriate guidance about financial means and should be reinforced through training.⁴²

F. Provide Special Student Relief (SSR) for J-visa holders to address challenges students and scholars are facing due to emergent circumstances.

We urge the State Department to provide SSR to J-visa holders whenever relief is provided by the Department of Homeland Security for F-1 visa holders. We also urge State to coordinate with DHS to ensure a simultaneous announcement of SSR for countries designated for Temporary Protected Status (TPS).⁴³

G. Provide transparent and clear information to students about visa denials.

When prospective students are denied visas, they are often left to guess what aspects of their application may have led to the denial. When a student visa is denied, the prospective student should be provided a clear written explanation for the denial.

H. Expedite processing of 212(e) waivers for Afghan Fulbrighters and other exchange visitors who have received J-1 visas but for whom it's impossible to fulfill the 2-year home residency requirement.

We support the blanket waiver recommended by Members of Congress.⁴⁴

⁴² See Students and Exchange Visitors – F, M, and J Visas, 9 FAM 402.5-5(G), available at <https://fam.state.gov/fam/09FAM/09FAM040205.html>.

⁴³ “Policy Brief: Automatic Special Student Relief Announcement to Accompany Temporary Protected Status Country Designation,” Presidents’ Alliance on Higher Education and Immigration, March 22, 2022, <https://www.presidentsalliance.org/policy-brief-automatic-special-student-relief-announcement-to-accompany-temporary-protected-status-country-designation/>.

⁴⁴ “What Congress Can Do to Help our Afghan Fulbrighters and Other Exchange Visitors,” Presidents’ Alliance on Higher Education and Immigration, February 28, 2022, <https://www.presidentsalliance.org/what-congress-can-do-to-help-our-afghan-fulbrighters-and-other-exchange-visitors/>.

I. Convey to EducationUSA all policy changes and updates to facilitate the ability of overseas advisors to guide students in navigating the visa process.

J. Communicate regularly with the U.S. higher education community.

Continue to communicate, both directly and through their relevant associations, about steps the U.S. government has taken and plans to take to ensure timely visa processing for students and other academic-related travelers. A series of roundtable discussions with key stakeholder communities would be useful, in addition to regular briefings.

III. For the U.S. Department of Education

A. Continue to articulate the importance of international students and scholars.

Be a champion for policies and practices that help to implement the Joint Statement of Principles issued by the U.S. Departments of Education and State.⁴⁵

IV. U.S. Department of Homeland Security (DHS)

A. Articulate the importance of international students and scholars.

Be a champion for policies and practices that help to implement the Joint Statement of Principles issued by the U.S. Departments of Education and State.⁴⁶

B. Continue to improve USCIS processing times.

USCIS should prioritize predictable processing times and implement technological improvements. There are dire consequences for students and scholars falling out of or violating immigration status. Reasonable and reliable processing times are critical to ensure maintenance of status.

C. Connect SSR to TPS and streamline processing.

We urge the simultaneous announcement of Special Student Relief whenever Temporary Protected Status is announced. We also urge the Department to move expeditiously to publish the necessary Federal Register announcements for these two forms of relief, to clarify how both can benefit international students and scholars, and to process applications expeditiously. For example, students applying for SSR whose country of origin has already been identified as an SSR-eligible country should not have to prove individual severe economic hardship.

D. Ensure H-1B regulations serve as a pathway for international students who attend our colleges and universities and then transition into the workplace and potentially legal permanent residence.

Upon graduation, many international students and scholars transition to other legal pathways, as employers seek to hire individuals who graduate from U.S. colleges and universities with the knowledge and skills needed in our economy.” DHS should ensure that any regulations promulgated to modernize the H-1B program provide viable options for new graduates to use the program as a stepping stone in their immigration pathway.

E. Strengthen and reaffirm Optional Practical Training (OPT).

Optional Practical Training offers an experiential learning opportunity that serves as a key feature of the U.S. higher education experience. Any changes to the program should enhance, not deter, prospective international students from choosing the United States for their degrees. We commend the administration for adding twenty-two new fields of study to the

⁴⁵ “Joint Statement of Principles in Support of International Education,” U.S. Department of Education.

⁴⁶ *Id.*

STEM OPT program,⁴⁷ and we encourage the administration to take the expansion a step further to include health-related fields.

F. Reconstitute the Homeland Security Academic Advisory Council (HSAAC).

We applaud Secretary Mayorkas’s decision to reconstitute this Council, which in the past has provided significant value to DHS as a higher education venue to share best practices, recommendations, and other policy change suggestions at the intersection of higher education and immigration (especially in regards to international students). We look forward to supporting DHS as it resumes regular meetings of the HSAAC with an eye toward engaging the higher education community, particularly those representing diverse constituencies, to consider recommendations and best practices to support our recruitment and retention of international students and scholars.

V. For the U.S. Agency for International Development (USAID)

A. Prioritize international student recruitment as part of our nation’s foreign policy and development strategy.

Implementing the vision articulated by USAID Administrator Samantha Power prior to her appointment.⁴⁸

B. Re-invest in funding international students from strategic areas of the world.

Too often, students from nations of strategic interest to the United States cannot afford to study in the United States, while other competitor nations are recruiting them and offering them scholarships.

⁴⁷ “Update to the Department of Homeland Security STEM Designated Degree Program List,” Federal Register, 87 FR 3317, Document Number 2022-01188, U.S. Department of Homeland Security, January 21, 2022, <https://www.federalregister.gov/documents/2022/01/21/2022-01188/update-to-the-department-of-homeland-security-stem-designated-degree-program-list>.

⁴⁸ Samantha Power, “The Can-Do Power: America’s Advantage and Biden’s Chance,” *Foreign Affairs*, January/February 2021, <https://www.foreignaffairs.com/articles/united-states/2020-11-20/samantha-power-can-do-power>.

Administrative Agenda for Refugee Students & Scholars⁴⁹

Last updated February 2023

Introduction

The UNHCR estimates that only six percent of refugees have access to higher education (up from only one percent in 2019).⁵⁰ This is far below the global average among non-refugees, which stands at 40 percent.⁵¹ We recommend the administration incorporate college- and university-based sponsorship initiatives as a critical component of expanding opportunities for U.S. institutions to formally sponsor refugees. College and university-based sponsorship will improve refugee integration outcomes, expand access to higher education for refugee students, capitalize on the many resources available in and through campus communities, and reaffirm the United States' role as a leader in helping refugees reach safety. We also recommend that the administration support expanded access to higher education for refugees already in the United States. The recommendations below are part of the RESPONSE campaign.⁵² We also recommend that the Administration provide additional guidance about and support expanded access and pathways to higher education for refugees, Special Immigrant Visa (SIV) holders, and humanitarian parolees already in the United States.

The Presidents' Alliance on Higher Education and Immigration

The nonpartisan, nonprofit [Presidents' Alliance on Higher Education and Immigration](#) 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, forward-looking immigration policies and practices at the federal, state, and campus levels that are consistent with our heritage as a nation of immigrants and the academic values of equity and openness. The Alliance is composed of over 550 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 43 states, D.C., and Puerto Rico.

Recommendations

I. For the White House

A. The President and agencies can use existing legal authority under the 1980 Refugee Act to create a new Priority 4 (P-4) refugee processing category.

We commend the administration for its willingness to make private sponsorship a reality and urge an expedient start to include the opportunity for college and university sponsorship.

II. For the U.S. Department of Education (Ed)

We commend the Department of Education's efforts to provide additional guidance in the FSA Handbook on access to federal student aid for Afghan and Ukrainian parolees. We also recommend the Department:

⁴⁹ For questions regarding undocumented students and scholars (including those with DACA), please contact Diego Sánchez at diego@presidentsalliance.org. For questions regarding international students and scholars, please contact Jill Welch at jill@presidentsalliance.org. For questions regarding refugee students and scholars, please contact Laura Wagner at laura@presidentsalliance.org.

⁵⁰ "Tertiary Education," United Nations High Commissioner for Refugees, accessed February 9, 2023, <https://www.unhcr.org/en-us/tertiary-education.html>.

⁵¹ Id.

⁵² "The RESPONSE Campaign," Higher Ed Immigration Portal, accessed February 9, 2023, <https://www.higheredimmigrationportal.org/response-campaign/>.

A. Create guidance and tools for campuses to engage in supporting refugee students.

1. Create additional guidance and tools to support higher education institutions to understand eligibility requirements and federal financial aid opportunities for refugees and humanitarian parolees, especially Cuban, Haitian, Nicaraguan, and Venezuelan parolees.
2. Encourage higher education institutions and state systems to seek in-state tuition waivers and access federal financial aid for refugee and parolee students.
3. Collaborate with other government agencies on behalf of refugee students, including engaging with the Department of Health and Human Services (HHS) for students to be able to access benefits while enrolled as full-time students.

B. Provide guidance that clarifies that refugees who arrive in the P-4 category may access federal financial aid upon arrival.

C. Consult with higher education to draft in a way that provides clarity within the financial aid cycles used by the U.S. government and higher education institutions.

III. For the U.S. Department of Health and Human Services (HHS)

A. Consider refugees and humanitarian parolees as eligible for Office of Refugee Resettlement (ORR) benefits, even when enrolled as full-time students.

Allowing refugees and humanitarian parolees to enroll as full-time students while accessing ORR benefits creates a more individualized approach to resettlement, resulting in longer-term economic self-sufficiency and integration.

IV. For the U.S. Department of State (DOS)

A. Priority 4 (P-4) Refugee Resettlement Category.

The Presidents' Alliance is excited to hear Secretary Blinken's announcement on Welcome Corps. The Welcome Corps is expected to open opportunities for U.S. colleges and universities to sponsor refugee students on their campuses, providing critical financial, academic, and integration support to sponsored students. In the anticipated college and university sponsorship program, we recommend:

1. Approaching P-4 program design with additionality in mind so that sponsored refugees are ultimately additional to government-assisted refugees.
2. Making every effort to improve processing times in order to accommodate strict academic admissions timelines, requiring students to arrive in the U.S. by the middle of August preceding the academic year.
3. Allowing for flexibility that accounts for the unique context of refugees arriving as enrolled students at U.S. colleges and universities.

- B. Ensure consular officers are familiar with Convention Travel Documents (CTDs) and what rights the CTD provides, particularly the right to return to the country of asylum.**
- C. Provide alternatives to in-person consular interviews for refugees who live in a country that restricts refugee movement within that country.**
In Kenya, for example, camp-based refugees need permission to travel to Nairobi, where the U.S. embassy is located. Although they can get permission to travel for such embassy appointments, the process can be slow and uncertain.
- D. Provide reasonable solutions for scholars and students applying for F-1 or J-1 visas and their families.**
Clarify that consular officers should only focus on evaluating the student applicant's immediate intent to enroll as a bona fide student and should be satisfied by an intent to return when conditions in the conflict-affected country of origin are normalized. DOS should work to address issues faced by displaced students applying for student or scholar visas in third-country posts, particularly in Islamabad.
- E. In cases of mass displacement of individuals who hold or have held J-1 visas, provide blanket waivers for the home residency requirement provisions of INA section 212(e), as recommended by Members of Congress.⁵³**

⁵³ Representative John Garamendi et al. to Secretary Antony J. Blinken, U.S. Department of State and Secretary Alejandro Mayorkas, U.S. Department of Homeland Security, February 4, 2022, https://www.presidentsalliance.org/wp-content/uploads/2022/02/Letter-StateDHS_AfghanFulbrighters-from-Rep.-Garamendi-et-al.pdf.