

PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION

Immigration Policy Overview & Impacts on Higher Education August 20, 2018

Immigration Policy Overview & Higher Education

Administrative, Congressional, court, and state-level activity related to immigration all impact our students and campuses. The purpose of this overview is to highlight recent policy developments on the national level.

Dreamer/Undocumented students

- After a number of efforts this past spring to pass legislation to protect DACA recipients and/or pass DREAM legislation, there is currently no movement in Congress to consider legislation before the mid-term elections.
- The current nation-wide injunction issued by federal district courts has forced USCIS to accept DACA renewals, but is not a permanent solution. The decision by Judge Hanen in the Texas DACA case is still pending.
- In July, House Democrats introduced the **Aim Higher** Act (Reauthorization of HEA), which included a provision to extend federal financial aid/Title IV eligibility to undocumented students ([see this NASFAA summary](#)).

Immigrants and Public Charge Executive Order

- The Public Charge Executive Order, anticipated to be released in the near future, could dramatically change how the use of public benefits is taken into consideration in immigration-related decision-making, and lead to a “chilling effect,” causing millions of immigrants, their families, including their U.S. born dependents, to stop using/drop from public benefits programs or tax credits for which they qualify, and result in less family-based immigration.
- It could have a significant impact on students and higher education institutions (see our July [update](#) on the Public Charge; highlights from the non-partisan MPI (Migration Policy Institute’s [report](#), [ppt slides](#), [Q&A](#); and for general information, the PIF (Protecting Immigrant Families) [website](#)).
- While there have been some changes in Department of State guidance (see this August [update](#) from NILC-CLASP, it is important to note that the determination of what constitutes a public charge has not yet changed (see this [ILRC factsheet](#)).

International Students

- **Visa restrictions targeting Chinese students**, restricting visas to 1 year renewals in certain STEM fields (see this [New York Times article](#))
- **New Unlawful Presence policy** affects F, J, and M visa holders (USCIS released a revised memo on 8/9). The policy could have the effect of placing foreign students, scholars, and exchange visitors on the path to removal following even inadvertent or minor immigration status infractions; It would also bar them from re-entering the country for up to 10 years. The 8/9 revision is an improvement as it “offers a grace period for certain international students on expiring F, M or J visas before their overstay will be counted against them” (see this [Politico article](#)) and shows the importance of speaking out as well as submitting concerns and comment

letters. But, it remains a flawed and problematic policy as detailed in this American Immigration Council (AIC) [article](#).

- **USCIS guidance** released on July 5 instructs staff to issue a Notice to Appear/NTA (a notice to appear in immigration court to show cause why an individual should not be removed) to anyone who is unlawfully present when an application, petition, or benefit request is denied. On July 13, USCIS also announced a [new policy on RFEs](#) (Requests for Evidence) that establishes that USCIS has the authority to deny applications and petitions without RFEs; in other words, permitting denials without giving the petitioner or applicant an opportunity to provide clarifying information when all required initial evidence was filed. When implemented, these two policies, along with the Unlawful Presence Policy (ULP) change means that there are a variety of ways that the ability of international students and other visa holders on campus to stay and work in this country can be significantly threatened (see these [July 11](#) and [July 25](#) Forbes articles). And, the liability for higher education institutions in these cases also increases. See below for the letter submitted to the Judiciary Committee regarding both the ULP and USCIS July memos.
- **Rescinding Work Permits from H4 Visa Holders:** This rule change is still anticipated and would adversely affect approximately 100,000 spouses and dependents of H-1B visa holders, including those on our campuses (see this [American Immigration Council fact sheet](#) on H-4 Visas). While the administration has still not issued the rule (the deadline was June), and there is [bipartisan support](#) to maintain work authorization for H-4 Visa holders, advocates anticipate that the rule rescinding work authorization may still be issued. In an August 15, 2018 interview, USCIS Director Francis Cissna stated it was still the intention of USCIS to rescind work authorization for H-4 visa holders.
- **Increase in SEVP fees for students, visitors, and institutions:** SEVP (Student and Exchange Visitor Program) recently [posted](#) a notice of increased fees for international students and visitors (F, M, J visas) as well as for institutional certifications. This 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. According to the proposal, the rationale for the fee increases is increased "operational costs." This [proposed rule change](#) is open for comment till September 17, 2018. The Presidents' Alliance is planning to submit a comment, and will coordinate with other groups in higher education as well.
- **Optional Practical Training (OPT) changes.** The Administration has signaled that it will issue changes to the OPT program in October, which could result in the reduced availability of OPT and/or STEM OPT for international students. Already in the spring, USCIS posted changes to their website that reduced eligible STEM OPT sites (see this [article](#) in Forbes), and led to a recent [lawsuit](#). On August 17, USCIS updated their website to provide new [clarifications](#) regarding the OPT extension (including revising some of the changes about eligible sites, highlighting the new ULP policy, stressing that students and employers must submit a modified training plan to a designated school official at the earliest opportunity, students must report within 10 days changes to their name, address, email or employer's address; employers must report within 5 days a student-worker's termination or departure, and other information about training and responsibilities of the employer and educational institution.)

[Letter](#) to Senate Judiciary Committee

The Presidents' Alliance joined NAFSA, AAAS, AILA, HACU, and others to send a [letter](#) to the Chair and Ranking Member of the Senate Judiciary Committee to express our deep concerns with the series of recent USCIS policy memos that could result in international students and scholars, as well as other

immigrant students being shifted into unlawful status. Consider the following examples (to read more examples, see the full [letter](#)):

- **Drop below full course load.** Undergraduate student receives permission from academic advisor (but not the DSO) to drop a course, is now registered for 11 rather than 12 semester credit hours as required. If the student becomes aware of this at the beginning of the next academic year following summer break, the student will already have accumulated more than 180 days of unlawful presence and will be beyond the 5-month “timely” reinstatement filing window that tolls unlawful presence.
- **Incorrect date to begin experiential learning.** Through a miscommunication with the DSO and failure to inspect the I-20 closely enough, a student begins an internship one day before the authorized start date of her/his curricular practical training and is unknowingly deemed by USCIS to be in violation of status and unlawfully present.
- **Work hours.** Student serving as a graduate research assistant and authorized to work 20 hours per week unexpectedly needs to work two extra hours one week on the research project to avoid jeopardizing the project, then works two hours less the following week so that the average employment for both weeks is 20 hours, and is unknowingly deemed by USCIS to be in violation of status and accruing unlawful presence.

TPS populations and refugee admissions

- **Temporary Protected Status (TPS) populations.** TPS, a form of humanitarian protection provided to those who cannot return to their countries due to violent conflict or natural disaster, provides recipients protection from deportation and work authorization. According to a [MPI report](#), “As of July 2018, TPS covered 317,000 immigrants from ten countries . . . By January 2020, 310,000 TPS holders (98% of total TPS holders) will lose their benefits.” El Salvador (close to 200,000 TPS holders), Honduras (close to 60,000) and Haiti (50,000) are the top three countries of those currently designated in the program.
- **Refugee admissions.** Earlier in August, the [New York Times](#) reported that the Administration is considering a reduction in refugee admission levels to 25,000 for FY19, which would represent a 40% drop from this year’s level (which at 45,000 was already a steep decrease from the past) and would be the lowest number of refugees admitted to the United States since the creation of the program in 1980. Importantly, as tracked by the [Refugee Council of America](#), the Administration has only settled a total of 18,327 in FY18 thus far. Refugee students and scholars historically have greatly enriched higher education in the United States, and colleges and universities have been integral in welcoming refugees.

Major takeaways for campuses:

- Support for Dreamer students on campus, including student services and access to legal and financial support for DACA renewals, continues to be a top priority.
- International student support services on campuses may need more resources, policy reviews, and training to best support international students and respond to changing policies.
- If your campus has not already done so, you may want to consider creating a cross-campus immigration task force (encompassing Dreamer, international, TPS, and refugee 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.
- Collecting campus specific data and stories can be very important, whether to gain a better understanding of policy impacts or as preparation for op-eds and advocacy. The start of the new school year is a timely hook to share the stories of the important contributions that immigrant students, faculty, and staff at your institution are making to the campus and community,

including those who first came here as international students (or whose parents did) and the many other community members who are first or second generation immigrants.