



December 19, 2018

Samantha Deshommes  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue, NW  
Washington, DC 20529

*Submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>*

Re: DHS Docket No. USCIS-2008-0014; OMB Control Number 1615-0003; U.S. Citizenship and Immigration Services Proposed Registration Requirement Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens

Dear Ms. Deshommes:

NAFSA: Association of International Educators submits this comment letter in response to the notice at 83 *Fed. Reg.* 232, 62406-62447 (Dec. 3, 2018) concerning the United States Citizenship and Immigration Services' (USCIS) proposed rule requiring filers of cap-subject H-1B petitions to register with USCIS. NAFSA is the world's largest association of international education professionals with approximately 10,000 members, many of whom work with international students who engage in post-completion Optional Practical Training. When such students are the beneficiaries of cap-subject H-1B petitions, they often fall into the H-1B cap gap. For that reason, we are particularly concerned with USCIS' implementation of the cap-gap regulations at 8 CFR 214.2(f)(5)(vi) and how this proposed rule may impact USCIS' ability to administer the cap-gap regulations effectively.

Section (h)(8)(iii)(4) of the proposed rule states “[a] petitioner may submit registration during the initial registration period only if the requested start date for the beneficiary **is the first business day** for the applicable fiscal year” (emphasis added). However, 8 CFR 214.2(f)(5)(vi)(2) states that cap-gap protection applies only to an H-1B petition that “[r]equests an employment start date of **October 1** of the following fiscal year” (emphasis added). This mismatch in the date requirement for cap-gap protection and the proposed date requirement for registration could make it impossible for H-1B petitioners and beneficiaries to receive the cap-gap protections afforded by 8 CFR 214.2(f)(5)(vi). For example, if the first business day of the fiscal year is October 3, H-1B petitioners would be required by this

proposed rule to request October 3 as the employment start date rather than October 1 as required by the cap-gap provision, and this could render cap-gap protection inapplicable. We would also remind USCIS that all aspects of cap-gap protection extend only until the October 1 date stated at 8 CFR 214.2(f)(5)(vi)(2), and the Student and Exchange Visitor Information System (SEVIS) appears to be programmed to maintain the SEVIS records of students in the cap-gap only until October 1.

USCIS must address the mismatch of the date requirements in this proposed rule and in the cap-gap provision at 8 CFR 214.2(f)(5)(vi)(2) before publishing a final rule. In years when the first business day of the fiscal year falls after October 1, H-1B petitioners and beneficiaries should not be denied the cap-gap protection afforded by the regulations simply because the petitioner has registered with USCIS. Nor should petitioners and beneficiaries suffer the consequences of having cap-gap protection end before the employment start date, and students in the cap-gap should not be subjected the potential consequences of having their SEVIS records end before the employment start date or otherwise be negatively affected by the mismatched dates.

Thank you for the opportunity to comment on this proposed registration requirement and its potential impacts on the cap-gap provision.

Sincerely,

Tatiana Mackliff  
Deputy Executive Director  
Leadership and Professional Development Services