November 13, 2026

Andrew Good, Chief
Office of Policy and Strategy
Business and Foreign Workers Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: DHS Docket No. USCIS-2026-0529

Dear Chief Good,

On behalf of the American Council on Education (ACE) and the undersigned organizations, we write in opposition to the Department of Homeland Security's (DHS) proposed rule "Removing Deference to Prior USCIS Determinations of Eligibility" [DHS Docket No. USCIS-2026-0529]. The proposed rule would end the policy of allowing for the use of deference to prior U.S. Citizenship and Immigration Services (USCIS) eligibility determinations for nonimmigrant worker extension petitions, including H-1B visas.[1] We write to you in a dual capacity: first, as major American employers of highly skilled professionals—including faculty, post-doctoral researchers, healthcare workers and instructors, and information technology specialists—and second, as institutions of higher education that educate and train thousands of international students who may someday seek to work for U.S. employers and be granted H-1B visas.

A major concern with this proposed rule is that the elimination of deference will lead to further slowdowns in USCIS processing, which has already had a negative overall impact on the U.S. economy. The proposed elimination of deference comes at a time when USCIS is already dealing with severe operational burdens, with total pending agency backlogs exceeding 12 million cases.[2] The latest data from the American Immigration Council's USCIS Immigration Filing Trends Dashboard show that the agency's backlog of immigration petitions and applications worsened in the second quarter of fiscal year (FY) 2026, even as USCIS received dramatically fewer filings than it did one year earlier.[3] Requiring officers to re-adjudicate baseline qualifications for the estimated 208,000 deference-eligible filings annually will cause severe delays in the adjudication of extension petitions.[4] Additionally, H-1B petitions are estimated to account for about 75

[1] December 18, 2024. Final rule on "Modernizing H-1B Requirements:" https://www.federalregister.gov/documents/2024/12/18/2024-29354/modernizing-h-1b-requirements-providing-flexibility-in-the-f-1-program-and-program-improvements
[2] USCIS Data Library, Fiscal Year 2026: Quarter 3 Data Reports, April–June 2026. https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data
[3] American Immigration Council, "USCIS Backlog Grows Even as Agency Gets Fewer Filings," September 2026. https://www.americanimmigrationcouncil.org/blog/uscis-backlog-grows-less-immigration-filings/
[4] DHS NPRM, "Removing Deference to Prior USCIS Determinations of Eligibility," Table 2. https://www.federalregister.gov/d/2026-20941/p-122

percent of the total filings, further complicating the impact of this rule on institutions of higher education. The academic disciplines with the highest percentage of H-1B faculty include engineering (12.3 percent) and health professions (9.2 percent).[5] Supporting faculty members and helping expedite processing times for H-1B renewals is crucial to educating the future workforce in those high-need fields.

Because of this slowdown, there is an increased risk that H-1B holders, who are in the country lawfully, will fall out of status and lose their authorization to work while their extensions are pending. Extended processing timelines and higher Request for Evidence (RFE) rates increase the risk that H-1B extension petitions will not be resolved before the regulatory 240-day automatic work authorization period expires.[6] Administrative delays threaten to push individuals who have remained continuously in lawful status out of status, and eventually out of work, while waiting for an H-1B renewal. This means colleges and universities that employ H-1B professionals may be forced to remove key faculty from the classroom during a course or pull specialized healthcare workers from university hospital clinics during their service.

We believe the policy of deference to prior eligibility promotes consistent adjudication without weakening review. When a petitioner seeks an extension on the same or substantially similar facts and evidence, the outcome should ordinarily be the same. Deference also only applies in cases where there are no changes. Under 8 CFR 214.1(c)(5), officers need not defer if there was a material error, a material change in circumstances or eligibility requirements, or new material information that adversely affects eligibility. Removing the ability to utilize deference will only increase the delays we are already seeing in processing.

Lastly, we are concerned that this rule will continue to discourage international enrollment at all levels at our U.S. institutions of higher education, further compounding the negative impact on recruitment and retention of international talent caused by other recent policies. International enrollment across colleges and universities is in steep decline, with consequential impacts to the U.S. economy.[7] Subjecting international professionals, including graduates of our institutions, to less predictable outcomes each time they seek an extension signals that the United States is an unreliable destination for long-term career growth. Highly qualified scholars and international students will increasingly choose institutions in competitor nations that offer greater regulatory certainty.[8] Furthermore, foreign national faculty and researchers caught in multi-year permanent residency backlogs rely on routine H-1B extensions to maintain their status. Eliminating deference disproportionately penalizes these long-serving, law-abiding professionals who contribute to domestic economic growth and innovation.

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[5] CUPA-HR, "Data on H-1B Status for Faculty and Professionals." September 2025. https://www.cupahr.org/resource/data-on-h-1b-status-for-faculty-and-professionals/

[6] American Immigration Council, "USCIS Immigration Filing Trends," I-129: H-1B - Initial Petition Specialty Occupations (H-1B). See: "backlog clearance time in months." FY 2026. https://www.americanimmigrationcouncil.org/uscis-immigration-filing-trends/

[7] August 11, 2026. NAFSA and JB International have projected a 9.5 percent drop in fall 2026 enrollment for international students, resulting in a loss of $3.4 million and 39,000 jobs to the U.S. economy. https://www.nafsa.org/about/about-nafsa/us-economy-stands-lose-34-billion-precipitous-drop-international-students

[8] January 15 2026. AAU Issue Brief: Scientific Talent in America: Going Abroad or Choosing Not to Come: https://www.aau.edu/resource-library/scientific-talent-america-going-abroad-or-choosing-not-come

The contributions of international faculty and students remain essential to American higher education and the nation's leadership in research, technology, and economic growth. The proposed rule creates uncertainty in renewal adjudication for foreign workers who have been contributing to the U.S. economy and workforce for years. In 2024, DHS described deference as promoting consistency and efficiency for USCIS and stakeholders.[9] The proposed rule now calls those benefits "overstated" without data showing they did not occur. If DHS believes extension petitions need closer scrutiny, it can pursue that through clarified guidance, officer training, and existing adjudication procedures. We strongly urge the Department of Homeland Security to withdraw this proposed rule.

Thank you for your consideration of these comments.

Sincerely,



Ted Mitchell

President

On behalf of:

American Association of Colleges and Universities
American Association of State Colleges and Universities
American Council on Education
American Council of Learned Societies
Association of American Universities
Association of Jesuit Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Public and Land-grant Universities
College and University Professional Association for Human Resources
Council for Christian Colleges & Universities
Council of Graduate Schools
EDUCAUSE
NASPA-Student Affairs Administrators in Higher Education
National Association of College and University Business Officers
National Association of Colleges and Employers
National Association of Independent Colleges and Universities
Presidents' Alliance on Higher Education and Immigration

[9] December 18, 2024. Final rule on "Modernizing H-1B Requirements:" https://www.federalregister.gov/documents/2024/12/18/2024-29354/modernizing-h-1b-requirements-providing-flexibility-in-the-f-1-program-and-program-improvements