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Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
5900 Capital Gateway Drive
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RE: Docket Number USCIS-2023-0005, “Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers”

The American Society for Biochemistry and Molecular Biology is an international nonprofit scientific and educational organization that represents more than 10,000 students, researchers, educators and industry professionals. The ASBMB strongly advocates for strengthening the science, technology, engineering and mathematics (STEM) workforce, supporting sustainable funding for the American research enterprise, ensuring diversity, equity and inclusion in STEM, and addressing emerging issues in the scientific enterprise.

The U.S. Citizenship and Immigration Services published a [proposed rule](#) on Oct 23, 2023, seeking public comment on the agency’s proposed changes to modernize and improve regulations related to the H-1B program.

Foreign talent, both students and workers, is essential for the U.S. STEM enterprise. However, the [U.S. is becoming less attractive](#) for foreign talent because of the current deterrents and delays in our visa system. Other countries are [opening their doors to foreign talent](#) and offering more competitive opportunities to work after degree completion. U.S. domestic talent alone does not fulfill the needs of the STEM workforce, which is essential for continued U.S. leadership in discovery and innovation. To remain at the forefront of the research enterprise, the U.S. must be proactive in attracting international talent and creating collaborations abroad.

As of 2019, foreign-born talent made up [23.1% of all STEM workers](#) in the U.S. In addition, foreign scholars comprised [50% to 75%](#) of STEM graduate students and [56% of postdoctoral researchers](#). However, the current H-1B visa process and annual cap makes it difficult for them to remain in the U.S. to work and contribute to the U.S. economy after their training is completed. The U.S. can stay competitive in STEM with the aid of talented foreign students and workers that gain valuable knowledge and skills needed for scientific innovation.

The USCIS is requesting feedback on three major provisions of the program: 1) streamlining eligibility requirements, 2) benefits and flexibility for employers and employees, and 3) program integrity.

The ASBMB is pleased to provide feedback for items 2 and 3, along with an additional recommendation:

Benefits and Flexibilities

Recommendation 1: Move forward with modernizing the definition for exempt employers

The ASBMB commends USCIS for taking steps to revise qualifying exempt employers from the H-1B visa cap. Current exempt employers include institutions of higher education, related or affiliated nonprofit entities, and nonprofit or governmental research organizations that have demonstrated research as their primary or principal activity. By changing the research requirement from “primarily” or “primary” to “fundamental activities,” the USCIS is creating more opportunities for organizations engaged in several important activities beyond research to now qualify as exempt employers. This will also expand the number of roles/positions available to foreign talent outside the congressional mandated maximum.

Recommendation 2: Move forward with the automatic extension for F-1 visa students in the cap-gap to April 1 of the relevant fiscal year

The ASBMB recognizes USCIS efforts to prevent disruptions in employment authorization by extending the cap-gap automatic extensions from Oct. 1 to April 1 of the relevant fiscal year. USCIS saw almost double the number of [total registrations submitted](#) for the FY 2024 H-1B cap compared with FY 2023. The high volume of applications is only one factor that influences the delays in petitions processed for students changing their status from F-1 to H-1B. This extension will not only allow F-1 visa students to maintain lawful status in the U.S. and employment authorization, but it will also allow USCIS more time to process the petitions before the deadline.

Recommendation 3: USCIS should consider extending dual intent to F-1 visas and offer a direct route for doctoral candidates applying to industry careers if they transition from a F-1 to H-1B visa.

International students provide crucial support for the survival of many graduate programs. In the 2021–2022 academic year, international students contributed [\\$33.8 billion to the U.S. economy and supported 335,423 jobs](#) by electing to study at a U.S. college or institution.

However, by 2020 international student enrollment had already [declined by 7%](#) since 2001. In NAFSA’s Losing Talent 2020 report, 87% of participants indicated the [visa application process or visa delays/denials](#) were the top reason for the decline in enrollment in the U.S. in the fall of 2019.

This is particularly important for the foreign talent that comes to the U.S. to attain a doctoral degree (Ph.D.) in STEM, which requires [four to seven-plus years](#) of intensive work and mentored research. In the Survey of Earned Doctorates by the National Science Foundation, 34% of all doctorate recipients (19,633 recipients) were temporary visa holders in 2022 ([Table 1-7](#)).

Other countries are proactively establishing [national policies and marketing strategies](#) to attract and retain degreed foreign talent. It is essential that U.S. universities continue attracting foreign talent and create opportunities to retain STEM talent for the bioeconomy to thrive.

The ASBMB urges USCIS to offer dual intent to F-1 visa holders pursuing a doctoral degree. The current immigration law requires applicants for F-1 student visas to demonstrate to the U.S. consular officer intent to return home after their course of study. By offering dual intent for applicants pursuing a doctoral degree, the U.S. will encourage this talent to stay in the U.S. and contribute to the research enterprise. The investment made in these talented foreign scholars to gain the skills and knowledge required for their field of expertise should be valued and capitalized upon.

The ASBMB also urges USCIS to offer a direct H-1B visa path for doctoral graduates from U.S. colleges and universities transitioning to an H-1B. U.S. colleges and universities invest time, money and resources to train these foreign scholars, and these resources often include federal taxpayer funds in the form of federal research grants. The current lottery system offers these talented scholars a slim 11% chance to be selected, making it difficult to retain this talent within the American research workforce. The current system does not appropriately capitalize on the investment of taxpayer funds by providing more opportunities for foreign talent to remain in the country.

It is essential to continue investing in the talented professionals trained in the U.S. after the completion of their degrees to sustain the research enterprise given the shortfall in domestic talent. This alternative pathway for doctoral candidates would incentivize, attract and retain foreign talent to study in U.S. and become authorized to work while supporting the bioeconomy with their expertise.

Program Integrity

Recommendation 4: Move forward with a unique beneficiary being entered once in the selection process

The ASBMB commends USCIS efforts to address the registration abuse in the H-1B cap. In the current selection process, USCIS selects beneficiaries by the number of registrations submitted on their behalf. This has raised the concern that the process unfairly increases the chances of selection for beneficiaries with multiple registrations submitted. In FY 2024, [408,891 of the 780,884](#) eligible registrations received were beneficiaries with multiple eligible registrations. By changing the selection process with each unique beneficiary, an individual is entered into the selection process once and ensures the lottery system is providing each beneficiary with the same probability of being selected.

On behalf of the ASBMB's more than 10,000 scientists and researchers, thank you for your attention to this matter. Additional questions can be directed to Sarina Neote, Director of Public Affairs, at publicaffairs@asbmb.org.