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Academic Engagement
MGMT/Office of Academic Engagement
Mailstop 0440
Department of Homeland Security
245 Murray Lane, SW
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Submitted via www.regulations.gov

**Re: Establishment of Homeland Security Academic Advisory
Counsel
Docket No. DHS-2011-0121**

Dear Executive Director Kielsmeier:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the Federal Register notice announcing the establishment of the Homeland Security Academic Advisory Counsel (HSAAC).¹ AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Since 1946, our mission has included the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of the U.S. immigration laws. We appreciate the opportunity to comment on the establishment of the HSAAC.

AILA applauds the efforts of DHS to establish the HSAAC for the purpose of providing advice and recommendations to the DHS Secretary and senior leadership on matters relating to student and recent graduate recruitment; international students, academic research; campus and community resiliency, security and preparedness; and faculty exchanges. Our comments will focus on issues and regulations as they impact the international student community.

¹ 77 Fed. Reg. 12606 (Mar. 1, 2012).

As a preliminary matter, we appreciate the Administration’s recent announcement outlining DHS reforms to attract and retain highly skilled immigrants, which include efforts that will benefit international students.² These reforms will:

- **Expand eligibility for the 17-month extension of optional practical training (OPT) for F-1 students to include students with a prior degree in science, technology, engineering, or mathematics (STEM).** This would widen the pool of individuals eligible for a 17-month OPT extension to include students who have most recently obtained a non-STEM degree (e.g., a master’s in business administration) but who have previously earned a STEM degree (e.g., a bachelor’s in mechanical engineering).
- **Allow for additional part-time study for spouses of F-1 students.** This would expand the educational opportunities for F-2 spouses beyond the currently allowed part-time vocational or recreational classes.

We applaud DHS for taking these steps to broaden the post-completion opportunities for international students and the educational opportunities for their spouses. We look forward to receiving further information about the implementation of these reforms in the very near future. While these efforts are a great first step, there are a number of other issues and regulatory reforms that we ask the HSAAC to consider as it deliberates and makes its recommendations to the Secretary of Homeland Security. These include:

- **Further expand the availability of the 17-month OPT extension under 8 CFR §214.2(f)(10)(ii)(C).** At present, this provision allows for a 17-month extension for students whose most recently earned degree is on the list of designated STEM degree programs. We appreciate the fact that as an accompaniment to the forthcoming reforms to attract and retain highly skilled immigrants, DHS has indicated that it will continue to review emerging fields for possible inclusion in the list of STEM degree programs. In addition to this, we ask the HSAAC to consider amending the regulation to provide for OPT extensions for individuals with degrees in other fields, to persons working in Schedule A positions, or to all graduates with a U.S. bachelor’s degree.
- **Eliminate the E-Verify component of the 17-month STEM OPT extension.** Under 8 CFR §214.2(f)(10)(ii)(C)(3), in addition to a STEM degree being the basis for the student’s current OPT, the employer must be a registered E-Verify user. In the supplemental information to the 2008 rule, DHS provided no rationale, other than an interest in increasing E-Verify enrollment, for requiring employers to enroll in E-Verify in order for the student employee to be eligible

² “DHS Reforms to Attract and Retain Highly Skilled Immigrants,” Jan. 31, 2012, published on AILA InfoNet at Doc. No. 12013168 (posted 1/31/12).

for a STEM extension.³ According to DHS statistics, the number of E-Verify participating employers has risen from 88,116 in 2008 (when the STEM rule was promulgated), to 302,529 as of November 2011.⁴ Further, with the implementation of mandatory E-Verify for certain government contractors, and the passage of state laws requiring all or a portion of employers to enroll, it is clear that efforts to encourage employers to enroll in E-Verify are no longer necessary.

- **Revise 8 CFR §214.2(f)(15)(i) to eliminate the prohibition on F-2 dependents accepting employment.** In addition to allowing for studies beyond the currently allowed part-time vocational or recreational classes, the HSAAC should consider removing the restriction on employment for F-2 spouses, so that they may make productive use of their time in the United States.
- **Publish implementing regulations for the F-3 and M-3 student commuter categories.** In 2002, the Border Commuter Student Act of 2002 was enacted, which created two new nonimmigrant student visa categories, F-3 and M-3, for Canadian and Mexican students who live in their home country and commute to academic or vocational classes in the United States.⁵ To date, DHS has not issued regulations to implement the F-3 or M-3 categories. Given that 10 years have passed since the enactment of the Border Commuter Student Act, the HSAAC should recommend that DHS prioritize the rule-making process for these statutorily recognized nonimmigrant categories.
- **Revise 8 CFR 248.1(a) to permit a 90-day window for change of status to F, J, or M.** Under 8 CFR §214.2(f)(5), an F-1 student may be admitted for a period up to 30 days before the program start date. DHS cites this provision to justify denying a change of status for an applicant whose prior status will expire more than 30 days before the program start date. For example, an H-1B professional whose status ends on July 30, would be denied a change of status to F-1 to pursue a graduate degree if the program of study was to begin on September 1. This person would be required to travel home, apply for an F-1 visa, and return to the United States to begin studies. The unnecessary travel costs and problems associated with delays could be avoided if a 90-day window were permitted for a change of status.
- **Expand “cap-gap” eligibility to J-1 students with academic training, extending the J-1 student’s status and employment authorization to bridge**

³ See 73 Fed. Reg. 18952 (Apr. 8, 2008) (“less than 1 percent of the total number of employers in the United States are currently enrolled in E-Verify [and] DHS anticipates that most employers who would want to employ these students ... would need to register”).

⁴ E-Verify History and Milestones, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=84979589cdb76210VgnVCM100000b92ca60aRCRD&vgnnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD>.

⁵ Pub. L. 107-274, 116 Stat. 1923 (Nov. 2, 2002).

the gap between the end of academic training and the start of H-1B status.

This would widen the pool of students who would be eligible for the cap-gap extension to include J-1 students. This would reduce the hardships on students, as well as employers, who lose a valuable part of their workforce during the gap.

- **Broaden and apply a “real-world” test of the criteria to establish a valid employer-employee relationship for purposes of H-1B status for graduating student entrepreneurs who are the sole or majority owners of a company.** Many F-1 students come to the United States with dreams to innovate and establish their own companies. Broadening the “employer-employee” test will reduce barriers and accelerate growth for job-creating student entrepreneurs – a key initiative supported by the White House and Startup America. These student entrepreneurs will not only attract significant investment in the U.S. and create jobs for Americans, they will help ensure that America can out-innovate and out-compete the world in a global economy.

Conclusion

We appreciate the opportunity to comment on some of the ongoing issues that impact the international student community and look forward to a continuing dialogue with the HSAAC and DHS on these and other important matters.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION