

# Compete America

The Alliance for a Competitive Workforce

February 28, 2022

Kevin E. Bryant  
Deputy Director  
U.S. Department of State  
Office of Directives Management  
600 19th Street, NW  
Washington, DC 20036

Re: DOS Docket No. DOS-2021-0019  
Schedule of Fees for Consular Services – Nonimmigrant and Special Visa Fees

Dear Director Bryant,

The Compete America Coalition advocates for ensuring that the United States has the capacity to educate domestic sources of professional talent and to obtain and retain the talent necessary for American employers to continue to innovate and create jobs in the United States. Our Coalition members include higher education associations, industry associations, the nation's largest business and trade associations, and individual U.S. employers that work together concerning issues pertaining to the high-skilled immigration system of the United States. For more than 20 years, Compete America has worked with successive administrations and Congress on issues critical to global mobility of talent and compliance, functionality, and integrity in the employment-based immigration system of the United States.

Members of our coalition often seek nonimmigrant classification for foreign-born professionals offered employment in the United States. Across our Coalition, our members are attentive to changes and policies in the nonimmigrant visa ("NIV") system. For that reason, we have reviewed the proposed regulation ("Notice of Proposed Rule Making" or "NPRM") recently published by the U.S. Department of State Bureau of Consular Affairs ("DOS" or "the agency") increasing the Schedule of Fees for Consular Services ("Schedule of Fees") based on the most recently updated Cost of Service Model ("CoSM") and are writing to share our views concerning the Schedule of Fees NPRM. While we have specific recommendations related to elements of the proposed rule, as a general matter, the Compete America Coalition supports the "full cost recovery" goals of the DOS Schedule of Fees NPRM to ensure the agency has sufficient funding for consular processing services related to NIV petitions and services related to J-Waivers.

The proposed regulation would significantly increase the processing fees charged for NIV applications and the J-Waiver. According to the proposed Schedule of Fees published in the Federal Register on December 29, 2021, the fees charged for all petition-based NIVs related to employment in the U.S., including H and L visas, will increase more than 63% from \$190 to \$310. Under the same proposed

Schedule of Fees, non-petition-based NIVs, such as F and J visas, will increase more than 53% from \$160 to \$245. Both proposed increases are well above the average rate of inflation in the U.S. economy (less than 23%) covering the same period since the last Schedule of Fees adjustment in 2012. The agency assigns this discrepancy in part to reasonable increases in “non-compensation costs” associated with improved services utilizing technology and contract staff. However, DOS in its explanation of the fee rule goes on to explain that the CoSM assumes a much lower projected 10-year average demand for visas than assumed in prior CoSMs due to ongoing factors related to the global pandemic<sup>1</sup>.

As a result of this lower demand conclusion, the per unit cost assumption of the agency, as explained in the NPRM, is a primary driver of the above average inflation increases in both the petition-based and non-petition-based Schedule of Fees. We note that if the agency’s assumption regarding lower visa demand over a 10-year horizon is incorrect, the agency will have funds well in excess of the “full cost recovery” goal of the Schedule of Fees adjustment process. Furthermore, we note that in the event the agency miscalculated, and the fees collected for NIV petition services exceed the “full cost recovery” goal, the agency has no publicly announced plan to apply surplus funds to improved services and processing for visa petitioners and their families. We recommend that prior to finalizing the proposed Schedule of Fees related to NIV petitions, the agency address the use of fees in excess of the “full cost recovery” goal and outline clearly that such fees will be allocated to improving consular services related to NIV and immigration processes.

As part of the Schedule of Fees NPRM, DOS is also proposing a J-1 two-year residency requirement waiver fee increase of 325% from \$120 to \$510. The agency assigns this increase, a rate of inflation more than 14 times greater than inflation in the U.S. economy over the same period since the last Schedule of Fees adjustment for J-Waiver processing, to increased use of contract labor, accounting errors, and decreased demand. While the agency’s CoSM has adjusted fees to both reflect the increased use of contract labor and the proper accounting of costs associated with waiver processing, again DOS has a stated assumption that demand for J-1 visa waivers will remain lower than historic averages, increasing significantly the per unit cost of providing waiver processing services. We note again that if this demand assumption over the next 10 years proves to be incorrect, the agency will collect fees in excess of the “full cost recovery” goal of the Schedule of Fees adjustment process and has no stated plan with respect to the use of funds in excess of the cost of providing J-1 waiver services. We recommend that the agency clarify that funds collected in excess of the “full cost recovery” goal will be reinvested in improving J-Waiver services with a particular focus on timely and consistent processing.

---

<sup>1</sup> U.S. Department of State. (2021, December 29). *Federal Register document issue for 2021-12-29*. Schedule of Fees for Consular Services-Nonimmigrant and Special Visa Fees. Retrieved February 25, 2022, from <https://www.federalregister.gov/documents/2021/12/29>: “Because of the dramatic drop in visa demand experienced in FY 2020 due to the pandemic and projected to continue in the coming years, the 10-year average volume used in this calculation is still much lower than demand figures used to calculate this fee in prior models. As a result, the calculated unit cost for these services, which is the total service cost divided by the total service volume, has increased, and has led to the proposed visa application processing fee increases.”

While the Compete America Coalition supports the agency's goal of "full cost recovery" for consular processing and other services, assuming the DOS projections regarding lower NIV and J-Waiver volume are correct, we believe that a fully funded agency should address the following issues related to current agency processing backlogs and future services:

1. NIV Consular Processing Backlogs—we acknowledge the unprecedented disruption to U.S. immigration services in the United States and abroad caused by the current health pandemic. We also understand, as explained by the agency through the NPRM, that the cost of providing consular services is higher than at the time of the last Schedule of Fees adjustment in 2012 and is increasing. However, our coalition members are also experiencing significant delays in appointment scheduling. For example, in the case of L-visas, many of the members of our coalition have noted the lack of appointment availability, and when combined with L-visa processing backlogs at USCIS, intracompany transfer delays have ballooned to 6 months or longer. These NIV processing delays negatively impact the stakeholder community by limiting the personnel resources necessary to meet business demands.

The agency notes that the goal of the Schedule of Fees adjustment process is to recoup the "full cost" of "activities required to produce a particular service or product and uses resource drivers to assign costs through activities to services." This approach to determining a "full cost recovery" Schedule of Fees adjustment is logical; however, we see no specific indication that any of the cost assigned activities identified by the agency relate to the goal of timely visa processing. For this reason, we ask that the agency take the following actions prior to finalizing the Schedule of Fees rule:

- a. DOS should confirm the CoSM process considered resource drivers related to timely and consistent processing and adjudication of NIV petitions when formulating the proposed Schedule of Fees.
- b. DOS should not move forward with finalizing the proposed Schedule of Fees until the agency provides a Backlog Reduction Plan, including, but not limited to:
  - i. Specific plans for ensuring consistency in processing times across consulates worldwide.
  - ii. Technological improvements to streamline and modernize visa processing and to leverage staff located outside the consular jurisdiction.
  - iii. Setting forth reasonable visa processing goals, so that the public can maintain reasonable expectations for the processing of their visa applications.
- c. DOS should adopt permanent policies that would address visa backlogs and processing delays in light of the global health pandemic. By leveraging technology and innovative solutions, DOS can continue to expand on delivering visa services in a cost-effective way. For example, we recommend that DOS contemplate reinstating U.S.-based visa renewals, automatic visa extensions, and a permanent expansion of visa interview waivers, particularly for petition-based applications. For those cases where visa interviews may be required, DOS can adopt protocols allowing for virtual or remote interviews and visa processing.

2. J-Visa Foreign Residence Waivers—as part of the [announced 36-month extension of the J-1 visa academic training program](#) on January 21, 2022, the Biden Administration acknowledged the J-1 visa program provides meaningful cultural exchange experiences that can deeply enhance STEM-related research and development across the U.S. economy. To fully realize this potential, J-1 sponsors need continuity and consistency in their program participants' availability requiring ongoing maintenance status for participants in J-1 status. Currently, J-1 exchange visitors must return for a period of 2 years to their home country, before they are eligible for H, L or permanent resident status. This requirement not only breaks the continuity of program participation in the U.S., the foreign residency requirement also encumbers and inhibits the pursuit of change of status to other nonimmigrant categories and LPR status for J-1 nonimmigrants. These J-1 visa limitations run contrary to the policy goals of the administration as reflected in White House statements early this year, and as such, we recommend the agency take the following actions prior to finalizing the Schedule of Fees rule:
  - a. DOS should provide a clear plan for ensuring timely and consistent J-Waiver determinations. Today, J-1 participants seeking waivers face processing times ranging between 4-24 weeks,<sup>2</sup> which is in addition to the 4-8 weeks it can take for J-Waiver applications to be received and transferred to WRD for final waiver approvals or denials.
  - b. DOS should expand eligibility for J-Waivers by revising the skills list, as the current requirement is a deep and unnecessary encumbrance to broader utilization of the J-1 program by U.S. STEM sponsors as revised by the January 21, 2022 announcement. We urge DOS to institute policies that waive the foreign residency requirement in situations specific to STEM sponsors in alignment with U.S. STEM competitiveness goals.

Again, the Compete America Coalition supports the “full cost recovery” goals of the DOS Schedule of Fees NPRM to ensure the agency has sufficient funding for consular processing services related to NIV petitions and J-Waivers. We ask that the agency confirm and provide details that the proposed Schedule of Fees are intended to ensure petitions are processed in a timely and consistent manner. We understand the agency has faced unprecedented challenges related to the current global health pandemic. Now more than ever, the goal of timely and consistent processing and adjudication of NIV and other visa programs is paramount, and we believe a backlog reduction plan for consular processing services related to NIV is a reasonable prerequisite to asking users to pay more.

---

<sup>2</sup> U.S. Department of State. (2022). *Apply for a Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement*. U.S. Department of State. Retrieved February 23, 2022, from <https://travel.state.gov/content/travel/en/us-visas/study/exchange/waiver-of-the-exchange-visitor/how-to-apply-waiver.html>

Compete America Coalition Comment: Proposed Schedule of Fees Increase

DOS Docket No. DOS-2021-0019

February 28, 2022

Page 5 of 5

We appreciate the opportunity to participate in the public notice and comment process and thank you for your attention to this matter. If you require any further information or clarification, you may contact me directly by phone at (202) 906-0127 or by email ([scott@corleydc.com](mailto:scott@corleydc.com)).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Corley", written in a cursive style.

Scott Corley

Executive Director, Compete America