



## *J-1 Visas and Universities*

### What is a J-1 Visa?

J-1 are non-immigrant, temporary visas available for exchange visitors participating in a work-and-study-based program in the U.S. There are 15 categories under the J-1 exchange visa program including: research scholars, teachers, camp counselors, au pairs, interns, and [more](#).

***In higher education, J-1 visas are used by universities to sponsor visiting scholars from abroad. For many universities, J-1 is the primary visa used for postdocs and visiting faculty.***

### What is the Two-Year Home Residency Requirement?

Due to the “exchange” nature of the J-1 visa, certain J-1 recipients are subject to a two-year home residency requirement, which requires them to return to their home country for two years at the end of their J-1 program. Unless they receive a waiver, those subject to the residency requirement cannot change their immigration status or transfer to another type of visa until after they have returned to their country for at least two years. J-1 visa holders are ineligible for H-visas, L-visas, and U.S. permanent residency.

### Who is Subject to the Two-Year Home Residency Requirement?

There are three groups of J-1 recipients subject to the two-year home residency requirement:

1. If the J-1 was financed by the U.S. government (through a Fulbright or fellowship program), their home government, or an international organization for their J-1 program.
2. If the J-1 was here to receive graduate medical training.
3. If the J-1 worked or studied in a field that appears on the [Exchange Visitor Skills List](#), published by the State Department. The Skills List is a listing of specialized fields and skills that are deemed necessary for the development of an exchange visitor’s home country. The list differs from country to country. For example, the “skills list” for China and India is quite extensive, while Germany and France don’t have a skills list at all.

### What is a No Objection Waiver?

The requirement to return to the home country may be waived if the exchange visitor’s home country indicates that it does not object. Each country has its own rules, regulations, and procedures as to when it will issue a “no objection” statement.

For the most part, the process is fairly straightforward and pro-forma: the J-1 applies through a State Department portal to get a case number; visits local embassy or consulate to request a no objection statement; the home country sends the no objection statement, with the case number, to the State Department; the State Department recommends that the waiver be granted; USCIS approves.

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continued

## Potential Rule Change

In the 2018 Fall Unified Agenda, the State Department indicated plans to:

“. . . revise 22 CFR 41.63(b) and (d) creating a presumption against recommending waivers of the INA 212(e) two year home-country presence requirement for no-objection and exceptional hardship cases.”

This change would impact anyone on a J-1 visa subject to the two-year home residence requirement. Under current practice, these individuals must obtain a waiver before changing to another type of visa in the U.S. (such as H-1B) if they intend to pursue employment in the U.S. Historically, most waivers have been granted if the home government agrees (through a no objection waiver). Without a waiver, the J-1 recipients must depart the U.S. for a two-year period. This rule, if implemented, would make it increasingly difficult for a J-1 to stay in the country while their visa change is processed – they could face increased reporting requirements or ultimately have to comply with the two-year home residency requirement. J-1 visa holders from China, India, South Korea, Africa, and South America would be most impacted.

## What Would A Potential Rule Do?

It is hard to say without actual rule language, but the Unified Agenda suggests the State Department is looking to approve fewer of these waivers. From NAFSA:

“This regulatory agenda item states that this rule would create a presumption against State Department recommending a waiver on the basis of a no-objection letter or

exceptional hardship case. This would not eliminate waivers on those bases, but it will likely create a new or revised burden of proof (e.g., requiring a no objection letter "plus" establishing whatever other factors the State Department might specify in the new regulation). No further details from the State Department are available at this time. As an interim final rule, it would go into effect once published in the Federal Register, but still allow for public comment.”

## Potential Impact on Universities

Broadly speaking, this type of change would make life harder for J-1 employees and could discourage them from coming to our universities to do research or to teach. Further, it could make it tougher for universities to recruit scholars and faculty members.

Example: USA University wants to hire Dr. X to be an associate professor in Electrical Engineering. Dr. X is from India and was previously a postdoc on a J-1 visa. Unless Dr. X can get the two-year home requirement waived, USA University (not to mention Dr. X) is out of luck. They may be able to hire Dr. X with some difficulty (e.g., O-1 visa), but consideration for tenure will be problematic at best.