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U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street SW
Washington, D.C. 20536

Re: DHS Docket No. ICEB-2019-0006-0001, Comments in Response to Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media

Dear Sharon Hageman,

International Student and Scholar Services (ISSS) of the Global Programs and Strategy Alliance (GPS) at the University of Minnesota has chosen to submit comments opposing the proposed rule, DHS Docket No. ICEB-2019-0006-0001, published September 25, 2020. We appreciate and note the encouragement for "all interested parties to participate in this rulemaking" via the comment process. We do regret, however, that the comment period has been limited to 30 days. Providing comments is vital on such a foundational change to student and scholar mobility, yet takes us away from our work with students and scholars at an exceptional time during the global COVID-19 pandemic. The following details the considerable reasons that we, as professionals in international education and experts of F-1 and J exchange visitors and international student regulations, request that this proposal be rescinded and that duration of status remain in effect.

One of the most substantial reasons we oppose this proposal is that it is simply not necessary and its implementation would be damaging to the United States. The proposed changes stand to greatly disrupt international education. If implemented, the proposed changes could upend the academic pursuits of current students, cut short the contributions of scholars to research and teaching, as well as deter future students and scholars from coming to the U.S. Students and scholars who come to the U.S. do so to pursue goals enabled by their respective visas and in turn, this amazing global talent deeply enhances higher education and the educational experiences for all. Our comment details how international students and scholars are already the most monitored non-immigrant visa holders in the United States. The proposed changes inappropriately shift decision making away from education experts whose dual knowledge of academic systems and immigration regulations best serves student and scholar visa programs.

Simply not necessary

The current system is in the best interest of the U.S., the institution, and individual students and scholars. As hundreds of submitted comments already indicate, international students and scholars are highly vetted before they arrive and are monitored while they are here. Designated School Officials (DSOs) for the F program and Responsible Officers (ROs) for the J program are experts on their individual school systems, applicable immigration regulations, and knowledgeable of the individual student and scholars' circumstances. The institutional, professional staff are best suited to advise and make decisions involving the student and scholars' academic success and should be continuing to do so for the benefit of all involved. The following details the current vetting, monitoring, and roles of the school officials.

Each year for the past several years, more than 5,500 international students and more than 1,500 scholars pursued their degrees or academic interests at the University of Minnesota. To study, research, and/or teach here, these students and scholars applied to receive a visa, completed the required interviews and background checks, and, for those from specific countries and fields of study, submitted their applications for additional review.

Once a visa is obtained, students and scholars face additional review upon entry. As the Department of Homeland Security's website states, "*... a student visa does not guarantee entrance into the country. You must present your visa and other travel documents to U.S. Customs and Border Protection (CBP) officers at a U.S. port of entry. A CBP officer may interview you further to determine whether or not you may enter the United States.*"¹ CBP may also select non-immigrants for secondary review, further questioning the student or scholar on the legitimacy of their course of study or scholarly activities.

Upon arrival at the host institution, the student or scholar's documents are also reviewed by ISSS staff who are trained in regulations and certified by the Student Exchange Visitor Program (SEVP). Thus, even before the academic experience begins, international students and scholars have been through a minimum of three and possibly five reviews by two departments of the U.S. government (the Department of State and by CBP of the Department of Homeland Security) along with university staff who regularly deal with visa documents.

SEVIS Already Provides Tracking

A third governmental agency, U.S. Immigration and Customs Enforcement (ICE), of the Department of Homeland Security, oversees the Student Exchange Visitor Program (SEVP). SEVP itself designed and implemented the Student Exchange Visitor Information System (SEVIS), which is a detailed tracking system exclusively for international students and scholars. No other visa types have such a system like SEVIS to ensure compliance. The items recorded in

¹ Department of Homeland Security Website. Retrieved 10/12/2020. <https://studyinthestates.dhs.gov/2016/01/student-visa-vs-student-status-what-difference>

SEVIS include all of the following: any change or update to biographical data; change of address, email, or phone number; degree program status; program extension; educational level change; changes in the individual's site of activity and any change in site of activity (J scholars only); course enrollment each term; when there are exceptions to a full course of study; transfers; termination of program, and any authorization requests for CPT, OPT, STEM OPT and/or Academic Training; as well as updates regarding change in employment and employer.

It is not necessary to remove the ability of the DSO and RO to grant extensions. The institution, via trained and certified DSOs and ROs, only grants extensions when warranted by the regulations and with a recommendation from either the student's academic adviser (who is in the best position to judge the student's academic progress and need for extension) or medical doctor.

This current system of tracking students and scholars is working, and thus, the proposed rule is illogical.

Predetermined Opportunities Best Overseen by DSOs and ROs

In the executive summary, fourth paragraph, the problem is defined as one in which DHS "does not afford immigration officers enough predetermined opportunities to directly verify that aliens granted such nonimmigrant statuses are engaging only in those activities their respective classifications authorize while they are in the United States." However, as noted above, through the tracking system currently in place, the government has predetermined opportunities (at each registration period, for example, or any time a student/scholar chooses to change their address or degree program, etc.) along with on-going 24/7 access to these records.

Further, the proposed change of students and scholars filing for extension after 2 or 4 years -- rather than having duration of status -- does not give access to directly verify in a way that is substantially different from the current system. The proposed changes require an arduous process for the students and scholars to provide the same information their school officials have been reviewing. It's also at added expense and time (for USCIS processing), and seems severe when imposed upon those who are issued far less time than we know their program will take to complete (a student from the "2 year" list who is starting a Ph.D. program, for example).

If the goal of the proposed changes are to ensure that students and scholars are complying with the terms of their visas, it should be noted that SEVIS provides this right now. By removing D/S, rather than addressing the touchpoints, it introduces a whole set of implications that are described in this document in regard to impact on enrollment, as well as significant procedural barriers.

If the goal is to catch someone who makes a miniscule mistake (for example, not updating the address in the right place on the form or misunderstanding a registration is for a 3-credit class

and not a 4-credit class), then again, the current system is the far better option than backlogging USCIS further with these types of administrative issues.

Inappropriate Shift in Decision-Making

This proposal would mean that immigration officers would be in a position to judge the validity of a student's educational plans. This is a tremendous shift of power away from educational institutions to individuals who do not have a specific background knowledge of academics, student development theory, and/or cross-cultural expertise.

Immigration officers do not know the academic programs to make these decisions. International student advisers, coupled with the student's own academic advisers, are best positioned to know the unique circumstances of whether a student is making adequate academic progress toward a degree – not DHS officials. The professional staff at ISSS are continually dedicating their advising time to educating students and scholars on maintaining their status. They are able to integrate their depth of understanding on regulations with the individual's unique circumstances and the university's own approaches to successful academic progress and implementation of scholars' plans.

Basis for the Change is Nonsensical

In the summary statement of Document 85 FR 60526 , there is a claim that the current system doesn't allow for monitoring:

This duration of status framework generally lacks predetermined points in time for U.S. Citizenship and Immigration Services (USCIS) or U.S. Customs and Border Protection (CBP) immigration officers to directly evaluate whether F, J, and I nonimmigrants are maintaining their status and poses a challenge to the Department's ability to effectively monitor and oversee these categories of nonimmigrants.²

This is inaccurate, as the touchpoints exist through the SEVIS system. International students and scholars are always being monitored, and they know they **must** follow their visa regulations to stay in status during their time in the United States, or face known consequences. DHS has a monitoring program in place, and thus, the basis for which the proposed change is nonsensical.

The proposal posits the outcome of the proposed changes is to deter and prevent fraud. The conjecture of "bad actors" is not an adequate justification for an overhaul to the current situation of duration of status. The proposal references a number of cases (for which action was taken), but does not provide data on the overall frequency or scope of such situations. Further, the proposal does not provide substantial explanation of the "perceived vulnerabilities in the F and J non immigrant categories."

² <https://www.federalregister.gov/documents/2020/09/25/2020-20845/establishing-a-fixed-time-period-of-admission-and-an-extension-of-stay-procedure-for-nonimmigrant>

Additionally, DHS expects this change would deter and prevent fraud, as a requirement to check-in directly with an immigration officer inherently is likely to deter some bad actors from exploiting perceived vulnerabilities in the F and J nonimmigrant categories. The same benefits of direct evaluation, better recordkeeping, and fraud prevention also would apply to the I population.³

The proposal appears to indicate DHS needs touchpoints in order to catch fraudulent activities and to determine unlawful presence. This is not the right move for international education. This proposal puts emphasis in the wrong place. The current system puts emphasis in the right place as it gives the university staff members the ability to inform and educate students about maintaining their status and pursuing the benefits available to them under the current regulations. The suggested changes are not the right approach with this population.

Illogical

The proposed changes suggest that the elimination of duration of status is necessary for national security. However, it does not make sense that a student or scholar's length of time in the U.S. presents a risk as this would seem to mean that the same student or scholar who was judged to be safe in month 23 or 47 would automatically become a safety risk simply due to reaching month 49.

The opening comments of the proposal itself indicate how the change is not needed since the current rules dictate the individual can only maintain their status if they stay in compliance with terms of admission (in bold italics below):

The Notice of Proposed Rulemaking, Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors and Representatives of Foreign Information Media, proposes to remove the duration of status framework that currently allows aliens in F, J and I classifications to remain in the United States ***for as long as they maintain compliance with the terms of admission.***⁴

Damaging to the United States

Benefits to the U.S. for hosting international students and scholars are currently significant and include educational impact for domestic students, global development with relationships to the U.S., jobs in the communities hosting students, tuition revenue for the institutions, and the sustainability of graduate degree programs that also benefit domestic students. Due to the

³ <https://www.federalregister.gov/d/2020-20845/p-174>

⁴ https://www.dhs.gov/news/2020/09/24/dhs-proposes-change-admission-period-structure-f-j-and-i-nonimmigrants?mc_cid=558de3cd80&mc_eid=e06d4fcf0a

uncertainty created by this and other regulation changes, we foresee a possible decline in the number of international students and scholars who choose to come to the United States. A decline in enrollment of international students and a reduction in scholarly activity poses a potential damage to the U.S. through the reduction in these benefits.

Impact of Students and Scholars

Educational Impact of International Students at the University of Minnesota

University of Minnesota institutional data⁵ show that international students desire to give back—they are active contributors to our campus communities through interactions with other classmates, contributions in classes, and co-curriculars. International students are also very engaged in research and employment activities—without them, we would not have as many individuals to serve in those crucial roles (such as RA or TA positions).

U.S. and international students can benefit by learning from each other in the classroom. In our research,⁶ U.S. students note they appreciate the different perspectives that international students bring to class, and international students equally stated they benefit from these cross-national interactions in their classes. Students shared that they gained knowledge, attitudes, and skills needed for effective intercultural communication; improved ability to reflect on their own culture; developed leadership and problem-solving skills; and engaged with course content utilizing multiple perspectives. International students reported benefitting from interactions with their peers from countries other than their own and from interactions with American students.

"When you work with other students from other countries in your projects, your papers, they can contribute important ideas, which really help you learn more thoroughly about the subject matter." (international student)

"My perspective has widened so much from people from different areas, from international students, and you have a new take." (domestic student)

The University of Minnesota has developed effective training and support for faculty and instructors who wish to integrate international students into on-campus courses so that these students are full contributors to the learning outcomes of the curriculum. The International Student Academic Integration initiative, International Teaching and Learning Faculty Cohort Program, International Teaching Assistant training program, and International Student Academic Enhancement Fee Committee are all designed to ensure that all students in University of Minnesota classes benefit from international students in the classroom.

⁵ Student Experience in the Research University, 2014, 2015, 2019

⁶ Yefanova, D., Montgomery, M.L., Woodruff, G., Johnstone, C. & Kappler, B. (2017) Instructional Practices Facilitating Cross-National Interactions in Undergraduate Classes, *Journal of International Students*, 7 (3), 786-805.

Impact of Scholars at the University of Minnesota

The Mutual Educational and Cultural Exchange Act of 1961 resulted in the creation of the J exchange visitor program whose purpose is to foster mutual understanding between the United States and other countries. The J exchange program promotes the exchange of ideas, experiences, and expertise.

We have had J scholars contribute in many ways at the University of Minnesota. One of our J scholars did work around the potential for devices that can accomplish the small-scale, distributed, safe manufacture of ammonia from air, water, and renewable energy. We had another scholar whose research focused on the neural-adaptations that occur in the brain following exposure to psychostimulants (such as cocaine), which help toward new and effective treatments to prevent drug addiction. Another scholar did research that included cognitive processes in reading comprehension, reading assessment and instruction, memory and learning processes, and development of cognitive processes. Other areas that scholars have made significant contributions have been in Landscape Architecture, Engineering, Kinesiology, Health Sciences, Life Sciences, History, Social Sciences, and more.

All of these contributions were made because we have J-1 exchange visitors wishing to come to the United States to lend their expertise, learn from experts at the University of Minnesota, and help advance the research being done in their field.

At the University of Minnesota, we have over 650 J-1 Scholars in the Research Scholar, Professor, and Short-term Scholar categories. The vast majority (75%) of J-1 scholars are in the Research Scholar category, which has a maximum period of participation of 5 years, as noted in CFR 22 62.20 (i)(1). In a typical year, we have close to 200 students on the J-1 visa. About half of those students are in a doctoral program that minimally requires 6 years of study and sometimes 7, depending on the field of study. All of our Ph.D. students have assistantships, which also helps them to make contributions in their area of study. We have a very diverse population of over 95 countries represented by our J population.

Many of these scholars are known all over the world as experts in their field. If this rule goes into effect, many of these scholars will choose to go to other places in the world to use their knowledge and expertise where they do not foresee having as many barriers that get in the way of the research. The United States will no longer be on the cutting edge in areas such as technology, biotechnology, biosciences, and engineering.

Caliber of U.S. Institutions at Risk

The risk to U.S. higher education is stated in the opening statement in the proposal:

In fiscal year 2018, the Department of Homeland Security (DHS or the Department) admitted over 2 million foreign nationals into the United States in the F academic student, J exchange visitor, and I representatives of foreign information media nonimmigrant categories. This is a testament to the United States' exceptional academic institutions, cutting-edge technology, and environment that promotes the exchange of ideas, research, and mutual enrichment.⁷

International students and scholars are both beneficiaries and contributors to U.S. higher education. A significant aspect of U.S. higher education is participatory and experiential learning and as such, international students enhance the education of all students as they learn from one another. International graduate students contribute to the institution through their teaching and research assistantships. This proposal risks shaking part of the foundation of the very exceptionalism it notes.

Uncertainty

Attending a university in another country is an enormous investment of an individual and family member's resources. To invest two or four years and not have a possibility known ahead of time whether they will complete the degree is a significant risk.

In the section on "Requests for Additional Information," the authors of this proposal make clear that the procedures are not fully known, further demonstrating that these proposed changes place students and scholars at risk for achieving their goals:

Because the percentage of nonimmigrants that USCIS would ask to provide additional information or participate in an in-person interview is uncertain, this analysis does not quantify the costs of such requests on either nonimmigrants or USCIS.⁸

Decrease in enrollment

A defining characteristic of U.S. higher education is its flexibility. Limiting flexibility decreases our attractiveness. DHS acknowledged that there may be a decrease in enrollment and cites one singular journal article in defense that there would be other reasons that students would choose to study in the U.S. The proposal states:

While DHS acknowledges that the rule may decrease nonimmigrant student enrollments, there are many factors that make the United States attractive to nonimmigrant students

⁷ <https://www.federalregister.gov/documents/2020/09/25/2020-20845/establishing-a-fixed-time-period-of-admission-and-an-extension-of-stay-procedure-for-nonimmigrant>

⁸ <https://www.federalregister.gov/d/2020-20845/p-590>

and exchange visitors beyond the allowable admission period. For example, Daily, Farewell, and Guarav (2010) found that international students pursuing a business degree in the United States rate opportunities for post-graduation employment, availability of financial aid, and reputation of the school as the most important factors in selecting a university.[186] These factors may outweigh the perceived impacts from the proposed admission for a fixed period.⁹

The publication cited appears in *The Academy of Educational Leadership Journal*, which is owned and published by the DreamCatchers Group, an organization that appears to be disbanded as of 2012 or 2013. The study is based on 42 respondents, an insufficient sample size given the population of international students in 2006 was over 500,000 when the study was conducted.¹⁰ The margin of error would be well over 20%.¹¹

On pages 64-65 of the referenced journal, the authors describe the factors they included in the study, based on previous research in Australia. The factors are listed in Table 3 on page 67-68 with the results and include 16 items: 1. Opportunities post graduation employment, 2. Financial Aid, 3. Reputation of the institution, 4. Accessibility of information on the institution, 5. AACSB Accreditation, 6. Tuition, 7. Cost of living in the area, 8. Recommendation by non-family members, 9. Friends/relatives already living in the area, 10. Urban/rural setting, 11. Friends/relatives attending the university, 12. Climate, 13. Public/private institutions, 14. Recommendation by parents/relatives, 15. Availability of athletic scholarship, and 16. The number of international students

The survey does not include questions related to benefits of the current system of duration of status, such as “flexibility of U.S. higher education,” “ability to change majors,” or “ability to double major.” It seems likely that the factors related to duration of status were not deemed necessary to be studied as these were taken for granted and assumed to be a foundational component to U.S. higher education. Further, the results of this study highlight the importance students placed on opportunities for post-graduation employment – a benefit that is now in jeopardy with the new proposal as, for example, undergraduate students in a 4-year degree program would need to file an extension to pursue post-graduation employment.

We believe, therefore, that the cited study actually demonstrates a greater case against the proposal than for it.

The University of Minnesota’s International Recruitment Committee, on October 21, 2020, reviewed the proposal to eliminate duration of status. They note the increasing competition in recruiting international students as a result of currency fluctuations, favorable visa regulations

⁹ <https://www.federalregister.gov/d/2020-20845/p-596>

¹⁰ Sample size: A rough guide. Retrieved 10/21/2020. <https://www.beaumontethics.ie/docs/application/samplesizecalculation.pdf>

¹¹ Ibid.

in competitive locations¹², increased capacity in home countries for higher education, and increased recruitment of international students by various locations throughout the world. Recent surveys indicate that post-graduate work experience is one of the highest factors for students from China and India, two of the largest student populations at the University of Minnesota.^{13 14} This proposal is being made at a time where higher education institutions are already fighting increased competition for international students. Very importantly, the post-graduate work experience faces significant risk from this proposal by requiring EOS application at the time of the OPT application and by recent changes made to curtail H-1B visas.

The international recruitment committee reviewed the research cited in this proposal and responded from their own expertise in recruiting for more than a decade. The committee immediately noted that the flexibility of the U.S. system is a frequent talking point in their conversations with international high school counselors, families, and prospective students. The current flexibility is in contrast to other locations around the world as it offers students opportunities to double major or add a minor or create individually designed majors. They also noted that national and international rankings base their results on six-year graduation rates, not the two- or four-year limits of this proposal—acknowledging the actual length of time for most degree programs. Specifically, they drew attention to the well-known USNews and World Report that calculates 17.6% of its rankings weight on six-year graduation rates¹⁵ while they and other non-US based rankings bodies (QS and Times Higher Ed) make no mention of four-year graduation rates. As the proposed changes limit terms of study to four or even two years, the proposed changes risk upending U.S. institutions' rankings.

Recruitment from 2-year fixed time limit

This proposal also lists a set group of countries where students would only be admitted to the United States for two years. The University of Minnesota currently has 440 students from the 59 countries that are proposed to be subjected to a 2-year limit.

This change would make recruitment of students from these countries even more problematic as it does not give students or families assurance that the student would be able to finish the degree they are seeking. Families need to carefully consider where to invest in their child's education, and graduate students need to carefully consider where to invest in the development of their careers. It would seem unlikely students or families will choose to study in a country without the certainty that, as long as they follow the rules, they will be allowed to stay long enough to complete the degree they start.

¹² https://thepienews.com/news/two-year-work-rights-for-international-students-in-uk-reinstated-for-2020-21/?utm_source=Bibblio

¹³ <https://thepienews.com/news/chinese-families-reconsidering-plan-to-study-in-us/>

¹⁴ <https://monitor.icef.com/2019/11/more-than-750000-indian-students-abroad-in-2018/>

¹⁵ <https://www.usnews.com/education/best-colleges/articles/how-us-news-calculated-the-rankings>

Negative Impact to Practical Training Requests for F-1 Students

Currently, international students can pursue the benefits promised to them for real-world experience in their field of study by submitting applications for CPT, OPT, and STEM OPT. The proposed rule would now require students request an extension when they apply for OPT and STEM OPT. This fundamental change makes the U.S. a less favorable option in comparison to other countries that provide access to employment opportunities as part of the student status. It also could prevent international students from making contributions to the U.S. economy through their internships and work experience.

Researchers from the College of Charleston and Michigan State University in 2019 called attention to the importance of work experience:

From an international student's perspective, with an increasing number of students studying abroad, the value of an overseas degree in their home countries is likely to depreciate. Therefore, acquiring foreign work experience has become more important than ever, even for those who choose to move back to their home country—work experience abroad makes international students better able to compete in the home country job market (citing Gribble, 2014).^{16 17}

Further, in their study with a sample size of 11,604, the researchers identified that international master's students had lower earnings compared to domestic master's students. They conclude with a policy warning:

The disadvantaged career outcomes—earnings, in particular—of IMRs in the study, coupled with the alarming slowdown in the number of International applications to American graduate schools, may serve as a wake-up call for U.S. institutions to pay more attention to track, examine, and assess the career outcomes of international students. The fact that IMRs as a group have significant disadvantages in fully converting their U.S. degrees into economic career outcomes in the early stage of their careers may discourage future international graduate students to choose the U.S. as their study abroad destination (pp. 749-750).

Recruiters and the students themselves often express that the first step students make is choosing a country, followed by selecting an institution.¹⁸

¹⁶ Gribble, C. (2014). Employment, work placements and work integrated learning of international students in Australia. *International Education Association of Australia Research Digest*, 14(2), 1–10.

¹⁷ Jiang, X., & Kim, D. (2019). The Price of Being International. *Journal of International Students*, 9(3), 732-757. <https://doi.org/10.32674/jis.v9i3.700>

¹⁸ Sarah Nicholls. (2018). Influences on International Student Choice of Study Destination: Evidence from the United States. <http://doi.org/10.5281/zenodo.1249043>

Enrollment impact

A decrease in international student enrollment is a likely outcome of this proposal, with potential for loss of tuition revenue.

Financial Impact

All students who pay tuition contribute financially to the institution, and those who pay out-of-state tuition contribute more. International students at the University of Minnesota pay out-of-state tuition rates, and international undergraduate students pay an additional \$250 per semester for an academic enhancement fee that is used to fund projects that support the success of international students such as writing center staff appointments dedicated to international students.

In total, the international student population for the past several years has been between 10-12% of the total student population of the University of Minnesota's enrollment and thus the financial contributions are significant to the institution. Each year for the past several years, 1 in 4 graduate students is an international student, with some programs having substantially higher international student enrollment.

Below is a summary of public information about financial contributions of international students.

Financial Impact of International Students¹⁹

In the 2018-19 academic year, international student enrollment generated more than \$124 million in tuition revenue* for the Twin Cities campus:

- Undergraduate Students: \$63,982,736
- Graduate Students: \$50,214,303
- Professional Degree Students: \$8,861,619
- MELP Intensive English Program: \$994,154
- GO Minnesota: \$844,910

* Tuition and program fees only; does not include student fees, housing, health insurance, etc.

In 2018, international students on the Twin Cities campus contributed \$227.8 million to the Minnesota state economy and supported 2,879 jobs. Source: NAFSA.

¹⁹ https://global.umn.edu/about/documents/IRC_annual_report_18-19.pdf

Based on Faulty Data

After the release of the proposal, the Presidents' Alliance on Higher Education and Immigration hosted a Rapid Response Briefing on October 7, 2020, in which panelists agreed on the faulty nature of this information and explicitly advised against using the overstay reports for policy purposes. Several comments already submitted detail that overstay reports are faulty, including NAFSA's statement in opposition to the proposal.²⁰ The report that DHS is relying upon to assert that D/S must be eliminated as a mechanism to reduce visa overstays is inaccurate as D/S does not increase visa overstays. Further, the report is incomplete and itself states that "...transportation hubs and border infrastructure in the United States were not constructed with exit processing in mind."²¹ It goes on to acknowledge that "(t)here are major physical, logistical, and operational obstacles to collecting an individual's biographic and biometric data upon departure."²² Basing massive and disruptive regulatory changes on flawed data is bad policy.

We also support NAFSA's request that:

DHS is revising international student and exchange visitor regulations purportedly to address the statutory overstay and unlawful presence provisions that have been left undefined by regulations for almost a quarter century. DHS should address its issues with the overstay and unlawful presence provisions by separate rulemaking rather than obliquely attacking the duration of status policy that has worked so well for almost 30 years.²³

We can work together to make changes. International educators can be consulted on how to make genuine improvements in the provisions.

Time Frames Not Suited for Actual Degree Programs

In the executive summary, the language used reveals a significant misunderstanding of higher education: "Nonimmigrants who would like to stay in the United States beyond their fixed date of admission would need to apply directly with DHS for an extension of stay." Ph.D. students who need more than four years and undergraduate students who need more than two years to complete their studies are not individuals who simply "would like to stay." This proposal, rather, would mean they would be required to leave half way through their undergraduate degree program or obtain an extension to simply stay the amount of time expected for them to complete their degree and graduate. Further, according to the statistics from the UMN Office of Institutional Research, 90% of the graduate programs require more than 2 years to complete (364 system-wide for the University of Minnesota and 173 at the Twin Cities campus) and 22%

²⁰ <https://www.nafsa.org/sites/default/files/media/document/NAFSACommentProposedEliminationDS.pdf>

²¹ Page 3 of the report: https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf

²² Page 4 of the report: https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf

²³ <https://www.nafsa.org/sites/default/files/media/document/NAFSACommentProposedEliminationDS.pdf>

of international undergraduates do not currently complete their undergraduate degree in four years.

For those students limited to two years, there is a disconnect from academic programs. The regulations currently admit students so that they can complete their “full course of study.” This cannot be done in the time period given under this regulation. A full course of study is not half:

Specifically, section 101(a)(15)(F) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), established the F nonimmigrant classification for, among others, bona fide students qualified to pursue a full course of study who wish to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an academic or language training school certified by ICE, Student and Exchange Visitor Program (SEVP), as well as for the spouse and minor children of such aliens. See *also* INA 214(m), 8 U.S.C. 1184(m) (limiting the admission of nonimmigrants for certain aliens who intend to study at public elementary and secondary schools).²⁴

No documentation of stakeholder feedback

The U.S. Department of Homeland Security provides a report on their website of stakeholder feedback and explains:

“The Trends and Improvements section of Study in the States is the central repository for tracking and monitoring the government’s progress on feedback received from the international student community.

This section aims to increase transparency by providing the most up-to-date information about the government’s response to stakeholders’ feedback. Within this section, we categorize each piece of feedback into four topic areas:

- School Certification: Topics relate to the Student and Exchange Visitor Program (SEVP) School Certification Life Cycle and Form I-17, "Petition for Approval of School for Attendance by Nonimmigrant Student," updates.
- Student and Exchange Visitor Information System (SEVIS): Topics relate to SEVIS functionality and enhancements.
- Policy: Topics relate to clarifying SEVP's interpretation of federal regulations and guidance for school and student compliance.
- Customer Service and Outreach: Topics relate to improving the government's direct interaction with stakeholders via the SEVP field representatives, SEVP Response Center, Study in the States and other outreach platforms.

Each piece of feedback includes a description of the concern, the government’s response and any action taken to address the concern, along with any related content available on Study in the States, ICE.gov/SEVP or other government websites.

²⁴ <https://www.federalregister.gov/d/2020-20845/p-120>

We will update the Trends and Improvements section regularly to reflect progress made on identified issues and to include any new feedback the government receives. To explore this section, you can filter the below feedback by the categories listed above.”²⁵

None of the feedback items on the website noted, as of October 24, are items with any relationship to policy on duration of status or any other changes in the proposal. At the time of the proposal to eliminate duration of status, there is no report of requesting discussion of, or elimination of, duration of status. In DHS’s self-declared efforts to be transparent, they explicitly declare that “policy,” means “(t)opics relate to clarifying SEVP’s interpretation of federal regulations and guidance for school and student compliance.” There is no documented request from the stakeholders for this change.

Potential for Discrimination

Requiring extension based on birth country or citizenship

The proposal includes differentiating those from 59 countries and limiting their status to two years. Earlier in our comments, we’ve indicated how the list of countries for the two-year limit is based on faulty data. Further, we suggest status should be linked to the time it takes to complete the academic program and not to the country in which an individual is born or holds citizenship. The SEVIS system already requires students to show that they are making progress toward completion of their degree. Making students apply for extension midway through their degree, based on their country of birth rather than anything related to their academic progress, is discriminatory.

Students with disabilities

Educators on our campus were quick to point out that the proposed changes could also discriminate against those with disabilities who are both making adequate progress to their degree but need more time to complete all of their degree requirements.

Unrealistic burden for ISSS staff

Working hard and long hours has been a part of the job description for higher education administrators, including international student advisors, for many years. However, these rules, coupled with previous changes in regulations, ICE guidance updates, and politicized threats to international student and scholar benefits makes answering students and scholars’ questions—advising them on the regulations and their choices in relation to the regulations—nearly impossible. Should students from Vietnam, one of our larger sending countries, ask if their request to stay longer than 2 years will be granted, what would the answer

²⁵ U.S. Department of Homeland Security Website: https://studyinthestates.dhs.gov/trends-and-improvements?field_category_tags_value=All&page=2

be? There is no track record, no detailed information about what will be approved, and distrust that USCIS will be able to respond in an appropriate amount of time given the current workloads and long adjudication times.

The proposal identifies three periods of implementation with a transition plan to begin in 2020. The Early Transition Period (2020-2023) and the End Transition Period (2024) would bring substantial increase in workload as ISSS staff communicate about the changes to all impacted stakeholders of students, scholars, departments, academic advisors, and the broader university community and develop the work processes necessary to carry out the regulations. As the proposal also does not indicate the training, if any, that USCIS adjudicators will receive, our own staff time could be spent supporting USCIS in implementing this new process in order to continue to support students and scholars through this process. At UMN-TC, like many institutions, we are already facing a reduction in staff due to loss of revenue from COVID, and we are deeply concerned about this increase in workload.

The proposed changes also indicate a potentially troublesome shift in the balance of the DSO and RO roles. It's already been an enormously complicated time to be a DSO and RO in higher education. Professional staff navigate a role of advising on the intersection of the institution, the student and scholar, and the regulations for maintaining status. We need to be conscious of wanting to ensure that non-lawyers can continue to advise on the regulations, and shifting the length of stay in the U.S. from an academic-focused process to a more legal one could lead to an undermining of the role of the DSO/RO/advisor.

Procedural Concerns

No Clear New Standards

There are any number of circumstances that commonly temporarily derail students (both international and domestic) as they pursue their studies. These can be personal or academic related. There are currently no clear standards for how USCIS would judge these circumstances to determine whether they are acceptable. These include:

- Disability
- Mental health
- Family health issues (family here or at home)
- Dealing with death/dying process of relative/friend here or at home
- Struggles with a faculty member/advisor
- Missing (possibly unstated) prerequisite knowledge/coursework
- Ph.D. student's adviser leaves and student has to find a new adviser and perhaps switch focus
- Ph.D. student hits a dead end with their research and has to switch focus, maybe several times

- Undergraduate is halfway through their program and realizes it isn't a good fit and has invested significant time and energy into their education, the institution, and the U.S.
- Undergraduate completes 3rd year and decides to add 2nd major but won't be able to complete in 4 years
- Course sequencing issues (sometimes because a student falls ill or fails a course)

The proposed new rule states that "DHS is proposing to eliminate a reference to 'normal progress' with respect to seeking a program extension, and incorporate a new standard that makes clear acceptable reasons for requesting an extension of a stay...."²⁶ But of deep concern to us is precisely that **it is not clear what the new standard is** and which, if any of the circumstances listed above, DHS would consider to be acceptable reasons to grant an extension of stay. And given universities and colleges already have well established probation and suspension policies and other processes in place to determine that students are making satisfactory academic progress, it is puzzling that DHS would commit substantial resources to create yet another process to similarly determine that students are progressing in their degree programs. USCIS adjudicators also are not trained regarding different institutional processes and expectations related to these issues. The proposal does not describe whether they will receive any (or sufficient) training on these topics.

This change would impose incremental costs on F, J, and I nonimmigrants, but would in turn protect the integrity of the F, J and I programs by having immigration officers evaluate and assess the appropriate length of stay for these nonimmigrants.

The statement also indicates that the integrity of the F, J, and I programs need to be maintained. Absolutely! But there is insufficient evidence that the current situation is without integrity. Under "Risks to the F Classification" the proposal does clearly specify instances in which there needed to be action taken for improper actions with the F program. However, the proposal does not indicate that these are a significant number or portion of the current F population to warrant such dramatic changes to duration of status.

If I-539 Denied, No Grace Period

If the I-539 is denied, the proposal states that there is no grace period and that individuals would need to leave immediately. However, international students would be applying to receive benefits that they are allowed by regulations—pursuit of a degree and OPT. Why should they be penalized by having no time to prepare to depart? Denial of an extension places the student and scholar in an incredibly disruptive state. If they are in the middle or toward the end of the semester, all of the time that they have put into their studies could be wasted. There is also a huge financial risk to losing tuition, breaking a rental lease, securing a last-minute flight, etc.

²⁶ <https://www.federalregister.gov/d/2020-20845/p-366>

Leaving requires making arrangements that can't be done in a day such as closing a bank account and taking care of belongings. Grace periods of 28 days in Australia and 30 days in the UK are standard, and both of these countries are attractive and viable options for international students. We stand to lose highly qualified individuals with this proposal and damage relationships with those who are currently here.

Examples of Date-Specific Problems for H-1B Visa Holders

DHS's proposal to implement date-specific end dates for international students and scholars is an approach that has been problematic with the H-1B visa. Our experts with this employment-based visa shared a few examples of where date-specific I-94 end dates have presented problems for H-1Bs (for whom I-94s have always been date-specific). The following have happened on more than one occasion with CBP officers admitting H-1Bs for specific dates. If D/S were eliminated, insert "DS-2019" or "I-20" or "EAD" in place of I-797 to understand the effect:

- **I-94 end date issued to match passport expiration date, if passport expires before I-797.** This is quite common with H-1Bs, and is not an error; CBP officers have the discretion to do this. It requires employees to either travel again after renewing their passport, or file a new H-1B petition before the I-94 end date.
- **I-94 end date issued to end 6 months before the passport expiration date, if passport expires before I-797.** This is much less common, and a super-conservative variation of the previous example, based on the fact that passports are expected to remain valid for 6 months into the future for many countries.
- **Inconsistency in whether the grace period is given with the I-94 end date.** For H-1Bs they sometimes issue the 10-day grace period, and sometimes not. The grace period is discretionary for H-1Bs (regulatory for J and F), so this might not be such an issue, but it's confusing nonetheless.
- **I-94 end date issued to match visa expiration.** This is an error, but does occur.
- **I-94 end date issued which cuts short the I-797 end date, if the employee entered before the I-797 start date.** In effect, CBP is "subtracting" the early arrival period—of which 10 days is allowed—from the back-end of their stay. For example, I-797 validity dates are 11/1/2020 - 10/31/2023. If the employee enters the U.S. on 10/25/2020 (6 days before employment start date, which they are allowed to do) the CBP officer might subtract those days and issue their I-94 end date for 10/25/2023. (If this example were applied to students and they entered 30 days before their program start date and never traveled again, their status might be cut short by approximately one month before their program actually ends.)
- When traveling, each entry can result in a **new updated I-94 end date.** If one of the above happens and the student/scholar doesn't realize it, then this could result in unintended consequences, including overstay issues, unauthorized employment, etc.

The above demonstrates that the procedural challenges to the proposed elimination of duration of status are significant, and inconsistent with the realities of international students and scholars.

Biometrics

Application Support Centers are not readily available and thus presents a significant barrier for students and scholars to access. Generally, DHS facilities for gathering biometrics are only in large cities. International students and scholars at education institutions outside large metro areas will have an undue burden fulfilling the biometrics requirements.

OPT Reduction in Application Time

Limiting the window of time for applying for OPT will negatively impact a number of students. The reduction from 60 to 30 days gives them less time to secure a job, especially if they are in nontechnical fields where there are more limited options. International students—like all students near the end of their degree program—have limited time as they complete their coursework, take finals, and finish their program requirements, and thus some need to wait to start their job search until after the term is completed. The reduction in time does not appear to serve a purpose other than to make it more difficult for students to apply for the benefits that were part of the attraction of attending university in the U.S. in the first place.

Inappropriate Timing

While the world endures a pandemic, international students and scholars face deeply challenging questions. Our staff has worked diligently since March to address hundreds of questions from students and scholars as they consider whether to stay in the U.S. and remain separated from their families during this global crisis or whether they should choose to travel to be with their families but then continue their studies in isolation. These students and scholars have also endured enormous stress over ICE guidance updates over the spring and summer as they finalized their academic plans.

This new proposal adds a great deal of additional stress to individuals that have applied and been accepted to U.S. institutions. The proposal would leave students and scholars scrambling to make another round of very difficult decisions—should they travel home to see a dying relative or visit family for the first time in several years? And does doing so then put them at risk to not complete their degree program if they return and re-enter and now have a fixed time limit and may or may not get an extension?

Now is, therefore, not the time to be considering a change such as this proposal's. Now is the time to be appreciating that these students and scholars are here in the U.S. and are committed to their studies and research.

Removal of Benefits During a Current Program is Unethical

We met with five different campus student organizations to discuss the proposed changes, to share our opposition to the changes, to answer student questions, and to hear about their own advocacy efforts.

The worry and stress they are experiencing from the proposal is significant. It was devastating to hear from such talented leaders that they were concerned about their peers and about their own circumstances. They are worried about whether they should try to travel now to see their families since they don't know how their requirements would change if they were to leave the country and return after this regulation is implemented.

The worry and stress students and scholars would experience if these changes are enacted would be even greater. Should they travel and re-enter after the final rule effective date, an F or J nonimmigrant who departs the U.S. and seeks admission after the final rule, the student or scholar becomes subject to the fixed date framework of this new rule.

This is not right. This is unethical. These individuals applied and were accepted to come to the U.S. We chose for them to be here. They invested their savings, gathered family funds, or took out loans to come to the U.S. And now, after making an investment in their own education and career paths, the rules could change on them in the middle of their programs.

Conclusion

We take these proposed changes to duration of status very seriously and believe that if implemented, they could set off a series of negative outcomes that begins with difficult and uncertain experiences for international students and scholars and eventually to lower enrollments which in turn, unfavorably impacts the United States.

Our staff in ISSS have also submitted substantial comments, detailing additional numerous concerns with the proposal, ranging from ongoing backlogs with USCIS that make implementing these changes unrealistic to how these changes are out of step with academic realities of time for degree completion. We urge a careful consideration from all of us at International Student and Scholar Services and the thousands of experts who have spoken out against this proposal.