

Summary and Talking Points on Duration of Status (D/S) Proposed Rule

The Department of Homeland Security (DHS) on Sept. 25, 2020, issued a [notice of proposed rulemaking \(NPRM\)](#) “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.” This proposed rule will remove the “duration of status” for international student and exchange visitors under F, J, and I visas and replace it with a fixed time period. The proposed rule has a 30-day comment period, with an Oct. 26 deadline.

Higher education institutions would be most impacted by changes to F-1 visas (academic students) and J-1 visas (exchange visitors, college/university students). I visas are granted to representatives of foreign media outlets. There are currently over 1 million international students in the U.S.¹

Under this proposed rule, F, J, and I visas would be limited to a maximum 2-year or 4-year time period, based on the length of period for a program of study, as well as additional factors which could limit the visa to a maximum of two years for:

- Students from a country with historic overstay rates of over 10 percent or those designated as state sponsors of terrorism (currently North Korea, Iran, Sudan, and Syria), and broadly defined national security concerns.
- F-1 students in a language training program, restricted to a lifetime aggregate of 24 months of language study, including breaks and an annual vacation.
- Students whose institutions and exchange visitor programs do not fully participate in E-Verify.

DHS says it is proposing this rule for several reasons, including: bringing these programs in line with other visa programs that have a fixed time period; allowing DHS officials more opportunities to review an alien’s status and whether they are complying with rules around their nonimmigrant status; and reducing and deterring fraud and abuse.

Talking Points:

Some 1 million international students attend U.S. colleges and universities annually, contributing greatly to this country’s intellectual and cultural vibrancy. They also yield an estimated economic impact of \$41 billion and support more than 450,000 jobs across sectors². Instead of creating additional complications and barriers, the federal government should be doing more to encourage international students and scholars to study in the U.S.

DHS says the maximum 4-year period was established to give international students enough time to finish a program of study such as a B.A., but surveys show it takes international students an average of 4.5 years to finish a degree. Such a strict time period may limit the ability of international students to change their majors, explore academic programs outside their majors, or extend their studies. In addition, the proposed time frame could discourage international students looking to pursue a B.S., an M.S. or for those pursuing PhDs, which take on average 6 to 8 years to complete.

The proposed rule says the changes will address fraud and abuse, but much of this information is already reported through the current Student and Exchange Visitor Information System (SEVIS) to DHS. For example, SEVIS

¹ <https://opendoorsdata.org/>

² <https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2>

provides DHS with data on an international student's country of origin, if a student has fallen out of academic status, and if the student is changing educational levels.

DHS is proposing to apply this new rule (using the date of admission and length of the program of study, as listed on the most recent I-20 or DS-2019) to current F-1 and J-1 visa holders. This would be a major change to a student visa after it has been granted under previous terms, for students who are currently advancing in an academic program, or already have made decisions and commitments to study in the U.S.

There are major concerns with the new Extension of Status (EOS) process and implementation for both students and institutions of higher education:

- While the proposed rule establishes an EOS process, it is unclear how often DHS will grant these extensions, as well as how burdensome this process will be for international students and scholars and institutions of higher education. Extensions would be granted at DHS's discretion, based on academic, medical or other grounds, and denials may not be appealed.
- It is unclear how long the extensions will be or if they will be granted in monthly or yearly increments.
- There is also a burden and cost associated with each application for EOS, both on the student and the institution of higher education.

The new extension of status process could create additional complications, including:

- Currently a Designated School Official (DSO) can grant a program extension for an international student. The proposed rule states that determinations of program extension and extension of stay should be separated, with the DSO and Responsible Officer's recommendation being on factor an immigration officer review.
- DHS has experienced historic delays in processing in the past few years, including recent processing of work authorizations for Optional Practical Training (OPT). It is unclear how DHS will be able to handle the influx of new applications for EOS and additional work such as biometrics for every application in a timely manner.
- There will be a filing fee for the new EOS and the required biometrics. This could be burdensome and expensive for students, as well as institutions of higher education who will need to issue supporting documents.
- Students seeking post-completion OPT would have to apply for an EOS as well as employment authorization. According to the proposed rule, these would be separate processes and a student may not engage in post-completion OPT unless the work authorization is granted, even if the EOS was granted.

The proposed rule will also heighten the U.S. Customs and Border Protection's (CPB) authority to determine whether or not to admit the student for the period of admission. There have been issues over the past few years of aggressive behavior of CPB at points of entry towards international students carrying valid State Department-issued visas.