



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION



September 29, 2025

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Secretary  
U.S. Department of Homeland Security  
2707 Martin Luther King Jr Ave SE  
Washington, DC 20528-0525

Todd Lyons  
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U.S. Department of Homeland Security  
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Washington, DC 20536

Submitted via [www.regulations.gov](http://www.regulations.gov)

**Re: DHS Docket No. ICEB-2025-0001**  
**Regulatory Information Number (RIN) 1653-AA95**

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 Secretary Noem and Acting Director Lyons:

The American Immigration Lawyers Association (AILA) and the American Immigration Council (Council) submit the following comments in response to the above-referenced notice and request for comments published by the Department of Homeland Security (Department or DHS) in the Federal Register on August 28, 2025<sup>1</sup> (the Proposed Rule or the Rule). The notice solicits comments on the Proposed Rule which would establish a fixed time period of admission for F, J, and I nonimmigrants, establish a procedure to extend the stay of F, J, and I nonimmigrants beyond the fixed period of admission, and make other changes to the F, J, and I nonimmigrant programs.

AILA is a voluntary bar association of over 18,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes 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 U.S. immigration laws.

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<sup>1</sup> 90 Fed. Reg. 42070 (Aug. 28, 2025).

The Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws and protect the legal rights of noncitizens. The Council frequently appears before federal courts on issues relating to the interpretation of the Immigration and Nationality Act (INA) and its implementing regulations.

Our collective expertise and experience make us particularly well-qualified to offer views that will benefit the public and the government. While we appreciate the opportunity to comment on the proposed changes to the F, J, and I nonimmigrant programs, as we noted in a separate comment<sup>2</sup> which is incorporated here by reference, a 30-day comment period is insufficient to provide meaningful comment, particularly since this Rule touches on a wide variety of issues, introduces new complexities in the status of F, J, and I nonimmigrants, and has significant economic impact. Therefore, we urge DHS to extend the comment period for a minimum of 60 days in accordance with EO 12866 to allow meaningful opportunity for the public to review and provide comment.

AILA and the Council oppose this Proposed Rule as it does not offer a balanced, data-driven assessment of the benefits and risks within these programs and fails to consider less burdensome alternatives to achieve its objectives. Instead, it relies on insufficiently supported logic and allegations to justify sweeping changes that could harm international students, U.S. institutions of higher education, and U.S. employers, as explained in more detail below.

## **I. DHS’s PROPOSAL WILL ADVERSELY IMPACT THE U.S. ECONOMY AND INNOVATION**

### **a. DHS Dramatically Underestimates the Economic Impact of the Proposed Rule**

DHS acknowledges in the proposed regulation that it “recognizes that the proposed rule would incur costs.”<sup>3</sup> This claim is—even with the most generous interpretation—a massive understatement. DHS significantly underestimates the likely economic impact of this Rule, both in terms of direct costs and the broader negative effects it will have on student enrollment, tuition payments, tax revenue, and consumer spending. In the Regulatory Impact Analysis, DHS only quantified some costs, with a large proportion of costs based on speculative qualitative assessments rather than concrete data.<sup>4</sup> DHS failed to provide any analysis of downstream economic impacts, such as labor market disruptions or the reduction in innovation which will result if DHS finalizes the Rule in its current form. Because DHS has not properly estimated or disclosed these costs, the Proposed Rule does not comply with Executive Orders 12866 or 12563, the Unfunded Mandates Reform Act, or the Regulatory Flexibility Act. DHS should withdraw the Proposed Rule, conduct a full analysis of the direct and indirect costs, and only reconsider reintroducing the Rule once

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<sup>2</sup> See <https://www.regulations.gov/comment/ICEB-2025-0001-8627>.

<sup>3</sup> 90 Fed. Reg. 42070, 42101.

<sup>4</sup> Regulatory Impact Analysis posted by the Immigration and Customs Enforcement Bureau on August 28, 2025, <https://Regulations.gov/document/ICEB-2025-0001-0143>, pp 5-7.

those costs are accurately assessed. Importantly, the massive negative economic impact of this Rule far outweighs any potential benefits DHS believes it would provide.

**b. The Proposed Rule Would Impose Significant Costs**

DHS admits that the Proposed Rule would, at a minimum, add direct costs related to government filing fees, legal fees, training of Designated School Officials (DSOs), and training of CBP and other DHS officers of around \$400 million per year.<sup>5</sup> Importantly, most of these costs would be borne by international students in the form of filing fees—on top of the already significant costs they pay for tuition, housing, and other school-related expenses. Asking this population to absorb hundreds of millions of dollars in additional costs each year is both unfair and unnecessary.

It is the indirect costs, however, that are most troubling. The negative effect this Rule would have on universities, state and local economies, and the United States as a whole has been largely brushed aside by DHS in the Proposed Rule. DHS states that the “proposed rule may have a marginal impact on nonimmigrant student enrollment,” but offers no support for its conclusion that the impact would be “marginal.”<sup>6</sup> Available data tells a very different story.

A recent analysis published by NAFSA: Association of International Educators shows that visa bans and disruptions in visa interviews and processing implemented by the current administration are already predicted to cause a “potential 30–40 percent decline in new international student enrollment, contributing to a 15 percent drop in overall enrollment this fall.”<sup>7</sup> This drop is occurring even before the implementation of any regulatory change that would formally complicate or restrict international students’ ability to maintain their nonimmigrant status.

DHS also asserts that “eligible students should have no difficulty with getting their extension of stay (EOS) requests approved, which should alleviate concerns about the uncertainty of EOS approval.”<sup>8</sup> This statement is made without any explanation of why or how extensions will be obtained with “no difficulty.” Currently, individuals applying to extend their stay incur hundreds, if not thousands, of dollars to submit their applications and often face significant delays in having their applications adjudicated, causing uncertainty and gaps in status and work authorization. In addition, USCIS reports on its website that it is currently taking 3.5 months for the agency to process Form I-539 Application to Extend/Change Nonimmigrant Status for F, M, and J applicants and up to 7 months for other categories.<sup>9</sup> Adding more applications to this workload will further delay processing times. Even if the government’s claim that nonimmigrants will receive an extension without difficulty is true, such reassurance offers little comfort to prospective international students, who will be deterred by the increased uncertainty and disincentives created by this Rule and other restrictive policies.

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<sup>5</sup> See Regulatory Impact Analysis, Table 2, page 6, estimated annualized costs of \$390.3 million to \$393.4 million, <https://regulations.gov/document/ICEB-2025-0001-0143>.

<sup>6</sup> *Id.*

<sup>7</sup> <https://www.nafsa.org/about/about-nafsa/us-economy-could-suffer-7-billion-loss-precipitous-drop-international-students>.

<sup>8</sup> 90 Fed. Reg. at 42101.

<sup>9</sup> <https://egov.uscis.gov/processing-times/>, visited Sept. 24, 2025.

**c. DHS Grossly Underestimates the Broader Economic Impact**

In the Rule’s Regulatory Impact Analysis, DHS estimated that eliminating duration of status will cumulatively cost about \$3.3 billion over ten years.<sup>10</sup> This figure grossly underestimates the likely actual costs to the United States if USCIS finalizes this policy. By contrast, economist Michael Clemens and the Institute for Progress (IFP), estimate that the elimination of duration of status as currently proposed, could cost the United States \$72-145 billion within ten years.<sup>11</sup>

Both private and public universities rely heavily on tuition paid by international students. A May 2025 Policy Brief by the National Foundation for American Policy (NFAP) found that “[m]any private schools... admit international students on a ‘need-aware’ basis that takes into consideration how much an international applicant can pay, based on their family resources. And at public universities, international students pay out-of-state tuition, which can be two to three times as high as in-state tuition.” The report further noted that private universities received about \$4.3 billion in revenue from international master’s students in 2015, and public universities received \$3 billion.<sup>12</sup> A decline in international student enrollment would directly reduce this revenue and increase costs for American students.

Beyond higher education, the economic impact would ripple across local economies that depend on student spending and tax revenue. The NAFSA report predicts that reduced enrollment will deprive local economies of \$7 billion in spending and more than 60,000 jobs.<sup>13</sup>

**d. The Rule Is Not Consistent with U.S. Trade and National Economic Policy Goals**

The current administration implemented its “America First” initiative to foster investment and productivity, bolster the Nation’s industrial and technological competitiveness, reinforce economic imperatives to reap tangible benefits to American workers, manufacturers, agricultural producers, entrepreneurs, and businesses.<sup>14</sup> The Proposed Rule undermines these objectives. According to Trade.gov, international students represent the seventh-largest U.S. service export. The Department of Commerce’s Bureau of Economic Analysis valued education-related travel exports at \$54.84 billion in 2024.<sup>15</sup> By discouraging international students from studying in the U.S., the Proposed Rule would directly reduce this major export sector.

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<sup>10</sup> Regulatory Impact Analysis posted by the Immigration and Customs Enforcement Bureau on Aug. 28, 2025, <https://regulations.gov/document/ICEB-2025-0001-0143>, page 55.

<sup>11</sup> Comment (<https://ifp.org/wp-content/uploads/Clemens-Neufeld-Nice-D-S-Elimination-comment.pdf>) to DHS “Fixed Time of Admission and Extension of Stay” for Fs and Js, from Michael Clemens, Jeremy Neufeld, Amy Nice filed at [Regulations.gov](https://www.regulations.gov).

<sup>12</sup> <https://nfap.com/research/new-nfap-policy-brief-the-importance-of-immigrants-and-international-students-to-higher-education-in-america/>.

<sup>13</sup> <https://www.nafsa.org/about/about-nafsa/us-economy-could-suffer-7-billion-loss-precipitous-drop-international-students>.

<sup>14</sup> <https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/>.

<sup>15</sup> <https://www.trade.gov/education-service-exports>.

## **II. DHS's PROPOSAL IS INEFFICIENT AND UNNECESSARY AS OVERSIGHT CAN BE IMPROVED BY BETTER LEVERAGING SEVIS**

AILA and the Council object to the proposed changes as unnecessary since the government has already invested significant resources into a mechanism which can conduct the proposed oversight. Rather than creating a new system, if additional oversight is necessary, DHS should fully utilize and improve the existing SEVIS system.

### **a. SEVIS is a Major Federal Investment in Oversight and Should Be Utilized to Achieve DHS's Goals**

We acknowledge and support DHS's objective of enhancing oversight and ensuring F-1 and J-1 program integrity. In order to achieve those objectives, DHS should reconsider shifting extension authority from schools and program sponsors to USCIS and instead optimize use of the Student and Exchange Visitor Information System (SEVIS). The United States has already invested substantial resources into SEVIS, a centralized platform designed to monitor and track the progress of nonimmigrant students and exchange visitors. SEVIS is effective, efficient, and already provides DHS with real-time oversight. DSOs and Responsible Officers (ROs), who are federally designated and trained, are the individuals best positioned to assess whether a program extension is academically justified. If DHS desires greater visibility, SEVIS already contains the data necessary to generate reports, conduct audits, and verify compliance. Requiring every international student to file an extension application with USCIS duplicates oversight, imposes new costs and delays, and undermines decades of progress in automating and modernizing student tracking.

Congress mandated the creation of SEVIS in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),<sup>16</sup> and following the September 11, 2001 terrorist attacks, the government rapidly developed SEVIS under the USA PATRIOT Act<sup>17</sup> and the Enhanced Border Security and Visa Entry Reform Act.<sup>18</sup> DHS and the Department of State have since invested hundreds of millions of dollars in its creation, maintenance, and modernization.

DHS reported that the initial build-out of SEVIS between 2001 and 2003 cost approximately \$36 million.<sup>19</sup> Since then, DHS has collected billions of dollars in Form I-901 SEVIS fees to sustain operations. In FY2023 alone, the Student and Exchange Visitor Program (SEVP) collected more than \$270 million in SEVIS-related fees.<sup>20</sup> SEVIS has been modernized repeatedly, incorporating stakeholder input, upgraded technology, and improved reporting functionality.<sup>21</sup> This investment has produced a comprehensive system that logs the status of every F, M, and J student or exchange

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<sup>16</sup> Illegal Immigration Reform and Immigrant Responsibility Act. Pub. L. 104-208, Division C., 110 Stat. 3009, 3009-46 to 74 (1996).

<sup>17</sup> USA PATRIOT Act, Pub. L. 107-56, 115 Stat. 272 (2001).

<sup>18</sup> Enhanced Border Security and Visa Entry Reform Act, PL 107-173, 116 Stat. 543 (2002).

<sup>19</sup> GAO-04-586, *Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing*, June 2004.

<sup>20</sup> DHS, *Budget-in-Brief, FY2024*, SEVP Fee Collections, available at [www.dhs.gov/sites/default/files/2023-03/DHS%20FY%202024%20BUDGET%20IN%20BRIEF%20%28BIB%29\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/DHS%20FY%202024%20BUDGET%20IN%20BRIEF%20%28BIB%29_Remediated.pdf).

<sup>21</sup> GAO-05-26, *Border Security: DHS Needs to Strengthen Management of the Student and Exchange Visitor Information System*, Oct. 2004.

visitor, records their enrollment, transfers, completions, terminations, and extensions, and transmits this data to DHS in real time. Replacing SEVIS extension authority with a duplicative USCIS process would squander this investment and create inefficiencies instead of building upon the infrastructure already in place.

**b. School and Program Officials Are Best Positioned to Monitor Compliance**

DSOs and ROs are federally designated compliance officers trained to carry out SEVP responsibilities. DSOs are closest to the students, their academic program, and the faculty and advisors who can attest to academic progress. With the necessary input from academic departments, DSOs and ROs can confirm whether a student needs additional time due to legitimate academic or personal reasons. DSOs enter program extensions directly into SEVIS, in real time, ensuring DHS has immediate visibility into every extension granted. And DHS already holds schools accountable through SEVP certification, site visits, and potential withdrawal of certification.<sup>22</sup>

Similarly, oversight of the J-1 Exchange Visitor Program is conducted by the State Department's Bureau of Educational and Cultural Affairs (ECA) under 22 CFR Part 62. The State Department, in turn, authorizes certain designated J-1 sponsors who appoint an RO, approved by the State Department, who is then ultimately responsible for compliance, monitoring and record-keeping in SEVIS. Only ROs have the legal authority to issue and sign Form DS-2019 on behalf of the J-1 sponsoring entity. Therefore, J-1 visa oversight and monitoring are already very strong.

USCIS adjudicators, by contrast, lack the same direct access to a student's academic record and an exchange visitors' compliance information, and therefore will be forced to evaluate extensions based solely on limited documentary evidence, rather than first-hand knowledge, introducing delays and erroneous denials.

**c. SEVIS Enables Automation, Efficiency, and Streamlined Oversight**

One of the greatest strengths of SEVIS is its automation. Since its creation, SEVIS has allowed real-time reporting and data sharing, replacing paper-based processes with an integrated electronic system. This has made compliance faster, more transparent, and more efficient.

DSOs and ROs update SEVIS directly, creating immediate federal records. This real-time automation is lacking from DHS filings, which are still largely paper-based, and from tracking of any other nonimmigrant or immigrant categories in the United States. DHS can generate reports from SEVIS to identify high-risk cases, rather than processing every student's extension individually and manually. Program extensions are already logged in SEVIS and visible to DHS, eliminating the need for redundant filings.

Conversely, requiring students to file Form I-539 extensions with USCIS reverses this progress. Under the Proposed Rule, schools will still have the responsibility of updating SEVIS, but students

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<sup>22</sup> 8 C.F.R. §214.3; SEVP Policy Guidance.

will also have to file paperwork with USCIS, and USCIS adjudicators will then have to review cases that have already been vetted by DSOs. This triple duplication wastes government resources and undermines the very efficiencies SEVIS was built to deliver. Moreover, the Rule would add tens of thousands of filings to USCIS's already overburdened caseload, increasing delays for other applicants. Students would face new fees, biometric appointments, and uncertainty over whether legitimate extensions would be approved in time.

In the era of automation, DHS should be expanding SEVIS functionality, leveraging data analytics to flag anomalies in a responsible manner—not reverting to slower, manual, and duplicative processes. The proposed USCIS extension requirement is a step backward when DHS should be moving forward with greater automation, efficiency, and modernization.<sup>23</sup> For further discussion on leveraging SEVP to ensure compliance, please refer to Section V.3 below.

#### **d. Alternative Approaches to Strengthen Oversight**

If DHS seeks greater assurance of compliance, it can achieve this within SEVIS itself without burdening students or USCIS. DHS can leverage the automated nature of SEVIS reports and instantly generate lists of students with multiple extensions or long enrollment periods. Those students can then be reviewed for compliance with student immigration regulations. DHS can also conduct focused audits of schools or programs identified through SEVIS reporting as programs that continuously extend student status or transfer them to lower-level degree programs. DHS can also require additional compliance training for DSOs, coupled with periodic reviews of their extension recommendations. Bottom line, DHS can enhance compliance by utilizing SEVIS data, paired with modern analytical tools, and proactively identify the risks that it seeks to isolate. These approaches enhance oversight while respecting taxpayer investments and minimizing burdens on the agency, schools, and students.

#### **e. The Proposal Would be Inefficient and Costly**

This proposal would create new inefficiencies and costs. USCIS would face hundreds of thousands of new filings annually, exacerbating existing backlogs.<sup>24</sup> Each filing would require fees and biometrics, increasing the financial barriers to studying in the U.S. for legitimate students who want to obtain world-class education in the United States, often at a high cost to themselves and their families. Schools would still be required to issue updated Forms I-20 or DS-2019 in SEVIS, meaning that DSOs and ROs would not experience any workload reduction as the result of the Proposed Rule. By contrast, maintaining SEVIS-based extensions avoids these problems, keeps costs predictable, and allows DHS to allocate USCIS resources to higher-priority adjudications.

In sum, SEVIS is a proven, modern web-based system that already tracks students and exchange visitors efficiently. DSOs and ROs are the officials best equipped to assess program extensions, and DHS already has full visibility through SEVIS reporting and auditing. Adding a USCIS adjudication requirement is duplicative, inefficient, and counterproductive, particularly in an era

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<sup>23</sup> <https://strategy.data.gov/assets/docs/2020-federal-data-strategy-action-plan.pdf>.

<sup>24</sup> USCIS, *Cycle Time Goals*, 2023. <https://www.uscis.gov/archive/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work#:~:text=To%20reduce%20the%20agency%27s%20pending,and%20overall%20case%20processing%20times>.

where automation and efficiency should be guiding federal policy. ICE proudly maintains on its website that SEVIS is an essential instrument in fulfilling its national security mission while facilitating the lawful entry of nonimmigrants for educational and cultural exchange in the United States.<sup>25</sup> AILA and the Council question why the enforcement duties must be duplicated by USCIS, as it seems to undermine the authority vested in ICE.

For these reasons, we respectfully urge DHS to withdraw or substantially revise the Proposed Rule to preserve DSO and RO authority over program extensions in SEVIS and to maximize the system's existing automation, efficiency, and oversight capacity.

### **III. DHS's PROPOSAL TO ESTABLISH FIXED PERIOD OF ADMISSIONS CREATES UNNECESSARY BURDENS**

A fixed admission period will create unnecessary paperwork and cost burdens on USCIS, consular posts, CBP officers, DSOs, ROs, individual applicants, and businesses. More importantly, it will impinge upon American competitiveness, innovation and constitutionally protected freedom of the press. Requiring students, exchange visitors, and foreign media representatives to repeatedly file Form I-539 extension applications unnecessarily increase the workload for USCIS without any purported national security benefit.

Given these burdens, AILA and the Council oppose eliminating duration of status admission periods for F, J, and I nonimmigrants, as they provide much needed flexibility to applicants to maintain their nonimmigrant status while they complete their activities. In the alternative, if fixed periods of admission are adopted by DHS, then the periods of admission should be consistent with the maximum period that is typically required in that nonimmigrant status to complete the courses of study, exchange programs or assignments.

#### **a. DHS Proposals of Periods of Admission for F-1 and J-1 Nonimmigrants Are Inconsistent with Typical Courses of Study and Programs**

DHS proposes to limit the entry of F-1 and J-1 nonimmigrants to the program end date shown on the Form I-20 or Form DS-2019, up to a maximum of four (4) years, plus a 30-day grace period following the end of the program. The time spent in F-1 or J-1 status may vary significantly for each nonimmigrant depending on the type of program they are enrolled in. For F-1 students, it will vary based on whether they are enrolled in an undergraduate program, a graduate program, their field of study, and whether they will be engaged in optional practical training. For J-1 nonimmigrants, as noted by DHS in the NPRM, typical periods of admission can range from 12 months to 7 years. As such, admitting individuals for the length and time necessary to complete the program is much more efficient and less arbitrary than an across-the-board 4-year admission period. In this case, one size definitely does not fit all.

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<sup>25</sup> <https://www.ice.gov/sevis/overview>.



Allowing students and exchange visitors to remain in the United States for the time needed to complete their programs ensures a more efficient use of government resources and avoids disrupting American institutions and employers, as opposed to the arbitrary limitations of a fixed four-year admission period. According to Melanie Hanson, an educator, research analyst and the senior editor for the Education Data Initiative, approximately 22% of undergraduates take longer than four (4) years to complete a bachelor's degree program.<sup>26</sup> Corroborating this data, the Department of Education uses six-year completion rates in its official reporting (rather than focusing on four-year completion rates).<sup>27</sup> Another study from NCES reports that only 44% of undergraduate students complete a course of study within 4 years.<sup>28</sup> For example, if the Proposed Rule were to be finalized in its current form, an international student embarking on a 5-year engineering or architecture degree would now need to seek permission from USCIS before completing the final year of their program, creating uncertainty in the student's education plan and putting in doubt the reliability of U.S. academic institutions.

Doctoral programs typically exceed four years to complete due to dissertation requirements and lab research. In fact, it is more common for a doctoral or medical student to spend more than 5-11 years completing their studies.<sup>29</sup> A Ph.D. program that can be completed in four years is a rare exception rather than the Rule. As a result of the proposed shortened entry periods, a Ph.D. candidate would have no guarantee that they will be able to remain in the United States to complete their program, which would make the U.S. less attractive to top international talent. Further, for most students progressing from undergraduate through doctoral studies, it is easy – and reasonable – to expect at least ten years of studies in the U.S. This timeline reflects educational growth, not a plan to remain in the United States without a purpose.

**b. DHS Proposed Period of Admission for F-1 Nonimmigrants Fails to Account for Practical Training**

OPT is a vital part of the F-1 program that allows international students to apply their classroom learning in professional settings, deepening their educational experience. This program creates a mutually beneficial relationship: international students trained at U.S. universities gain invaluable real-world experience, while American universities maintain their competitive edge in the global education marketplace. The Proposed Rule would force international students to obtain an extension of stay to access one year of OPT and, for those eligible, the additional two years of STEM OPT. The ability to obtain OPT and STEM OPT is a critical part of the educational experience for international students.

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<sup>26</sup> Hanson, Melanie. "College Graduation Statistics" EducationData.org, Mar. 15, 2024, <https://educationdata.org/number-of-college-graduates>.

<sup>27</sup> Jon Marcus, *The Hechinger Report*, Oct. 10, 2021, <https://hechingerreport.org/how-the-college-lobby-got-the-government-to-measure-graduation-rates-over-six-years-instead-of-four/>.

<sup>28</sup> National Center for Education Statistics, *Time to Degree*, <https://nces.ed.gov/fastfacts/display.asp?id=569>.

<sup>29</sup> Carlisle, A. T. *How Long Does it Take to Get a Ph.D. Degree and Should You Get One?* U.S. News & World Report. (Apr. 29, 2025). <https://www.usnews.com/education/articles/how-long-does-it-take-to-get-a-phd-degree>.

According to data from the Congressional Research Service (CRS), a significant portion of graduating F-1 students apply for OPT. An April 9, 2024 CRS report estimated that there were around 1.5 million F-1 or M-1 students in the United States, and approximately 25% were authorized to work via OPT.<sup>30</sup> Importantly, this does not mean that only 25% of graduating international students choose to apply for OPT. Most F-1 and M-1 students only become eligible for OPT when they graduate from their academic program, and if most students are in either 4-year bachelor's or 2-year Master's degree programs, it would follow that around 17% to 25% of the roughly 1.5 million F-1 students in the United States would graduate each year. Given the CRS's finding that around 25% of those students hold OPT, that would mean that the vast majority of F-1 or M-1 students who graduate each year apply for and obtain OPT.

This conclusion is reinforced by research from the Center for Growth and Opportunity at Utah State University, which found that around 72% of international students utilize OPT following graduation, with the number rising to nearly 80% for international students in STEM fields.<sup>31</sup>

When international students rely on OPT or STEM OPT as part of their educational experience, adding an additional layer of uncertainty by requiring an EOS in advance of an OPT or STEM OPT application will necessarily discourage some from studying in the United States. The significant projected drop in international enrollment for Fall 2025—based on less dramatic policy changes than this Proposed Rule—shows how increased restrictions deter international students from coming to the United States to study. Forcing international students to apply not only for OPT on the Form I-765 but also for an EOS on Form I-539 further destabilizes the process and undermines the value of studying in the United States.

It is also noteworthy that STEM OPT extension increases the likelihood that international students enroll in STEM fields and complete those degrees. This helps to attract top foreign students to U.S. universities which further enhances the academic environment. These STEM students often teach classes in STEM fields that U.S. undergraduate students take and benefit from, so reducing the number of STEM international students will necessarily impact the availability of STEM classes for U.S. students.

After graduation, these international students often take roles in research, technology, and engineering, all of which helps further the United States's standing in high tech fields, expands productivity, and attracts foreign investment. According to a study by economist Gaurav Khanna, Associate Professor of Economics at UC San Diego, “high-skill immigrants contribute to the generation of knowledge and productivity through patenting and innovation, both of which serve to shift out the production possibility frontier in the U.S. and may also slow the erosion of the U.S. comparative advantage in high tech.” If OPT/STEM OPT availability is limited, other countries (e.g., China, Canada, United Kingdom, Australia, etc.) will become more attractive to top-performing international students and high skilled immigrants resulting in a loss in innovation outputs by the U.S. and net economic harms to the American economy.

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<sup>30</sup> [https://www.congress.gov/crs-product/IF12631#:~:text=Optional%20Practical%20Training%20\(OPT\)%20is,student's%20major%20area%20of%20study](https://www.congress.gov/crs-product/IF12631#:~:text=Optional%20Practical%20Training%20(OPT)%20is,student's%20major%20area%20of%20study).

<sup>31</sup> <https://www.thecgo.org/research/if-you-extend-it-they-will-come-the-effects-of-the-stem-opt-extension/>.

For STEM OPT, there are several key oversight requirements already in place: students can only work for employers enrolled in E-Verify; the employment must be directly related to the STEM degree; employers must sign and certify a Form I-983 training plan with supervision and reporting obligations – all of which are strong oversight tools already in existence. Maintaining the current system will preserve DHS resources, while also maintaining the integrity of our academic institutions and educational competitiveness, particularly in the STEM fields which are in urgent need of workers.

AILA and the Council urge maintaining the current duration of status system, however, if DHS nevertheless chooses to eliminate it, we suggest that the period of stay should extend at least through I-20 end date plus one year for F-1/OPT applicants, with additional adjustments permitted for STEM OPT.

**c. The Proposal to Significantly Curtail I Nonimmigrant Period of Admission Impinges on the First Amendment**

The Proposed Rule eliminates admission for duration of status for I nonimmigrant representatives of foreign information media and limits them to a fixed period of admission of no more than 240 days (8 months). Although DHS argues that admitting I nonimmigrants for a fixed period of time will treat them similarly to other nonimmigrant categories, the extremely short period of admission is not comparable to other nonimmigrants, such as those admitted in H, L, or O status who are typically admitted in 3-year increments. This proposal effectively curtails the activities of foreign correspondents being sent to the United States on long-term assignments to provide regular coverage of ongoing events in the United States, infringing on the First Amendment. Requiring I nonimmigrants and their employers to constantly undergo renewals of their status in the United States and visa eligibility every few months, in a manner that is not comparable to other similarly situated nonimmigrants, is a substantial burden on the exercise of press freedoms and unconstitutionally singles out the press for unique and unjustified burdens in violation of *Minneapolis Star Tribune v. Comm'r*, 460 U.S. 575 (1983).

Constant renewals add increased financial requirements and uncertainty to the process, which may serve as a chilling effect on the ability of foreign press to report on the news occurring in the United States. While we appreciate that the Rule provides automatic extension of status for up to 240 days under 8 CFR §274a.12(b)(20) once a timely-filed application for extension of stay is filed, this does not sufficiently negate the effects of shortening the period of admission for foreign journalists so significantly. A 240-day period of admission will require frequent and costly requests to extend their stay, which cannot be expedited because Form I-539 is ineligible for Premium Processing. Extension requests can be filed up to 6 months before an individual's status expires, which means that a journalist will only have been on assignment for 2 months before an extension will need to be filed again. It is currently taking USCIS Service Center Operations more than 6.5 months to

adjudicate 80 percent of extension of stay requests.<sup>32</sup> If an employer is not ready to immediately file an extension of stay, the lengthy processing times at USCIS could still result in a gap in work authorization, even with the automatic extension.

DHS has provided no justification as to why such a limited period of admission is warranted for foreign media representatives, whose duration of status admission has traditionally covered the length of their employment contracts. Such a significant and sudden change has grave implications for the First Amendment. As noted by the European Broadcasting Union, which was joined by over 100 international news organizations, “For decades, the existing system has enabled international correspondents to report on U.S. affairs with depth, context, and consistency. Short-term visas would severely curtail that ability, undermine press freedom, and weaken the flow of accurate, timely coverage from the United States to global audiences.”<sup>33</sup>

Accordingly, AILA and the Council oppose eliminating duration of status for I nonimmigrants and believe that they should be permitted to remain in the United States for the duration of their assignment, which is typically up to 5 years.

#### **IV. THE PROPOSED EXTENSION OF STAY PROCESS FOR F AND J NONIMMIGRANTS IS NOT WORKABLE FOR ANY OF THE AFFECTED PARTIES**

If DHS implements a fixed period of admission, the extension of stay (EOS) process contained in the Proposed Rule will adversely impact F and J nonimmigrants, their schools and programs, and USCIS. The proposed process needs to be improved prior to implementation to minimize the impact on all parties.

For F and J nonimmigrants, the Proposed Rule will bring great uncertainty as to whether they will be able to continue their programs in the United States and be eligible for the incidental benefits of their status, such as employment and training options. For colleges, universities and program sponsors, there will be a financial and operational impact in light of the additional advising of F and J nonimmigrants which will be needed and the additional preparation of government forms which will be required. The Proposed Rule indicates that 78 percent of the SEVP-certified institutions and 60 percent of the J exchange visitor program sponsors are considered “small entities.”<sup>34</sup> Of these entities, many only have one DSO or RO. These entities may be required to hire additional staff to implement all of the new requirements contained in this Proposed Rule. However, many colleges, universities and programs are already under extreme financial stress and do not have the available resources to hire new staff or provide additional services to comply with newly proposed regulatory requirements.<sup>35</sup>

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<sup>32</sup> <https://egov.uscis.gov/processing-times/>.

<sup>33</sup> See <https://www.ebu.ch/news/2025/09/world-media-bodies-join-ebu-in-urging-u-s-government-not-to-restrict-visas-for-foreign-journalists>.

<sup>34</sup> 90 Fed. Reg. at 42103.

<sup>35</sup> <https://www.cnn.com/2024/10/15/more-colleges-set-to-close-in-2025-while-ivy-plus-schools-thrive.html?msockid=16cfbd61564c69582d40a8aa57ca68c0>.

For USCIS, the new extension of stay requirement contained in the Proposed Rule will only increase processing times for all of its adjudications, many of which are currently at historic highs. The current processing time for an F-1 reinstatement extension is approximately 6 months.<sup>36</sup> The Proposed Rule indicates that DHS expects an annual average of 205,000; 203,000; 6,000 EOS requests for F, J, and I nonimmigrants, respectively.<sup>37</sup> This is a total of 414,000 new applications filed with USCIS. However, this total is significantly underestimated. For example, as noted above, only 44% of undergraduate students complete a course of study within 4 years.<sup>38</sup> In calendar year 2024, SEVP reported that there were 464,843 F-1 students seeking a bachelor's degree.<sup>39</sup> Therefore, assuming that approximately ¼ of the students are in their 4th year of admission and, as proposed by the regulation, at least 56% of those students will need to file an EOS application, this will account for approximately 66,000 EOS application filings for F-1 undergraduates alone (not factoring in graduate students who, as explained above, will almost always need one or more extensions at the Ph.D. level).

Additionally, according to DHS, in calendar year 2023, there were 344,686 F-1 students who were authorized for regular or STEM OPT, of which approximately 280,000 were authorized for one-year regular OPT.<sup>40</sup> Under the Proposed Rule, an F-1 student would have to file an EOS application before filing an OPT application. Therefore, while only considering F-1 undergraduate EOS applications and EOS applications which will be required to file regular OPT applications, the total number of EOS application filings per year may be at least 340,000 applications, which is 65% higher than what is projected in the Proposed Rule. And this does not include EOS applications which will be filed annually by Ph.D. students or students applying for STEM OPT. With such an increase in workload, it is reasonable to assume that USCIS processing times for F-1 EOS applications will greatly increase beyond the current 6 months into the 1- to 2-year processing range and will significantly impact USCIS's ability to timely process other applications, thereby impacting other categories of nonimmigrants, U.S. businesses and U.S. citizens.

In order to lessen the impact of the proposed EOS application process on international students, international exchange visitors, colleges, universities, program sponsors and USCIS, should DHS decide to continue to move forward with the Proposed Rule, AILA and the Council recommend the following changes to the Proposed Rule:

1. **Increase the admission timeframe from up to 4 years to a validity period that corresponds to the degree level and field of study and practical training.** As discussed above, a majority of undergraduate students do not complete their course of study and practical training in four years. Medical residency and Ph.D. programs take longer than four years to complete and vary in length. Forty-nine percent of current international graduate students and postdoctoral researchers recently surveyed by NAFSA responded that they would not have entered a U.S. program if the admission period had been fixed

<sup>36</sup> <https://egov.uscis.gov/processing-times/> (last checked on Sept. 23, 2025).

<sup>37</sup> 90 Fed. Reg. at 42101.

<sup>38</sup> <https://nces.ed.gov/fastfacts/display.asp?id=569>.

<sup>39</sup> [https://www.ice.gov/doclib/sevis/btn/25\\_0605\\_2024-sevis-btn.pdf](https://www.ice.gov/doclib/sevis/btn/25_0605_2024-sevis-btn.pdf).

<sup>40</sup> [https://www.congress.gov/crs\\_external\\_products/IF/PDF/IF12631/IF12631.2.pdf](https://www.congress.gov/crs_external_products/IF/PDF/IF12631/IF12631.2.pdf).

rather than duration of status.<sup>41</sup> The period of admission must be reasonably related to the length of time within which a particular program is designed to be completed and should not be arbitrarily set across the board.

2. **Incorporate the EOS application process into the I-765 OPT application process.** In the Proposed Rule, DHS is proposing that F-1 students will first have to apply for an extension of stay when the DSO recommends them for a program extension to accommodate a period of OPT, and then will have to apply for the OPT Employment Authorization Document (EAD).

AILA and the Council recommend that DHS eliminate this duplicative process. An application for extension of stay is presumably needed for DHS to confirm that the applicant has maintained their nonimmigrant status. Currently, USCIS routinely requests evidence of maintenance of status as part of the Form I-765 process. USCIS could formally incorporate this additional evidence of maintenance of status into the Form I-765 process for F-1 students and eliminate the need to file an EOS application with the same evidence, as they already requires biometrics and conduct vetting as part of the Form I-765 application.

If DHS were to retain a duplicative EOS application process and I-765 OPT application process, DHS should clarify that the I-539 application and I-765 application can be filed concurrently. F-1 students must complete their regular OPT within 14 months after the completion of their course of study.<sup>42</sup> If it is anticipated that EOS applications will take at least one year to be adjudicated and I-765 applications are currently taking approximately four months to be adjudicated, F-1 students will lose their eligibility for OPT because the adjudication process will take longer than 14 months. This would make OPT unavailable to virtually all F-1 students - a result contrary to the regulations explicitly granting F-1 students an opportunity to obtain practical training related to their field of study.

Additionally, if DHS rejects concurrent filing, then AILA and the Council recommend that DHS incorporate into the Rule that F-1 students may apply for any required extension of stay up to 1 year prior to their expiration date in order to account for the USCIS adjudication delays. Moreover, if DHS will not allow for the concurrent filing of I-539 F-1 EOS applications and I-765 OPT applications, then we recommend that DHS modify 8 CFR §214.2(f)(11)(i)(B)(2) and 8 CFR §214.2(f)(11)(i)(C) to state that F-1 students may file a Form I-765 application any time after the I-539 application is approved. Finally, AILA and the Council also recommend that DHS eliminate the F-1 14-month OPT completion period<sup>43</sup> so that, if USCIS is delayed in adjudicating the I-539 EOS application and I-765 OPT application, the DSO may issue an updated Form I-20 with a full 12-months

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<sup>41</sup>NAFSA: Association of International Educators, August-September 2025 surveys, survey summary and distribution, key results, tabulated results, <https://ifp.org/wp-content/uploads/2025-Surveys-on-International-Talent-Pipelines-1.pdf>.

<sup>42</sup> 8 CFR 214.2(f)(10)(ii)(A)(3).

<sup>43</sup> 8 CFR 214.2(f)(10)(ii)(A)(3).

of OPT and USCIS may issue a full 12-month OPT EAD card. F-1 students who timely file their OPT applications should not be penalized by USCIS adjudication delays.

3. **Eliminate the time limitations on automatic employment extensions while EOS applications are pending.** AILA and the Council thank DHS for confirming that F and J nonimmigrants may continue their programs while their EOS applications are pending. However, we recommend that DHS eliminate the 240-day automatic extension limitation for on-campus employment, severe economic hardship, Curricular Practical Training (CPT) and J-1 academic training while timely filed EOS applications are pending. As indicated above, F-1 EOS applications are currently taking approximately 6 months for initial review, and it is safe to assume that processing times will only increase with the influx of EOS applications which will be required if this Proposed Rule is implemented. Therefore, in order to eliminate the uncertainty to students, exchange visitors, employers, and schools, above-listed categories of employment authorization should be automatically extended to the earlier of the employment end date stated on the Forms I-20/DS-2019 or the date on which a decision is issued on the EOS application.

Additionally, because it may take longer than 180 days for an EOS application and STEM OPT application to be approved, AILA and the Council recommend that DHS modify 8 CFR §274a.12(b)(6)(iv) so that OPT employment authorization is automatically extended until USCIS issues a decision on the timely filed STEM OPT I-765 application.

4. **Eliminate duplicate filings in the F-1 program.** F-1 students applying for reinstatement should not be required to file EOS applications in addition to the reinstatement application to obtain an extension of their Form I-94. As part of the reinstatement process, F-1 students should be allowed to request an extension of status. If, due to USCIS processing delays, the I-539 approval is not issued until after the program end date indicated on the Form I-20, USCIS should issue a Request for Evidence for an updated Form I-20 (as is the current practice). If the I-539 is approved, then the validity period should extend through the expiration date contained on the updated Form I-20, without requiring the F-1 student to file a duplicate EOS application.
5. **Eliminate the extension of stay duplication in the J program.** For J-1 nonimmigrants applying for an extension of stay or reinstatement, the Proposed Rule would require that the U.S. Department of State (DOS) first approve the extension or reinstatement and then the J-1 nonimmigrant would be required to apply for another extension of stay through USCIS if the J-1 nonimmigrant's Form I-94 will expire prior to the DOS authorized extension date. DHS and DOS should collaborate to eliminate this duplicative process. After DOS determines that the J-1 nonimmigrant continues to qualify for J-1 status, DOS should transmit this determination directly to USCIS so that USCIS can then issue an updated Form I-94. DHS should defer to DOS determinations in the J-1 program and should not require an unnecessary duplicate filing supported by the same evidence already provided to DOS.

6. **Deference to DOS and DSO determinations as basis for EOS adjudication.** The Proposed Rule states that sponsoring schools may not be well-versed in foreign documentation submitted by F-1 students to ensure that they have sufficient funds to study in the United States. However, sponsoring schools are very motivated to ensure that they are well-versed in foreign funding documentation because the school has to ensure that students will pay the tuition for their studies at the institution. Additionally, as part of the F-1 visa adjudication process, the DOS Consular Official must confirm that the F-1 student has available resources to meet all expenses for the first year of study and that additional funds will be available for the duration of the intended period of study.<sup>44</sup> As part of the EOS adjudication process, USCIS officers should defer to the expertise of their DOS colleagues and DSOs. The Proposed Rule should be modified to indicate that DSOs should not issue a Form I-20 recommending the extension of stay if the F-1 student has not provided sufficient evidence to the school that they have the ability to pay the tuition and fees required by their course of study. DHS also should clarify that if the F-1 students have been studying in the U.S. for more than one year and have been able to pay their school's required tuition, the F-1 students have met their burden to evidence that they have sufficient funds to study in the United States.
7. **DHS should reuse biometrics.** DHS should modify the Proposed Rule to state that USCIS intends to reuse biometrics so that F, J, and I nonimmigrants do not have to appear at a USCIS Application Support Center (ASC) to submit biometrics each time that an EOS application is filed. Additionally, DHS should clarify if F, J, and I nonimmigrants will be required to pay a biometrics fee in addition to the I-539 filing fee with each EOS application.
8. **Revise the proposed EOS provision so that it is consistent with current reinstatement regulations.** The F-1 reinstatement provisions at 8 CFR §214.2(f)(16)(i)(F) provide that "circumstances [beyond a student's control] might include serious injury or illness, closure of the institution, a natural disaster, or inadvertence, oversight, or neglect on the part of the DSO." In the Proposed Rule, DHS states that these should "merit favorable consideration in extension requests" pursuant to the proposed 8 CFR §214.2(f)(7)(i)(C)(3). However, the text of 8 CFR §214.2(f)(16)(i)(F) differs from the proposed 8 CFR §214.2(f)(7)(i)(C)(3). DHS should modify the text in proposed 8 CFR §214.2(f)(7)(i)(C)(3) so that it mirrors 8 CFR §214.2(f)(16)(i)(F) to confirm that DSO oversight is considered a compelling circumstance beyond the student's control. DHS should also emphasize that the list is not all inclusive and that other circumstances not listed may be considered to be beyond the student's control.

**V. DHS SHOULD PRESERVE THE ABILITY OF SCHOOLS TO ENSURE THE SUCCESS OF F-1 STUDENTS**

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<sup>44</sup> 9 FAM 402.5-5(G)



In the Proposed Rule, DHS restricts the ability of schools to ensure the success of their F-1 students. DHS should modify these restrictive provisions acknowledging that schools have a vested interest in the success of all of their students (both domestic and international) and that they (and not government officials) have the training to make sure that this success is achieved.

**a. Restricting Changes of Educational Objectives for Undergraduates Within Same Institution During First Academic Year is Misguided**

In the Proposed Rule, DHS proposes to restrict school transfers and changes of educational objectives within the first academic year of an undergraduate program of study. DHS defines an “educational objective” as a change to an F-1 student’s educational level or major. Even if DHS restricts school transfers, it should not restrict the ability of students to change educational levels or majors within the same school after consultation/approval of an academic advisor. Approximately 80% of undergraduate students end up changing their majors at least once.<sup>45</sup> Additionally, reports indicate that students who change their majors increase their likelihood of graduating from college.<sup>46</sup> The earlier that undergraduate students are able to change their majors, the more likely it is that they will graduate in 5 years.<sup>47</sup> Therefore, DHS should not be restricting the ability of schools’ academic advisors to allow students to change majors or academic levels within the same school within the first year because this restriction will only negatively impact the ability of the students to succeed and complete their academic programs faster.

**b. An Absolute Prohibition on Changes of Educational Objectives and Transferring on the Graduate Level is not Justified or Warranted**

In the Proposed Rule, DHS proposes to completely prohibit graduate level F-1 students from changing educational objectives or transferring schools. In order to justify the restrictions on changing educational objectives or transferring schools, the Proposed Rule states that since DHS eliminated the EOS application requirement in 1991 and began relying on DSOs to make decisions about educational progress, it has enabled “thousands to stay here for decades by switching programs and not making any upward progress.”<sup>48</sup> In support of this statement, DHS indicates that it has reviewed SEVIS data and has identified 2,134 F-1 students who entered the United States between 2000 and 2010 and still remain in active status. However, DHS fails to indicate that each year there are more than 1 million F-1 students studying in the United States.<sup>49</sup> Therefore, if between 2010 and 2025 there were 15 million students studying in the United States and only 2,134 have been identified continuing their studies since 2010, this accounts for 0.01% of the F-1 student population over this period. There are currently approximately 881,000 F-1 graduate students enrolled at U.S. institutions. Instead of severely impacting these students’ ability to progress towards their academic goals which may include a change in major, educational level or institution, DHS should have SEVP review the records for the 2,134 F-1 students that it has

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<sup>45</sup> See <https://eab.com/resources/insight-paper/how-late-is-too-late/>.

<sup>46</sup> See id.

<sup>47</sup> <https://nces.ed.gov/fastfacts/display.asp?id=569>.

<sup>48</sup> 90 Fed. Reg. 42088.

<sup>49</sup> See [https://www.ice.gov/doclib/sevis/btn/25\\_0605\\_2024-sevis-btn.pdf](https://www.ice.gov/doclib/sevis/btn/25_0605_2024-sevis-btn.pdf).

identified as remaining in the U.S. for more than 15 years in order to confirm that they are complying with the terms of their F-1 status - an ability that SEVP has had since the introduction of the SEVIS system in 2003.

**c. DHS Should Leverage SEVP to Ensure Compliance**

Instead of creating new requirements and restrictions in the F program, DHS should better use and more fully fund the tools that it already has available through SEVP to detect non-compliant F-1 students and national security threats. SEVP uses its web-based system SEVIS “to qualify individuals for F and M status and to facilitate Port-of-entry admission screening; Processing of nonimmigrant benefit applications; Verification of nonimmigrant status maintenance; and Timely removal of nonimmigrants from the United States, as needed.”<sup>50</sup> It also uses SEVIS to review schools through a recertification process every two years. According to SEVP, “law enforcement agencies use SEVIS to protect national security and enforce immigration laws. SEVIS is a critical national security component and a primary resource for conducting counterterrorism and counterintelligence threat analysis by the law enforcement and intelligence communities.”<sup>51</sup> SEVP also has numerous analysts and field representatives who have been trained to determine students’ and schools’ compliance with the F, J, and M regulations.

In the Proposed Rule, DHS acknowledges the expertise of SEVP by allowing SEVP analysts (and not USCIS officers) to adjudicate whether undergraduate students may transfer schools or change educational objectives during their first academic year. However, the Rule does not extend this accommodation to graduate students. Graduate students should not be treated differently than undergraduate students. At a minimum, graduate students should be allowed to demonstrate to SEVP the need to transfer schools or change educational levels. If SEVP grants the transfer or change and the student still needs to apply for an extension of stay through USCIS, USCIS officers should defer to the determination of SEVP.

**d. DHS Should Continue to Allow Flexibility for F-1 Academic Progression**

The Rule would prohibit F-1 students from completing two programs at the same educational level or returning to a lower educational level for an additional course of study. There may be many valid reasons why domestic or international students need to complete two programs at the same educational level or at a lower level. For example, a graduate student majoring in Computer Science may be told by his employer that she cannot be promoted to a Project Manager position without a Master of Business Administration degree. Professionals may pursue a second master’s degree later in life, and some may combine master’s programs in fields like business, public health and public policy, for a specialized skillset essential for a successful career. Therefore, instead of a complete prohibition, DHS should find a balance between its concerns about student educational progress and the need of certain F-1 students to complete an additional course of study at the same

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<sup>50</sup>[https://docs.publicnow.com/viewDoc?filename=139931%5CEXT%5C82522E399476874A0AD172121464938715233F3E\\_1F19F4F9DE9BD84DD1668A9168E54DB00952AD44.PDF](https://docs.publicnow.com/viewDoc?filename=139931%5CEXT%5C82522E399476874A0AD172121464938715233F3E_1F19F4F9DE9BD84DD1668A9168E54DB00952AD44.PDF)

<sup>51</sup> See id.

or lower level. The following are some options that DHS should consider in order to promote F-1 students' academic success ensuring the continued integrity of the F-1 student program:

1. DHS could require that all school transfers or changes in educational programs at the same or lower level be reviewed by SEVP. SEVP could require DSOs to upload supporting documentation with the recommendation for the transfer or change. If SEVP identifies an issue, it could request additional information from the student and/or the school to resolve issues about the bona fides of the transfer or change in educational objectives. Additionally, the student may be required to file an EOS application to extend the period of admission to accommodate the change. However, as previously stated, the USCIS officer should defer to the SEVP determination and not re-adjudicate that decision.
2. In a similar rule proposed in September 2020, DHS proposed a different, more practical approach to F-1 students' change in educational levels.<sup>52</sup> This included:
  - a. An F-1 student who has completed a program in the United States at one educational level and begins a new program at the same educational level, up to, but not more than two additional times, is considered to be maintaining F-1 status. This is a lifetime limit.
  - b. An F-1 student who has completed a program in the United States at one educational level and begins a new program at a lower educational level is considered to be maintaining F-1 status only in the first instance of such a change. This is a lifetime limit.

AILA and the Council do not support lifetime limits because there may be situations where such an educational path may be needed for career progression. For example, a person with a master's degree in finance who wants to move into actuarial science may need a bachelor's degree in mathematics or statistics if their graduate coursework did not cover required quantitative prerequisites. Rather than imposing lifetime limits, DHS could impose additional programmatic requirements by SEVP to verify the need for these types of changes. Also, USCIS may still review those changes when the F-1 student applies for an extension of stay to accommodate the time that it will take the F-1 student to complete the new program, should the EOS application be implemented by DHS in this situation. As mentioned earlier in this comment, extensions of stay should be approved by DOS and reviewed by SEVP through the SEVIS reporting capabilities.

## **VI. TRANSITION PROCESS TO A FIXED TIME PERIOD OF ADMISSION**

### **a. If the Proposed Rule is Finalized, Individuals in F and J Status Should Maintain their Duration of Status Admission**

The proposed transition provisions are complicated and will likely result in substantial confusion for the students, exchange visitors, DSOs, DHS officials charged with administering SEVIS

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<sup>52</sup> 85 FR 60591 (September 25, 2020),

through SEVP, and USCIS officers adjudicating immigration benefits applications. If DHS implements the change to a fixed period of admission, which AILA and the Council oppose, DHS should consider simplifying the transition provisions to allow those who are in the United States on the date of enactment to retain their “duration of stay” admission status until the end of their program date on their Form I-20, DS-2019, rather than limiting their programs to a fixed stay of up to 4 years from the date of enactment. Allowing those F and J nonimmigrants to complete their programs with “duration of status” would be less confusing for all those affected because the period of admission will be clearly indicated on the nonimmigrant’s Form I-20 or DS-2019. Similarly, allowing I nonimmigrants currently in status to maintain D/S through the duration of their current employment contract would minimize burdens.

Individual F and J nonimmigrants whose program end dates are more than 4 years after the enactment date will not have any immigration document evidencing when their period of stay ends (their I-94 records will still state “D/S”, and their program end dates on their I-20s or DS-2019s will be different than their new period of fixed stay). Nor will any F or J nonimmigrant have any documentation evidencing whether they have a 30- or 60-day grace period once their period of fixed stay ends. This will make it difficult for F and J nonimmigrants to comply with the new regulations, and for DHS to keep track of those nonimmigrants’ status. To apply a fixed period of admission to the current F and J nonimmigrants, DHS would need to provide each F and J nonimmigrant subject to the transition provisions with an immigration document (i.e. a new I-94 record) that clearly states the nonimmigrant’s new fixed stay end date and whether the individual has a 30- or 60-day grace period. This would ensure that the nonimmigrant, those who work with them, and all DHS (and local law enforcement) officials who interact with the F or J nonimmigrant, can easily determine what the individual’s immigration status is without having to engage in a complicated legal analysis. Because providing such individualized records is logistically complicated, we propose that the continuing F and J nonimmigrants are grandfathered from the application of this Proposed Rule and are allowed to remain in the United States until the end of their programs for the duration of status. The Proposed Rule should only apply to F and J nonimmigrants arriving in the United States after the adoption of the Rule so that they are granted the fixed period of admission and have an accurate I-94 record from the very beginning of their program in the United States.

Additionally, we are concerned about how USCIS adjudication delays of I-765 OPT and I-539 applications will affect those F and J students or exchange visitors subject to the transition rules. For example, if an F-1 student who is in the United States on the date of enactment has a timely filed pending I-765 application, but their program date has ended, what would their status be if USCIS ultimately denies the I-765 application more than 60 days after the date of enactment? Would this F-1 student still get a 60-day grace period from the date that the I-765 OPT application was denied? If not, what would the F-1 student’s immigration status be, and would they have any grace period? What documentation would the F-1 student have evidencing their new fixed period of authorized stay? These questions raise complex and nuanced issues not currently addressed in the Proposed Rule. They evidence the fact that the simplest and cleanest solution would be to leave the current rules in place for those students and exchange visitors already pursuing their programs and, if DHS were to adopt the Proposed Rule, apply it only prospectively to those students and exchange visitors who have not arrived in the United States yet.

**b. If the Proposed Rule is Finalized, Individuals in I Status Should Maintain their Duration of Status Admission**

Similarly, should this Proposed Rule be finalized, individuals in I nonimmigrant status on the effective date of the Rule should be grandfathered in and remain duration of status through the completion of their contract. As explained above, allowing individuals who were admitted before the Final Rule takes effect to remain in valid status on their present I-94s will reduce confusion and compliance issues regarding immigration documentation and periods of stay for I nonimmigrants, their employers, and agency officials.

DHS proposes a 240-day transition period because it is the timeframe authorized for automatic extension under 8 CFR §274a.12(b)(20). DHS states that I nonimmigrants who change employers are already familiar with this provision. However, this is only a portion of I nonimmigrants who need to file Form I-539 applications, so the justification to have such a short transition period is misplaced. As I nonimmigrants typically have 5-year contracts, the vast majority of I nonimmigrants will not only need the automatic transition period, but they will also be required to file an extension of stay application. Current processing times for extension of stay applications are 6.5 months for “all other” and will likely increase significantly when tens of thousands of individuals who are in the United States when the Final Rule takes effect are all forced to file extension applications within a short period. To limit the burden on the applicants, their employers, and USCIS operations, DHS should not impose a fixed period of stay to I nonimmigrants who were admitted prior to the effective date of this Rule, if finalized.

**VII. DHS IS ATTEMPTING TO ELIMINATE CODIFICATION OF THE “DEFERENCE POLICY” WITHOUT THE NOTICE REQUIRED UNDER THE ADMINISTRATIVE PROCEDURE ACT**

On December 18, 2024, DHS published a Final Rule entitled “Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers effective on January 17, 2025 ,” (H-1B Modernization Rule)<sup>53</sup> As part of the H-1B Modernization Rule, DHS explained it was “codifying its current deference policy to clarify that, when adjudicating a Form I–129, Petition for Nonimmigrant Worker, involving the same parties and the same underlying facts, adjudicators generally should defer to a prior USCIS determination on eligibility, unless a material error in the prior approval is discovered or other material change or information impacts the petitioner’s, beneficiary’s, or applicant’s eligibility.”<sup>54</sup> DHS provided extensive commentary about the reasons and justifications for codification of the deference policy, including explaining that the policy “will help ensure consistent and efficient adjudications and provide greater predictability to the visa petition process without... compromising the level of scrutiny needed for substantive assessment.”<sup>55</sup> This change was finalized after going through a 60-day notice and comment period.

In the preamble of the H-1B Modernization Rule, DHS devoted a full six pages to a discussion of codification of the deference policy, including the benefits of codification of the policy and an

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<sup>53</sup> 89 Fed. Reg. 103054 (Dec. 18, 2024).

<sup>54</sup> *Id.* at 103055.

<sup>55</sup> *Id.* at 103094.

explanation of the limits of deference in adjudications.<sup>56</sup> In this Proposed Rule, however, DHS appears to be seeking to eliminate the deference policy at least as it applies to extension of stay adjudications without proper justification. DHS attempts to justify this change by characterizing this as a simple technical update “[l]ike the technical updates to strike the specific form name from 8 CFR §214.1(c)(2).”<sup>57</sup>

This is simply not correct. The Proposed Rule would make a major change to 8 CFR §214.1(c)(5), which is evident from comparing the current regulatory language implemented after the enactment of the H-1B Modernization Rule in January 2025 to what that language would become under the Proposed Rule.

Current 8 CFR §214.1(c)(5)

Deference to prior USCIS determinations of eligibility. When adjudicating a request filed on Form I-129 involving the same parties and the same underlying facts, USCIS gives deference to its prior determination of the petitioner's, applicant's, or beneficiary's eligibility. However, USCIS need not give deference to a prior approval if: there was a material error involved with a prior approval; there has been a material change in circumstances or eligibility requirements; or there is new, material information that adversely impacts the petitioner's, applicant's, or beneficiary's eligibility.

Proposed 8 CFR §214.1(c)(5)

***Decisions for extension of stay applications.*** Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at USCIS's discretion. The denial of an application for extension of stay may not be appealed.

This substantial change to the very regulation that implemented the codification of deference – deleting essentially **all** of the regulatory language and replacing it with language indicating that extensions will only be granted at USCIS's discretion – is not a "technical update." It is a major regulatory change that would eliminate a carefully developed and considered policy. Implementing such a change in this way would violate the notice provisions of the Administrative Procedure Act at 5 U.S.C. 553(b) because it fails to give the public meaningful notice of a major legislative (substantive) rule.

It should be noted that what DHS is proposing as the new language of 8 CFR §214.1(c)(5) is similar to the current language of 8 CFR §214.1(c)(7), but the proposed regulatory language in the Proposed Rule lists this language as the “new” language for 8 CFR §214.1(c)(5). If DHS intended to keep in place the current language of 8 CFR §214.1(c)(5) and instead update the language of 8 CFR §214.1(c)(7), it should clarify in publication of the Final Rule that this was an error and make a correction accordingly.

AILA and the Council urge DHS to eliminate the proposed change to 8 CFR §214.1(c)(5) and keep in place the current regulatory language. All of the reasons for codification of the deference policy

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<sup>56</sup> *Id.* at 103093 – 103098.

<sup>57</sup> 90 Fed. Reg. 42107, 42083.

explained in the preamble of the H-1B Modernization Rule remain valid today, and DHS has not identified any reason for a change in that rule. If it is DHS's intention to make a major change to well-developed, considered, and extensively discussed regulatory language by characterizing that change as a simple "technical update," then DHS has failed to comply with the notice provisions of the Administrative Procedure Act.<sup>58</sup> If that was not DHS's intention, it should specifically clarify what modifications will be made to 8 CFR §214.1(c)(5) and 8 CFR §214.1(c)(7) and provide the public with an opportunity to make meaningful comments on those changes.

## VIII. CONCLUSION

The Proposed Rule is not only unsound economic policy, but it also violates the Administrative Procedure Act. By relying on flawed and misleading economic data, DHS has failed to provide the public with accurate notice of the true costs of the proposal. DHS has also failed to comply with Executive Orders 12866 and 12563, the Unfunded Mandates Reform Act, and the Regulatory Flexibility Act. The Proposed Rule should be withdrawn for failure to provide sufficient notice opportunity to the public, consider the significant economic burdens that would be imposed on the public, and fails to consider proposals that would be less burdensome for students, exchange visitors, foreign media representatives, DHS officers, institutions of higher education, program sponsors and U.S. employers. Duration of status is a proven and effective tool that balances security and flexibility, both of which are essential to supporting American employers' access to high-skilled talent, sustaining economic growth, and attracting top international students without compromising border security. If DHS continues to finalize this Rule, despite opposition, AILA and the Council strongly urge DHS to adopt regulatory modifications reflective of existing law and current market realities to protect the pipeline of talent and innovation that is critical to the United States.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION and  
THE AMERICAN IMMIGRATION COUNCIL

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<sup>58</sup> *AFL-CIO v. NLRB*, 57 F.4th 1023, 1034 (D.C. Cir. 2023) (the procedural rule exception to notice and comment applies only to "internal house-keeping measures organizing agency activities").