

Issue Brief



Maintain Duration of Status Policy

Request: We urge members of Congress to work with the administration to protect the current common-sense policy for international students and exchange visitors to maintain legal status.

Issue

The Department of Homeland Security's (DHS) Fall 2019 Regulatory Agenda proposes to replace the current "duration of status" (D/S) policy for international students (F status) and exchange visitors (J status) with a policy setting an expiration date for authorized stay. Ending D/S is not good policy because international students and exchange visitors are tracked by DHS and monitored by institutions of higher education or research organizations. Ending D/S will impact every international student and exchange visitor, higher education institution that admits or sponsors them, and employer who benefits from the international students pursuing optional practical training. We are in a global competition for talent, and we need to ensure our policies make sense and are welcoming. We urge members of Congress to work with the administration to protect the current D/S policy for international student and exchange visitors to maintain legal immigration status.

The DHS Secretary has authority to regulate the period of admission of all nonimmigrants. At the port of entry, DHS Customs and Border Protection (CBP) officers determine how long a nonimmigrant is legally allowed to remain in the United States. Most nonimmigrants are given an exact date on which their status expires. However, for decades, those in F and J status have been granted D/S, which allows them to legally remain in the United States for the period of time they are engaged in their studies (or practical training) or research while complying with all requirements of their immigration status.

International students and exchange visitors are the most tracked by ICE.

Unlike any other nonimmigrant group, international students and exchange visitors are constantly tracked in DHS' Immigration and Customs Enforcement (ICE) database, the Student and Exchange Visitor Information System (SEVIS), from the moment of admission (for a student) or invitation (for an exchange visitor) until their program is complete. ICE knows where international students and exchange visitors are, what they are studying or researching, and when they finish their programs. SEVIS is continuously updated by DHS agencies and by colleges and universities. SEVIS data includes dates of entry, periods of authorized study, optional practical training, and other detailed information. SEVIS alerts ICE when an international student or exchange visitor overstays or otherwise potentially fails to comply with the law.

D/S is good policy that allows for the flexibility necessary for pursuing education.

D/S is a sound policy because the time for study or research can fluctuate given the changing goals and actions of the student or scholar. With D/S, students and researchers can make approved changes to their education plan without having to depart the United States or undertake a long and complicated government process to extend their status. For example, the time it takes to earn an academic degree does not always fit into a predetermined time period. Programs are added, and experiments and research take longer than anticipated, pushing graduation dates farther away. It is also common for students to pursue additional degrees (such

as moving on from a bachelor's to a master's program), to transfer to a new school, or to shorten a period of study. D/S does NOT allow international students and exchange visitors to stay legally indefinitely. International students must remain enrolled full-time (or engage in optional practical training) and exchange visitors must be actively progressing in their program, all while ensuring complete compliance with all requirements of their status. SEVIS continuously tracks students, exchange visitors, and their academic progress.

D/S does not increase visa overstays.

DHS states ending D/S is an attempt to reduce the number of overstays by providing an exact date of expiration of legal status. DHS claims that a high percentage of international students illegally remain in the country after completing their studies. However, to support this claim DHS relies on deeply flawed data that inaccurately inflates the number of individuals who “overstay.” According to notable demographer Robert Warren,¹ the overstay statistics cited by DHS are incorrect. Warren recently published a study finding serious flaws in the overstay statistics stating, “The DHS figures represent actual overstays plus arrivals whose departure could not be verified. That is, they include both actual overstays and unrecorded departures.” The report concludes that “[s]lightly more than half of the 628,799 reported to be overstays by DHS actually left the country but their departures were not recorded.” The inability of CBP to consistently match nonimmigrant entry and exit data creates unreliable data.

An exact expiration date would increase backlogs at USCIS.

With a set status expiration date, every international student or exchange visitor whose study or research is extended would have to file a request for extension of status with U.S. Citizenship and Immigration Service (USCIS). As current ongoing USCIS processing delays illustrate, the agency does not have the staff necessary to deal with these requests. Overall USCIS average processing times have increased by 46% over the past two fiscal years and 91% since fiscal year 2014.² Ending D/S would exacerbate an existing problem by adding an enormous number of new extensions of status filings to the existing backlog. With SEVIS tracking in place, this is only creating extra, unnecessary work for USCIS.

D/S has proven to be the best policy for international students and exchange visitors.

The current D/S policy was put in place after the implementation of SEVIS in 2002. Prior to SEVIS, the Immigration and Naturalization Service (INS) struggled to constantly monitor international students while being overwhelmed by the workload of requests for extensions created by an exact expiration date for student and exchange visitor status. As technology improved to track international students, an exact expiration date became less necessary. The implementation of SEVIS allowed ICE to confront the reality of how study and research is conducted, eliminate the tremendous work involved in requiring multiple filings by students and scholars, and rely on D/S as the most efficient policy to meet their goals.

¹ Robert Warren Director of the legacy Immigration and Naturalization Service (INS) Statistics Division and was for 34 years with the U.S. Census Bureau and legacy INS. He also is credited with projecting the accurate ranges of the number of unauthorized immigrants that would apply in each state under the Immigration Reform and Control Act of 1986 (IRCA).

² AILA Policy Brief: USIS Processing Delays Have Reached Crisis Levels Under the Trump Administration, January 30, 2019, [https:// www.aila.org/infonet/aila-policy-brief-uscis-processing-delays](https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays).