

*****DO NOT SUBMIT THIS COVER PAGE WITH YOUR COMMENT*****

Higher Education “Talking Points” Template Comment for Proposed D/S Rule¹ October 2020

This document is a template to assist institutions of higher education that wish to comment on the U.S. Department of Homeland Security’s (DHS) proposed rule [*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*](#) (ICEB-2019-0006-0001). **The deadline for institutions to submit comments is October 26, 2020 at 11:59 PM ET.** We have asked for an extension of the deadline from DHS, but given the uncertainty around whether the deadline may change, higher education institutions should plan to comment by the current deadline. We will keep institutions abreast of any developments.

The Presidents’ Alliance and NAFSA created this template to assist individual colleges and universities in drafting comments regarding the proposed rule. Below, you will find a framework that your institution can edit and suggestions on additional institution-specific content that would be especially valuable to include. **Individualized institutional comment letters are incredibly useful to demonstrate the broad impact of the proposed rule on institutions of higher education and build an administrative record for future advocacy. Federal law requires that the Department read, review, and consider all comment letters.**

You can read the text of the proposed rule [here](#).

NAFSA has created a resource page on the proposed rule [here](#).

¹ For questions about submitting a comment or this document, please contact miriam@presidentsalliance.org, jillam@nafsa.org, or jose@presidentsalliance.org. For more information on the Presidents’ Alliance and NAFSA, please visit presidentsimmigrationalliance.org and nafsa.org.

Steps to Submit Your Comment

1. **DRAFT.** Using the template below, work with the appropriate stakeholders at your institution to draft your institution’s comment and convert to a text-searchable PDF.
2. **SUBMIT. Comments can only be submitted online.** Visit <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>. Click on “Submit a Formal Comment.” The button will look like this:



3. You can also click [here](#) for the direct link to the comment box. Either enter your comment in the text box (must be fewer than 5,000 characters) or upload your comment as a text-searchable PDF (we recommend submitting a PDF).
4. **LET US KNOW.** Email a copy of your comment letter to Grassroots@nafsa.org with the subject line “Comment Letter on D/S Rule for [Institution Name]” so we can track higher education comments.

As you draft your comment, here are some important tips to keep in mind:

1. The “talking points” template on the following pages is intended to help guide you and give you an example and ideas, **but the comment should be edited with your original input.** DHS may bundle any comments that are too similar to each other. Feel free to choose which bullet points you want to focus on and the arguments that are most relevant to your institution and edit them to better reflect your institution’s perspective on the issue. You do not need to cite this document in your comment.
2. While this template contains a number of bullet points, your own comment letter can highlight one to two key arguments or points you want to raise.
3. Institutional comments should be signed by a representative of the institution and provide the business contact information of the representative for any follow-up questions or concerns. However, keep in mind that this comment will be publicly available, so personal addresses or cell phone numbers are not recommended. Who signs the letter is at the discretion of the institution and does not impact the review of the letter.

Guidance on Creating your Comment Letter

The first page of the comment letter should include (suggested inclusions in italics):

Submitted via www.regulations.gov

*Sharon Hageman
Acting Regulatory Unit Chief, Office of Policy and Planning
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

Opening paragraph sample:

On behalf of [INSTITUTION], I submit this comment letter in response to the U.S. Department of Homeland Security's (Department) proposed rule, 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 (DHS Docket No. ICEB-2019-0006-0001), published September 25, 2020.

To ensure that it is categorized as a comment in opposition to the proposed rule, your letter should include a summary statement of opposition toward the beginning of the letter, such as:

We urge that the proposed rule be withdrawn in its entirety, and that admission for the duration of status remain in effect.

Inclusion of institution-specific information:

Your letter can include information on the institution–location; number of students, including F-1 international students; and number of faculty and staff, including number of J exchange visitors. You can include information on the diversity of your international students and how many are in programs that require more than four years of study. You can also include data here regarding the number of international students in your state and their [economic contributions](#). Consider incorporating the content beginning on the next page that applies to your institution's concerns. Please customize the language to make it unique to your institution.

Issues with Most Impact - Talking Points

I. International students and exchange visitors contribute immensely to our campuses, communities, and country.

- Insert information about the number and diversity of the international students studying on your campuses.
- Describe the contributions of J exchange visitor scholars to research and other endeavors.
- Detail how international students provide domestic students with access to the understanding of other countries and cultures that is so important to success in a global market for employment and ideas.
- If possible, describe how international students make it possible for your institution to offer classes/majors to U.S. students whether it is through their presence in classrooms (if there is not enough domestic demand to sustain them) or acting as TAs or research assistants.
- Describe the loss to the institution and your domestic students if F international students and J exchange visitors decided not to come to your institution. What is the economic impact? What is the educational impact?

II. SEVIS is already sufficient to accomplish DHS's goals, so the rule is duplicative, wasteful, and unnecessary.

- Although F and J nonimmigrants are admitted for duration of status, unlike “most other nonimmigrant categories,” none of those “other categories” are connected to a massive electronic reporting system like SEVIS.
- The IT Dashboard SEVIS Business Case (Section C1: Projects Table) shows that for technology investment alone, the SEVIS Project from its 7/1/2002 start date through a projected project date of 9/30/21, \$181.7 million dollars will have been spent. This expensive endeavor has yielded detailed data for DHS that would have been unthinkable in prior decades.
- SEVIS gives DHS immediate access to detailed information related to almost every student and exchange visitor event that could impact a student or exchange visitor's compliance with the regulations.
- For information not directly submitted in SEVIS, DHS also has the authority to request, “on any individual student or class of students upon notice,” all information and documents that schools are obligated under 8 CFR 214.3 to retain throughout the student's enrollment and for a period of 3 years beyond that.
- In the course of an extension of stay application, students would have to submit information that they would have to get from their schools or programs--information or documentation that the schools and programs already provide directly through SEVIS or are required to retain by regulation. Making a student submit to USCIS this same information that DHS already has access to is duplicative and wasteful.
- DHS can effectively enforce the current immigration laws by wisely using its resources to engage in data-driven initiatives that focus on risk factors, rather than subject entire nonimmigrant categories to an expensive, cumbersome, and time-consuming extension of stay process that largely duplicates the efforts that schools and exchange visitor programs will continue to make to comply with heavy SEVIS reporting obligations.

III. The proposed rule is a significant unwarranted, unnecessary and harmful intrusion into academic decision-making.

- The rule encroaches on the role of the academic institution. It is the institution's, not the federal government's, decision whether and when to grant students additional time to complete a degree.
- It is inappropriate and overreaching for the rule to give a USCIS officer the ability to evaluate whether a student is making good academic progress, rather than the school.
- "Compelling academic reasons" are not clearly defined by the rule, meaning that the government will have more discretionary power over students than their own colleges or universities; a student may apply for an extension of their studies and be approved by their own school, but not by the government.²
- Restricting international student enrollment in language training programs to a lifetime aggregate of 24 months (including breaks and an annual vacation) is arbitrary. The length of time students require in ESL programs varies, and can extend beyond 24 months.
- Institutions already have processes to approve additional semesters based on academic and institutional procedures. Reference those procedures. Describe the role of the international student office in maintaining the SEVIS database.

IV. The proposed date-specific admission does not conform to academic programs, harms students' reliance on duration of status.

- The rule does not provide an admission period beyond 2- or 4-years.
- Four year admission limits are impractical, and do not conform to academic program lengths.³ Imposing a four-year visa limit will increase the economic burden of international students in the U.S., as well as introduce a significant amount of uncertainty in students' coursework.⁴
- The rule doesn't recognize today's reality of the time needed for degree completion in many academic programs. This affects PhDs, surgery residents, neuroscience postdocs, joint degree program participants, and those pursuing BS/MS programs, among others.
- The new proposed rule would hold international students to a different standard influenced by an enforcement-forward strategy.⁵ For instance, international students would only be able to request time off due to "compelling academic reasons," including medical conditions or other natural disasters or major events. Insert information on time-to-completion or the campus emphasis on a complete education that may require additional time.

² Anderson, Stuart. "New Immigration Rules Will Have Big Impact on International Students." Forbes. <https://www.forbes.com/sites/stuartanderson/2020/09/28/new-immigration-rules-will-have-big-impact-on-international-students/#7f2ef65d6899>. September 28, 2020.

³ "Time to Degree." National Center for Education Studies. <https://nces.ed.gov/fastfacts/display.asp?id=569>; Kowarski, Ilana. "How Long Does It Take to Get a Ph.D. Degree?" U.S. News. <https://www.usnews.com/education/best-graduate-schools/articles/2019-08-12/how-long-does-it-take-to-get-a-phd-degree-and-should-you-get-one>. August 12, 2019.

⁴ "Proposal to Replace Duration of Status." NAFSA. <https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status>. October 5, 2020.

⁵ Redden, Elizabeth. "Major Changes to Student Visa Rules Proposed." Inside Higher Ed. <https://www.insidehighered.com/news/2020/09/25/trump-administration-proposes-major-overhaul-student-visa-rules>. September 25, 2020.

- Provide examples of your graduate level programs that go beyond the four-year admission limit such as medical training and PhD programs.
- Two year admission limits for international students from countries identified with 10%+ overstays: (1) is based on flawed data and analysis; and (2) unfairly targets students from Africa. How will this impact your diversity goals? What is the educational impact of less diversity of international students on campus?
- Describe the prevailing reasons why international undergraduate students on your campus take longer than four years to graduate--they often do so for a variety of reasons.⁶ Additional bureaucratic barriers should not be added to their degree completion.
- Institutions can provide examples of non-traditional or non-linear students and describe the impact of the rule's limits on the number of F-1 programs an international student may pursue (limit of 3 for the lifetime of the student) and limit on "reverse matriculation" (an international student who has completed an academic program at one level would be allowed to change to a lower level only one time).

V. The proposed rule ignores DHS/USCIS's inability to timely process extension applications to ensure institutions and students are able to efficiently move forward.

- The rule is logistically unworkable because of the uncertainty and length of processing times for extension of status applications.
- We anticipate that the extensions and authorizations required by the student rule will create additional backlogs within USCIS,⁷ which will in turn result in extended adjudication timelines, resulting in uncertainty, disruption, and potential harm on the student's and school's behalf.
- Increasing the applications submitted to USCIS at a time when the agency is handling a significant backlog and funding crisis would have an immediate detrimental impact not only to international students, but to the entire legal immigration system as a whole. The increased volatility and uncertainty would drive students from the U.S. following delayed approvals or adjudications and would discourage others from studying in the U.S.
- Insert information about delays and backlogs that your campuses have experienced.
- Explain the role of Curricular Practical Training and/or on-campus TA/RAships that would be disrupted if a student's timely application for extension of status is backlogged.

VI. This rule makes US higher education less competitive internationally.

- The uncertainty will discourage international students and postdocs from applying to higher education institutions in the U.S., will make it less likely for international

⁶ Redden, Elizabeth. "Major Changes to Student Visa Rules Proposed." Inside Higher Ed. <https://www.insidehighered.com/news/2020/09/25/trump-administration-proposes-major-overhaul-student-visa-rules>. September 25, 2020. "Transfer & Mobility – 2018." National Student Clearinghouse Research Center. <https://nscresearchcenter.org/signaturereport15/>. August 7, 2018.

⁷ Anderson, Stuart. "Disputed Policy on Foreign Students Uses Flawed Report." Forbes. <https://www.forbes.com/sites/stuartanderson/2020/09/28/disputed-immigration-policy-on-foreign-students-uses-flawed-report/#579f0f6b3fc5>. September 28, 2020.

students and postdocs to accept offers from institutions in the U.S., and for those who are here, will make it more uncertain for employers to hire them.

- Many students and postdocs are not able to transfer to other programs easily (if at all) if their extension is not approved, and must leave the United States as a result.
- If U.S. colleges and universities are unable to provide incoming or prospective students and postdocs with the confidence that they will be able to complete their entire academic program with said school, they may decide to study in another country as a consequence. The U.S. will then lose a critical pipeline of advanced STEM knowledge and talent, potentially to competitor nations.
- The proposed rule fundamentally alters the agreement between students and institutions mid-way between the program. Other countries see the value of international students and have policies to attract and retain them. It is a mistake to create yet another hurdle to study in the United States.
- Provide insight into recruiting challenges and efforts that your campus must make to attract and retain international students and scholars. If that work has become more difficult or has required more funds, include that detail.

VII. Implementing the rule would have significantly greater economic effects than estimated by DHS on U.S. higher education institutions, including from the loss of the international student population resulting from the rule. There would also be significant economic costs to students and an economic impact on the economy.

- If possible, describe the financial impact on your students. You may also want to describe the logistical hurdles (e.g. the requirement to submit biometrics).
- The proposed rule would divert much-needed resources from institutions to complying with a rule that adds no demonstrable benefits. Describe the costs to your institution, possibly including additional advising, systems alterations, lost tuition revenue, etc.
- E-Verify/Compliance requirements add additional costs and required resources to maintain, and unnecessarily and inappropriately link unrelated regulatory issues to this proposed rule.
- Any loss of tuition revenue from international students has an adverse multiplying effect on the local economy. Calculate impact of loss of international students and visitors on the local economy.
- Describe impact of loss of OPT and CPT participants on the economy, businesses, and innovation

VIII. A minimum of 60 days is required for meaningful public comment on the NPRM. The global COVID-19 pandemic results in delays and overwhelmed stakeholders that require more time to adequately assess and respond.

- On March 13, 2020, the White House proclaimed a national emergency in light of the COVID-19 pandemic, a state of emergency that continues to this day.⁸ The pandemic has

⁸ Donald J. Trump, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, Mar. 13, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

drastically affected [insert name of institution here] stakeholders' ability to adequately respond to the proposed rule.

- You may reference the Presidents' Alliance letter requesting a 60 day extension (to be sent 10/9/2020, and will be posted on the Presidents' Alliance website).
- This section is also an opportunity for colleges and universities to point to their own challenges and accommodations given the current environment. For example, the situation on the ground has continued to shift throughout the crisis requiring students, professors, institutions, businesses, and researchers to repeatedly accommodate new circumstances and standards. This is especially the case for colleges and universities, who have had to decrease staff, work and teach remotely, and monitor the health of every person on their campuses. Advocates and legal practitioners have had to remain up to date and informed on each change and its consequences, all with limited access to the information, technology, resources, and clients needed to adequately respond to the NPRM.