September 29, 2025

U.S. Immigration and Customs Enforcement (ICE)
U.S. Department of Homeland Security (DHS)

Re: DHS Docket No. ICEB-2025-0001
Regulatory Information Number (RIN) 1653-AA95
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*
Comments submitted by NAFSA: Association of International Educators

Submitted via: https://www.regulations.gov/

Introduction

On behalf of NAFSA: Association of International Educators (NAFSA), we submit this comment to the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) in response to the notice of proposed rulemaking (NPRM or "proposed rule") published in the Federal Register on August 28, 2025, titled *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-2025-0001**). **We urge you to withdraw this rule from consideration**. If the rule does move forward, we reiterate NAFSA's request for at least an additional 30-day comment period given the drastic policy change.

About NAFSA

With approximately 10,000 members at more than 3,500 colleges and universities, **NAFSA is the world's largest nonprofit comprehensive professional association dedicated to international education**. NAFSA believes that international education advances learning and scholarship, fosters understanding and respect among people of diverse backgrounds and perspectives, is essential for developing globally competent individuals, and builds leadership for the global community. We believe that international education lies at the core of an interconnected world. NAFSA believes that international engagement in our classrooms, our communities, and our workplaces is our strength.

NAFSA realizes its values, vision, and mission by convening people to advance international education. Based in the United States, we provide high-quality programs, products, services, and physical and virtual meeting spaces for the worldwide community of international educators. NAFSA serves international educators and their profession, advances international education in institutions of higher education, and promotes international education and the policies that sustain it in the public arena. The association helps define the profession of international education by establishing principles of good practice and providing professional development opportunities. NAFSA aspires to an environment in which every student, scholar, and practitioner seeking the benefits of international education finds a path, and every institution of higher education integrates international perspectives into its teaching, research, and service missions. We aspire to enlightened international relations, globally engaged citizenry, and a more peaceful and just world.

U.S. Immigration and Customs Enforcement (ICE) | U.S. Department of Homeland Security (DHS)
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NAFSA Comment Overview

The proposed rule[1] will impact all international students and exchange visitors in the United States, higher education institutions that admit or host them, and employers who benefit from the international students pursuing optional practical training (OPT). If it becomes final, **the damage done by this rule will be felt on our campuses and in our communities and will harm our country's standing in the world.**

Our country's ability to attract and retain international students and exchange visitors is a key element of U.S. public diplomacy, foreign policy, competitiveness, and innovation. We are in a global competition for talent, as other countries around the world recognize the outsized economic and social benefits of international students and exchange visitors and have implemented policies to create a welcoming environment for these students to thrive.

The "Duration of Status" (D/S) policy allows F students and J exchange visitors to remain in the country as long as they are making normal progress towards completing their academic or exchange objectives or are engaging in OPT or J-1 academic training, provided they are properly tracked in the Student and Exchange Visitor Information System (SEVIS). D/S recognizes common educational scenarios and facilitates students and exchange visitors progress to completion of their programs. This proposed rule would eliminate D/S and replace it with a system that admits F students and J exchange visitors for a *fixed* period of time: only until the program end date on their SEVIS document, but not to exceed four years. This means students and exchange visitors who need more time to accomplish their purpose would need to apply for a formal extension of stay (EOS) from United States Citizenship and Immigration Services (USCIS), an agency already mired in processing backlogs. This will deter people from choosing to study and/or stay in the United States. Ending D/S would also create higher compliance costs and legal risks, enrollment impacts, and heavier advising burdens for higher education institutions. If D/S is abolished, students and exchange visitors will need to file an EOS application with USCIS to:

- Complete a Ph.D. program;
- Complete any educational, research, or teaching programs that require more time than four years;
- Complete any program where a student falls a few credits short of graduation requirements;
- Engage in post-completion practical training or academic training,
- Move to a higher level of study;
- Transition from an English language program into a degree program; or
- Transfer to a new school or program sponsor.

[1] The "proposed rule" or "proposal" in this letter refer to the proposed rule published in the Federal Register at 90 FR 42070 (August 28, 2025*), 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*. https://www.federalregister.gov/d/2025-16554. DHS Docket No. ICEB-2025-0001. References to the "2025 proposed rule preamble" are to agency comments in the *Supplementary Information* section of the Federal Register document. Links are to the version of the proposed rule published on federalregister.gov.

The proposed rule also prohibits F-1 graduate students from changing educational objectives or transferring from within the United States, without explanation for why that is necessary.

Participants in Ph.D. programs in the United States will face a particular hardship as the median time to complete this degree is 5.7 years, according to the National Center for Science and Engineering Statistics, or as high as 7.3 years, based on National Center for Education Statistics data. This means that **nearly every international Ph.D. student will be required to file for an extension status**. The ability of Ph.D. students to complete their studies will be in the hands of USCIS and not their higher education institution.

This proposed rule is a policy that will benefit countries other than our own. If finalized, the rule will foster tremendous uncertainty for many international students and exchange visitors about whether they will be able to maintain their legal status in the United States through the completion of their studies or program, discouraging students and exchange visitors from coming here, and pushing them to look for opportunities in other countries instead.

This proposed rule would replace a proven, flexible policy that has served the nation, international students, and exchange visitors for decades with a policy that is duplicative, burdensome and creates uncertainty. Less onerous options are available for ICE to meet the stated goals of the proposed rule. More importantly, the ICE Student and Exchange Visitor Program (SEVP) and the Department of State's (DOS) Bureau of Educational and Cultural Affairs (ECA) already track international students and exchange visitors through the Student and Exchange Visitor Information System (SEVIS) and certify U.S. institutions of higher education and research and other organizations that admit or sponsor them. International students and exchange visitors are the only nonimmigrants tracked the entire time they are in the country. If they overstay, the system already exists to alert ICE to this violation. **We urge DHS to examine how the current system can be used to achieve stated goals instead of establishing new policies that will only do harm.**

This proposed rule is both procedurally and substantively inadequate. Procedurally**, the NPRM does not provide adequate time for the public to provide feedback**, and the formal comment period should be extended by at least 30 days. Substantively, **the proposed rule is arbitrary and capricious for a number of reasons**, including not considering less expensive and burdensome alternatives, insufficient analysis of the financial impact of this rule on the U.S. education sector and economy, the arbitrary nature of the details of the rule in the context of higher education, and not considering the reliance interests of students, faculty, and the education sector more broadly. **DHS should withdraw this rule entirely and consult directly with NAFSA and other stakeholders to address the agency's stated concerns in a way that does not harm U.S. national interest or international education and improves upon systems and processes that already exist and for which significant financial and human resource investments have already been deployed.**

The proposed rule does not meet the APA's requirement of reasoned decision making in multiple, independent ways, each sufficient to render it arbitrary and capricious. **Throughout the proposal, DHS offers unsupported assertions instead of the evidence and reasoned analysis that the APA demands.**

DHS would reverse longstanding policy, without identifying concrete problems with the current system. The proposal does not grapple with the reliance interests that current students and institutions have built around the D/S framework that has been in place for decades, **nor does it address the reality of academic degree timelines**. DHS proposes, without sufficient justification, to prohibit all transfers

and changes in field of study for graduate-level students and imposes an arbitrary four-year admission period that is divorced from the reality of academic degree programs and serves no legitimate aim. The agency's cost-benefit analysis is fundamentally inadequate, ignoring substantial costs and overstating speculative, unsubstantiated benefits. **DHS also does not consider obvious, less burdensome alternatives**.

We have provided a table of contents at the end of this letter as a reader's aid.

I. DHS Should Provide Adequate Notice and Comment Process

The truncated comment period for this proposed rule of only 30 days, despite its extensive and controversial nature with the potential of affecting over 1.8 million international students and exchange visitors,[2] over 6,500 F-1-certified schools[3] , and over 1,200 exchange visitor program sponsors,[4] is insufficient for the public to adequately respond. **DHS should provide at least 60 days but preferably 90 days to comment.**

The APA requires that agencies "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments" before a rule is finalized.[5]

In addition, Executive Order 14219 of February 19, 2025,[6] instructs that "[a]gencies shall continue to follow the processes set out in Executive Order 12866 for submitting regulations for review by OIRA." Executive Order 12866 provides that "... each agency should afford the public a meaningful opportunity to comment on any proposed regulation, **which in most cases should include a comment period of not less than 60 days**." [emphasis added] [7]. For a proposed rule of this type, 60 days is the minimum comment period that should be given, but preferably 90 days.

Lastly, even the comparatively minor actions to make changes to the SEVIS and USCIS forms that will be impacted by the proposed rule changes have been given a 60-day comment period.[8]

A 30-day comment period does not allow the public to adequately gather information and data, including from FOIA requests. NAFSA and other organizations have already filed an initial comment requesting at least a 60-day comment period,[9] and we reiterate this request here.

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[2] The total number of SEVIS records for active F-1 and M-1 students was 1,582,808 in calendar year 2024. https://studyinthestates.dhs.gov/2025/06/read-the-2024-sevis-by-the-numbers-report. Total J-1 category participation in 2024: 301,694: https://j1visa.state.gov/facts-and-figures-2015-2024/

[3] Derived from SEVP 2024 SEVIS by the Numbers Report, https://www.ice.gov/doclib/sevis/btn/25_0605_2024-sevis-btn.pdf

[4] Derived from https://j1visa.state.gov/participants/how-to-apply/sponsor-search/

[5] See 5 USC 553(b)-(c).

[6] Section 4, Executive Order 14219 of February 19, 2025, https://www.federalregister.gov/d/2025-03138/p-17

[7] Section 6(a)(1), Executive Order 12866 of September 30, 1993, 58 FR 51735 (October 4, 1993), https://www.federalregister.gov/executive-order/12866

[8] 2025 proposed rule preamble at https://www.federalregister.gov/d/2025-16554/p-4

[9] See https://www.regulations.gov/comment/ICEB-2025-0001-8627

Executive Order 12866 also directs each agency "to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking."[10] We are unaware of any outreach to explore or otherwise incorporate the views of the DSOs or ROs who will be charged under this proposal with ensuring its proper execution. Compare this, for example, to the 1986 proposed rule where legacy INS stated in the preamble that the proposals "were developed in part through a series of meetings between the Service and the National Association for Foreign Student Affairs (NAFSA)."[11]

II. DHS Should Avoid Waste That Doesn't Achieve Its Goals

DHS's proposed elimination of duration of status represents a costly and inefficient shift away from a system that has worked for more than three decades. **Instead of strengthening oversight, the rule would create layers of duplicative process, divert scarce government resources, and impose new burdens** on students, scholars, and institutions without offering clear or evidence-based benefits. By discarding a proven framework in favor of untested and unnecessary requirements, DHS risks increasing uncertainty, wasting resources, and undermining the very goals it seeks to achieve.

DHS should build upon longstanding D/S policy.

The proposed DHS rule would eliminate D/S for F and J nonimmigrants, a more than 30-year policy, with insufficient evidence of systemic policy failure. DHS does not adequately:

- Identify concrete problems with D/S oversight that are not already addressed by SEVIS.
- Justify why previous reforms to SEVIS and DSO and RO oversight are now deemed inadequate.
- Quantify how the proposed rule would meaningfully reduce fraud or security risk.

In the preamble to the proposed rule, DHS characterizes D/S as an admission for "an unspecified period of time."[12] But this is not accurate. The length of a D/S admission is tied to the student or exchange visitor's program end date in SEVIS. **International students and exchange visitors are already the most tracked of all nonimmigrant categories in the United States, and schools and exchange programs already comply with significant reporting requirements**. Rather than doing away with the D/S system that has successfully operated for more than 30 years and creating in its place an overinclusive protocol covering all F and J nonimmigrants, DHS should instead use the information sources (to include SEVIS) and human resources it already has at its disposal to spot trends and focus its enforcement efforts on specific individuals or organizations who are out of compliance.

[10] Section 6(a)(1), Executive Order 12866 of September 30, 1993, *Regulatory Planning and Review*, published at 58 FR 51735 (October 4, 1993), https://www.federalregister.gov/executive-order/12866.
[11] *Nonimmigrant Classes; Change of Nonimmigrant Classification*, proposed rule, 51 FR 27867 (August 4, 1986)
[12] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-46

DHS should not rely on speculative harms.

DHS justifies the rule by vague references to "noncompliance," "regulatory violations," "national security," and "fraud risk," without articulating evidence beyond anecdotal anomalies and without showing systemic problems with the current D/S structure.

No empirical link is drawn between D/S and increased fraud or risk, particularly for students at accredited institutions and at long-established exchange visitor programs.

In the 2020 proposed rule that also sought to eliminate D/S, DHS admitted that it had no data to support its contentions, and only speculated that it "believes" it "could result" in data to show reduced fraud, abuse, and national security risks only after the D/S elimination was put into place.[13] Five years later, DHS has scrubbed such language from the preamble to the current proposed rule but has produced no new data, only anecdote.

In the preamble to the current proposed rule, the agency no longer expects the post-implementation quantitative data it hypothesized about in 2020. With the current proposed rule, it states that it only expects "qualitative benefits… by providing DHS additional opportunities to evaluate whether F, J, and I nonimmigrants are complying with their status requirements, or if they present a national security concern."[14]

DHS's "feeling" that ending D/S might result in uncovering high rates of noncompliance, fraud, or national security risks is an insufficient basis on which to impose this heavy additional administrative burden on F and J nonimmigrants who, thanks to the enormous expenditures on SEVIS and SEVP, are already the most tracked and monitored of all nonimmigrants.

DHS should avoid duplicative processes.

Eliminating D/S and limiting international students' and exchange visitors' admission period will mean that all such students and exchange visitors who are not able to complete their degrees or programs within the initial time period granted must file an EOS application with USCIS. In addition, any student who wishes to pursue another degree at a higher level will also have to apply to USCIS for an EOS. This is an unnecessary, expensive, and time-consuming process. In the course of an EOS application, students would have to submit information to USCIS that their schools and programs have already provided

[13] In the preamble to the 2020 proposed rule, DHS had stated: "DHS believes this proposed rule could result in reduced fraud, abuse, and national security risks for these nonimmigrant programs, but whether the rule will in fact result in a reduction will be borne out when the final rule is implemented. Compared to the current D/S framework in which a nonimmigrant's substantive compliance might never be reviewed by DHS, DHS believes that the rule would be likely to result in more prompt detection of national security concerns or abuse by F, J and I nonimmigrants and could serve as a deterrent to those who would otherwise plan to engage in fraud or otherwise abuse these nonimmigrant classifications. The rule proposes additional oversight of these individuals. Without this oversight, there is no data on prevalence of fraud and abuse by F, J, and I nonimmigrants and only limited data on these individuals' impact on national security." *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*, 85 FR 60526, 60554 (September 25, 2020), preamble to the 2020 proposed rule, at https://www.federalregister.gov/d/2020-20845/p-623

[14] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-448

directly through SEVIS or are required to provide upon DHS or DOS request when warranted, **creating a duplicative process that increases bureaucratic burdens on the government and individuals without providing a demonstrable gain for the government.**[15]

Making international students and exchange visitors pay fees and wait for USCIS to make the same decision that is already made by the education institution or program sponsor and recorded in SEVIS thereby notifying DHS is duplicative and wasteful. **DHS can effectively enforce 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 process** that largely duplicates the efforts of schools and exchange visitor programs that already comply with heavy SEVIS reporting and information retention obligations.

Change in policy will unnecessarily burden an already overloaded USCIS.

The problems facing USCIS are well known and dire, as it is unable to handle even its current caseload of applications. This summer, USCIS threatened to furlough thousands of employees due to shortfalls in expected fee funding. However, as ongoing USCIS processing delays illustrate, the agency currently does not have the staff necessary to deal with these requests.

As of September 5, 2025, the USCIS website reported processing times[16] for Form I-539 for EOS applications at 6.5 months. **Ending D/S would exacerbate an existing problem by adding an enormous number of new EOS filings to the current backlog**. With SEVIS tracking in place, this is only creating extra, unnecessary work for USCIS.

It is a poor use of resources to direct USCIS to adjudicate EOS requests. No matter the fees generated by the requirement, there is no reason to believe that USCIS would be able to improve its timely adjudication of cases if this proposed rule were implemented. The amount of time required to train adjudicators on a new, duplicative requirement could be better spent focused on the present caseload that is already overwhelming the agency.[17]

DHS should better use SEVIS and other tools to achieve desired goals.

Rather than upend the D/S system that has worked well for three decades, **DHS should engage in smart and targeted enforcement that is made possible by the SEVIS tracking system.** DHS should develop

[15] SEVIS transactions that would likely result in a new program end date or OPT end date necessitating an EOS with USCIS would likely include:

- F-1: Extend Program. Correct Program Dates. Create Transfer-In I-20. Create Reinstatement I-20. Change Educational Level. OPT Request (Employment End Date). STEM OPT Extension Request (Employment End Date).
- J-1: Extension Within the Maximum Duration of Participation Request. Extension Beyond the Maximum Duration of Participation Request. Change of Category Request. Amend Program.

[16] USCIS, "Check Processing Times," https://egov.uscis.gov/processing-times/ (Accessed September 5, 2025), "all other extension of stay applications by Service Center Operations (SCOPS).

[17] Reporting by *Newsweek* indicates that USCIS has a record backlog of 11.3 million pending cases. US Immigration Backlog Hits All-Time High, Newsweek, July 8, 2025, https://www.newsweek.com/us-immigration-backlog-hits-all-time-high-2095846.

SEVIS and maximize its use of its human resources in ICE rather than adding a duplicative USCIS layer, otherwise SEVIS becomes just a very expensive[18] way to produce a paper Form I-20 or DS-2019. The costly SEVIS endeavor commanded by Congress[19] now yields data for DHS that would have been unthinkable in prior decades.

Although, **unlike most other nonimmigrant categories, F and J nonimmigrants are admitted for D/S, none of those other categories are connected to a massive electronic database reporting system** like SEVIS. Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as amended, is the core statutory authority for the electronic collection of information in SEVIS. In passing Section 641, Congress established reporting and document retention obligations for U.S. schools that admit international students in the F-1 and M-1 categories and organizations that sponsor exchange visitors in the J-1 category.

Congress has had opportunities to end D/S for international students and exchange visitors since 1991 but has not done so. However, when IIRIRA was passed in 1996, Congress opted to require U.S. schools to report to SEVIS the date of the alien's termination of enrollment and the reason for such termination (including graduation, disciplinary action or other dismissal, and failure to re-enroll).[20] **SEVIS and other DHS information systems give DHS immediate access to this detailed information about almost every student and exchange visitor event that could impact a student or exchange visitor's compliance with the regulations**, including where students and exchange visitors are; the fields they are studying, researching, or teaching; when they have been properly authorized for employment; and when their programs have ended.

DHS states in the preamble to the proposed rule that "the significant increase in the volume of F academic students [and] J exchange visitors...poses a challenge to the Department's ability to monitor and oversee these categories of nonimmigrants while they are in the United States."[21] Then, citing the statutes that underlie SEVIS, DHS simply asserts, circularly, that "DHS believes that the admission of F, J, and I nonimmigrants for D/S is not appropriate."[22]

The only justification that DHS makes for abandoning the D/S system is an unsubstantiated assertion that "DHS believes that this process would help to mitigate risks posed by aliens who seek to exploit these programs"[23] and anecdotal examples in the footnotes to support an assertion that "DHS believes this greater oversight would deter F, J, or I nonimmigrants from engaging in fraud and abuse and strengthen the integrity of these nonimmigrant classifications."[24]

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[18] IT spending for SEVIS in FY 2025 alone is 23.53 million dollars. See ITDashboard.gov, ICE - Student and Exchange Visitor Information System (SEVIS) / 024-000005363, https://www.itdashboard.gov/investment-details/024-000005363

[19] Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) as amended is the core statutory authority for the electronic collection of information in SEVIS. IIRIRA 641 is codified at 8 USC 1372.

[20] IIRIRA 641(c)(1)(H)/8 USC 1372(c)(1)(H)

[21] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-61

[22] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-69

[23] Id.

[24] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-74

Greater oversight does not require overturning a longstanding policy that applies to all F and J nonimmigrants, but rather better utilizing the data in the SEVIS system to identify and target bad actors.

For information not directly submitted in SEVIS, DHS already has the authority to request, on any individual student or class of students upon notice, all information and documents that schools are obligated to retain throughout the student's enrollment and for a period of three years beyond that.[25] Likewise, the DOS exchange visitor program regulations already require sponsors to cooperate with any inquiry or investigation that may be undertaken by DOS or DHS.[26]

In the preamble to the current proposed rule, DHS cites a 2020 GAO report[27] that recommended "that ICE modify the SEVIS system to include factors that potentially indicate which foreign students or scholars may pose more risk of transferring technology at U.S. universities." This makes sense, because the SEVP Office that manages SEVIS is within the National Security division of ICE's HSI Directorate. **DHS does not adequately explain why it has ruled out first implementing additional SEVIS data requirements and analysis of its own SEVIS data before abandoning the current well-functioning D/S policy**, nor does it adequately address why its robust training materials, Field Representative corps, sector outreach, and ownership of the SEVIS database and SEVIS data are viewed as insufficient.[28]

In the Regulatory Impact Analysis for the proposed rule,[29] DHS states simply that SEVIS "does not readily lend itself" to identifying higher-risk cases, but this conclusion rests entirely on the current structure of SEVIS, not its potential. DHS has full authority to modify SEVIS data fields through rulemaking or programmatic changes to supplement the areas it believes are currently lacking. DHS itself notes that SEVIS data already plays a critical role in visa issuance, admission, and ongoing status monitoring. Ignoring the possibility of modest SEVIS upgrades, rather than ending D/S and requiring F and J nonimmigrants to incur the uncertainty and cost of EOS and burdening USCIS with processing these filings, demonstrates a lack of seriously weighing alternatives. Lastly, DHS efforts to modify the information in SEVIS are already underway, as shown by DHS's September 3, 2025, proposal to significantly expand the data collected through SEVIS Forms I-17 and I-20.[30]

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[25] 8 CFR 214.3(g)(1)

[26] 22 CFR 62.10(f)

[27] See U.S. Gov't Accountability Off., GAO 23-106114, China, Efforts Underway to Address Technology Transfer Risk at U.S. Universities, but ICE Could Improve Related Data (Nov. 2022), available at https://www.gao.gov/assets/gao-23-106114.pdf.

[28] The enormous investment in SEVIS and SEVP should yield data sufficient to detect patterns. DHS's Regulatory Impact Analysis rejects this, stating only that "While this information is likely to be helpful in identifying aliens who should be subjected to further review, in some cases the information may not be sufficient for determining whether these nonimmigrants are engaging in fraudulent behavior or otherwise have fallen out of status." This response reflects DHS's assertion that if there are a few "bad actor" cases there must be so many more that it justifies replacing the current system with the proposed EOS system. But this is based on mere speculation and is insufficient basis for the proposed action.

[29] DHS Regulatory Impact Analysis, https://www.regulations.gov/document/ICEB-2025-0001-0143

[30] See the information collection review notice published at 90 FR 42602 (September 3, 2025). This information collection is separate from the information collection notice that is part of the proposed rule to eliminate duration of status.

DHS's concern with fraud is legitimate, but the proposed solution is misplaced. SEVP has the resources necessary to enforce actions to mitigate fraud. DHS cites a few press releases from 2008 to 2015 (and one from 2018) detailing actions taken against certain schools. DHS also points to an anomalous instance of "a nonimmigrant who has been an F-1 student at a dance school since 1991 and who has been issued 16 program extensions since 2003" and a few other English as a Second Language (ESL) and associate degree students who were enrolled beyond the normal period of time needed to complete their courses of study. DHS also states that it identified "nearly 29,000 F-1 students who, since SEVIS was implemented in 2003, have spent more than 10 years in student status," including students "who enrolled in programs at the same educational level as many as 12 times, as well as students who have completed graduate programs followed by enrolling in undergraduate programs, including associate's degrees."

The fact that DHS has access to the data already shows the effectiveness of SEVIS. Rather than place all international student and exchange visitor nonimmigrants into a USCIS EOS scheme that would unnecessarily burden schools, programs, students and exchange visitors, and USCIS, **DHS should continue its work by analyzing SEVIS data and using its pre-existing authority to further investigate the individuals and institutions it believes are not acting within the bounds of the laws.** For example, schools and exchange programs are statutorily required to recertify or redesignate with DHS or DOS every two years, which provides the agencies with regular opportunities to determine the bona fides of the institution.

Over the years that SEVIS has been in operation, DHS has cultivated and maintained an excellent working relationship with U.S. schools through their principal designated school officials (PDSOs) and designated school officials (DSOs). DOS has done likewise with exchange visitor programs through their responsible officers (ROs) and alternate responsible officers (AROs). A 2009 letter from to U.S. university presidents lauded DSOs: "I know of no other group like these international school officials who handle so many pressures so successfully….They are unique in America in that they are the only group whose good and diligent work determines the success of the very Federal agency that regulates their activities. And they are doing this while serving five masters-their academic institutions, international students, faculty and researchers, the Federal government and their families.…They have provided SEVP with thousands of improvements to SEVIS I (the current system), and they are key players in the proper development of SEVIS II. They provide critical feedback on the policies and regulations SEVP is drafting, and they do so in a most professional manner."[31]

In its analysis, **DHS also does not account for the nationwide fleet of SEVP field representatives who already contribute to compliance and the integrity of the SEVIS system**. According to SEVP,[32] the field representatives "serve as liaisons between SEVP and SEVP-certified schools. As a stakeholder resource, field representatives enhance national security by helping schools comply with federal policy and regulations," and "SEVP field representatives and Homeland Security Investigations' (HSI) Counter Threat Lead Development Unit (CLTD) work together through the Project Campus Sentinel initiative to provide an open communication channel for DSOs to report any fraudulent activity. Project Campus

[31] 2009 letter from then-SEVP director Lou Farrell to U.S. university presidents, https://www.nafsa.org/professional-resources/browse-by-interest/sevp-director-letter-university-presidents
[32] SEVP Field Representatives, https://studyinthestates.dhs.gov/schools/apply/sevp-field-representatives (accessed September 5, 2025)

Sentinel provides resources to help DSOs identify any fraudulent activity and any threats to national security."

Current SEVP and ECA leadership do a good job of educating and engaging with schools, sponsors, programs, and participants. SEVP's relationship with schools and ECA's relationship with program sponsors have continued to grow, and DHS should continue to trust this group of highly trained professionals to competently and conscientiously perform the statutory duties that provide DHS with all the information it needs to ensure compliance while balancing burdens placed on schools and programs.

DHS should consider more efficient ways of increasing oversight and adequately examine less burdensome alternatives.

DHS's proposal should adequately explore less burdensome alternatives and demonstrate the factual, policy, and legal reasons for not considering or rejecting other available mechanisms.

DHS has not adequately explained why, for example, longer admission periods, SEVIS upgrades, or a registration system would not suffice. Nor does it show why such options would be inconsistent with the INA or with DHS's fraud-prevention objectives.

DHS seeks to overturn the more than 30-year D/S system partly on the premise that it needs to more regularly "check in" on students and exchange visitors. DHS says fixed-date admissions will "strengthen vetting" and deter "nefarious actors," yet the NPRM identifies no evidence that current D/S prevents biometrics collection for targeted cases, nor does it present failure-to-detect rates under existing SEVIS and benefits adjudications. **Assertions that more frequent EOS filings will improve vetting, without analysis of adjudicatory capacity, false positives, or processing delays, are purely speculative**.

Even assuming that more regular "check ins" are indeed necessary, the proposal takes for granted that meaningful oversight can only occur through the Form I-539 EOS process managed by USCIS, without considering reasonable alternatives.

The Department did not adequately consider other less costly and less burdensome, but equally secure, ways of accomplishing the same objective. DHS should consider, for example, whether a streamlined "registration" requirement for longer-term students or exchange visitors could provide a compliance checkpoint without the full adjudicative burdens of an EOS.

This, in combination with the detailed data available in the SEVIS database, would certainly provide DHS with sufficient contact and information on longer-term nonimmigrants, without upending the D/S policy that is already adequately managed through SEVIS. Yet DHS does not consider this or any other reasonable alternative methods that could facilitate the desired oversight in less costly and burdensome ways.

DHS should not eliminate D/S to address its concerns with enforcing the unlawful presence statute.

DHS presents the elimination of D/S as a way to improve oversight and integrity of the nonimmigrant visa programs, claiming that:

- D/S hinders DHS's ability to track status violations,

- D/S delays or prevents individuals from beginning to accrue "unlawful presence" under INA 212(a)(9)(B),
- Fixed periods of admission would trigger earlier unlawful presence accrual, enabling more effective enforcement.

DHS also avers that, "[a]dmission for D/S, in general, does not afford immigration officers enough predetermined opportunities to directly verify that aliens granted such nonimmigrant statuses are engaging only in those activities their respective classifications authorize while they are in the United States. In turn, this has undermined DHS's ability to effectively enforce compliance with the statutory inadmissibility grounds related to unlawful presence and has created incentives for fraud and abuse."[33]

In essence, **DHS would use a D/S rule change that institutes a massive administrative requirement impacting schools, students, exchange visitors, and USCIS resources as a *workaround* to expand the scope and enforcement of INA 212(a)(9)(B), rather than engaging in substantive rulemaking on that separate statute.**

In addition, DHS overstates the number of international students and exchange visitors who illegally remain in the country after completing their studies or programs by reliance on deeply flawed data. According to notable demographer Robert Warren, **the overstay statistics cited by DHS are incorrect**.[34] Warren published a study that identifies 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 U.S. Customs and Border Protection (CBP) to consistently match nonimmigrant entry and exit data creates unreliable data.

The passage of IIRIRA in 1996 created distinct sections of the INA to define visa overstays, INA 222(g) [8 USC 1202(g)], and unlawful presence, INA 212(a)(9)(B) [8 USC 1282(a)(9)(B)]. This legal distinction was created in the same law that mandated SEVIS (8 USC 1372). While DHS and DOS have promulgated detailed regulations to implement SEVIS, DHS and its predecessor INS never issued regulations for the overstay and unlawful presence provisions. Now, DHS is revising international student and exchange visitor regulations in part to address the statutory overstay and unlawful presence provisions that have been left undefined by regulations for almost a quarter century. **DHS should address its issues with the overstay and unlawful presence provisions by separate rulemaking rather than obliquely attacking the duration of status policy that has worked so well for more than 30 years**.

DHS should avoid arbitrarily linking legal immigration status and threats to national security.

In the proposed rule, ICE argues that ending D/S will advance national security. However, it is difficult to understand how the damage done to the many interests served by admitting international students and exchange visitors to the United States will be balanced out by requiring an exact status expiration date.

[33] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-61
[34] Stuart Anderson. *USCIS Uses Questionable Overstay Report to Justify Policies*. Forbes, June 6, 2018, https://tinyurl.com/y4y8brxl

The DHS proposed rule shifts the narrative on international students and exchange visitors from welcome contributors to our campuses and communities to those to be treated with continuous suspicion. We recognize the need to identify and address the threats posed by foreign malign actors and governments that seek to undermine U.S. national security, and the higher education community already does and will continue to work closely with the U.S. government to address threats through improved research security.

Being born outside the United States is not a precondition of threat to national security. In the proposed rule, DHS cites only a few discrete examples of espionage by students and exchange visitors from China as a reason to impose burdensome, uncertain new processes on all international students. While essential, any legitimate concerns about espionage should be addressed by existing law enforcement and national security mechanisms using agencies and provisions that are designed and equipped to deal with such issues should they occur, without imposing costly and duplicative paperwork and obligations on all international students and exchange visitors.

Students applying for post-completion OPT should not have to file for extension of stay.

DHS's proposed rule is premised in part on the need to formally "check in" on the status of students and exchange visitors. In the case of F-1 post-completion Optional Practical Training (OPT), applicants must file a Form I-765 along with a Form I-20 bearing the DSO's recommendation for OPT. The I-765 is a robust form that results in an employment authorization document (Form I-765) bearing the applicant's photograph and an expiration date. The I-765 process is certainly equivalent to the I-539 process in many respects and should obviate the need for a duplicative EOS application in OPT scenarios.[35]

Students applying for reinstatement should not have to file for extension of stay.

Like the I-765 application for post-completion OPT, filing for F-1 reinstatement already involves the filing of Form I-539. To require in some cases the filing of a parallel or consecutive Form I-539 to address the F-1 student's prior I-94 end date is duplicative and unnecessary. The reinstatement recommendation in SEVIS involves specifying a program end date.[36] The reinstatement I-539 should satisfy the dual purpose of reinstating the applicant's F-1 status and extending their stay until the Program End Date on the Reinstatement I-20, without the need for setting another 6-month deadline as DHS discusses in the preamble to the proposed rule.[37]

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[35] Note that DHS's proposed transition provisions will not require students covered by them to file a duplicative I-539 extension of stay application (see proposed 8 CFR 214.1(m)), but only for six months.

[36] See SEVIS Help Hub, Reinstatement COE (Form I-20), at https://studyinthestates.dhs.gov/sevis-help-hub/student-records/certificates-of-eligibility/reinstatement-coe-form-i-20

[37] DHS describes this complicated process in the preamble to the proposed rule: "If a student is reinstated and his or her admit until date expires within 6 months, but the student is unable to complete his or her program of study within that time, then the F-1 student also would need to apply to USCIS for an EOS. In that scenario, the F-1 student would need to make separate requests for reinstatement and for EOS by submitting a separate form for each request, including the required filing fee for each form, by marking reinstatement on one form and then EOS

DHS should consider legal costs and liability.

An EOS application is a personal application of the individual applying for that benefit and can have a complex impact on the applicant's immigration status and eligibility for future immigration benefits.

Although college-based advisers need to be aware of the general issues surrounding EOS applications, they cannot provide legal advice. Applicants needing immigration advice and help weighing risks or planning an immigration strategy should be referred to an experienced immigration attorney. An experienced immigration lawyer is best positioned to advise on all aspects of any EOS application, including responding to Requests for Evidence (RFEs), applicability of overstay and unlawful presence rules, dependents, and other matters that relate to the personal immigration status of applicants and their dependents.

The proposed rule does not consider the costs of immigration representation to the student or exchange visitor, or the potential liability of advisers who will be involved in the EOS process and expected by applicants for advice and assistance that in many cases would border on legal advice, leading to situations that could be seen as the unauthorized practice of law.

DHS should consider reliance interests and increased uncertainty.

The rule disrupts settled expectations of students, scholars, universities, and sponsors who relied on D/S flexibility. DHS does not account for reliance interests in the longstanding D/S rules.

DHS admits D/S was re-adopted in 1983 and again in 1991 based on efficiency and trust in schools' DSO oversight but does not adequately weigh these benefits against the proposed change.

It is clear that the proposed rule will increase uncertainty for international students and exchange visitors.

Under the proposed rule, students and exchange visitors must file an EOS application with USCIS to continue their studies or research. To participate in F-1 post-completion OPT to gain critical experiential knowledge that complements their academic studies, a date-specific admission period will require international students to file EOS requests in addition to applying to USCIS for OPT. As noted earlier, USCIS is already overburdened by its current workload, so there is justified concern for the ability of USCIS to complete timely adjudications. International students are already required to apply to USCIS for work authorization; adding an EOS request creates another level of uncertainty. A U.S. degree is devalued when international students are not given the opportunity to participate in experiential learning that is available to their U.S. peers.

Students and their families cannot make plans based on an unknowable, future USCIS decision or USCIS backlogs. It becomes increasingly difficult to justify studying in the United States when the ability to retain legal student status throughout the period of study is uncertain. The benefits of studying in the United States are great; however, it becomes far riskier when success is tied not to students' abilities or

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on the other. Both forms can then be submitted together at the same time to avoid unnecessary adjudication delays. In the event both forms are submitted together, and the F-1 student's application to reinstate student status is denied, his or her application for EOS would also be denied, with both filing fees being retained by USCIS and not refunded." See 2025 proposed rule preamble, at https://www.federalregister.gov/d/2025-16554/p-334

school, but to unknown USCIS representatives who adjudicate the EOS requests and their academic futures.

III. DHS Should Consider Academic Purviews and Avoid Making Academic Decisions

DHS's proposal reaches into academic matters that are best left to educational institutions themselves. By imposing rigid restrictions on student mobility, program structures, and timelines, the rule would replace well-established academic norms with federal mandates that are disconnected from how U.S. education actually functions. These incursions risk undermining institutional autonomy, disrupting long-standing practices that support student and research success, and introducing unnecessary barriers to innovation in higher education.

DHS should not limit graduate-level program mobility.

Proposed 8 CFR 214.2(f)(8)(i) (students who are "currently in a graduate level program of study" are not eligible for school transfer and changes in educational objectives) and proposed 8 CFR 214.2(f)(5)(ii)(A) ("An F-1 student at the graduate degree level or above may not change programs at any point during a program of study") disallow changes in educational objectives and transfers for graduate students. **These provisions are unusually harsh and would severely restrict academic flexibility for graduate-level study**.

In the preamble regarding these provisions,[38] DHS simply says that it's proposing "to prohibit F-1 students in a graduate level program of study from changing educational objectives or transferring from within the United States," but offers inadequate justification for these limits.

The proposed restrictions on graduate-level program changes should be abandoned.

The proposal to restrict graduate-level program changes is also overbroad. While perhaps aimed at preventing students from shifting to unrelated graduate degree objectives midstream, the proposed categorical prohibition would disrupt longstanding and essential graduate education practices. Here are two examples.

Disrupted practice: Student mobility to match adviser mobility

It is not uncommon for a faculty member to accept a new position at a new university or laboratory. Where the faculty member is the thesis or dissertation adviser of a student, an F-1 student currently has the option to transfer to the new school to continue the mentorship with that faculty member. The absolute prohibition on graduate student mobility would unnecessarily disrupt longstanding and essential graduate education practices. Here are two examples:

Disrupted practice: The awarding of a master's en route to the Ph.D.

At many U.S. universities, the master's en route is not a separate academic program but rather an embedded milestone within the Ph.D. curriculum. It serves both to recognize academic progress and to

[38] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-296

provide an exit credential for students who complete substantial graduate-level work but do not finish the dissertation. Importantly, students who receive this credential have not changed their program of study - they have simply concluded it early. In other cases, a student who sets out to do a doctoral degree may decide for a variety of legitimate reasons to discontinue that program and accept the master's degree.

The proposed rule's wording could be interpreted to prohibit conferral of a master's en route, which could be seen as a change of educational objective (defined as "educational level or major") that is prohibited under proposed 8 CFR 214.2(f)(8)(i)(C), or as a "change in program" that's prohibited under proposed 8 CFR 214.2(f)(5)(ii)(A) (since the use of the term "program" throughout the rule is so nebulous and undefined).

This would create several harmful consequences:

- **Institutional noncompliance risk:** Universities would be unsure whether awarding the master's en route would violate the new prohibition, chilling their willingness to award earned credentials.
- **Adverse student outcomes:** Students who leave a Ph.D. program after years of work could be denied any credential or forced to depart and seek readmission on a new F-1 solely to receive the master's, despite already meeting all academic requirements.
- **Misalignment with academic structure:** The rule assumes degree programs are discrete and sequential, but graduate education often uses nested structures (master's within Ph.D.), which SEVIS can already accommodate under current D/S rules.

If DHS does not abandon the provision in its entirety, as we recommend, to preserve the integrity of graduate education, DHS should at the very least establish exceptions to include, among others, that students can transfer to continue mentorship with their advisor, and that the conferral of a master's en route to the Ph.D. does not constitute a "change of program" and thus should not be barred by proposed 8 CFR 214.2(f)(8)(i)(C) or proposed 8 CFR 214.2(f)(5)(ii)(A).

DHS should not regulate the maximum amount of time needed for language study.

DHS proposes limiting ESL study to an aggregate of 24 months, including breaks and an annual vacation. NAFSA believes that achieving mastery of a language at a level sufficient for study at the college level should not be determined by an arbitrary limit set by an agency that does not specialize in language learning and pedagogy.

In addition, the language used in the proposed regulation and the explanatory notes in the preamble do not clarify whether the proposed limit is per uninterrupted stay in F-1 status or lifetime. A lifetime limit would be particularly unwise. Maintenance of language expertise over time is an ongoing process. For example, an 18-year old student who studies ESL for two years might return to their home country build a career in a non-English-speaking environment, only to find an opportunity years later that requires her to refresh her language skills and return to the United States for a second round of ESL.

The proposal to prohibit transfers and educational level changes during the first academic year is overbroad.

DHS proposes prohibiting a student studying at lower than the graduate level from either transferring or changing educational objectives "within the first academic year of a program of study" at the school whose Form I-20 was used to enter the United States.[39] This provision is overbroad.

For example, how would it apply to an ESL student who has completed a three-month program of intensive English language study who then wishes to transfer to another school to pursue an associate or bachelor's degree? Under SEVP's current definition of "academic year,"[40] three months would not constitute a full academic year and this provision as proposed would prohibit the student from transferring or even from changing levels at the same school, given the proposed rule's equally overbroad definition of educational objectives.

Also, although the proposed rule would allow SEVP to pre-authorize changing educational objectives or transferring before the completion of the first academic year, the proposal does not specify what the procedure is to request that SEVP authorization, nor does the proposed rule further explain what might constitute "extenuating circumstances" for this purpose, except for identifying school-level circumstances "that may include, but are not limited to, a school closure or a school's prolonged inability to hold in-person classes due to a natural disaster or other cause."[41]

DHS should allow international students to pursue new F-1 programs of study at the same or lower educational level.

DHS should not disallow or prohibit academic choice with arbitrary restrictions that limit movement between academic programs or levels. Instead, DHS should continue to focus its ongoing compliance and enforcement efforts based on smart, data-driven analysis, using the tools and regulatory authorities already available to it.

Proposed 8 CFR 214.2(f)(5)(ii)(C) provides that a student "who has completed a program in the United States as an F-1 nonimmigrant at one educational level may not maintain, be admitted, or otherwise be provided F-1 status through a program at the same educational level or a lower educational level."

This proposed rule language could possibly be read as a lifetime limit. Even though the preamble[42] talks about this as prohibiting "a change to the same or a lower educational level *while in F-1 status*," the language of the proposed rule (e.g., "be admitted, or otherwise be provided F-1 status") moves interpretation towards a lifetime limit. DHS must clarify this.

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[39] Proposed 8 CFR 214.2(f)(5)(ii)(A)

[40] SEVP Policy Guidance for Adjudicators 1408-01: Academic Year (October 10, 2014) provides that to constitute an "academic" year, an F-1 program measured in clock hours must "include a minimum duration of… Twenty-six weeks of instructional time." See: https://www.ice.gov/sites/default/files/documents/Document/2016/sevp-PG1408-01.pdf

[41] See proposed 8 CFR 214.2(f)(5)(ii)(A) and proposed 8 CFR 214.2(f)(8)(i)(D)

[42] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-90

A lifetime limit is particularly uncalled for and unjustified. There are many situations where another degree or certificate at the same or "lower" level would make academic or professional sense. For example, a student who completes an engineering degree should be able to then do a Master of Business Administration (MBA) to prepare for a career in technical patents, or a Master of Fine Arts degree recipient should be able to enroll in a post-graduate certificate in Photography to hone skills in that specialty discipline.

DHS should avoid durational limits that dampen innovation in educational programming.

The proposed rule, although characterized as a simple "check-in" with the government, would institute an unwieldy process that disproportionately impacts innovative courses, including those that involve collaboration between learning institutions.

For example, "2+2 degree programs" are educational pathways where students complete the first two years of a degree at a community college (often for an associate's degree) and then transfer to a four-year institution to finish the final two years and earn a bachelor's degree. This model is also known as the "2+2 model" and is a popular and affordable option for earning a bachelor's degree, with a major benefit being the cost savings and smooth credit transfer between institutions. Inserting a de-facto EOS requirement for educational programs of this type will upend the "smoothness" promised by the educational package and even discourage programs that pool resources.

DHS should preserve the requirement to make normal progress.

DHS also proposes to eliminate from the current regulations[43] a reference to "making normal progress" with respect to seeking a program extension.[44] While the "normal progress" standard for status maintenance is not overly specific, it is similar to standards used in the education industry. For example, schools are familiar with applying the concept of "satisfactory academic progress" for U.S. students who are receiving federal financial aid.[45] DHS proposes that it will adjudicate whether a student's need for an extension to complete a program of study is due to "compelling academic reasons."[46]

In addition, DHS dives deeply into the academic realm by proposing that it would find ineligible for a school transfer or changes to educational level or major a student who has "a pattern of behavior demonstrating a repeated inability or unwillingness to complete his or her course of study."[47] **These are academic decisions that the experts at educational institutions are better equipped to handle**.

DHS also asserts in the preamble that it "believes that the determinations of program extension and EOS should be separated, with the DSO's and RO's recommendation being one factor an immigration officer reviews while adjudicating an application for EOS."[48] **DHS, however, does not have expertise in making such determinations or creating such restrictions**. NAFSA asserts that the DSO's decision to

[43] Current 8 CFR 214.2(f)(5)(i)
[44] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-332
[45] https://studentaid.gov/understand-aid/eligibility/staying-eligible#satisfactory-academic-progress
[46] Proposed 8 CFR 214.2(f)(7)(i)(C)(2)(i)
[47] Proposed 8 CFR 214.2(f)(8)(i)(F)
[48] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-164

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extend the program of a student who is making satisfactory academic progress according to the school's standards is sufficient. The current regulation already requires DSOs to approve extensions only after determining that the delays in completion "are caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses."

If DHS is interested in enhancing the requirements for DSO determinations of eligibility for a program extension, rather than change a decades-old policy that works well, it could change 8 CFR 214.2(f)7)(iii) to specify that the DSO must base the academic determination on documentation such as a letter from the student's academic adviser or dean and retain that documentation for inspection upon the request of the agency.

We also believe that **the current system provides adequate information to DHS, through SEVIS, to spot any trends that merit further inquiry** through the procedures that already exist at 8 CFR 214.3.

DHS should reconsider its 4-year limit.

In the Regulatory Impact Statement (RIS) for the August 28, 2025, proposed rule,[49] DHS acknowledges only a narrow set of alternatives—"no action," a 2-year period, the hybrid 2/4-year period proposed in the 2020 rulemaking, and limited SEVIS-based targeting.

DHS justifies a 4-year maximum period by weighing enforcement desires against nonimmigrant and school or program burden but does not explain why other systems within the context of D/S were not considered.[50]

Regardless, even longer periods of maximum admission would do nothing to address the plight of shorter programs like ESL and pathway programs and other situations where students seek to achieve their academic objectives through a series of connected educational opportunities.

In the end, DHS simply dismisses all alternatives in favor of a one-size-fits-all EOS requirement.

DHS should increase the J-1 and M-1 category grace periods to 60 days, not reduce the F-1 grace period to 30 days.

DHS states in the preamble that it believes that the F category, albeit distinct from M or J, shares a core similarity in that many aliens in these categories are seeking admission to the United States to study at U. S. educational institutions.[51] Thus, DHS thinks that the current 60-day F-1 post-completion "grace period" to prepare for departure, or take other actions to extend, change, or otherwise maintain lawful status should be reduced to the 30-day "grace period" of the J-1 and M-1 categories.[52] While we agree that the F, M, and J categories share some important aspects, we submit that the parity DHS seeks should be achieved by increasing the J-1 and M-1 grace periods to 60 days, not by reducing the F-1 grace period to 30 days.

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[49] DHS Regulatory Impact Analysis, at https://www.regulations.gov/document/ICEB-2025-0001-0143
[50] For example, under the 1987 final rule students were admitted for duration of status but also had to file a request for extension of stay with (legacy) INS if they would be "in student status for eight consecutive academic years." See the 1987 final rule published at 52 FR 13223, 13227 (April 22, 1987).
[51] See 2025 proposed rule preamble at https://www.federalregister.gov/d/2025-16554/p-308
[52] See proposed 8 CFR 214.1(a)(4)(i)(A)

IV. DHS Should Seek to Preserve and Promote U.S. Preeminence in Education

DHS's proposal to eliminate duration of status and impose restrictions on academic mobility does not adequately account for the realities of U.S. higher education and exchange programming, and in doing so risks undermining America's global preeminence. The proposed rule relies on incomplete sources for average program lengths, imposes a four-year maximum admission period that is inconsistent with normal academic pathways, and disregards the length of doctoral, medical, and research programs. By forcing nearly all international Ph.D. students and many J-1 exchange visitors to seek extensions of stay, DHS would shift authority for program completion away from U.S. institutions and into USCIS's hands. At the same time, DHS offers only a cursory and inaccurate assessment of the proposal's economic and diplomatic consequences, ignoring well-documented contributions of international students and exchange visitors to U.S. campuses, the workforce, local economies, and global engagement.

DHS should account for the dynamic nature of modern U.S. educational offerings and exchange programming.

DHS points to a simple, outdated Department of Education webpage as the source of its data on average degree completion times.[53] While the majority of U.S. bachelor's degree programs may be structured to be completed within four years, a maximum admission period of four years is not adequate for doctoral degree completion. The Education Department webpage indicates four years for a doctorate without specifying the source of that assertion.

While U.S. higher education is often viewed through the lens of bachelor's degree programs at what are known as "four-year institutions," the four-year maximum period of admission proposed by DHS does not match the reality of study.

According to the Education Department's primary statistics agency, the National Center for Education Statistics (NCES), **the median time to complete a bachelor's degree is 56.3 months (or 4.33 years)**.[54] The maximum admission period does not account for normal academic endeavors such as the need to change majors, take courses outside of one's major, or add a minor. Dual-degree programs often require additional years of study. According to the National Science Foundation's principal statistics agency, the National Center for Science and Engineering Statistics (NCSES), the median years to a research doctorate

[53] See preamble footnote 91 at https://www.federalregister.gov/d/2025-16554/p-233, citing "The Mobile Digest of Education Statistics, 2017, The Structure of American Education, available at https://nces.ed.gov/programs/digest/mobile/The_Structure_of_American_Education.aspx". Also see preamble footnote 92 at https://www.federalregister.gov/d/2025-16554/p-234, which, although it cites from the Department of Education's 2023 Digest of Education Statistics at https://nces.ed.gov/programs/digest/d23/tables/dt23_326.10.asp, that data is from cohort entry years 1996-2016.

[54] National Center for Education Statistics Fast Facts, https://nces.ed.gov/fastfacts/display.asp?id=569 (accessed September 24, 2025)

is 5.7 years from entering a program to completion, while those who complete the master's/doctorate sequence take an average of 7.3 years from entering graduate school to completion.[55]

Participants in Ph.D. programs in the United States will face a particular and unwarranted hardship This means that **nearly every international PhD student will be required to file for an extension of stay**. The ability of PhD students to complete their studies will be in the hands of USCIS and not their higher education institution.

In the preamble, DHS notes that before arriving at the four-year admission period it proposes, it considered only a two-year standard admission period, in addition to taking no action (which we recommend) and the 2/4-year system proposed in 2020.[56] Although DHS states that a two-year period would "unduly burden many F and J nonimmigrants" as well as "place greater administrative burdens on USCIS and CBP,"[57] **it does not adequately address the same burdens on many shorter-term students**, including ESL students, many of whom may be admitted for a single term and would need to extend as needed to reach their linguistic goals, to associate's degree students coming to a U.S. community college with a view to transferring to a bachelor's degree program,[58] pathway programs who have been instructed by SEVP[59] to first issue an I-20 for the ESL pathway portion of the program and then after completing that portion to issue a change of level I-20 to begin their degree program to which they had initially only been conditionally admitted, etc. All of these innovative programs and approaches would be required to navigate the unnecessary EOS protocol proposed by DHS.

In addition, on the J-1 side of the equation:

- The J-1 Professor/Research Scholar category is available for a maximum of five years. A four-year limit would arbitrarily limit all five-year research and postdoctoral programs to four years, making these exchange participants apply for an expensive and time-consuming extension of stay in every case in order to complete the last year of the program.
- The J-1 Alien Physician category, for physicians engaged in clinical residencies and fellowships, is available up to seven years to accommodate the lengthy preparation involved in many medical specialties. Requiring all physicians in such specialties to file an extension of stay application would introduce unnecessary distractions and could interrupt the continuity of patient care.

DHS must analyze the financial and diplomatic impact of this proposed rule.

In the proposed rule, DHS provides only a perfunctory and inadequate analysis of the rule's financial impact on the U.S. education sector. Most fundamentally, DHS vastly underestimates the adverse

[55] NSF, "Survey of Earned Doctorates," 2024, https://www.nsf.gov/statistics/srvydoctorates/#tabs-2 (accessed September 5, 2025)
[56] 2025 proposed rule preamble to the proposed rule, https://www.federalregister.gov/d/2025-16554/p-237
[57] Id.
[58] See, e.g. SEVP's Study in the States page "What is Community College" at https://studyinthestates.dhs.gov/2012/03/what-community-college that describes community colleges as "two-year schools that provide affordable postsecondary education as a pathway to a four-year degree."
[59] See SEVP Policy Guidance S7.2: Pathway Programs for Reasons of English Proficiency, October 28, 2016, at https://www.ice.gov/doclib/sevis/pdf/pathwayS7.2englishProficiencyReasons.pdf

impact this proposed rule will have on foreign student enrollments and exchange programs, which will in turn impact colleges, universities, and foreign exchange programs generally. International students at U.S. colleges and universities contribute billions of dollars to the U.S. economy and support hundreds of thousands of U.S. jobs. Beyond those direct economic impacts, the presence of foreign students in U.S. higher education contributes substantially to academia, workforce development, global understanding, and diplomatic ties more generally. This proposed rule will negatively impact the entire country.

The NPRM underestimates the adverse impact on enrollments and exchange.

In the proposed rule's preamble, DHS correctly states that the "global market for nonimmigrant students is competitive and many U.S. schools hold an advantage over foreign institutions due to the quality of the programs they offer." But the agency then grossly underestimates the effect of the proposal, stating only that "the proposed rule may have a marginal impact on nonimmigrant student enrollment." [60]

Compare this to the agency's statement in the similar 2020 proposed rule, where DHS admitted that ending D/S "may adversely affect U.S. competitiveness in the international market for nonimmigrant student enrollment and exchange visitor participation," and "could decrease nonimmigrant student enrollments in the United States with corresponding increased enrollments in other English-speaking countries."[61] These other countries have policies akin to D/S that allow ongoing legal immigration status for the length of students' enrollment without the uncertainty of a required EOS filing that could derail their studies.

U.S. higher education is already under enormous pressure due to a slate of unwelcoming immigration policies and executive orders**. Ending D/S would add yet another significant deterrent to talented students and exchange visitors who are seeking a predictable educational experience or research opportunity in the United States**.[62]

In the proposed rule, DHS also brushes away any concerns or uncertainty that current and prospective students and exchange visitors would experience, stating in a conclusory manner only that "DHS maintains that eligible students should have no difficulty with getting their EOS requests approved, which should alleviate concerns about the uncertainty of EOS approval."[63] As stated above, DHS makes an anemic nod to the fact that "many U.S. schools hold an advantage over foreign institutions due to the quality of the programs they offer" but says nothing about the erosion of that advantage due to unfortunate government policies and the fierce and increasing competition from other countries for the same talent.

[60] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-445
[61] 2020 proposed rule preamble, https://www.federalregister.gov/d/2020-20845/p-592
[62] NAFSA Fall 2025 International Student Enrollment Outlook and Economic Impact: "Scenario modeling based on a potential 30-40 percent decline in new international student enrollment in the United States this fall could result in a 15 percent drop in overall enrollment." See https://www.nafsa.org/fall-2025-international-student-enrollment-outlook-and-economic-impact
[63] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-445

The Institute for Progress and NAFSA conducted recent surveys to understand the international student talent pipeline[64] **where 49% of respondents who were current international students studying in the United States said they would not have enrolled in the first place had D/S been replaced with a fixed period of admission**. Of the **prospective students surveyed, 16% fewer respondents said they were likely to enroll in U.S. programs if D/S were replaced with a fixed period of admission** (57%) compared to the current rules (67%).

It is unrealistic to expect international students to choose to study here when it is entirely possible that their legal immigration status will not be extended throughout the time they would need to complete their studies or finish their programs. The prospect of being forced to leave a country before completing a degree or program or instead losing one's valid immigration status is hard to justify for many students. **This proposed rule will necessarily depress the enrollment of foreign students at U.S. colleges and universities to a far greater extent than what the NPRM is willing to admit**.

International students make significant contributions to the U.S. economy and support hundreds of thousands of jobs.

Noted earlier, international students and exchange visitors generate billions of dollars of spending in local economies and contribute groundbreaking research and innovation that maintains the United States' critical edge in a competitive global economy. NAFSA and JB International conduct an annual analysis of the economic contributions of international students and their families to the U.S. economy, and their latest analysis found that international students studying at U.S. colleges and universities contributed that international students studying at U.S. colleges and universities contributed **$43.8 billion** and supported **378,175 jobs** to the U.S. economy during the 2023-2024 academic year.[65] For every three international students, one U.S. job is created or supported.[66]

Another study[67] separately submitted in comment on this proposed rule by three immigration experts who have assessed over 20 years of administrative data from USCIS, SEVIS, and the U.S. Census estimates that **the proposal to eliminate D/S, if implemented, would incur annual losses of $72-145 billion by 10 years into the future**, compared to the $3.3 billion of costs cited by DHS in the proposed rule preamble and DHS's Regulatory Impact Assessment. This is a difference of more than 22 times higher in cost to what DHS presents.

[64] Surveys on International Talent Pipelines, Institute for Progress and NAFSA: Association of International Educators, September 15, 2025, accessed at https://ifp.org/wp-content/uploads/2025-Surveys-on-International-Talent-Pipelines-1.pdf
[65] NAFSA International Student Economic Value Tool, https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2
[66] The United States of America: Benefits from International Students, NAFSA: Association of International Educators, https://www.nafsa.org/sites/default/files/media/document/EconValue2024.pdf
[67] Comment of M. Clemens, J. Neufeld, A. Nice, submitted on the proposed rule, text at https://ifp.org/wp-content/uploads/Clemens-Neufeld-Nice-D-S-Elimination-comment.pdf

An additional study by the same experts[68] also points out that **international students form an essential part of the science, technology, engineering, and mathematics (STEM) workforce pipeline.** That study finds that **expected reductions in STEM international students after the combined effect of eliminating duration of status admissions, restricting Optional Practical Training, and reducing access to H-1B status, would impact the U.S. STEM workforce and ultimately "reduce annual productivity growth in the US economy by 3 to 6% (not percentage points), cumulating to a loss of $220–439 billion per year after 10 years."**

Driving away international talent in general is predicted to **cost the U.S. economy $7 billion in revenue and more than 60,000 jobs** due to projected declines in new international student enrollment in the upcoming 2025-2026 academic year.[69]

In its proposed rule, however, DHS does not even mention the economic and job contributions of international students and exchange visitors. The absence of acknowledging or addressing these very real and inevitable economic impacts render this proposed rule's analysis inadequate. Because DHS does not analyze or engage in any way with the costs the proposal would impose on America's job market, talent pool, and economic growth, **the cost-benefit and regulatory impact analyses in the proposal are inadequate and unrealistic**.

International students' and exchange visitors' contributions extend to academia, workforce development, global understanding, and diplomatic ties.

Beyond the economic contributions illustrated above, international students and exchange visitors provide immense contributions to our campuses and communities in the areas of academia, workforce development, global understanding, and diplomatic ties. **International student enrollment helps to maintain the viability of courses and majors when domestic enrollment lags, specifically in some STEM fields**.

Since 2000, immigrants have represented 40 percent of all American Nobel Prize recipients in chemistry, medicine, and physics.[70] To be sure, the United States must do more to ensure more American students are prepared and eager to study in STEM fields. But in the meantime, the presence of foreign students allows U.S. colleges and universities to maintain robust STEM departments and offer a wider and stronger selection of courses for American and foreign students alike. According to IIE's 2024 *Open Doors* report, 56% of international students in the United States pursue STEM fields.[71] Without these students in the classroom, there would be fewer course options for American students.

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[68] Brain Freeze: How International Student Exclusion Will Shape the STEM Workforce and Economic Growth in The United States, M. Clemens, J. Neufeld, A. Nice, text at https://ifp.org/wp-content/uploads/Clemens-Neufeld-Nice-9-28-25.pdf

[69] NAFSA Fall 2025 International Student Enrollment Outlook and Economic Impact, https://www.nafsa.org/fall-2025-international-student-enrollment-outlook-and-economic-impact

[70] National Foundation for American Policy, NFAP Policy Brief, October 2023, *Immigrants and Nobel Prizes: 1901-2023*, https://nfap.com/wp-content/uploads/2023/10/Immigrants-and-Nobel-Prizes-1901-to-2023.NFAP-Policy-Brief.October-2023.pdf

[71] Open Doors International students data, https://opendoorsdata.org/annual-release/international-students/

International students and scholars studying and conducting research alongside American students and scholars also helps foster a mutual understanding of each other's cultures. Their perspectives, experiences, and competencies provide a window to the world that U.S. students and researchers need to be successful in developing products and services for the global marketplace. No matter the political winds, growth in the U.S. job market is inextricably tied to the world outside our borders. **The ability to conceive of, develop, and market goods and services to non-U.S. markets is essential to future business success and innovation**.

When international students and exchange visitors return home, they bring with them a deeper knowledge and understanding of our country and become America's greatest foreign policy assets. They strengthen links in trade, research cooperation, and diplomacy. Since World War II, U.S. institutions of higher education have welcomed and educated millions of students from all over the world, with many going on to become world leaders and some of our closest friends and allies. U.S. foreign policy leaders across the political spectrum, from Colin Powell to Madeleine Albright to Robert Gates, all agree that our openness to international students and exchange visitors helps to strengthen ties with countries across the globe.

It is also worth mentioning that **almost half of U.S. "unicorns" have a foreign-born founder**.[72]

V. Miscellaneous and Technical Comments

F and J nonimmigrant status, not just period of authorized stay, should be extended while EOS applications are pending.

DHS states in the preamble that F nonimmigrants with a timely filed EOS application and whose EOS application is still pending after their admission period indicated on Form I-94 has expired "would be authorized to continue pursuing a full course of study after the end date of his or her admission until USCIS adjudicates the EOS application."[73]

Although logical and appreciated, this does not mean that the student is seen to be in valid F-1 status while the EOS is pending.

And although the heading of proposed 8 CFR 214.2(f)(5)(viii) implies that students with a timely filed extension of stay application would receive "Automatic Extension of F stay," the wording of that provision states only that a student with a timely filed extension application "will be considered to be in a period of authorized stay."

Likewise, proposed 8 CFR 214.2(j)(1)(vii)(A) says that a J-1 exchange visitor who has filed a timely EOS application with USCIS would be "authorized to continue engaging in activities consistent with pursuing the terms and conditions of the alien's program objectives," but not that the exchange visitor remains in actual J-1 nonimmigrant status while the EOS is pending.

[72] A unicorn founder is the leader of a privately held startup company that has achieved a valuation of over $1 billion. See *Nearly Half Of US Unicorns Have Foreign-Born Founders*, Global Finance magazine, December 4, 2024, https://gfmag.com/capital-raising-corporate-finance/us-unicorns-immigrant-founders/
[73] 2025 proposed rule preamble, https://www.federalregister.gov/d/2025-16554/p-317

A period of authorized stay is very different than nonimmigrant status. While being considered in a period of authorized stay may protect an applicant from being subject to the INA 222(g) overstay penalty and accruing unlawful presence under INA 212(a)(9)(B), DHS has long distinguished between valid nonimmigrant status and a period of authorized stay.[74]

In fact, it has been USCIS's long-standing policy that "lawful nonimmigrant status ends and you are out of status when your Form I-94 expires, even if you have timely applied to extend your nonimmigrant status.[75] Given exceedingly long USCIS processing times, this rule would needlessly jeopardize the immigration status of international students and exchange visitors if finalized as proposed.

NAFSA urges DHS to withdraw this proposal in its entirety. However, if DHS continues toward a final rule, at a minimum, for an F or J nonimmigrant, the regulatory wording should be revised to clarify that an applicant with a timely filed EOS application should be considered to be in valid F or J nonimmigrant status, not just in a period of authorized stay, while an EOS application is pending, and remain eligible for all benefits of such status while the application is pending.

Erroneous or beyond-the-scope removal of I-129 deference language.

The proposed rule would replace the "deference" to prior Form I-129 determinations language in the current regulation at 8 CFR 214.1(c)(3)(v) with completely new language relating to USCIS discretion in granting EOS applications:

- **Current** 8 CFR 214.1(c)(5): "(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): "(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 is odd for two reasons. First, it revises a petition-based immigration provision in a rulemaking on F students, J exchange visitors, and I media professionals. Second, it would leave 8 CFR 214.1(c) with two almost identical "discretion" paragraphs, as the proposed rule leaves intact the existing "discretion" provision at current 8 CFR 214.1(c)(7):

> (7) *Decision on extension or amendment of stay request*. Where an applicant or petitioner demonstrates eligibility for a requested extension or amendment of stay, USCIS may grant the

[74] See USCIS Adjudicator's Field Manual 40.9.2, at https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf; AFM 40.9.2 is also referenced and linked to on USCIS's Unlawful Presence and Inadmissibility page at https://www.uscis.gov/laws-and-policy/other-resources/unlawful-presence-and-inadmissibility

[75] See for example "C1—I am a nonimmigrant…How do I extend my nonimmigrant stay in the United States?" [Form M-579B], May 2016, at https://www.uscis.gov/sites/default/files/document/guides/C1en.pdf

> extension or amendment in its discretion. The denial of an extension or amendment of stay request may not be appealed.

We suggest that DHS possibly meant to revise paragraph (c)(7) rather than paragraph (c)(5). In any case, we believe that amending an H-1B provision is beyond the scope of this proposed rulemaking and should not be included.

Cleaning up pre-SEVIS language.

If DHS adopts any part of this proposed rule, the agency should also take the opportunity to clean up current 8 CFR 214.2(j)(1)(i) by removing this outdated language at the end of that paragraph:

> "… Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an exchange visitor possessing a SEVIS Form DS-2019 to enter the United States using a copy of the exchange visitor's SEVIS Form DS-2019. However, where the exchange visitor presents a properly completed Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, which was issued to the J-1 exchange visitor by a program approved by the Department of State for participation by exchange visitors and which remains valid for the admission of the exchange visitor, the accompanying spouse and children may be admitted on the basis of the J-1's non-SEVIS Form DS-2019."

DHS should remove the 30-day I-765 filing requirement, as it had proposed doing in 2020.

In the preamble to the 2020 proposed rule,[76] DHS proposed striking the current language in 8 CFR 214.2(f)(11)(i)(B)(2) and (C) which requires students to file their Form I-765 with USCIS within 30 days and 60 days, respectively, of the date that the DSO enters a post-completion OPT or STEM OPT recommendation into SEVIS, stating that "such a timeframe for obtaining the DSO recommendation seems unnecessary given that students would always be required to first get their DSO's recommendation before filing their Form I-765 requesting OPT employment authorization and a regulatory timeframe for submitting the I-765 is already in place."

We recommend that DHS also remove the 30/60-day I-765 filing requirement in the 2025 rulemaking, as it proposed doing in 2020.

F-1 SEVIS is currently programmed to allow only one year of extension at a time.

The "Extend Program" functionality of the F-1 SEVIS release in effect at the time this comment was prepared limits the new program end date of the extension to no more than one year from the date of

[76] *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*, 85 FR 60526, 60554 (September 25, 2020), preamble to the 2020 proposed rule, at https://www.federalregister.gov/d/2020-20845/p-405

the student's current program end date.[77] This programming exists despite the fact that the current extension of stay regulation[78] does not limit the term of the extension period. This would have to be remedied. This comment would also go towards the information collection comment on DHS Docket No. ICEB-2025-0001.

Conclusion

For more than three decades, the D/S framework has enabled the United States to attract the world's most talented students and exchange visitors while ensuring robust oversight through the SEVIS system and the expertise and commitment of designated school and exchange program officials. **The proposed rule would dismantle this proven model and replace it with a duplicative, costly, and burdensome system that offers no demonstrated benefit. It would inject profound uncertainty into the educational experience, deter international talent, and overwhelm an already overextended USCIS—undermining U.S. competitiveness, innovation, and global standing in the process**. DHS has not shown systemic problems with the current D/S policy beyond speculation based on anecdote and has not meaningfully evaluated less disruptive alternatives such as modest SEVIS enhancements or a simple registration mechanism.

For all of the reasons explained above, **NAFSA strongly opposes the proposed rule to eliminate D/S for F and J nonimmigrants, including its attendant restrictions on academic mobility**. We urge DHS to withdraw this proposal. If DHS nevertheless proceeds, it must at a minimum provide a substantially longer comment period, revisit its assumptions and data, and fully engage with the educational and exchange community to develop any reforms collaboratively. Our nation's success depends on an immigration policy that is secure, efficient, and welcoming—one that strengthens rather than undermines the global exchange of knowledge and ideas that fuels the preeminence of U.S. higher education, research, and economic vitality.

Respectfully submitted,

NAFSA: Association of International Educators

[77] SEVP's SEVIS Help Hub, Extending the F-1 Form I-20, confirms: "The Student and Exchange Visitor Information System (SEVIS) allows for an extension period of up to one year." See https://studyinthestates.dhs.gov/sevis-help-hub/student-records/manage-program-dates-registration-and-course-load/extending-the-f-1.
[78] Current 8 CFR 214.2(f)(7)

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