



Town Hall: Proposed Rule to Eliminate D/S

October 13, 2020

NAFSA: ASSOCIATION OF INTERNATIONAL EDUCATORS

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Introduction – Steve Springer

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**THE VOLUME ON THE
COMPUTER SPEAKERS**



**THE SOUND CARD ON
THE COMPUTER**

Today's Presenters

Machelle Allman

Director, Center for
International Education,
University of Washington-
Bothell Campus

Rachel Banks

Senior Director, Public
Policy & Legislative
Strategy, NAFSA

Samuel Brown

Director of International
Services, Brigham Young
University

David Fosnocht

Director of Immigration
Practice Resources,
NAFSA

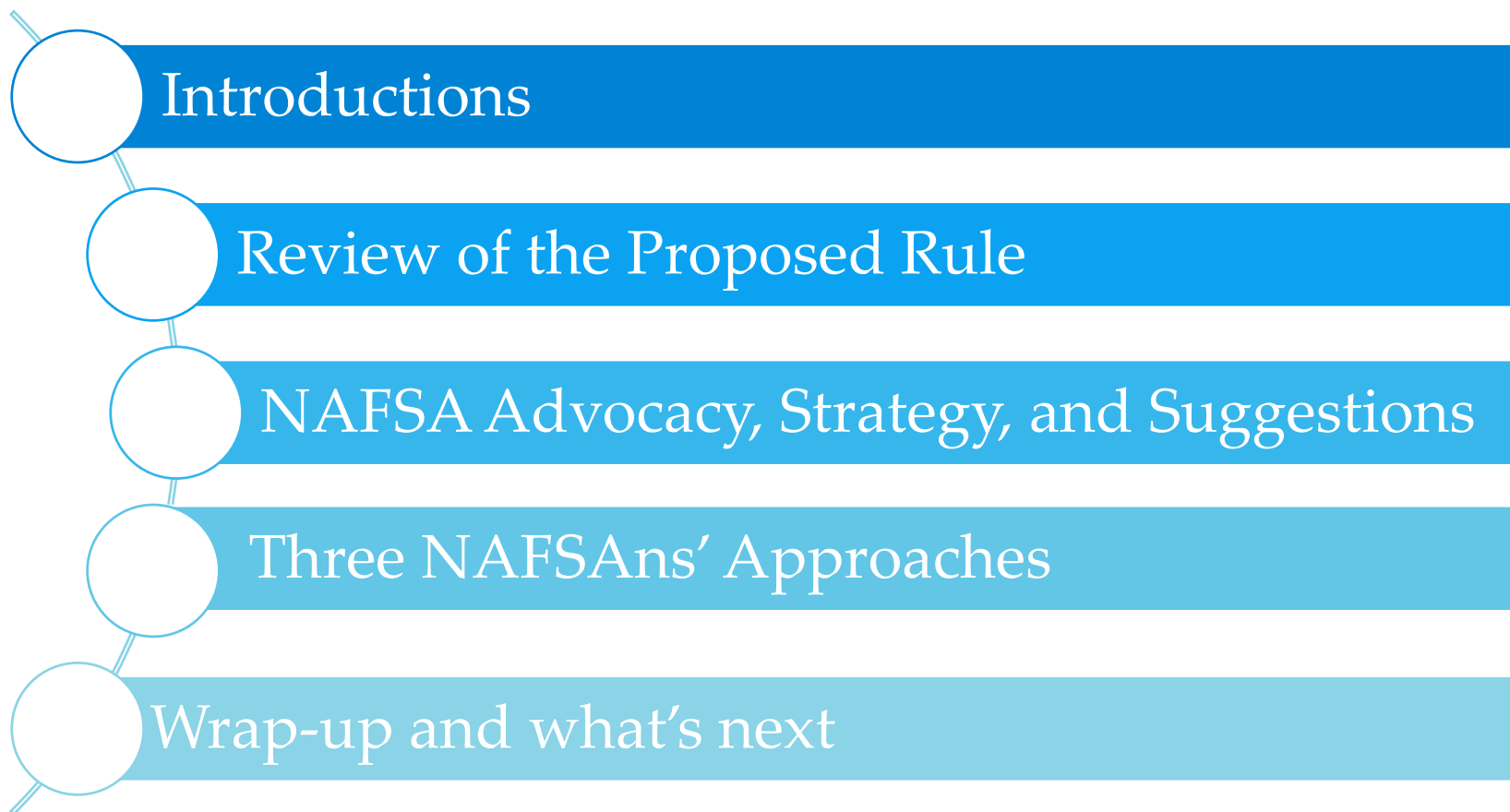
Mihaela Metianu

Executive Director, Center
for Global Engagement,
Florida Atlantic University

Steve Springer

Director of Regulatory
Practice Liaison, NAFSA

Overview



Polls

Have you signed up for Connecting Our World, NAFSA's grassroots advocacy website?

- Yes
- No
- Not Yet

Have you visited NAFSA's web page "Proposal to replace duration of status" (<https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status>)

- Yes
- No
- Not Yet



Proposed Rule – David Fosnocht

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The Proposed Rule

DHS proposes to amend five sections of Title 8 of the Code of Federal Regulations (8 CFR):

- [8 CFR 214.2\(f\)](#) (F-1 regulations)
- [8 CFR 214.1](#) (general regulation on requirements for admission, extension, and maintenance of status)
- [8 CFR 214.2\(j\)](#) (DHS J-1 regulations; Only the DHS J-1 regulations are included in the proposed rule; The Department of State is not proposing changes to the J-1 regulations at 22 CFR)
- [8 CFR 248](#) (general change of status regulations)
- [8 CFR 274a.12](#) (regulations on employment verification and employment authorization)

In the first part of the Federal Register notice (the preamble) DHS discusses the proposed changes, and the second part of the notice contains the actual regulatory language being proposed.

NAFSA versions of the affected sections show how the regulatory language would change if the proposed rule is finalized as proposed. Links to these resources and more, on NAFSA's proposed rule page at:

<https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status>

NAFSA Resource



8 CFR 214.2(f)(5)

(5) *Duration of status* Authorized admission periods --

8 CFR 214.2(f)(5)(i)

(i) *General.* Except for border commuter students covered by the provisions of paragraph (f)(18) of this section, an F-1 student is admitted for duration of status. Duration of status is defined as the time during which an F-1 student is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies; except that an F-1 student who is admitted to attend a public high school is restricted to an aggregate of 12 months of study at any public high school(s). An F-1 student may be admitted for a period up to 30 days before the indicated report date or program start date listed on Form I-20. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of study. If eligible for admission as described in paragraph (f)(1)(i) of this section, aliens seeking F-1 status may be granted such nonimmigrant status for up to the length of their program (including any period of authorized practical training time following the completion of studies to engage in post-completion optional practical training (OPT) and Science Technology Engineering and Mathematics Optional Practical Training (STEM OPT) extensions) listed on the Form I-20, not to exceed a period of 4 years, plus a period up to 30 days before the indicated report date or program start date listed on Form I-20 and an additional 30 days at the end of the program, as provided in paragraph (f)(5)(iv) of this section, subject to the following exceptions:

(A) Aliens subject to the limitations described in paragraph (f)(20) of this section may be admitted for the applicable period under that paragraph.

(B) Aliens whose course of study is in a language training program are restricted to an aggregate total of 24 months of language study, including any school breaks and annual vacations.

(C) Aliens who are granted F-1 status as border commuter students under the provisions in paragraph (f)(18) of this section may be admitted for the applicable period described under that paragraph.

(D) Aliens who are granted F-1 status to attend a public high school are restricted to an aggregate of no more than 12 months to complete their course of study, including any school breaks and annual vacations.

(E) Aliens with pending employment authorization applications who are admitted based on the DSO's recommended employment end date for post-completion OPT or STEM OPT specified on their Form I-20, with a notice issued by USCIS indicating receipt of the Application for Employment Authorization, Form I-765 or successor form for post-completion or STEM OPT, who cease employment pursuant to an employment authorization document (EAD) that expires before the alien's fixed date of admission as noted on their I-94, will be considered to be in the United States in a period of authorized stay from the date of the expiration noted on their EAD until the fixed date of admission as noted on their I-94.

(F) The authorized period of stay for F-2 dependents may not exceed the authorized period of stay of the principal F-1 alien.

Summary of the Proposal

Today we'll highlight:

- Date-Specific admission of F and J nonimmigrants – no more D/S
- Academic-related restrictions
- Extension of stay mechanics and standards of eligibility
- Immigration status
- Employment-related issues
- Institutional impacts
- Resources

Date-Specific admission of F, J (and I) nonimmigrants

- **Date-specific admission.** Admission to the U.S. for a fixed period instead of duration of status (D/S). I-94 expiration date will be:
 - The program end date on Form I-20 or DS-2019, plus 30 days
 - But not to exceed a 4 or 2-year maximum
 - F-1 grace period reduced to 30 days (currently 60)
 - The rule would not change the program period a school or program could put on I-20 or DS-2019... it would limit the period of admission that CBP or USCIS would give on the F or J's Form I-194
- **File I-539 EOS if need to stay longer.** Individuals who need time beyond the period of admission on their I-94 would have to timely file a complete extension of stay application (Form I-539/I-539A) with USCIS before their I-94 expiration date.
 - Must pay I-539 fee **and** biometric data fee
 - Will likely face long I-539 adjudication times
 - Benefit from legal representation?
- **If I-539 denied.** If the applicant's period of authorized stay expired while the application was pending, applicant and dependents must immediately depart the United States. – no grace period

Date-Specific admission: 4/2 maximum

- Admitted until the program end date on Form I-20 or DS-2019, but not to exceed a 4 or 2-year maximum.
- Groups subject to a limited 2-year admission instead of a 4-year admission:
 - State Sponsor of Terrorism List (born in or citizen of) – FR notice
 - For now: North Korea, Iran, Sudan, and Syria
 - Country with > 10% student overstay rate (citizen of) – FR notice
 - For now: Afghanistan, Benin, Bhutan, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo-Brazzaville, Congo-Kinshasa, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, the Gambia, Ghana, Guinea, Guinea-Bissau, Guyana, Haiti, Iraq, Kenya, Kosovo, Kyrgyzstan, Liberia, Libya, Malawi, Mali, Mauritania, Moldova, Mongolia, Nepal, Niger, Nigeria, Papua New Guinea, the Philippines, Rwanda, Samoa, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Syria, Tajikistan, Tanzania, Togo, Tonga, Turkmenistan, Tuvalu, Uganda, Uzbekistan, Vietnam, Yemen and Zambia
 - School or exchange program not **fully** participating in E-Verify
 - U.S. national interest (e.g., nuclear science) – FR notice
 - Unaccredited post-secondary institution (F-1 only)
 - Language training programs. “The student is attending an English language training program, which does not lead to a degree.”
- So, Fs and Js pursuing similar programs could be admitted to the U.S. for different time periods on their I-94

Sample scenario

General scenario: Tarek is an Egyptian citizen born in Syria while his parents were stationed there while working for an Egyptian company. He received offers of admission to both University X and University Y for a 4-year BFA degree.

Current rule

Whichever school he chooses to attend, he could be admitted to the United States in F-1 status for Duration of Status (D/S), and upon completion could file a Form I-765 to apply for OPT.

Proposed rule

Since Tarek was born in Syria, he would be limited to a 2-year admission in F-1 status to attend either school, even though he is not a citizen of Syria, and would have to file an I-539 to complete the second 2 years of the program, and then another I-539 with a Form I-765 to apply for OPT.

Sample scenario

General scenario: Tarek is an Egyptian citizen born in Alexandria, Egypt. He received offers of admission to both University X (fully enrolled in E-Verify) and University Y (enrolled in E-Verify only for a specific federal contract) for a 4-year BFA degree.

Current rule

Whichever school he chooses to attend, he could be admitted to the United States in F-1 status for Duration of Status (D/S), and upon completion could file a Form I-765 to apply for OPT.

Proposed rule

At University X:

- Could be admitted for 4 years in F-1 status
- Must file a Form I-539 and Form I-765 to apply for OPT

At University Y:

- limited to a 2-year admission in F-1 status
- Must file I-539 to complete second 2 years of the program
- Must file another I-539 with a Form I-765 to apply for OPT

Extension of stay mechanics and standards of eligibility

- I-539 as the extension of stay application form. Used if period of admission on Form I-94 is insufficient :
 - To complete current program (F-1 and J-1)
 - For change of educational level (F-1) or matriculation (J-1)
 - For school or program transfer (F-1 and J-1)
 - To engage in OPT or STEM OPT (F-1, must also file I-765) or academic training (J-1)
- Period of extension = same rules as period of admission: time needed to complete the program or requested practical training, not to exceed 4 (or 2) years.
- Biometrics. As part of an EOS application, USCIS requires biometric collection and will require such collection from F, J, and I nonimmigrants under the proposed rule. All must also pay the \$85 biometric fee.
- Proof of sufficient funding for F-1 students extending their stay.
- Possibility of an interview
- Dependents of F-1 and J-1 must also file I-539/I-539A for EOS or F-1 reinstatement and pay biometric fee.

Transition provisions

- **In U.S. in D/S on final rule effective date.**
 - F or J nonimmigrants previously admitted for D/S would be transitioned to a fixed date of admission, which would be:
 - the program end date of the Form I-20 (or OPT EAD) or DS-2019 that is valid on the final rule's effective date,
 - plus an additional period of 60 days for F nonimmigrants and 30 days for J nonimmigrants, but
 - not to exceed a period of 4 years from the final rule's effective date (even if in a “2-year” category)
- **Travel and reentry after the final rule effective date.**
 - An F or J nonimmigrant who departs the United States and seeks admission after the final rule's effective date becomes subject to the fixed date framework that would be imposed by this rule (e.g., admission for 2 year maximum if in a “2-year category”)
- **OPT and STEM OPT.**
 - F-1 applicants for OPT or STEM OPT whose I-765 is pending with USCIS on the final rule effective date could remain in the U.S. while the application is pending. They would not have to file an I-539 or re-file an I-765.
 - If USCIS **approves** the OPT, the F-1 could remain in F status until the expiration date of the OPT EAD, plus 60 days.
 - If USCIS **denies** the OPT:
 - If the student's program end date has not yet passed, could remain in the United States until the program end date listed on their Form I-20, plus 60 days
 - If the program end date and 60-day grace period has passed by the time USCIS denies the I-765, student must immediately depart the United States

Travel

- **Travel while EOS application is pending, return before current program end date**
 - If reenter before current program end date, can be readmitted for balance of time remaining plus 30-day grace period.
 - “USCIS would not consider the EOS application abandoned.”
 - Pending EOS “would remain relevant and ultimately determine the alien's fixed date of admission.”
- **Travel while EOS pending, return on extension I-20 or DS-2019**
 - If reenter on I-20 or DS-2019 with end date beyond form current at time of departure, pending EOS is deemed abandoned and CBP will most likely refer to extension I-20 or DS-2019 for period of readmission.
 - Doesn’t answer directly what happens when student or exchange visitor exits the United States while EOS pending and reenters after the EOS application is approved... most likely, CBP will refer to extension I-20 or DS-2019.
- **Travel while EOS and OPT and J-2 work authorization applications are pending**
 - “CBP does not adjudicate applications for employment authorization. USCIS would continue processing any such applications, notwithstanding a departure, and, if the application is approved, USCIS will not issue an EAD with a validity date that exceeds the fixed date of admission provided to the alien at the POE.”
 - “For example, an F-1 student wishing to engage in post-completion or a STEM OPT extension would need to file both an EOS application and an application for employment authorization. Where the alien had departed the United States before his or her applications are adjudicated, USCIS would not consider the employment authorization application abandoned.”
- **In U.S. in D/S on final rule effective date**
 - An F-1, F-2, J-1, or J-2 nonimmigrant who departs the United States and seeks admission after the Final Rule's effective date becomes subject to the fixed date framework that would be imposed by this rule.

Academic restrictions

- 24-month aggregate limit on ESL study (not eligible for extension)
- Lifetime limit on extension of stay to pursue new F-1 programs at the same educational level. (2 times while in F-1 status for a total of 3 programs at same level)
- Lifetime limit on extension of stay to pursue "reverse matriculation" by F-1 students. (1 time while in F-1 status)
- Study at unaccredited post-secondary schools = 2-year periods of admission, certain academic fields in "national interest"
- Standards for USCIS to approve an F-1 extension of stay:
 - 1) "compelling academic reasons"
 - 2) "a documented illness or medical condition" or
 - 3) "exceptional circumstances beyond the control of the alien"

Proposed F-1 extension standards



Student “must establish to the satisfaction **of USCIS**” that delay is caused by:

1. Compelling **academic reasons**, such as:

- inability to take the required classes in major due to over-enrollment,
- changes of major or research topics
- unexpected research problems... “Unexpected research problems are those caused by an unexpected change in faculty advisor, need to refine investigatory topic based on initial research, research funding delays, *and similar* issues.”

Delays caused by the following do **not** qualify for extension (including, but not limited to):

- academic probation or suspension, or
- where “pattern of behavior demonstrates a repeated inability or unwillingness to complete his or her course of study, **such as failing classes;**”

2. A documented **illness or medical** condition.

- “a compelling medical reason, such as a serious injury, that is supported by medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist”

3. “**Circumstances beyond the student's control**, including a natural disaster, national health crisis, or the closure of an institution.”

- DHS says in the preamble, “Passing a class, or not, is something that is within the student's control.”

F-1 extensions currently

Compare to **current** F-1 extension regulation: student must establish to satisfaction **of DSO** that delay is caused by:

- “...compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses”
- “Delays caused by academic probation or suspension are not acceptable reasons for program extensions.”
- From the RCL regulation: “In order to authorize a reduced course load based upon a medical condition, the student must provide medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist, to the DSO to substantiate the illness or medical condition.”

Under the proposed and current rules, what is the link between reduced course load (RCL) authorizations and reasons for extension of stay?

Immigration status

- The nature of status while the EOS is pending.
 - Proposed regs state that a student or exchange visitor whose I-94 expires while the EOS is pending "will be considered to be in a period of authorized stay... until USCIS issues a decision on the extension of stay application."
 - However, a "period of authorized stay" is different than valid nonimmigrant status.
 - Being in "a period of authorized stay" may protect an applicant from overstay and unlawful presence penalties [INA 222(g) and 212(a)(9)(B)], but DHS has long distinguished between valid nonimmigrant status and a "period of authorized stay."
- F-1 and F-2 reinstatement.
 - A student's failure to file a Form I-539 extension request before the I-94 expiration date is a status violation for which the student will have to apply for reinstatement on Form I-539.
 - "DHS is also requiring F-2 dependents seeking to accompany the F-1 principal student to file applications for an EOS or reinstatement, as applicable."

OPT-related issues

OPT and STEM OPT

- **Students applying for F-1 post-completion OPT and STEM OPT would also have to file an application to extend their stay**
 - F-1 student applying for standard post-completion OPT could not continue or begin engaging in practical training until **both** I-539 and I-765 are approved and student receives EAD.
 - Underlying STEM OPT rules have not changed, so STEM OPT applicant would still be able work for up to 180 days beyond the expiration date of the standard OPT EAD while the STEM OPT I-765 and I-539 are pending.
- **Post-Completion OPT filing window.** Student could file for OPT:
 - Up to 120 days prior to program end date (currently 90 days), but
 - No later than 30 days after the program end date (currently 60 days)
- **End of 30-day after DSO recommendation requirement.**
 - DHS proposes eliminate the requirement to file OPT Form I-765 with USCIS within 30 days of the date that the DSO enters the recommendation in SEVIS
- **F-1-H-1B cap-gap**
 - Proposal would extend cap-gap employment authorization period from October 1 to April 1 of the following year

Other employment issues

- **F-1 on-campus employment** and economic hardship employment
 - could continue while extension pending, **but** only for 180 days beyond program end date, and only if USCIS receives I-539 by program end date.
- **F-1 curricular practical training**
 - **No** continuation of CPT while extension is pending with USCIS; must wait until USCIS approves I-539 extension application
- **J exchange visitors**
 - 8 CFR 274a.12(b)(20) is unchanged; it would allow J-1 exchange visitors to continue working for up to 240 days beyond their program end date while a timely filed extension of stay I-539 is pending with USCIS
 - However J-2 work authorization applicants would have to wait until USCIS approves both their I-539 and I-765

Institutional impacts



DSO and RO Rule Familiarization and Adaptation Costs

- DHS says that “Based on best professional judgment, SEVP estimates that DSOs and ROs would require:
 - 8 hours to complete rule familiarization training,
 - 16 hours to create and modify training materials, and
 - 16 hours to adapt to the proposed rule through system wide briefings and systemic changes.”

Potential Reduction in Enrollment

- DHS states, “While the intent of the proposed rule is to enhance national security, the elimination of duration of status has the potential to reduce the nonimmigrant student enrollment and exchange visitor participation.”
 - “the possibility of an extension being denied and the student thus not being able to complete the degree in the U.S. might affect the student's choice of country in which to study. As a result, nonimmigrant students and exchange visitors may be incentivized to consider other English-speaking countries for their studies.”
 - “While DHS acknowledges that the rule may decrease nonimmigrant student enrollments, there are many factors that make the United States attractive to nonimmigrant students and exchange visitors beyond the allowable admission period.”

Resources

DHS proposes to amend five sections of Title 8 of the Code of Federal Regulations (8 CFR). The first part of the Federal Register notice (the preamble) discusses the proposed changes, and the second part of the notice contains the actual regulatory language changes being proposed.

The following resources prepared by NAFSA show how DHS regulatory language would change if the proposed rule is finalized as proposed:

- [Proposed changes to 8 CFR 214.2\(f\)](#) (F-1 regulations)
- [Proposed changes to 8 CFR 214.1](#) (general regulation on requirements for admission, extension, and maintenance of status)
- [Proposed changes to 8 CFR 214.2\(j\)](#) (DHS J-1 regulations; Only the DHS J-1 regulations are included in the proposed rule; The Department of State is not proposing changes to the J-1 regulations at 22 CFR)
- [Proposed changes to 8 CFR 248](#) (general change of status regulations)
- [Proposed changes to 8 CFR 274a.12](#) (regulations on employment verification and employment authorization)

Links to these resources and more, on **NAFSA's proposed rule page** at:

- <https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status>

Let Us Hear From You

What concerns you most about the proposed rule?

Type your answer in the chat box



NAFSA Advocacy – Rachel Banks

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Advocacy Actions: What NAFSA is Doing

- Advocating since 2018
- Drafting comment letter, recently published talking points
- Engaging congressional offices
- Collaborating w/coalition partners in higher education, business, scientific societies
 - Joined ACE-led sign on letter to push for an extended comment period
 - Talking points/guidance in partnership w/Presidents' Alliance for Higher Education and Immigration
- Communicating with the media
 - [NAFSA Media Statement](#) (September 24)
 - Voice of America: [New Visa Rules Worry Some Students](#)
 - Inside Higher Ed: [Major changes to student visa rules proposed](#)
 - The PIE News: ['Complicated & burdensome' student visa rule changes proposed](#)

Advocacy Actions: What YOU Can Do

- Submit a comment as an individual or on behalf of your institution
- Use the [Talking Points Template for Commenting on the Proposed Rule to Eliminate D/S](#) as a guide
- Personalize comments
- Visit ConnectingOurWorld.org to urge your member of Congress to speak out against the rule

CONNECTING OUR WORLD



Questions?
Email grassroots@nafsa.org

Let Us Hear From You

Are you able to submit a comment letter on this proposed rule on behalf of your institution?

Are you working with other campus offices to submit comment a comment letter on this proposed rule on behalf of your institution? Which ones?

Type your answer in the chat box



Institutional Response – Sam Brown

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Brigham Young University

- Lessons from Summer Communications
- Worked with General Counsel to draft institutional response
- Looked at stakeholders (students, DSOs/AROs, campus, community, USCIS, etc.)
- Sent messaging to all F and J visa holders:
 - What we know and what we don't know
 - Invitation and resources for talking to ISSS or Counseling Center
 - Promise to send update as soon as we know
- Added a section on main website



Institutional Response – Mihaela Metianu

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Florida Atlantic University

- The view from FAU:
 - Regulatory ‘fatigue’ and cautious university-level responses
- Actions to date:
 - Reviewed and discussed regulations among A/RO & P/DSO teams
 - Drafted message to F/J visa holders; provided only the most general information to avoid confusion
 - Planning to host a virtual Q&A with students and scholars
- Next steps:
 - Draft RO/PDSO response (with review from General Counsel before submission)
 - Prepare communication to University administrators/faculty/staff (through Provost Office)
 - Encourage individual staff/faculty submission of comments



Institutional Response – Machel Allman

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University of Washington-Bothell



- UW system with UW Seattle as flagship. Very strong president with interest in international issues.
- Policy landscape portion of 1x1s with supervisor.
- Immediate contact with colleagues at other campuses in the system.
- Ready to provide statistics and individual stories.
- Know the rules.
- Comment as a private citizen. (Own computer and email address.)

Polls

Do you plan to submit a comment letter as an individual?

- Yes
- No
- Unsure

Will your institution submit a comment letter?

- Yes
- No
- Unsure

Poll

Have you or other officials from your institution contacted members of Congress about this proposed rule?

- Yes
- No
- Unsure



Wrap-Up

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Key Take-Aways and Reminders

- Sign up for Connecting Our World
- See the NAFSA web page on the proposed rule
 - Includes explainer, comment letter tips and talking points, and a link to [regulations.gov](https://www.regulations.gov) portal
- Stay tuned for NAFSA's comment letter
 - We'll add to web page when submitted and post notice to ISTA & ISCA
 - Our process is more careful and comprehensive than speedy
- Submit a comment letter
- Encourage your institution to submit a comment letter
- Message your members of Congress (see Connecting Our World "Take Action Center") and encourage your institution to do so

Updates and Resources



- **Proposal to replace duration of status**

- <https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status>
- [Talking Points Template for Commenting on the Proposed Rule to Eliminate D/S](#), prepared by the Presidents' Alliance on Higher Education and Immigration and NAFSA
- [Read the letter requesting an extension](#) submitted by ACE, NAFSA, and others
- [NAFSA press release on the proposed rule](#) (2020) and [NAFSA press release](#) (2018)
- [NAFSA one-page issue brief for Congress on duration of status](#)
- [Notes from a June 19, 2020 meeting on the proposed D/S rule](#) with OMB
- NAFSA backgrounder: [APA public notice and comment procedures](#)
- NAFSA's [Tips for Writing a Useful Government Comment Letter](#)
- Link to NAFSA's Connecting Our World at www.connectingourworld.org
- Read the proposed rule and submit comments by October 26, 2020 at:
https://www.regulations.gov/document?D=DHS_FRDOC_0001-1933
<https://beta.regulations.gov/document/ICEB-2019-0006-0001>



NAFSA: Association of International Educators is the world's largest nonprofit association dedicated to international education and exchange, working to advance policies and practices that ensure a more interconnected, peaceful world today and for generations to come.