

THE NATIONAL FOUNDATION FOR AMERICAN POLICY

September 27, 2025

Office of Regulatory Affairs and Policy,
U.S. Immigration and Customs
Enforcement, Department of Homeland Security
500 12th Street, S.W.
Washington, DC 20536

Re: Comment on 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

Submitted online via www.regulations.gov.

On behalf of the National Foundation for American Policy (NFAP), a nonpartisan policy research organization, I submit this comment to provide information on the proposed rule to establish fixed periods of admission for students, exchange visitors and foreign journalists.

The Most Significant And Disqualifying Flaw In The Proposed Rule

The proposed rule's most significant and disqualifying flaw is that it fails to adopt readily available and easily implemented policy alternatives that are far less intrusive than burdening all students and exchange visitors with fixed periods of admission. Failing to choose less burdensome alternatives raises the legitimate suspicion that DHS chose examples in the rule to justify its unnecessary policy rather than conducting a serious analysis and concluding that, after completing that analysis, the only way to address the examples cited would be to require fixed periods of admission.

DHS cites national security benefits to justify a sea-change in how international students attend U.S. universities (i.e., to move from duration of status to fixed admission periods). Under "Costs to Schools and Enrollments" in the proposed rule's preamble, it states, "DHS expects this proposed rule to have qualitative benefits for national security 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.”

In the section on the need for rulemaking, DHS discusses five cases of Chinese nationals who entered on J-1 visas, whose actions, the department believes, represented national security threats. DHS places significant confidence in the extension approval process to protect against threats. “As with F nonimmigrants, *setting the length of the J nonimmigrant’s specific program to not exceed a 4-year period would establish a mechanism for immigration officers to assess these nonimmigrants at defined periods (such as when applying for an EOS in the United States beyond a 4-year admission period) and determine whether they are complying with the conditions of their classification,*” according to DHS. “This will increase vetting of the J nonimmigrant population, which can help to prevent and deter nefarious actors.” (Emphasis added.)

DHS’s argument is not credible. Government officials cannot believe that the best way to address the national security concerns raised by the cases of the five Chinese nationals is to require fixed periods of admission to “establish a mechanism for immigration officers to assess these nonimmigrants at defined periods (such as when applying for an EOS in the United States beyond a 4-year admission period).”

If individuals represent national security concerns, hoping that they apply for an extension after four years so that an immigration officer can review their application is a woeful or even absurd security measure. Under DHS’s reasoning, if the proposed rule is finalized, all a national security threat needs to do to avoid scrutiny is to complete their academic program quickly enough to prevent the need to file for an extension.

It is not true, as DHS implies, that the only way its personnel can scrutinize potential national security threats among international students and exchange visitors is to hope they apply for an extension.

“DHS has the authority to check any individual F-1 or J-1 visa holder,” noted an August 28, 2025, *Forbes* article authored by NFAP Executive Director Stuart Anderson. “If there are particular concerns about visa holders from specific countries or working in certain areas, a focused and likely more effective approach would be for DHS or the FBI to increase checks on those individuals based on the information the agencies received, rather than subjecting all international students and J-1 visa holders to new restrictions.”

There are numerous alternatives that DHS and the U.S. security apparatus could choose to address potential national security threats among exchange visitors or international students that would be far more effective and produce far less collateral impact on hundreds of thousands of exchange visitors and international students each year, as well as on U.S. universities and the American economy.

These alternatives include:

- 1) DHS can use intelligence that it acquires or receives on individual international students or exchange visitors to engage in enhanced surveillance or verification of those individuals and their activities in the United States. DHS can monitor or check on the activities and academic progress of such individuals every 6 months.
- 2) DHS can identify international students and exchange visitors in specific fields or from particular countries that it chooses to scrutinize more than others. DHS can check on those international students and exchange visitors annually (or more frequently), including through a Designated School Official, to ensure they are complying with their immigration obligations.
- 3) DHS can conduct interviews or liaise with campus personnel on an ongoing basis to ensure that concerns about individuals or countries of interest are addressed.
- 4) DHS can develop a new interagency task force that includes the FBI to gather information on international students and exchange visitors for counterintelligence and counterespionage purposes, or to address other national security issues.

These alternatives—and there are additional alternatives—would be more effective and are more plausible for addressing national security or fraud concerns than DHS relying on an adjudicator or other immigration specialist to review the academic progress of an international student or exchange visitor only if they request an extension of stay, which would likely be four years after individuals enter the United States.

DHS knows if a student is meeting academic requirements through the SEVIS system. That means there is little reason to subject more than one million students to heightened scrutiny when it is possible to prioritize individuals about whom

government officials are concerned. Expending resources on individuals who do not represent a threat weakens national security. When DHS treats everyone as an equal threat, no one is a priority.

Elizabeth Neumann, former assistant secretary for counterterrorism and threat prevention at the Department of Homeland Security during Donald Trump's first term, said in the August 28, 2025, *Forbes* article: "It seems like they're trying to focus on national security as a justification for what is really a policy preference. If I had to characterize this action, I would say there are legitimate needs to strengthen the student visa programs to prevent fraud and protect national security, but it might be possible to do so through other, more narrow means."

DHS also cites the existence of a comparatively small number of longtime students to justify the rule: "DHS has identified over 2,100 aliens who first entered as F-1 students between 2000 and 2010 and remain in active F-1 status as of April 6, 2025."

A total of 2,100 aliens would equal 0.067% of the estimated 3.1 million people who may have entered the United States as F-1 students on visas between 2000 and 2010. The proportion could be even lower under other calculations. Additionally, DHS recordkeeping has been flawed in the past, which means that not all these students may currently be in F-1 student status. When DHS went to arrest Mahmoud Khalil, a high-profile protest leader at Columbia University, DHS agents thought he was still a student, even though he had been a lawful permanent resident for several months after marrying a U.S. citizen spouse.

As the August 28, 2025, *Forbes* article notes, "The proportion indicates that, to the extent DHS believes it must address this group of students, it could direct resources at that population rather than impose a far-reaching policy that could negatively affect the other 99.93% of international students."

Ironically, DHS does not allege these 2,100 students have violated the law but only "the spirit of the law." Given the small number, this might not even be a sign of slow academic progress, as some international students move from elementary school to high school to college to graduate school.

Among the alternatives to fixed admission periods that DHS could choose to address what it characterizes as longtime students are:

- 1) A rule that requires an extension of stay if an individual remains in F-1 status for 10 years.
- 2) A rule that allows DHS to review the F-1 status of any student whose stay has exceeded 8 years and requires that student to submit information to confirm their continued academic progress. As part of the rule, DHS could require an extension of status application to be approved if the information it receives does not satisfy the department's concerns. There is a precedent for this in the [final rule](#) from INS published on April 22, 1987, which states, "Any student who has been in student status for eight consecutive academic years must request an extension of stay from the Service." This 8-year rule should not be triggered for students who have completed their degree and begun a period of Optional Practical Training. A transition to OPT is a regular postdoctorate activity from which the United States receives substantial benefits.

The two alternatives cited above would address the issue DHS raised, which concerns well less than 1% of F-1 students, and do so without compelling other students and institutions to incur significant costs to address a minor problem. The two alternatives are not exhaustive but illustrative. The 1987 final rule shows INS established a mechanism to address longtime students without burdening the other 99% of international students.

Insufficient Time To Complete Degrees

Currently, international students can remain in lawful status as long as they are pursuing an academic program toward completion, and can, for example, transition from undergraduate to graduate studies. The new rule would replace that policy, with limited exceptions, by establishing a fixed four-year period for F-1 and J-1 visa holders. The rule also limits the period of stay for "foreign information media" on I visas. Language training students are limited to an aggregate 24-month period of stay.¹

The four-year limit will likely be insufficient for many international students. The National Center for Education Statistics [reports](#) a median of 52 months (4.3 years) for completing a bachelor's degree. The National Science Foundation reports a

¹ The following sections of the comment letter are taken from Stuart Anderson, "Trump Deals A New Immigration Blow To International Students," *Forbes*, August 28, 2025.

median of 5.7 years for [completing a Ph.D.](#) The proposed rule requires students to obtain approved extensions from government adjudicators to continue their studies.

Education organizations oppose the proposed rule, expressing concerns about its impact on international student enrollment. “If finalized, this rule would create additional uncertainty, intrude on academic decision-making, increase bureaucratic hurdles and risk deterring international students, researchers and scholars from coming to the United States,” said Miriam Feldblum, president and CEO of the Presidents’ Alliance on Higher Education and Immigration, in a statement. She believes that by forcing students to submit additional applications, the rule would impose significant burdens on students, colleges and universities, and USCIS, which already has extensive immigration backlogs.

Educators view the proposed rule as an example of government overreach. “The proposal represents a dangerous overreach by government into academia, as it would give USCIS oversight over decisions that have long been the domain of academia, including changes to a student’s course of study and to their level of study,” said Fanta Aw, Executive Director and CEO of NAFSA: Association of International Educators, in a statement. “International students and exchange visitors are already rigorously tracked in the SEVIS database and are the most closely monitored nonimmigrants in the country.”

“Government interference into the academic realm in this way introduces a wholly unnecessary and new level of uncertainty to international student experience in the United States as degree completion is now highly unpredictable,” said Aw. “It will certainly act as an additional deterrent to international students choosing to study in the United States, to the detriment of American economies, innovation and global competitiveness.”

Sponsoring Students For Permanent Residents

Today, universities (and others) may choose to sponsor a graduate student for permanent residence. It makes sense to start the process early, given that it can take years to complete. The proposed rule raises concerns that if an individual is sponsored for permanent residence, whether by an employer or a spouse, they may be considered an intended immigrant when applying for an extension and be denied. That would be another argument against finalizing the rule. If the rule is finalized, DHS should clarify that it does not intend to deny extension applications for individuals who have been sponsored for permanent residence.

Eliminating Deference

During Donald Trump's first term, USCIS ended deference to prior findings of fact for adjudications, which contributed to a dramatic increase in Requests for Evidence and a significant rise in denials for H-1B extensions. This led to many longtime employees of companies leaving the United States when USCIS adjudicators rejected their H-1B applications. The [H-1B rule](#) finalized by the Biden administration in December 2024 codified deference, and, at the time, attorneys and employers viewed it as a way to improve USCIS operations.

The proposed rule on duration of status eliminates the deference provision and cloaks the significant change in bureaucratic language.

As Nancy Morowitz of Fragomen points out, the current [8 CFR 214.1\(c\)\(5\)](#) with the discretion language states: “***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.”

That section would be replaced with the proposed: “***(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.”

The regulatory preamble in the proposed rule masks this alteration by characterizing it as a minor technical change related to forms. The preamble reads: “Like the technical updates to strike the specific form name from 8 CFR 214.1(c)(2), DHS is proposing to strike the references to Forms ‘I-129’ and ‘I-539’ in 8 CFR 214.1(c)(5), replacing those specific form numbers with the aforementioned general language. See proposed 8 CFR 214.1(c)(5). The substance of that provision, including the language that does not allow an alien to appeal an EOS denial would remain the same.”

Eliminating deference is unwarranted and will lead to increased bureaucracy and expenses for employers.

Sincerely,

[Signature Redacted]

Stuart Anderson
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