November 1, 2026

Office of the Principal Legal Advisor
Regulatory Affairs Unit
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street SW
Washington, DC 20536-5901

Re: Comment on DHS Docket No. ICEB–2026–0100, RIN 1653–AB01, Optional Practical Training Fees

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 on Optional Practical Training Fees.

Summary: The Department of Homeland Security has proposed an immigration rule that requires universities to pay $70,000 for an international student to work on Optional Practical Training, or OPT, and an additional $30,000 to be employed on STEM OPT. The proposed rule's purpose appears clear: to deter international students from working in the United States by charging $100,000 in practical training fees. The policy objectives are to make it less likely that international students can obtain H-1B status and to discourage them from coming to the United States to study. The Trump administration has attempted to achieve these objectives through administrative and regulatory actions rather than by passing new legislation.[1]

How OPT and STEM OPT Currently Work

Optional Practical Training permits international students to work for 12 months in their field of study before or after completing their course requirements. STEM OPT allows students to gain practical experience through working an additional 24 months (beyond OPT) in a science, technology, engineering or math field. The

[1] Parts of this comment are adapted from Stuart Anderson, "DHS Immigration Rule Proposes $100,000 In Practical Training Fees," *Forbes*, October 8, 2026.

George W. Bush administration hoped that by providing more years in the United States, STEM OPT would improve students' chances of being selected in the annual H-1B lottery.

DHS Ignores the Benefits of International Students in the Proposed Rule

When you tax something, you get less of it. When DHS taxes international students, the United States will get fewer of them. However, DHS does not attempt to document how harmful this new tax will be to the U.S. economy, U.S. universities and American students.

DHS ignored the benefits of international students to America, including as entrepreneurs. "Entering the United States as an international student has been shown to be a promising avenue for immigrants to start successful U.S. companies," according to a study from the National Foundation for American Policy. "There are 184 U.S. billion-dollar companies with a founder who attended a U.S. university as an international student. Almost one-quarter (184 of 775, or 24%) of U.S. billion-dollar startup companies have a founder who first came to America as an international student. Several companies have multiple international students as founders**.** There are 234 international students who became founders or cofounders of current U.S. billion-dollar companies."[2]

The study found, "U.S. billion-dollar startup companies with immigrant founders who entered as international students have created an average of 1,123 jobs per company. The total value of U.S. billion-dollar companies with international student founders is $3.5 trillion, more than the market value of companies listed on stock markets in all but 9 countries."[3]

Jhon Cohen, born in Colombia, came to America as an international student and completed an MBA at Harvard. In 2012, Cohen founded ArtIn Energy. The company develops and installs solar power systems, green hydrogen production and battery energy storage systems in the United States and internationally. In 2026, Agila Investments invested $255 million in equity in the company, implying a valuation of $14.58 billion.[4]

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[2] Stuart Anderson, *Immigrants and U.S. Billion-Dollar Companies*, NFAP Policy Brief, National Foundation for American Policy, June 2026.
[3] Ibid.
[4] Ibid.

With poor lab equipment and a crumbling Russian economy, Gleb Yushin decided the only way he could become a scientist was to immigrate. He chose America. He became an international student and earned a Ph.D. in materials science at North Carolina State. The early years were tough, with little money and a new child, but he said, "What helped a lot were remarkably friendly and supportive people on campus and in the city." Today, Yushin, a professor at Georgia Tech, has over 200 patents connected to expanding the energy capacity of lithium-ion batteries for electric vehicles, devices and other uses. He cofounded and became CTO of Sila Nanotechnologies, valued at over $3.3 billion and employing 400 people.[5]

Martin Tolar, founder of Alzheon, was born in the Czech Republic and earned a Ph.D. in neuroscience from the University of Cincinnati College of Medicine. Alzheon, valued at $1.3 billion, has produced promising results in treating Alzheimer's. According to *Inside Precision Medicine*. "In a peer-reviewed research article . . . The drug slowed cognitive decline, nearly doubled the brain's functional preservation, and reduced brain shrinkage."[6]

OPT and STEM OPT can provide international students with a foothold in America. Michelle Zatlyn, who came to America as an international student from Canada, and Matthew Holloway, cofounders of Cloudflare, developed the idea for their company while at Harvard Business School. Following graduation, Zatlyn obtained 12 months of work authorization under Optional Practical Training. "The best thing the U.S. government has done on immigration is OPT to allow international students a chance to stay and work for a time after graduation," she said in a 2016 interview. "It allowed me to work with Matthew on the business plan that helped create the company."[7] Today, Cloudflare has over 5,000 employees and a market capitalization of $122 billion.

DHS Ignores International Students as an Important Source of Talent

International students are a crucial source of talent for many companies and help universities by defraying costs for U.S. students and allowing more course offerings. Companies recruiting at U.S. universities find that international students

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[5] Ibid.
[6] Ibid., Jonathan D. Grinstein, "Alzheon's Oral Alzheimer's Drug Shows Safety and Promise for APOE4/4," *Inside Precision Medicine*, October 16, 2025. https://www.insideprecisionmedicine.com/topics/precision-medicine/alzheons-oral-alzheimers-drug-shows-safety-and-promise-for-apoe4-4/.
[7] Stuart Anderson, *Immigrants and Billion Dollar Startups*, NFAP Policy Brief, National Foundation for American Policy, March 2016.

make up about 75% to 80% of full-time graduate students in AI-related fields, such as computer and information sciences.[8]

NFAP research found, "Most full-time graduate students in AI-related fields in America are international students. At U.S. universities, international students account for 80% of full-time graduate students in computer and information sciences, 75% in electrical and computer engineering and 62% in mathematics and statistics. International students also represent a majority of full-time graduate students in other fields at U.S. universities, including industrial engineering, civil engineering and mechanical engineering."[9]

International students boost U.S. innovation, while restrictions harm it. A 10% decrease in international graduate students in science and engineering could cost the U.S. economy $334 billion a year, and a 20% decrease could cost $668 billion, according to a National Foundation for American Policy analysis of research by economists Gnanaraj Chellaraj (World Bank), Keith E. Maskus (Univ. of Colorado) and Aaditya Mattoo (World Bank). According to Chellaraj, Maskus and Mattoo, an additional foreign STEM graduate student results in 0.57 patents granted. Based on the value of patents and the number of STEM international graduate students enrolled in the United States in Fall 2024, a 10% increase in enrolled STEM international graduate students at U.S. universities would add $334 billion to the U.S. economy each year and a 20% increase would benefit the U.S. economy by $668 billion a year.[10]

DHS Ignores That International Students Encourage U.S. Students to Enter STEM Fields

A National Foundation for American Policy study by University of North Florida economics professor Madeline Zavodny concluded, "Enrolling more international undergraduate students does not crowd out U.S. students at the average American university and leads to an increase in the number of bachelor's degrees in STEM majors awarded to U.S. students. Each additional 10 bachelor's degrees—across all

[8] *AI and H-1B Visas*, NFAP Policy Brief, National Foundation for American Policy, February 2026.
[9] Ibid. National Foundation for American Policy analysis and tabulation of the National Center for Science and Engineering Statistics Survey of Graduate Students and Postdoctorates in Science and Engineering (2023).
[10] Gnanaraj Chellaraj, Keith E. Maskus and Aaditya Mattoo, "The Contribution of Skilled Immigration and International Graduate Students to U.S. Innovation," *Review of International Economics*, 16(3), 444-462, 2008, and *The Economic Contributions of High-Skilled Immigration*, NFAP Policy Brief, National Foundation for American Policy, November 2026.

majors—awarded to international students by a college or university leads to an additional 15 bachelor's degrees in STEM majors awarded to U.S. students."[11]

Zavodny explained the connection between international students and U.S. STEM majors. "International students are considerably more likely to major in STEM fields than in most other areas of study, indicating U.S. students are taking more classes with international students rather than avoiding majors popular with international students," writes Zavodny. "Colleges and universities that attract more international students likely are devoting more resources to STEM areas, such as increasing the number of courses and adding fields offered within STEM, hiring more faculty, and providing new lab spaces and buildings. To the extent such changes are occurring, they also appear attractive to U.S. students."[12]

Zavodny's research involved data on over 1,200 universities between 1990 and 2018.

DHS Ignores Research Showing OPT Helps, Not Harms, U.S. Workers

DHS states that one reason for the rule is to protect U.S. workers from international students on OPT and STEM OPT. However, DHS provides no research showing that allowing international students to work after graduation on practical training harms U.S. workers economically. Available studies have shown the opposite.

According to an NFAP study by University of North Florida economics professor Madeline Zavodny, "There is no evidence that foreign students participating in the OPT program reduce job opportunities for U.S. workers." Zavodny found, "The relative number of foreign students approved for OPT is negatively related to various measures of the unemployment rate among U.S. STEM workers. A larger number of foreign students approved for OPT, relative to the number of U.S. workers, is associated with a lower unemployment rate among those U.S. workers."[13]

The study concluded, "Analysis of the data show unemployment rates are lower in areas with larger numbers of foreign students doing OPT as a share of workers in

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[11] Madeline Zavodny, *The Impact on Men and Women in STEM Fields of Increases in International Students*, NFAP Policy Brief, National Foundation for American Policy, April 2021.
[12] Ibid.
[13] Madeline Zavodny, *International Students, STEM OPT and the U.S. STEM Workforce*, NFAP Policy Brief, National Foundation for American Policy, March 2019.

STEM occupations. Comparisons at the state level likewise show a negative relationship."[14]

Zavodny analyzed data covering a 9-year period (2008 to 2016) on international students with STEM majors approved for OPT after they complete their studies (either via the 12-month post-completion OPT component of the program or via the STEM OPT extension component of the program) and their impact on potentially competing workers. It uses data released by U.S. Immigration and Customs Enforcement (ICE) in response to a Freedom of Information Act (FOIA) request.[15]

Other research released in February 2026 confirmed Zavodny's findings on the positive impact of OPT and STEM OPT. Examining the impact of adding STEM OPT in 2016, Seoyoung Kwon (Yonsei University), Jongkwan Lee (Yonsei University) and Joan Monras (Pompeu Fabra University in Barcelona) found, "Native high-skilled and STEM workers *experienced substantial and strengthening employment gains*." (Emphasis added.) The economists added, "This local inflow stimulated firm creation and the demand for native high-skilled workers."[16]

DHS provides no evidence to support its assertion that there is a "large-scale replacement of American workers through systemic abuse of the OPT program." According to the Bureau of Labor Statistics, the U.S. unemployment rate for computer and math occupations was 3.3% in September 2026, down from 3.9% in September 2025.[17] The U.S. unemployment rate for architecture and engineering occupations dropped by 31% between September 2025 and September 2026, falling from 2.9% to 2.0%.[18] The BLS released the data shortly before the publication of the DHS proposed rule.

Immigration Rule Imposes New (Illegal) Tax

The DHS proposed rule requires universities to pay for international students who want to work on Optional Practical Training and STEM OPT: $70,000 for OPT and $30,000 for STEM OPT. DHS would allow universities to charge students or employers the fee to recoup costs. However, DHS does not explain why, or if,

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[14] Ibid.
[15] Ibid.
[16] Seoyoung Kwon, Jongkwan Lee, Joan Monràs, *The effect of retaining high-skilled international graduates: Evidence from the STEM OPT extension*, Universitat Pompeu Fabra Barcelona, Economic Working Paper Series, Working Paper No. 1940, February 2026: https://econ-papers.upf.edu/papers/1940.pdf.
[17] https://www.bls.gov/web/empsit/cpseea30.htm.
[18] Ibid.

international students would pay $70,000 to work on OPT for 12 months. International students want to work on OPT, in part, to earn money and are unlikely to have $70,000 in free cash available.[19]

Dan Berger of Green & Spiegel agrees that the new fees are intended to end the use of OPT and STEM OPT. "The new OPT fees would make OPT unobtainable for the vast majority of students," said Berger in an interview.[20]

"I can't imagine paying $70,000 in fees just to be approved to work for 12 months after graduating," said Maya, a former international student from India, in an interview. "I came to the U.S. as a student knowing that OPT would give me an option to gain professional experience. I also chose the University of Southern California partly because of its strong alumni network. Universities invest a lot in career services. If we can access those resources as students but can't turn that education into work experience in the U.S. without paying another $70,000 or $100,000, it defeats the purpose of that investment."[21]

"Most international students already pay higher tuition, while their families also have to support their cost of living in U.S. dollars," she said. "If students then have to consider more fees to be allowed to work after graduating, it changes the calculation of whether we can afford to study in the U.S. in the first place."[22]

DHS failed to survey or provide reasonable analysis showing universities, students or employers would pay the two fees in any sizable number. DHS omits mentioning in the Notice of Proposed Rulemaking that, according to a recent presidential proclamation, only about 700 individuals in a year found employers willing to pay the $100,000 H-1B fee.[23] It also omitted that in a technical appendix to its $103,265 H-1B fee rule, DHS reports a 91.2% decrease in Initial Form I-129 H-1B petitions after the Trump administration imposed the $100,000 H-1B fee.[24]

DHS does not explain why, if few employers were willing to pay $100,000 for experienced professionals for H-1B positions that could last three to six years,

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[19] Stuart Anderson, "DHS Immigration Rule Proposes $100,000 In Practical Training Fees," *Forbes*, October 8, 2026.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] *Restriction on Entry of Certain Nonimmigrants*, Proclamation, White House, September 18, 2026. https://www.whitehouse.gov/presidential-actions/2026/09/restriction-on-entry-of-certain-nonimmigrant-workers-faad/.
[24] See Stuart Anderson, "DHS Omits Describing H-1B Data Undermining Premise Of Immigration Rule," *Forbes*, August 26, 2026, and link to technical appendix.

companies would pay $70,000 for 12 months for intern-like positions and an additional $30,000 for another 24 months for students.

Instead, without providing an analysis, DHS assumes that OPT and STEM OPT will not drop significantly, despite the fee. DHS offers a "high," "low" and "primary" estimate on the rule's impact. It assumes the number of students on OPT and STEM OPT will remain unchanged in its "high" estimate, which is based on the 2024 OPT level of 194,554 and 95,384 for STEM OPT.

For the "low" estimate, DHS assumes a 56% decline for OPT, down to 88,374, and a 22% decline for STEM OPT, down to 74,088. (That assumes 84% of OPT recipients in its "low" estimate go on to STEM OPT, despite the fees.) DHS then takes an "average" of the two estimates, OPT: 141,464 and STEM OPT: 84,736.

"These numbers are picked out of the air," said Mark Regets, an NFAP senior fellow and labor economist, in an interview. "They don't present any reasons for these numbers. Given the response to the $100,000 H-1B fee for workers that employers would have a greater interest in, there is every reason to believe the proposed OPT fees would devastate the number of international students in OPT and STEM OPT." [25]

According to an IZA discussion paper by Johns Hopkins economics professor Michael Clemens, a total practical training tax of $100,000 could cause OPT to decline by as much as 84% at the bachelor's degree level and 99% for master's degree recipients, depending on who is expected to pay the fee.[26]

Regets also points to Table 9 in the proposed rule, which is labeled "Opportunity Costs from Reduced OPT." He notes that DHS assumes the opportunity costs to the U.S. economy equal only the dollar value of the fees employers choose not to pay for international students on OPT and STEM OPT. In other words, the number of fewer students on OPT and STEM OPT multiplied by $70,000 or $30,000. "That significantly underestimates the value of the labor lost, given these are well-educated workers," said Regets. [27]

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[25] Stuart Anderson, "DHS Immigration Rule Proposes $100,000 In Practical Training Fees," *Forbes*, October 8, 2026.
[26] Michael A. Clemens, *Taxes on International Students: Demand and Supply Response for Post-Graduation Foreign Workers on Optional Practical Training*, IZA DP No. 18933, September 2026.
[27] Stuart Anderson, "DHS Immigration Rule Proposes $100,000 In Practical Training Fees," *Forbes*, October 8, 2026.

The rule lists a cost to the U.S. economy of $40 billion over 10 years in its primary estimate and $80 billion in its high estimate, and it quantifies no economic benefits, according to an NFAP analysis. As noted above, a 10% decrease in international graduate students in science and engineering could cost the U.S. economy $334 billion a year, and a 20% decrease could cost $668 billion, according to a National Foundation for American Policy analysis of research by economists Gnanaraj Chellaraj, Keith E. Maskus and Aaditya Mattoo.

Other Issues Raised By the Rule

The executive branch lacks the authority to levy taxes. In June, in a ruling that applied nationwide, a federal judge struck down the Trump administration's $100,000 H-1B fee imposed via a presidential proclamation. U.S. District Court Judge Leo T. Sorokin in the District of Massachusetts agreed with a coalition of 20 states, led by California Attorney General Rob Bonta, and granted the plaintiffs' motion for summary judgment. He declared, "The Policy implementing the Proclamation is declared unlawful and is vacated in its entirety."

Judge Sorokin said the case raised significant constitutional separation-of-powers issues. "Plaintiffs allege both that the Policy exceeds the scope of the President's authority under the Immigration and Nationality Act, and that it encroaches upon Congress's exclusive power to tax under the Constitution," he wrote. According to the judge, "The Supreme Court's reasoning in this pair of precedents supports a finding that the $100,000 payment requirement amounts to a tax, not a penalty." The two Supreme Court precedents are *Bailey v. Drexel Furniture Company* and *National Federation of Independent Business v. Sebelius*.

On Sept. 18, 2026, the White House posted a new presidential proclamation that renewed the $100,000 fee levied on the entry of new H-1B professionals. The proclamation revealed that the Sept. 2025 $100,000 fee effectively prohibited employers from hiring new H-1B visa holders, i.e., employers paid the $100,000 fee for only about 700 individuals.[28]

On September 30, in an order in *Global Nurse Force v. Trump*, U.S. District Judge Haywood S. Gilliam, Jr., in the Northern District of California, vacated the $100,000 H-1B fee and its renewal. He ruled that the Trump administration needed to follow notice-and-comment rulemaking under the Administrative Procedure Act and conduct regulatory flexibility analyses. According to Judge Gilliam, "There is

[28] Ibid.

no question here that Agency Defendants failed to consider *any* alternatives or the reliance interests of the regulated parties. As such, Plaintiffs are likely to succeed on their claim that the Agency Policies are arbitrary and capricious."[29]

DHS Again Relies on Anecdotes

The DHS OPT fee may also face challenges for failing to consider alternatives and reliance interests, while offering only anecdotes and little analysis to justify the rule.

DHS states that it believes fraud exists but relies on anecdotes. It cites two cases from 2020, a "news article" from 2021 and employer site visits in Northern Virginia in 2025 that "discovered evidence of fraud and non-compliance associated with OPT." It added, "Most recently, DHS announced an investigation that identified more than 10,000 F-1 nonimmigrant students who were engaged in OPT and were working for highly suspect employers." That is largely the extent of the discussion of fraud in the Notice of Proposed Rulemaking.

"DHS claims that they don't have enough resources to deal with fraud but then admits that not a penny of these fees would go toward fraud prevention—instead, the Treasury Department would get the money," said Doug Rand, a former DHS official, in a statement.[30]

According to the Federal Register notice, "Notably, the proposed OPT fees collected under this rule would be deposited in the Treasury of the United States as a miscellaneous receipt pursuant to 31 U.S.C. 3302. *ICE would not maintain or use the funding collected under these OPT fee provisions promulgated . . . because the statute does not provide legal authority for ICE to retain the funds collected*." (Emphasis added.) Despite the lack of a connection between the fees and the proposed purpose the fees, DHS maintains "the collection of these fees remain essential in addressing the vulnerabilities of the OPT program."

In the Notice of Proposed Rulemaking, DHS struggles to offer a rational argument for its fee. "DHS believes that this proposed fee would incentivize schools to only recommend the most promising students to engage in OPT after a thorough review and payment of the required fee," according to DHS. "Limiting the pool of OPT participants to talented students who are in genuine educational programs and

[29] Ibid.
[30] Stuart Anderson, "DHS Immigration Rule Proposes $100,000 In Practical Training Fees," *Forbes*, October 8, 2026.

placed in training programs that directly relate to their major area of study would protect the interests and jobs of American workers in the long run."

DHS provides no explanation for how universities would know which students would later be trapped in or participate in OPT-related fraud. DHS also does not explain why it believes universities will pay the $70,000 OPT fee and the additional $30,000 STEM OPT fee. The fees would likely reduce or eliminate the financial gains many U.S. schools receive from enrolling international students.

In September, in *Presidents' Alliance on Higher Education, et al., v. DHS*, a federal judge granted universities nationwide preliminary relief against the DHS final rule limiting international students to four years. Similar arguments could be made against the OPT and STEM OPT fees.

According to U.S. District Judge F. Dennis Saylor IV, "Among other things, commenters pointed out serious flaws in DHS's reasoning and offered multiple alternatives that would achieve the stated objectives with far less harmful effects on students, universities, journalists and the American economy."[31]

According to Judge Saylor, "DHS summarily rejected those views, dismissing their concerns as merely 'speculative,' based on mere 'predictions,' or 'unquantifiable.' In fact, because it asserted that the impact on enrollment was unquantifiable, it effectively concluded that the cost of that impact was zero. And in support of its own position, it offered almost entirely conclusory statements, *non sequiturs*, and statements of 'belief' without supporting reasoning." The judge added, "To the extent DHS engaged at all on the substantive issues, its responses were largely disconnected from academic or practical realities."[32]

He criticized the use of anecdotes. "The government's contention that the rule is necessary to safeguard national security borders on the absurd," wrote Judge Saylor. "It is based almost entirely on a small handful of anecdotes, each of which involved incidents that the new rule would do nothing to prevent or even mitigate."[33]

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[31] As cited in Stuart Anderson, "DHS Immigration Rule Proposes $100,000 In Practical Training Fees," *Forbes*, October 8, 2026.
[32] Ibid.
[33] Ibid.

"And the government failed to consider less drastic and more obvious ways to address security vulnerabilities, or even attempt to explain why the arbitrary four-year cap was preferable to the alternatives."[34]

Among the reasons the judge found the DHS final rule was "arbitrary and capricious" was that "DHS failed to conduct any reasoned calculation of the costs and benefits of the Final Rule. In particular, DHS effectively ignored the immense costs of restricting international student enrollment, research and teaching by international individuals, and press nonimmigrant travel." He also faulted DHS for failing to consider reasonable alternatives and "provide meaningful responses to significant comments."[35]

Finally, "DHS failed to show that there is a rational connection between the Final Rule and its purported objectives of preventing fraud and furthering national security," according to Judge Saylor. DHS will have the burden of proving its $100,000 in practical training fees has a "rational connection" to its objective or preventing fraud.[36]

The Trump administration's immigration rule imposing $100,000 in practical training fees runs counter to what Donald Trump proposed in a 2024 podcast, when he told Silicon Valley investors he wanted all international students to be able to stay and work in America after graduation. This rule does the opposite by placing an insurmountable obstacle in the path of international students who wish to engage in practical training in the United States.

Sincerely,

[Signature Redacted]

Stuart Anderson
Executive Director
National Foundation for American Policy

[34] Ibid.
[35] Ibid.
[36] Ibid.