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Proposed Regulation on the Change of Admission Period of F, J, and I Nonimmigrants from Duration of Status: What You Need to Know*

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On September 25, 2020, the Department of Homeland Security (DHS) published a proposed [regulation](#) that would establish fixed end dates on student and exchange visitor visas. Under the proposal, individuals applying to either F or J status would be eligible to stay in the United States for the length of time indicated by the program end date noted in their Form I-20 or DS-2019, not to exceed 4 years. In some cases, international students and scholars would be limited to 2 years.

Currently, individuals in F and J categories can stay in the United States for the period of time that they are complying with the terms and conditions of their visa category (“duration of status”). “Duration of status” does not have fixed end dates.

The proposed rule would also make many other changes. Overall, if finalized without change, the rule would constitute the largest changes to regulation of international students and scholars in 20 years.

Q: What is the rationale for the proposed rule?

The Department cites national security risks and the possibility of fraud for the proposed changes, stating, “this change would provide the Department with additional protections and mechanisms to exercise the oversight necessary to vigorously enforce our nation’s immigration laws, protect the integrity of these non-immigrant programs, and promptly detect national security concerns.”

The proposed rule notes that it may reduce enrollment of international students at US schools.

Q: Who would be affected by the proposed rulemaking?

F students and their dependents, J exchange visitors and their dependents, and I (foreign media representatives) would be affected by the rulemaking.

Q: What are the fixed time periods under the proposed rule?

Under the proposed rule, a maximum of 4 years of stay would be issued for international students. However, initial visa terms for certain categories of students would be limited to 2 years. Specifically, individuals who were born in or are citizens of countries designated as state sponsor of terrorism— **Iran, North Korea, Sudan, and Syria** – or citizen of countries with a student and exchange visitor visa overstay rate exceeding 10 percent would only be eligible for 2-year visas subject to renewal. According to DHS, these countries currently include:

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,



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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.

The proposed rule would also limit the admission of other individuals to 2-years "if the DHS Secretary determines that U.S. national interests warrant limiting admission to a 2-year maximum period in certain circumstances." Similarly, noncitizens who are not attending institutions accredited by an accrediting agency recognized by the Secretary of Education and students attending schools or exchange programs not participating fully in E-Verify would be subject to the 2-year limit.

Q: Are students eligible for extension if their status expires?

Under the proposed rule, in addition to obtaining a recommendation from the DSO for an extension, students must apply for an application for extension with USCIS. The extension could be approved by the USCIS if the program length goes beyond the minimum initially granted, additional time needed is due to a compelling academic reason, a documented medical illness or medical condition, or circumstances beyond the student's control. USCIS considers failing classes as within the control of the student, so that academic challenges would no longer generally be a basis for extension. An extension of stay application is requested by filing Form I-539. Biometrics of the applicant would be collected in conjunction with the extension of stay application.

Q: How does the proposed rule affect students in a PhD program that might require more than a 4-year study?

Under the proposed rule, Ph.D. students would need to apply for an extension of stay during their study and before the 4-year admission period expires.

Q: What does the proposed rule say about the status of F and J non-immigrants who are currently in the United States?

F and J nonimmigrants who are properly maintaining their status would be authorized to remain in the United States in F and J status until the end date on their Form I-20 or DS-2019, not to exceed a period of 4 years from the final rule's effective date, plus a grace period of 60 days for F nonimmigrants and 30 days for J nonimmigrants. If they need additional time to complete their current course of study or exchange visitor program, including requests for post completion optional practical training (OPT) or STEM OPT, or would like to start a new course of study, they would have to apply for an extension of stay.

Q: What other changes are proposed?

The proposed rule would also decrease the time F-1 international students can stay in the United States after the end of their studies from 60 to 30 days. Further, under the proposed rule, students could attend English language training for no more than 2 years total (including breaks and vacations). The proposed rule would also set limits on the ability for students who completed a



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program at one education program to change to another program at the same educational level to no more than 2 additional times.

The proposed rule also increases the window for F-1 students filing for Optional Practical Training (OPT) work authorization before the program end date from 90 to 120 days (but narrows the filing window after the program end date from 60 to 30 days). The OPT request would no longer have to be filed within 30 days of recommendation by the DSO.

Finally, the OPT cap gap would be extended from October 1 to April 1 of the next year in recognition of the fact that USCIS cannot get all the H-1B petitions approved by 10/1 with the new H-1B lottery system. Says DHS "DHS is proposing... to provide an automatic extension of F-1 status and post-completion OPT, as applicable, until April 1 of the fiscal year for which the H-1B petition is filed."

Q: When would the proposed rule take effect?

It is unknown. The proposed rule is open for public comments until October 26, 2020. After the DHS considers the comments, it would draft a final rule and submit that to the Office of Management and Budget for review. Only after that could a final rule be published. Litigation could temporarily or permanently stop the final rule from taking effect. There will be requests to extend the 30-day comment period, but based on other recent NPRMs, it is unlikely those requests will be granted.

Q: Where Can I Find More Resources? See the [Penn State Law Center for Immigrants' Rights Clinic](#) website for updates on this and other immigration policies. Also visit:

- Department of Homeland Security, *Fiscal Year 2019 Entry/Exit Overstay Report* (March 30, 2020) https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf
- Major Changes to Student Visa Rules Proposed <https://insidehighered.com/news/2020/09/25/trump-administration-proposes-major-overhaul-student-visa-rules>
- NAFSA, "Proposal to Replace Duration of Status," September 25, 2020 <https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status>
- Presidents' Alliance on Higher Education and Immigration https://www.presidentsalliance.org/issues/?fwp_post_categories=international-students-and-scholars

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