

PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION

Delivered electronically

February 5, 2021

Tae Johnson
Acting Director
U.S. Immigration and Customs
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500 – 12th St., SW
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John Trasviña
Principal Legal Advisor
U.S. Immigration and Customs
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RE: EXPANDING GUIDANCE ON FLEXIBILITY FOR INTERNATIONAL STUDENTS

Dear Acting Director Johnson and Principal Legal Advisor Trasviña:

On behalf of the Presidents' Alliance on Higher Education and Immigration, we write to bring to your attention urgent matters of concern to our alliance of over 500 college and university leaders. International students make immense contributions to our academic programs, campuses, and communities. Yet, our institutions face significant complexities as they work to recruit, admit, and support their international student populations. Thus, the issues below are most urgent and time-sensitive in impacting our ability to support our international students and scholars in our communities.

After a concerted advocacy effort by the higher education community, the U.S. Department of Homeland Security (DHS) stated that international students should "[continue to abide](#)" by emergency pandemic guidance that allows them to take all or some of their courses online. We strongly support this guidance because without it, a large number of international students still in the United States during the pandemic would have had to take classes in person or leave—neither tenable as COVID cases rise and the pandemic is still prevalent.

However, DHS has still not issued additional guidance that would allow *all* international students, including those who were not already enrolled during the initial COVID-19 outbreak in March 2020 but have since enrolled or who will enroll, to enter and remain in the United States. Current guidance stipulates that if a new international student's courses are online, they are prohibited from entering the United States or must depart the country. This policy is a substantial problem for programs with students living in different time zones.

Member institutions inform us that they have enrolled students studying remotely in numerous countries, who must literally wake up in the middle of the night or during other unreasonable hours to attend classes online. This barrier is exacerbated in situations where students reside in countries with deficient or lacking infrastructure, leading to a lack of a reliable internet

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access. The strong preference of these higher education institutions would be for these international students to be permitted entry into the United States to continue or start their studies.

Therefore, we urge Immigration and Customs Enforcement (ICE) to update its Frequently Asked Questions for SEVP Stakeholders about COVID-19 (August 7, 2020) guidance (and any related or supplementary interagency guidance) by:

- a. Explicitly allowing initial international students to enter the country, as well as permitting existing students to remain in the United States when enrolled in online-only courses (as opposed to currently only allowing students enrolled in hybrid courses to enter);
- b. Clarifying that the five month absence rule for F-1 is suspended, particularly in response to some institutions of higher education being unsure of how to treat international students for over five months;
- c. Expressly permitting international students (including new/initial students) to enter and lawfully remain in the United States while pursuing programs of study that are not 100 percent remote coursework. Regulatory allowances for a temporary drop below a full course load should continue to be available; and
- d. Directing U.S. Customs and Border Patrol (CBP) to uniformly and immediately implement the existing and supplementary guidance.

As done in the past during emergent circumstances, we also urge DHS to issue a Federal Register Notice immediately granting Special Student Relief, particularly in light of COVID-19; and will gladly provide technical assistance in support of this request. We provide sample Special Student Relief templates in *Appendix A - Special Student Relief (SSR) Notice Follow Up*. The SSR package would address the reality that international students and exchange visitors are facing severe economic hardship, that Optional Practical Training (OPT) work authorization processing has been severely delayed, that some schools and exchange programs may have to cancel classes or move to fully online learning, necessitating a solution for initial international students seeking admission to the United States, and that students may need to temporarily drop below a full course of study or engage in employment beyond the normal 20-hour limit on both on- and off-campus employment.

We thank the new administration for its recent actions to affirm the importance of immigrant and international populations in the United States and for your continued partnership with the various universities and colleges in the United States. We [applaud the Executive Actions](#) on rescinding the travel bans, protecting and fortifying DACA, committing to diversity and equity, and reviewing and reducing barriers to the legal immigration system. We also commend the administration's decision to pause and review all pending rules. We hope we can find the right mix of flexibility in this space to ensure all students pursuing a higher education during this pandemic can continue to meet the goals of rebuilding a strong economy, contributing to economic innovation, and obtaining a cutting-edge education.

If you have any questions regarding these priorities and requests, please contact Jose Magaña-Salgado at jose@presidentsalliance.org or (480) 678-0040. We stand ready

and eager to support you and your team with further details on all of these priorities above.¹

Sincerely,

A handwritten signature in black ink, reading "Miriam Feldblum". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Miriam Feldblum
Executive Director

¹ The nonpartisan, nonprofit Presidents' Alliance on Higher Education and Immigration brings college and university presidents and chancellors together on the immigration issues that impact our students, campuses, communities and nation. We work to advance just immigration policies and practices at the federal, state and campus level that are consistent with our heritage as a "nation of immigrants" and the academic values of equity and openness. The Alliance is composed of over 500 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 43 states, D.C., and Puerto Rico.

APPENDIX A - Special Student Relief (SSR) Notice Follow Up

The Ask: We ask DHS and DOS to publish a Special Student Relief (SSR) notice in the Federal Register.

Summary of the Special Student Relief (SSR) Notice

The Department of Homeland Security (DHS) and Department of State (DOS) should exercise discretion to allow flexibility for international students and exchange visitors who are impacted by the global pandemic (COVID-19) and current requirements relating to: maintaining status, employment, and course load. When adjudicating benefit requests and status determinations for our prospective and current international students, they should be held harmless for reasonable responses to this pandemic, which is affecting conditions in countries around the world. What higher education and international students and exchange visitors need is more of a whole-of-government approach that provides relief to international students, scholars, researchers and others holding nonimmigrant visas – a goal that could be accomplished through the SSR.

We would be happy to assist in drafting specific language for the Federal Register notice for the SSR. Here are the broad strokes of what it should include for international students and exchange visitors (F1s and J1s):

- Permission to take online courses without losing immigration status and that counts toward OPT/CPT eligibility.
- Permission to legally remain in the United States as long as students are making progress toward their program or degree and allowance for a temporary drop below a full course load.
- Permission to engage in on-campus and off-campus employment as needed.
- Flexibility in Optional Practical Training, due to processing delays, including conditional approvals and extensions; improved communication; and avoiding penalties.
- Stopping the clock that requires students to secure employment within 90-days or lose their Optional Practical Training (OPT) benefit and be forced to leave the United States.

The SSR package would address the reality that international students and exchange visitors are facing severe economic hardship, that some schools and exchange programs may have to cancel classes or move to fully online learning, and that students may need to temporarily drop below a full course of study or engage in employment beyond the normal 20-hour limit on both on- and off-campus employment. Students living in different time zones or with unreliable internet should be allowed to travel to the United States, once travel is permitted, to pursue their programs online when needed without risking violation of their immigration status. To date, we appreciate recent DHS guidance regarding visa and immigration policy and processes for international students and exchange visitors, specifically the Student Exchange Visitor Program (SEVP) guidance regarding the transition to online courses and its impact on international students; however, we request that the flexibility to engage in online learning be extended to initial (new) students as well.

Background for Issuing the SSR.

Regulations allow DHS to suspend or alter rules regarding duration of status, full course of study, and employment eligibility for international students facing extreme hardship as a result of emergent circumstances in the U.S. or occurring in students' countries of origin. Notably, in 2005, DHS issued a [Federal Register notice](#) temporarily suspending certain regulations relating to on-campus and off-campus employment, and course load requirements for international students impacted by Hurricane Katrina, and there have been numerous other examples, including the Asian Financial Crisis of 1998 (cited below). DOS has also twice acted to publish SSR notices for exchange visitors. Higher education institutions have extensive emergency and contingency plans for natural and other disasters, including the pandemic, and they are implementing measures to mitigate the spread of COVID-19 to protect the health and safety of their communities. Typical measures include temporary closures, telework and distance education policies, etc.

The impact of the current global pandemic on international students and exchange visitors has not yet received enough attention. In addition to navigating public health and safety restrictions, students and exchange visitors are facing economic hardship. They must make decisions that are best for the health and wellbeing for themselves and their families, but without SSR, they risk violating their status. Many of the regulations governing maintenance of immigration status, course load requirements, and employment eligibility for students and exchange visitors simply do not provide enough flexibility to accommodate for the emergent circumstances of the pandemic and global economic downturn affecting the U.S. and countries around the world.

Additional resources:

<https://www.nafsa.org/professional-resources/browse-by-interest/special-student-relief-f-1-students-essential-concepts>.

Citations. Regulations allow DHS to suspend or alter rules regarding duration of status, full course of study, and on-campus and off-campus employment, for specific groups of F-1 students affected by emergent circumstances. This collection of benefits is known as "special student relief." [see 63 FR 31872 (June 10, 1998), amending the Code of Federal Regulations governing F-1 duration of status at 8 CFR 214.2 (f)(5)(v), full course of study at 8 CFR 214.2(f)(6)(i)(F), and employment eligibility at 8 CFR 214.2(f)(9)(i) and (ii)].

The regulatory provisions are generic and are activated only when DHS makes a finding of emergent circumstances and publishes a notice in the Federal Register to define the specifics of what is to be suspended, and for whom, and the procedures for how to apply for any benefits that result from the suspension. DHS has not yet provided Special Student Relief for students impacted by COVID-19.

Examples of past SSR. The NAFSA SSR webpage lists various instances of SSR including [Asian Economic Crisis of 1998](#), [Hurricane Katrina](#), Haiti (extended numerous times [starting in 2010](#) ending in [2017](#)), [Libya](#), Syria (extended numerous times starting in [2012](#) and ending in [2019](#), and the Republic of Nepal (starting in [2015](#) and ending in [2019](#) after extension).

Terminology. Note: We suggest using the term “international students and exchange visitors” when publicly communicating about this group of individuals covered by the legal term “foreign student” (F-1s) and “exchange visitor” (J-1s).