

PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION

October 26, 2020

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740 15th St. NW
Suite 900
Washington, D.C. 20005

info@presidentsalliance.org
www.presidentsalliance.org

Sharon Hageman
Acting Regulatory Unit Chief
Office of Policy and Planning
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street SW
Washington, D.C. 20536

Re: DHS Docket No. ICEB-2019-0006-0001, Comments in Response to 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

Dear Acting Regulatory Unit Chief Hageman:

On behalf of the Presidents' Alliance on Higher Education and Immigration ("Presidents' Alliance"), I submit this comment letter in response to the U.S. Department of Homeland Security's (DHS) proposed rule, *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-2019-0006-0001), published September 25, 2020. With strong opposition and profoundly serious concerns, we urge that the proposed rule be withdrawn in its entirety, and that admission for the duration of status remain in effect.

The Presidents' Alliance is a non-partisan, nonprofit education and advocacy organization that brings college and university presidents and chancellors and their institutions together on the immigration issues that impact their international and immigrant students, campuses, communities, and our country. 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 approximately 500 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 42 states, D.C. and Puerto Rico. Our members' institutions and university systems reflect a wide range of nonprofit higher education institutional types. Roughly one quarter of institutions grant Doctoral degrees, twenty-seven percent offer Master's level instruction, twenty-three percent offer only Baccalaureate degrees, nineteen percent grant Associate degrees, and six percent are specialized institutions, including law schools and medical schools.

If the United States is to remain a leader in science and innovation, we must encourage, rather than deter, the best minds from around the world to study and conduct research at our institutions. One of the greatest strengths of our U.S. higher education system has been our ability to attract international students and scholars. These students and scholars enrich our classrooms, drive innovation, promote scientific advancement, and create jobs.

Given the enormous asset that international students and scholars are to the United States, policies that impact them must consider whether those policies help attract and retain them students, or whether those policies serve to deter them. This rule, unfortunately, does the latter. Let us be clear: correcting the issues posed by the proposed rule piecemeal, absent a clear focus on enacting policy that helps to promote, rather than diminish, the attractiveness of the United States as a destination for international students and scholars, will be detrimental to our institutions and our nation. We object to the rule in its entirety.

There are a multitude of serious concerns about both the process and the substance of the rule, which, both cumulatively and individually, merit its withdrawal. The 30-day comment period is inadequate under the Administrative Procedure Act, and the proposed rule is unsound as a matter of policy.

A. The 30-Day Comment Period is Inadequate Under the Administrative Procedure Act

- I. A minimum of 60 days is required for meaningful public comment on the NPRM. The global COVID-19 pandemic results in delays and overwhelmed stakeholders that require more time to adequately assess and respond to such a significant reversal of long-standing policy.**

On October 8, together with 90 organizations and higher education institutions, we sent a letter to DHS to request a reasonable comment period. In what appears to be a flagrant disregard for the process of public input and comment, and in contradiction with the Administrative Procedure Act, the agency has forced the public to comment in an extremely compressed timeline, all while institutions and communities are already consumed with the challenges posed by the pandemic and its impact on higher education and international education.

As we stated in that letter, a minimum of 60 days is required for meaningful public comment on the NPRM to adequately assess and respond for two principle reasons:

First, The global COVID-19 pandemic results in delays and overwhelmed stakeholders. On March 13, 2020, the White House proclaimed a national emergency in light of the COVID-19 pandemic, a state of emergency that continues to this day. The pandemic has drastically affected stakeholders' ability to adequately respond to the proposed rule. The situation on the ground has continued to shift throughout the crisis requiring students, professors, institutions, businesses, and researchers to repeatedly accommodate new

circumstances and standards. This is especially the case for colleges and universities, who have had to decrease staff; work and teach remotely; and monitor the health of every person on their campuses. Advocates and legal practitioners have had to remain up to date and informed on each change and its consequences, all with limited access to the information, technology, resources, and clients needed to adequately respond to the NPRM. In particular, more time is needed to reach out to current and prospective international students and exchange visitors to assess the impact of the proposed rule, including those who were denied entry this year because of DHS's restriction on online programs.

In light of the urgent conditions of the pandemic, members of Congress from the House and the Senate have also requested that the administration halt the federal rulemaking process and administrative actions that did not pertain to the COVID-19 response, as well as extend the formal comment period for the duration of the crisis. Other agencies have extended their comment periods due to COVID-19, and DHS should follow suit.

Moreover, there also have been technical delays to submitting a comment. The Federal Register indicated that stakeholders must submit comments using www.regulations.gov, but during the comment period the webpage was undergoing development; and on a number of Tuesdays and Thursdays visitors to the site were redirected to the development page at beta.regulations.gov. Frequent outages and loading delays made it exceedingly difficult to access the page to submit comments during that time, meaning that some commenters may have been delayed or prevented from submitting their comments, or even reading the proposed rule.

Second, the NPRM will have a widespread and complex impact on stakeholders that requires careful analysis. Executive Order 12866 states that agencies should allow “not less than 60 days” for public comment in most cases, in order to “afford the public a meaningful opportunity to comment on any proposed regulation.” Executive Order 13563 also states that “[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally be at least 60 days.”

Moreover, DHS, as a matter of policy, has generally allowed an extra 60 days for all types of immigration applications during COVID, an acknowledgement of the challenges of responding during the pandemic. Even without the conditions of the pandemic, it takes time to collect metrics and data from students, exchange visitors, institutions, and businesses in all 50 states to adequately assess the impact of the proposed rule. For example, though international students support over 458,000 jobs in the United States and contribute \$41 billion to the U.S. economy, the economic impact of the proposed rule was not adequately addressed in the proposal's cost benefit analysis and will thus need to be assessed and reported by stakeholders themselves. A minimum 60-day comment period would have allowed more stakeholders to carefully examine the NPRM, providing DHS with essential information to consider the scope of related issues, assess unintended consequences, and prevent potential waste of resources.

Given the current conditions under the pandemic and wide and varied potential impact of the proposed rule, we believe that an extended comment period is not only warranted but necessary.

B. The Proposed Rule is Unsound as a Matter of Policy

I. With the very limited timeframe DHS allowed for comment on this rule, we object the rule based on the following substantive issues:

A. International students and exchange visitors contribute immensely to our campuses, communities, and country, yet this rule makes U.S. higher education less competitive internationally.

To cite just some of the data demonstrating their significant value to our nation:

- In 2018, international students and their dependents contributed over \$41 billion to the U.S. economy, creating or supporting more than 458,290 jobs, according to the latest data from NAFSA: Association of International Educators. They represent the 6th largest service sector export in the United States.
- Nearly one-quarter of the founders of the \$1 billion U.S. startup companies first came to America as international students, according to the National Foundation for American Policy (NFAP).
- NFAP also found that immigrants have been awarded 40% of the Nobel Prizes won by Americans in chemistry, medicine, and physics since 2000.
- International exchange visitors and immigrants are vital to delivering healthcare in our communities. More than 12,000 J-1 physicians are training in the United States at nearly 750 teaching hospitals across the country, according to ECFMG/FAIMER; and, according to research by New American Economy, immigrants account for close to 30% of all physicians in the United States.

However, other nations are increasingly successful in competing for these students and part of their strategy is to highlight the ways in which their immigration policies are more welcoming than the U.S. system to talent from abroad. This proposed rule sends a clear and unwelcoming message to prospective and current students and scholars.

- The most recent U.S. Department of State Open Doors report, published by the Institute of International Education, reported a 0.9% decline in new international student enrollments; this is the third consecutive year of decline in new international student enrollment at U.S. colleges and universities. Because a drop in new enrollments affects the overall pipeline of talent for years to come; policies should be helping us to arrest this decline, not further exacerbate this trend.
- University and industry leaders acknowledge that anti-immigrant rhetoric and policies contribute to a chilling effect on international study in the United States.

- Data show that international students and scholars feel less safe and less welcome in the United States than the previous year surveyed.
- Competitors like Canada, China, and Australia are recruiting and attracting more international students and scholars and benefiting at the expense of the United States. For example, in 2014, China surpassed the United Kingdom and the United States as a top destination for international students from Africa—and it continues to draw increasing numbers of students from the African continent.
- Of increasing concern, U.S. government data show that prior to the COVID-19 crisis the number of international students from India (one of the largest sending countries) enrolled in graduate-level computer science and engineering at U.S. universities declined by more than 25% between the 2016-17 and 2018-19 academic years, according to an analysis by the National Foundation for American Policy.
- The evidence indicates in recent years many Indian students have been choosing Canada over the United States as the place to study and make their careers. More restrictive immigration and international student policies under this administration and the difficulty of obtaining green cards in the United States are key factors.
- Imposing a limit of a two- or four-year admission period on students will increase the economic burden of international students in the United States, causing many to have to travel to distant locations to obtain biometrics. It will require students to undertake additional applications and lengthy processes for an Extension of Stay (EOS) if they want to complete their educational experience with participation in Optional Practical Training (OPT), and mean that many international students will have to pay additional filing fees with no perceptible value added. It will introduce a significant amount of uncertainty in students' coursework.

In the midst of fierce global competition for talent, this is not the time to impose harmful, unnecessary restrictions. International students deserve to know that they will be allowed to stay in the United States through their entire academic program, but this new proposed rule injects uncertainty and unwarranted hurdles.

B. The proposed date-specific admission does not conform to academic programs and harms students' reliance on duration of status.

The wide and varied potential impact of the proposed rule creates a significant degree of uncertainty and does not appropriately support international students. Four-year limits on the period of stay do not take into consideration the time that it takes to complete academic coursework, specifically at a higher level (including Master's, and PhD programs). It also fails to take into consideration the reality of undertaking a course of secondary study in the United States. The current, long-standing rule enables students (both American and international) to change their majors or request time off while studying. Indeed, over half of first-time bachelor's recipients did not complete their

bachelor's degree within four years (48 months).¹ The new rule would hold international students to a different standard influenced by an enforcement-forward strategy, without having adequately demonstrated the need for this significant change in policy.²

The proposed rule would impose limits on a student's ability to change their degree program.³ Students who may wish to change degree programs within their college or university to specialize in their course of studies (e.g. a student who decides to transition to a degree in Information Science from Computer Science; International Relations from Political Science; or Applied Economics from Economics) will also be impacted as they attempt to pursue coursework that is ultimately more technical and specialized than their previous degree program. The rule also does not take into consideration reasons that a student may choose to extend their program in the United States, such as transferring schools or changing their major. According to the National Student Clearinghouse Research Center, more than one third of college students transfer at least once within six years of their matriculation.⁴

Students transfer programs for a variety of reasons, including transferring from community college to a four-year institution; changing schools because their intended program is not adequately supported at their first school (i.e., a student who transfers to pursue engineering at another school when their first school was not able to provide adequate training); moving to pursue education and training that is not offered by their first school (i.e., transferring to pursue a STEM-related program from a school that favors the liberal arts, or vice versa); or because their first school was less compatible with their values, needs, or goals (i.e., transferring to a school associated with their faith, to be closer to their support network, or to an area that has more professional and academic opportunities available). At the very least, international students' educational and professional development opportunities would be restricted by the proposed rule.

Further, many international undergraduates at four-year institutions pursue combined programs that require a fifth year or additional time. More broadly, the four-year visa admission period ignores the previously cited data that many undergraduates do not graduate in four years. International students are more likely to graduate with a bachelor's degree within four years than domestic students (56% for international students compared to 44% of domestic students). Still, the average time for international students to complete their bachelor's is more than four years according to the National Center for Education Statistics (NCES).⁵ And, the limit of four-year

¹ "Time to Degree," National Center for Education Studies (last accessed Oct. 26, 2020) <https://nces.ed.gov/fastfacts/display.asp?id=569>.

² Redden, Elizabeth, "Major Changes to Student Visa Rules Proposed," Inside Higher Ed, Sept. 25, 2020, <https://www.insidehighered.com/news/2020/09/25/trump-administration-proposes-major-overhaul-student-visa-rules>.

³ *Id.*; "Proposal to Replace Duration of Status," NAFSA, Oct. 25, 2020, <https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status>.

⁴ "Transfer & Mobility – 2018," National Student Clearinghouse Research Center, Aug. 7, 2018, <https://nscresearchcenter.org/signaturereport15/>.

⁵ "Table 326.10. Graduation Rate from first institution attended for first-time, full-time bachelor's degree seeking postsecondary institutions, by race/ethnicity, time to completion, sex, control of institution and percentage of applications accepted: Selected cohort entry years, 1996 through 2012," National Center for Education Statistics (2019) https://nces.ed.gov/programs/digest/d19/tables/dt19_326.10.asp.

admission period does not account for participation in OPT, which is a critical component of the educational experience for international students.

The four-year limit is completely impractical for longer degree programs, such as PhD programs and medical training programs in the United States. PhD programs normally take at least five to six years to complete,⁶ which means that if the rule is finalized, PhD candidates at U.S. schools or programs will certainly need to request an extension during the middle of their program. The goal of PhD programs in the United States is most often to develop significant and original research in a student's area of study. These PhD programs are academically rigorous, competitive, highly selective, and require that a student form a close connection to a faculty advisor or institution to undertake their studies properly. Since many PhD programs require extensive student research and faculty support (as well as publication in a peer-reviewed academic journal), it is sometimes necessary to extend programs to accommodate said research.⁷ Since the government, in the proposed rule, wants to assume the responsibility of ensuring that students are moving through their programs at an appropriate pace or speed, they may judge a student to be noncompliant with their visa terms and deny an extension when their advisor (or school) supports the program extension.⁸

American medical schools are highly selective, competitive, and academically challenging. They are internationally renowned and feature coveted programs and facilities. According to *U.S. News*, eight of the top 10 best universities for clinical medicine are located within the United States.⁹ Regardless of whether or not a student chooses to change their major or specialty, medical schools require a high degree of student engagement in order to succeed. According to the Association of American Medical Colleges (AAMC), the four-year graduation rate ranged from 81.6% to 84.1%. For students who graduate from combined degree programs, the graduation timeline extends between eight and 10 years for MD-PhD programs and five years for MD-MPH programs.¹⁰ If medical students are left uncertain as to whether or not they will be able to complete their studies within the United States, they may choose to pursue their medical degrees elsewhere. Should they decide to pursue medicine in another country, the United States will almost certainly lose out on the ability to entice them back for critical research and healthcare-related positions. As the United States navigates and recovers from the COVID-19 pandemic and prepares for future public health challenges, international medical students will be a critical lifeline for an industry that is facing a

⁶ Kowarski, Ilana, "How Long Does It Take to Get a Ph.D. Degree?" *U.S. News*, Aug. 12, 2019, <https://www.usnews.com/education/best-graduate-schools/articles/2019-08-12/how-long-does-it-take-to-get-a-phd-degree-and-should-you-get-one>.

⁷ *Ibid.*

⁸ Anderson, Stuart, "New Immigration Rules Will Have Big Impact on International Students," *Forbes*, Sept. 28, 2020, <https://www.forbes.com/sites/stuartanderson/2020/09/28/new-immigration-rules-will-have-big-impact-on-international-students/#d493a5e68999>.

⁹ *U.S. News*, "Best Global Universities for Clinical Medicine" (last accessed Oct. 22, 2020) <https://www.usnews.com/education/best-global-universities/clinical-medicine>.

¹⁰ "Graduation Rates and Attrition Rates of U.S. Medical Students," Association of American Medical Colleges, Oct. 2019, <https://www.aamc.org/system/files/2019-11/AAMC%20Data%20Snapshot%20on%20Graduation%20Rates%20and%20Attrition%20Rates%202019.pdf>.

major shortage as soon as 2033.¹¹ Many students are not able to transfer to other programs easily (if at all) if their extension is not approved. If finalized, the rule would require them to leave the United States, in spite of major investments of time, money and talent by the students and the institutions.

Similarly, the two-year admission limit for international students from countries identified with alleged 10%+ overstay rates is based on deeply flawed data and analysis. As shown in a National Foundation for American Policy brief, the rule is not based on actual overstay data, but “relies on a flawed measurement - an overall overstay rate by country that includes individuals who DHS concludes have already left the United States and people DHS concedes may have lawfully changed status inside the United States and are not actual overstays.”¹² In fact, the research shows that as many as half of those students identified as overstayers are revealed to have remained in the country legally. The two-year admission limit unfairly and disproportionately targets students from Africa and undermines efforts by higher education institutions to diversify their international student populations. For example, students from Nigeria, Kenya, Tanzania as well as Vietnam and the Philippines would be limited to admission periods lasting at most two years, and subject to heightened scrutiny.

For its flawed analysis of the scope of international students impacted and of the incidence of overstays and for its lack of evidentiary bases, the proposed rule should be withdrawn. At the very least, DHS should be required to redo its analysis of overstays and recalculate how many international students would need to apply for EOS before finalizing the rule.

C. SEVIS is already sufficient to accomplish DHS's goals, making the rule duplicative, wasteful, and unnecessary.

The proposed rule is also unnecessary and duplicative. Although F and J nonimmigrants are admitted for duration of status, unlike “most other nonimmigrant categories,” none of those “other categories” are connected to a massive electronic reporting system like SEVIS. As such, SEVIS is already providing a higher level of accuracy of data to DHS and other federal government agencies as it pertains to an individual’s lawful status in the United States.

The IT Dashboard SEVIS Business Case (Section C1: Projects Table) shows that for technology investment alone, the SEVIS Project from its 7/1/2002 start date through a projected project date of 9/30/21, \$181.7 million will have been spent. This expensive endeavor has yielded detailed data for DHS that would have been unthinkable in prior decades.

¹¹ Boyle, Patrick, “U.S. Physician Shortage Growing,” American Association of Medical Colleges. June 26, 2020, <https://www.aamc.org/news-insights/us-physician-shortage-growing>.

¹² National Foundation for American Policy, “International Students and DHS Data,” Sept. 2020, <https://nfap.com/wp-content/uploads/2020/09/Analysis-of-DHS-Data-on-International-Students.NFAP-Policy-Brief.September-2020-1.pdf>.

SEVIS gives DHS immediate access to detailed information related to almost every student and exchange visitor event that could impact a student or exchange visitor's compliance with immigration regulations. SEVIS disseminates student & exchange visitor real-time data (including active status) into various government database systems (i.e. SAVE, E-VERIFY, etc.) which is potentially accessible by various federal agencies (i.e. DHS, USCIS, Social Security, etc.) as well as state governments (DMVs).

Unlike any other nonimmigrant status, this provides immediate access to detailed information related to every student and exchange visitor to determine eligibility for any of these services. Program completion date and maintenance of status details are also provided real-time via SEVIS. Should the P/DSO or A/RO determine a student or an exchange visitor is not maintaining status at any point, they can update SEVIS with a termination event providing an immediate notification into these government database systems which provides a wide range of visibility that the status is ended. For information not directly submitted in SEVIS, DHS also has the authority to request, “on any individual student or class of students upon notice,” all information and documents that schools are obligated under 8 CFR 214.3 to retain throughout the student's enrollment and for a period of 3 years beyond that.

In the course of an extension of stay application, students would have to submit information that they would have to get from their schools or programs—information or documentation that the schools and programs already provide directly through SEVIS or are required to retain by regulation. Making a student submit to USCIS this same information that DHS already has access to is duplicative and wasteful. DHS can effectively enforce the current immigration laws by wisely using its resources to engage in data-driven initiatives that focus on risk factors, rather than subjecting entire nonimmigrant categories to an expensive, cumbersome, and time-consuming extension of stay process that largely duplicates the efforts that schools and exchange visitor programs will continue to make to comply with heavy SEVIS reporting obligations.

D. The proposed rule is a significant unwarranted, unnecessary, and harmful intrusion into academic decision-making.

The rule encroaches on the role of the academic institution. It is the institution's, not the federal government's, decision whether and when to grant students additional time to complete a degree. It is inappropriate and overreaching for the rule to give a USCIS officer the ability to evaluate whether a student is making good academic progress, rather than the school. Moreover, “compelling academic reasons” are not clearly defined by the rule, meaning that the government will have more discretionary power over students than colleges or universities. This presents an untenable situation in which a student may apply for an extension of their studies and be approved by their own school, but not by the government. Restricting international student enrollment in language training programs to a lifetime aggregate of 24 months (including breaks and an annual vacation) is arbitrary. The length of time students require in English as a Second Language (ESL) programs varies and can justifiably extend beyond 24 months.

Institutions already have extensive processes to approve additional semesters based on academic and institutional procedures. These procedures are overseen by faculty,

academic and student deans, registrars, financial aid officers, and others on campus, who are in the best position to make these determinations. Allowing the federal government to intervene in academic decisions that are best handled by higher education institutions sets an alarming precedent. These matters are best left to academic professionals who understand equally the importance of advising students on compliance with federal immigration regulations and helping them navigate the complexities of academic program requirements.

E. The proposed rule ignores DHS/USCIS' inability to timely process extension applications to ensure institutions and students are able to efficiently move forward.

We anticipate that the extensions and authorizations required by the student rule will create additional backlogs within U.S. Citizenship and Immigration Services (USCIS), which will in turn result in extended adjudication timelines, resulting in uncertainty on the student's and school's behalf. And this only exacerbates what is already an overburdened immigration bureaucracy. As recently as August 2020, USCIS narrowly avoided a furlough of nearly 13,000 employees (over 70% of its workforce¹³).¹⁴ USCIS has attributed its budgetary issues to a decline in application filings and receipts due to the COVID-19 pandemic.¹⁵ However, the November 2019 Proposed Fee Schedule¹⁶ points to the agency's need to increase filing fees to match growing budget concerns that preceded the pandemic. Some of the increased costs are a result of restrictive immigration policy decisions enacted by agency leadership and the Trump administration appointees.¹⁷ These policies, including intensive vetting, temporarily suspending premium processing, and fraud prevention costs, have caused case processing and adjudication timelines to increase, which has further added to the existing backlog.¹⁸ The backlog exceeded 2.3 million delayed cases at the end of FY2017. The additional vetting escalated the need for additional USCIS personnel to manage the backlog, which also does not match agency requirements. The backlog and policy changes were examined in a 2019 congressional hearing, as well as a follow up on July

¹³ Monyak, Suzanne, "US Immigration Agency Risks Furloughs Amid Financial Woes," Law360, June 24, 2020, <https://www.law360.com/articles/1286483/us-immigration-agency-risks-furloughs-amid-financial-woes>.

¹⁴ "USCIS Averts Furlough of Nearly 70% of Workforce," USCIS (Aug. 25, 2020) <https://www.uscis.gov/news/news-releases/uscis-averts-furlough-of-nearly-70-of-workforce>; Ogrysko, Nicole, "USCIS Cancels Impending Employee Furlough Days Ahead of Deadline," Federal News Network, Aug. 25, 2020, <https://federalnewsnetwork.com/workforce/2020/08/uscis-cancels-impending-employee-furloughs-days-ahead-of-deadline/>.

¹⁵ Monyak, Suzanne, "US Immigration Agency Risks Furloughs Amid Financial Woes," Law360, June 24, 2020, <https://www.law360.com/articles/1286483/us-immigration-agency-risks-furloughs-amid-financial-woes>.

¹⁶ Federal Register, U.S. Department of Homeland Security, "U.S. Citizenship and Immigration Services Fee Changes to Certain Other Immigration Benefit Requirements," (Nov. 14, 2019), <https://www.federalregister.gov/documents/2019/11/14/2019-24366/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

¹⁷ Monyak, Suzanne, "US Immigration Agency Risks Furloughs Amid Financial Woes," Law360, June 24, 2020, <https://www.law360.com/articles/1286483/us-immigration-agency-risks-furloughs-amid-financial-woes>.

¹⁸ Dreid, Nadia, "USCIS Union Blames \$1.2B Funding Woes on Trump Admin," Law 360, July 14, 2020 <https://www.law360.com/articles/1291709>.

29, 2020. As a result of these issues, USCIS leadership foresaw itself as unable to continue operations.

While the USCIS larger furlough was averted, over 800 USCIS contractors were furloughed from the National Benefits Center in Kansas City, Missouri.¹⁹ In September 2020, a federal judge in the Ninth Circuit issued a nationwide preliminary injunction enjoining fee increases for citizenship and other immigration benefits.²⁰ USCIS Deputy Director of Policy Joseph Edlow commented, “This increase is necessary to continue operations in any long-term, meaningful way to ensure cost recovery.”²¹ If USCIS chooses to move forward with its furlough in the future, it would affect all Service Centers and would have an immediate, dramatic impact on the processing of pending applications.²² By requiring international students to prepare and submit additional extensions to USCIS (that are not currently required), USCIS’ case load would increase by an estimated 300,000-plus applications per year by 2024.²³ When combined with a reduced workforce, this increase would result in an explosion of the case backlog, creating an additional layer of uncertainty in the visa extension process. The additional uncertainty would undoubtedly lead international students to either depart the United States before the end of their program to avoid accumulating any “unlawful presence,” or discourage students from studying here in the first place.

Increasing the applications submitted to USCIS at a time when the agency is handling a significant backlog and funding crisis would have an immediate detrimental impact to not only international students, but to the entire legal immigration system as a whole. If finalized, the rule would result in delayed approvals or adjudications, causing increased volatility and uncertainty that would drive students from the United States, while at the same time discouraging other prospective students from studying in the United States.

F. Implementing the rule would have significantly greater economic effects than estimated by DHS on U.S. higher education institutions, including from the loss of the international student population resulting from the rule. There would also be significant economic costs to students and impact on the economy.

The proposed rule significantly underestimates the costs of implementation of the proposed rule. The estimate outlined by DHS only acknowledges a portion of the

¹⁹ Steve Vockrodt, “Push under way in Congress to stave off mass layoff of federal agency in Kansas City,” *The Kansas City Star*, May 27, 2020, <https://www.kansascity.com/news/politics-government/article243025411.html>.

²⁰ Villalobos, Melina V, “Federal Judge Blocks USCIS Immigration Fee Increases,” *The National Law Review*, Oct. 2, 2020, <https://www.natlawreview.com/article/federal-judge-blocks-uscis-immigration-fee-increases>.

²¹ Press Release, U.S. Citizenship and Immigration Services, USCIS Response to Preliminary Injunction of Fee Rule (Sept. 30, 2020) <https://www.uscis.gov/news/news-releases/uscis-response-to-preliminary-injunction-of-fee-rule>.

²² Girard, Scott and Rabindra Singh, “USCIS Furloughs Will Mean Massive Case Delays, Backlogs.” *Law 360*, Aug. 24, 2020, <https://www.law360.com/articles/1303750/uscis-furloughs-will-mean-massive-case-delays-backlogs>.

²³ Anderson, Stuart, “Disputed Policy on Foreign Students Uses Flawed Report,” *Forbes*, Sept. 28, 2020, <https://www.forbes.com/sites/stuartanderson/2020/09/28/disputed-immigration-policy-on-international-students-uses-flawed-report/#579f0f6b3fc5>.

training, software, and technology costs. For example, the proposed rule does not take into account the new and ongoing training that the institution will have to develop and implement for the multiple academic departments and administrative entities that are involved in supporting international students; and given the complexity of the rule, institutions need a greater amount of time to analyze and project those costs. In addition, the proposed rule does not consider the significant, increased costs that will be required to implement E-VERIFY at many institutions in order for them to qualify for the four-year visa admission periods. The implementation of E-VERIFY will require a significant overhaul to hiring and administrative systems at many institutions. Further, DHS largely dismisses the significant and rippling economic losses that would result from the rule.

The positive impact of international students on the economy (both national and local) has been extensively studied and would be at significant risk due to the proposed rule. International students typically pay full tuition, which boosts revenue for schools, thus creating opportunities for domestic students to attend as well. Spending on housing and other goods (such as food, transportation, and retail) supports U.S. businesses and workers. According to the U.S. Department of Commerce, international students contributed over \$44 billion USD to the economy in 2018.²⁴ Unwelcoming policies can dissuade talented international students from studying in the United States, leading them to take their talent and spending power elsewhere.

U.S. education is a valuable service sector export and is roughly equivalent to total U.S. exports of wheat, corn, coal, and natural gas.²⁵ Because international students are ineligible for federal financial aid, they frequently pay the full (or “sticker”) cost of tuition, making them a critical source of tuition revenues for both public and private American colleges and universities. In contrast, most U.S. students receive subsidies and financial aid to assist in their tuition expenses, and on average pay between 40 and 50 percent of a school’s sticker price.²⁶ International student enrollment enables classes to be available for domestic students. In at least one case, Purdue University paused its recruitment for its two-year residential MBA program in part due to declining applications from international students, who have opted to study in other countries.²⁷ A study from the Center for Global Development in July 2020 estimated that the U.S. trade war with China could cost U.S. universities around \$1.15 billion in tuition revenue

²⁴ Department of Commerce International Trade Administration, “U.S. Education Service Exports,” Oct. 22, 2020, <https://www.trade.gov/education-service-exports>. Accessed October 22, 2020; The Institute of International Education, “Economic Impact of International Students,” 2019, <https://www.iie.org/Research-and-Insights/Open-Doors/Economic-Impact-of-International-Students>

²⁵ Peri, Giovanni, Kevin Shih, and Chad Sparber, “The Devastating Economic Consequences of Pushing Foreign Students out of the Country,” UC Davis Global Migration Center, July 2020, https://globalmigration.ucdavis.edu/sites/g/files/dgvnsk8181/files/inline-files/Policy%20Brief_Economic%20Consequences%20of%20Pushing%20Foreign%20Students%20out%20of%20the%20Country.pdf.

²⁶ Peri, Giovanni, Kevin Shih, and Chad Sparber, “The Devastating Economic Consequences of Pushing Foreign Students out of the Country,” UC Davis Global Migration Center, July 2020, https://globalmigration.ucdavis.edu/sites/g/files/dgvnsk8181/files/inline-files/Policy%20Brief_Economic%20Consequences%20of%20Pushing%20Foreign%20Students%20out%20of%20the%20Country.pdf.

²⁷ Hummels, David, Letter to the Krannert School of Management Community, June 15, 2020, https://krannert.purdue.edu/news/articles/hummels-letter-june-15_2020.pdf.

alone.²⁸ Furthermore, tuition from international students has acted as a buffer for U.S. colleges and universities in light of declining state appropriations for university education.

International students in the United States contribute to the U.S. economy beyond their school tuition. Because they must reside in the United States as part of their visa program requirements, international students pay for services in their local communities including housing, transportation, food and dining, and recreation. Their demand for local goods and services supports the employment of U.S. workers as well as tax revenue from their purchases. For every 7 international students, 3 U.S. jobs are created or supported by spending in higher education, accommodation, dining, retail, transportation, telecommunications, and health insurance. Education is the nation's 6th largest services export.²⁹ By restricting international students' access to study in the United States, the proposed rule discourages investment in U.S. schools and businesses and encourages students to spend their money elsewhere.

The loss of international students would therefore have a compound effect on many local economies.³⁰ As noted earlier, more than one million international students contributed nearly \$41 billion to the U.S. economy and supported 458,290 jobs during the 2018-2019 academic year.³¹ California and New York, two of the top ten destinations of international students, received \$6.8 billion USD and \$5.3 billion, respectively, from international students. 74,814 and 59,586 jobs, respectively, were created or supported as a result. Texas gained \$2.2 billion, Wisconsin earned \$448.5 million in revenue, and Florida received \$1.6 billion.

Since Fall 2016, the decline in international student enrollment since Fall 2016 has cost the U.S. economy \$11.8 billion and more than 65,000 jobs. Canada and Australia have meanwhile shown double-digit growth.³² The stagnation of U.S. enrollment and the increase in competitor states' international student population has a direct relationship: As the United States adopts more stringent measures that penalize international students, or create an unwelcoming environment for international students, they will

²⁸ Khanna, Gaurav, Kevin Shih, Ariel Weinberger, Mingzhi Xu, and Miaojie Yu, "Trade Liberalization and Chinese Students in US Higher Education," Center for Global Development, July 2020, <https://www.cgdev.org/sites/default/files/trade-liberalization-and-chinese-students-us-higher-education.pdf>.

²⁹ Mitropoulos, Arielle, "Loss of international students could damage US economy, experts say," ABC News, July 14, 2020, <https://abcnews.go.com/Business/loss-international-students-damage-us-economy-experts/story?id=71754388>; "The United States Benefits from International Students," National Economic Data PDF: <https://www.nafsa.org/sites/default/files/media/document/isev-2019.pdf>.

³⁰ Peri, Giovanni, Kevin Shih, and Chad Sparber, "The Devastating Economic Consequences of Pushing Foreign Students out of the Country," UC Davis Global Migration Center, July 2020, https://globalmigration.ucdavis.edu/sites/g/files/dgvnsk8181/files/inline-files/Policy%20Brief_Economic%20Consequences%20of%20Pushing%20Foreign%20Students%20out%20of%20the%20Country.pdf.

³¹ "Economic Value Statistics," NAFSA: Association of International Educators, 2019, <https://www.nafsa.org/sites/default/files/media/document/isev-2019.pdf>.

³² Morgan, Rebecca and Kasey Penfield, "New NAFSA Data: Despite Stagnant Enrollment, International Students Contribute Nearly \$41 Billion to the U.S. Economy," NAFSA: Association of International Educators, Nov. 18, 2019, <https://www.nafsa.org/about/about-nafsa/new-nafsa-data-despite-stagnant-enrollment>.

choose to pursue their studies in another country. As a result, the communities that would otherwise benefit from international students could see a significant decrease in business and tax revenue and a depressed demand for U.S. workers' services. This also supports approximately 460,000 U.S. jobs in various industries including higher education, housing, and retail.³³

The DHS economic impact calculations provided very rudimentary costs based upon inaccurate data. Given the far greater financial costs associated with implementing the rule, its duplicative and unnecessary provisions, and the additional hurdles it creates for students and institutions, any reasoned determination would conclude that its benefits do not justify its costs. DHS should be required to redo the cost-benefit analysis to reflect these larger scale impacts the proposed rule fails to recognize.

G. This rule makes US higher education less competitive internationally

The United States is the top destination for international students.³⁴ As noted above, international student enrollment growth has been on the decline since the Fall 2016 school year, and declined for the first time during the 2018-2019 school year.³⁵ The 2018-2019 school year was the first year during which the United States saw a decline in both new international student enrollment and flat overall enrollment. As outlined above, the proposed rule injects vast uncertainty and increased costs into the educational plans for international students who are weighing their educational options among higher education institutions in the United States and elsewhere.

OPT is an important channel that attracts top-tier international students to the United States. This program enables international students who have graduated from U.S. colleges and universities to obtain real work experience and training directly related to their degree through temporary work authorization. The OPT program is an important conduit for the contributions of U.S.-trained high-skilled immigrants to the economy.³⁶ During FY2019, USCIS approved over 220,000 requests for employment authorization for all types of OPT. Many students approved for OPT frequently work for top U.S. companies, such as Amazon, Google, Microsoft, Facebook, IBM, and Apple and contribute to these companies' reputations as global leaders in technology and research innovations.³⁷ Altogether, the top 100 employers of students on OPT only comprise of

³³ Reuters Staff, "Explainer: What 1.1 million international students contribute to the U.S. economy." Reuters, July 8, 2020, <https://www.cicnews.com/2020/02/642000-international-students-canada-now-ranks-3rd-globally-in-international-student-attraction-0213763.html#gs.jecgiz>.

³⁴ "Open Doors Report: International Students Contribute 44.7 Billion to the U.S.," Department of Homeland Security, Nov. 18, 2019, <https://studyinthestates.dhs.gov/2019/11/open-doors-report-international-students-contribute-447-billion-us>.

³⁵ "Enrollment Trends," The Institute of International Education, 2019 Open Doors Report, 2019, <https://opendoorsdata.org/data/international-students/enrollment-trends/>; The Institute of International Education, "Number of International Students in the United States Hits All-Time High," Nov. 18, 2019, <https://www.iie.org/Why-IIE/Announcements/2019/11/Number-of-International-Students-in-the-United-States-Hits-All-Time-High>.

³⁶ The Business Roundtable, "The Economic Impact of Curbing the Optional Practical Training Program," Dec. 2018, https://s3.amazonaws.com/brt.org/BRT-OPTProgramReport_1.pdf.

³⁷ Bier, David J., "The Facts about Optional Practical Training (OPT) for Foreign Students," Cato Institute, May 20, 2020, [https://www.cato.org/blog/facts-about-optional-practical-training-opt-international-students#:~:text=In%20fiscal%20year%202019%2C%20U.S.,\)%20or%20STEM%20\(69%2C353\)](https://www.cato.org/blog/facts-about-optional-practical-training-opt-international-students#:~:text=In%20fiscal%20year%202019%2C%20U.S.,)%20or%20STEM%20(69%2C353)).

18% of the employer population; compared to the H-1B visa program, students in the U.S. on OPT more often work for startups and other smaller businesses, providing their insight and experience to companies and organizations that may otherwise struggle to compete against larger conglomerates.

Under the proposed rule, many international students seeking to participate in OPT will need to apply and pay for an EOS in addition to submitting a parallel petition for an OPT Employment Authorization Document (EAD). The international student would need approval of both EOS and EAD prior to beginning working. Either form processing could be delayed adding insecurity to the student's ability to timely onboard when the training begins. Neither international students nor employer can be assured that both will be adjudicated at the same time. Further, the EOS has a biometric appointment requirement at an Application Support Center, so adjudication will likely take longer. As a result of these new hurdles and uncertainties, more international students may decide to attend colleges and universities in other countries, where the pathway to study and work is facilitated.

The rippling economic impacts of this loss will be felt across various sectors, and particularly in STEM fields. Over half of all international students in the United States pursue STEM fields, and the percentage of international students pursuing Math and Computer Science programs has grown by nearly 10 percent as of the 2018-2019 school year, surpassing Business and Management to become the second-largest field of study for international students. Engineering is the largest academic field for international students, attracting over 20 percent of all international students.³⁸ Similarly, students who pursue OPT work authorization are more likely to work in a STEM field than a non-STEM field.³⁹ Students benefit from the program by having the opportunity to learn valuable work experience within their field of study while the economy profits off of a skilled and educated workforce who have attended and graduated from U.S. colleges and universities. The program also strengthens the pipeline of talent between many U.S. schools and top companies, benefitting all students (not just international ones).

C. Conclusion

As stated above, the proposed rule would increase overall program uncertainty, inject additional and unwarranted hurdles and costs for international students and higher education institutions alike, and introduce significant discretionary powers for the government, reducing schools' appropriate oversight and authority.

International students in the United States are mandated to comply with a number of visa and immigration program requirements to maintain good standing. Students would find themselves at the mercy of a system in which their immigration status could end

³⁸ The Institute of International Education, "Number of International Students in the United States Hits All-Time High," Nov. 18, 2019, <https://www.iie.org/Why-IIE/Announcements/2019/11/Number-of-International-Students-in-the-United-States-Hits-All-Time-High>.

³⁹ Bier, David J., "The Facts about Optional Practical Training (OPT) for Foreign Students," Cato Institute, May 20, 2020, [https://www.cato.org/blog/facts-about-optional-practical-training-opt-international-students#:~:text=In%20fiscal%20year%202019%2C%20U.S.,\)%20or%20STEM%20\(69%2C353\)](https://www.cato.org/blog/facts-about-optional-practical-training-opt-international-students#:~:text=In%20fiscal%20year%202019%2C%20U.S.,)%20or%20STEM%20(69%2C353)).

before the completion of their academic program. Students who come to the United States often look for stability in a program to balance the uncertainty of studying in an international country. U.S. schools and research institutions, meanwhile, work to ensure that a student's transition to life in the U.S. goes smoothly to ensure that they are academically successful and that the school retains the student for the length of their studies. If a school is unable to guarantee their end of the bargain, then students will look elsewhere (e.g. Canada, Australia, and the United Kingdom); this outcome directly causes the U.S. economy to lose out on an intelligent, and hardworking student population and potential workforce, stunting U.S. labor export and future economic growth.⁴⁰

Although international educators in the United States are committed to bringing in and retaining international students, these efforts have been undermined by the Trump administration's anti-immigrant rhetoric and practices. The previously-mentioned decline in international student enrollment coincided with a double-digit increase in international student enrollment in Australia and Canada. This convergence of events is not coincidental—rather, it serves as evidence that international students have already started to doubt whether or not the United States will be a welcoming place to undertake their studies. Due to the government's actions, some have already decided to choose other destinations. The proposed rule will no doubt accelerate this trend and cause long-term harm to the United States' prior reputation as the preeminent destination for international students.

With strong opposition and very serious concerns about the aforementioned issues, we urge that the proposed rule be withdrawn in its entirety, and that admission for the duration of status remain in effect.

Thank you for your consideration of this comment. For questions, please contact me at miriam@presidentsalliance.org.

Sincerely,



Miriam Feldblum
Executive Director
Presidents' Alliance on Higher Education and Immigration

Cc:

Members of the U.S. Senate Committee on the Judiciary
Members of the U.S. Senate Committee on Health, Education, Labor, & Pensions

⁴⁰ The Business Roundtable, "The Economic Impact of Curbing the Optional Practical Training Program," Dec. 2018, https://s3.amazonaws.com/brt.org/BRT-OPTProgramReport_1.pdf.

Members of the U.S. Senate Committee on Foreign Relations

Members of the U.S. Senate Committee on Homeland Security & Governmental Affairs

Members of the U.S. House Committee on the Judiciary

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