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Submitted via regulations.gov

Office of Regulatory Affairs and Policy
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-2025-0001, *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*[1]

Dear Sir or Madam:

The Fragomen Center for Strategy and Applied Insights (the Fragomen Center) appreciates the opportunity to comment on this proposed rule. The Fragomen Center seeks to identify and analyze cross-cutting issues and put forward insights-based strategies that strengthen immigration pathways worldwide. For the reasons discussed below, we urge the Department to withdraw this proposed rule and continue the current, well-functioning system providing for the admission of international students and scholars to the United States for the duration of time that they successfully maintain and fulfill the requirements of their student status.

The Department of Homeland Security's proposed rule to impose a fixed period of admission for international students and scholars risks destabilizing critical talent pipelines for U.S. employers. For decades, the "duration of status" framework that has long governed international student admissions has ensured predictability, allowing students to complete their studies and transition where appropriate into the American workforce through the Optional Practical Training (OPT) and H-1B programs. By replacing this proven model with rigid

[1] *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*, 90 Fed. Reg. 42070 (Aug. 28, 2025) (proposed rule).

time limits and costly extension requirements, the proposal threatens to shrink the pool of highly skilled early-career candidates, especially in science, technology, engineering, and math (STEM) fields, at a time when U.S. employers face intensifying global competition for talent. Employers across industries rely on international graduates not only to fill pressing skills shortages but also to drive innovation, fuel research, and expand economic growth. Unneeded disruption to this talent flow will reverberate through classrooms, research laboratories, hospitals, and boardrooms, undermining U.S. competitiveness and weakening the nation's long-term workforce strategy.

When DHS last proposed to establish a fixed period of admission for the F, J, and I nonimmigrant classifications in 2020, there was a broad public chorus highlighting its deficiencies and economic harms. An overwhelming and virtually complete majority – 99 percent of the 32,000 individuals and organizations who commented on the proposal – opposed it.[2] The commenters described how the proposal would unduly burden international students, scholars and foreign media, as well as U.S. employers, by widely requiring the filing of additional, nonproductive extension of stay applications.[3] The commenters noted the enormous cost of the proposal, beyond the direct cost of filing fees, highlighting the negative economic impact the proposal would have on colleges and universities, research institutions, and U.S. employers, as well as the economy as a whole.[4] Commenters predicted gaps and delays in completing courses of study due to the inevitable expansion of administrative backlogs in adjudicating hundreds of thousands of additional extension of stay requests.[5] Finally, commenters highlighted the reasons why the minimal security and integrity gains from new scrutiny under the proposal would be far outweighed by the tremendous cost of the rule.[6]

DHS's current proposed rule – nearly identical to the withdrawn 2020 proposal – features all these same defects and should likewise be withdrawn. The scant economic analysis provided in the proposed rule does not address the real cost of upending the duration of status framework which has for decades successfully facilitated our country's ability to attract foreign talent to study and work in the United States. Requiring the repeated filing of requests for extensions of stay would not only mean disruption to existing processes and additional filing fees but would also have substantial negative economic impact to U.S. colleges and universities, U.S. employers, and the U.S. economy as a whole.

A fixed period of admission, and an unnecessarily burdensome and unpredictable process to seek extensions of stay, would undoubtedly make the United States higher education system, long one of the nation's great strengths, less attractive to international students and scholars. In a recent survey conducted by the Institute for Progress and NAFTA, 49% of over 1000 international graduate students and postdocs surveyed indicated they would not have enrolled

[2] *See Notice of Proposed Rulemaking; Withdrawal*, 86 Fed. Reg. 35,410 (July 6, 2021).
[3] *Id*.
[4] *Id*.
[5] *Id*.
[6] *Id*.

in a U.S. program if their period of admission was fixed rather than for duration of status.[7] Similarly, 16% fewer prospective students at all academic levels noted that they would be likely to enroll in a U.S. program if the period of admission was fixed.[8] The deterrent effect was especially pronounced among those considering where to pursue an advanced degree.[9]

In addition to the anticipated decline in international student enrollment, establishing a fixed period of admission would require U.S. educational and research institutions to restructure their international student and scholar support services and absorb a significant reduction in tuition revenue. International students not only contribute importantly to the learning environment of U.S. universities for the entire student population, which of course is made up overwhelmingly of American students,[10] those international students often pay full tuition, generating a significant source of resources for the American higher education system.

Imposing an inflexible and unsubstantiated 4-year limit on the period of stay would cause significant disruptions in students' courses of study, without corresponding benefits, and impact ongoing research projects. A central reason for this is that the 4-year period does not match with academic reality. DHS specifically recognizes in the proposed rule's Regulatory Impact Analysis (RIA) that the average time to complete a bachelor's degree is 52 months (or 4.33 years), citing to the National Center for Education Statistics.[11] Students cannot ordinarily complete a doctoral program in 4 years, and it generally takes 6 or 7 years to do so.[12] The proposed rule does not address the disproportionate impact of the inadequate fixed period of admission on PhD candidates. The 4-year limit also does not account for combined programs, joint degrees, or post-completion training. Moreover, the new string of extension filings could trip up many students who are trying meticulously to adhere to already-complex immigration processes. Minor delays or misfilings could unexpectedly expose students to severe immigration consequences, such as bars to re-entry.

Any decline in enrollment, and additional burdens dissuading or preventing students from remaining in the United States to complete their studies or training, would also severely impact U.S. employers. U.S. employers rely on a steady pipeline of early career talent, particularly in high-demand STEM fields. Many international graduates transition to OPT and H-1B visas, creating a direct pathway from university to the workforce. International students and scholars

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[7] *See* Institute for Progress & NAFSA: Association of International Educators, *2025 Surveys on International Talent Pipelines* (Sept. 15, 2025), https://ifp.org/wp-content/uploads/2025-Surveys-on-International-Talent-Pipelines-1.pdf (Accessed: 29 September 2025).

[8] *Id.*

[9] *Id.*

[10] An estimated six percent of students at U.S. universities are international students. *See* Jeanne Batalova & Michael Fix, International Students in the United States, MIGRATION POL'Y INST. (Oct. 26, 2023), https://www.migrationpolicy.org/article/international-students-united-states (Accessed: 29 September 2025).

[11] *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*, 90 Fed. Reg. 42070 (Aug. 28, 2025) (RIN 1653-AA95; Regulatory Impact Analysis), available at https://www.regulations.gov/document/ICEB-2025-0001-0143, at pages 17-18, footnote 13.

[12] National Science Foundation, *Survey of earned doctorates (SED) 2024* (2025), https://ncses.nsf.gov/surveys/earned-doctorates/2024#key-data-tables (Accessed: 09 September 2025).

drawn to the U.S. workforce spur business innovation, expansion, and job creation. Thousands of physicians on J-1 visas staff hospitals across the United States, a benefit especially pronounced in underserved areas. Without predictability in the recruitment of international talent, U.S. employers will face critical skills gaps and declining competitiveness. The proposed rule adds compliance risks and disrupts workforce planning. Repeated extension filings increase the chance of status lapses, especially given the near-certain additional delays that the additional adjudications burden the rule would impose on USCIS, exposing companies to risk and to project delays. Employers in technology, healthcare, manufacturing, finance, and other sectors critical to the health and the sharp edge of the American economy rely on predictable learning-to-workplace pathways to meet critical skills needs and sustain university research partnerships. By introducing uncertainty, the proposed rule would weaken U.S. competitiveness against countries like Canada and the U.K. that strategically offer clearer pathways from study to employment, and it could lead companies to shift jobs or projects abroad.

In its RIA, "DHS acknowledges the economic contribution of foreign students, foreign media representatives, and exchange visitors through tuition and regional spending as well as contributions to research, innovation, teaching, and overall competitiveness of the United States."[13] DHS recognizes, in notably direct terms, that the proposed rule "may adversely affect U.S. competitiveness in the international market" for students and exchange visitors. Nevertheless, DHS moves quickly past the adverse economic impact and concludes without reasoned explanation that it expects the economic benefits to continue. It is not at all clear how this could be correct. Even putting aside the massive economic contribution of international students to this country through their talents, ideas, research, teaching, and business creation, they also create wealth effects in the United States by sheer spending: paying for housing, food, transportation, health insurance, and other personal expenses. NAFSA estimates that international students contribute $43.8 billion to the U.S. economy. Indeed, experts estimate that "reducing the number of F-1 graduates by 10% because of a new fixed period of admissions rule would itself reach an annual loss of as much as $72-145 billion by ten years into the future."[14]

The only justification proffered in the proposed rule for establishing a fixed period of admission is DHS's concern that some individuals or institutions may have abused the duration of status framework, and that additional touchpoints with DHS during extension of stay adjudications would allow for greater scrutiny. The weight of experience shows, though, that DHS has the needed enforcement tools already at its disposal. As evidenced by the examples cited in the proposed rule itself,[15] the SEVIS database — the tool envisioned by Congress to monitor the activities and compliance of international students and scholars — is effective.

[13] *Id*.
[14] Comment by Michael Clemens, Jeremy Neufeld, and Amy Nice to the proposed rule filed at Regulations.Gov, https://ifp.org/wp-content/uploads/Clemens-Neufeld-Nice_D.S.-Elimination.pdf (Accessed: 29 September 2025).
[15] Proposed rule at 42077, footnotes 59-63.

DHS must also consider the impact of adding hundreds of thousands of extension of stay requests to its current backlog, which stands at a record – and staggering – 11.3 million pending cases. This is in addition to tens of thousands of applications in the "frontlog" waiting to be accepted for processing.[16] The drastic decline in case completions, coupled with a shrinking workforce and deprioritization that is currently a part of the USCIS adjudications environment, would inevitably result in even greater adjudication delays. Alongside of this expected consequence, DHS's policymaking calculus should also factor in the likelihood of litigation over these delays by affected stakeholders, as in 2021, when a lawsuit brought by international students resulted in a settlement requiring, among other things, that USCIS adjudicate pending OPT extensions within 120 days.[17]

The proposal to establish a fixed period of admission, and necessarily require extension of stay requests, could also create gaps in the system for monitoring the activities and compliance of international students. It would likely leave large numbers of students languishing in administrative backlogs without the close monitoring that designated school officials provide through SEVIS. DHS proposes to include a 240-day extension of stay with a timely-filed application, yet it provides no assurances and could likely not realistically provide them under current resource limits, that the extension requests will be adjudicated within that timeframe. To the contrary, the proposed rule contemplates that adjudicators will review student transcripts and medical records, request further evidence, and even require in-person interviews. The extension request adjudication would also require students to appear at a biometrics appointment at a designated Application Support Center, which could in practice be hundreds of miles away from their school, research facility, or hospital. These adjudicative steps are unnecessary for a cohort of applicants who are interviewed and fingerprinted prior to arrival in the United States, and who are continuously monitored today through SEVIS. Requiring hundreds of thousands of new extension filings would consume substantial agency resources, further straining an already backlogged system. Those same resources could be better directed toward true enforcement priorities—such as combating fraud, enhancing national security, and improving adjudicatory quality standards and efficiency—rather than creating counterproductive paperwork hurdles for bona fide students, schools, and U.S. employers.

The proposed rule would also materially alter the role of U.S. Customs and Border Protection (CBP) officers at ports of entry. While now CBP officers admit students until the completion of their academic or program activities, verified in real time throughout their studies or training through SEVIS, the proposed rule would instead require CBP to assign a fixed expiration date based on a review of the student's program information, institutional accreditation, OPT or STEM OPT end dates, and, in some cases, country-specific factors. This would lengthen inspection times, as well as add inconsistency. CBP officers are not trained or prepared to assume these adjudicatory responsibilities. An error at the port of entry could trigger the accidental accrual of unlawful presence, exposing international students to severe immigration

[16] Billal Rahman & Dan Gooding, *US Immigration Backlog Hits All-Time High*, Newsweek, July 8, 2025, https://www.newsweek.com/us-immigration-backlog-hits-all-time-high-2095846 (Accessed: 29 September 2025).
[17] *Li v. USCIS*, No. 2:21-cv-00677 (S.D. Ohio).

consequences, including an inability to return to their studies or pursue a career in the United States.

Finally, seemingly by accident, the proposed rule would replace the existing DHS deference policy by writing over 8 CFR 214.1(c)(5). Perhaps due to a drafting error, the proposed rule would renumber 8 CFR 214.1(c)(7) as (c)(5), resulting in the deletion of the current (c)(5) and duplication of the provision in (c)(7). Notably, 214.1(c)(5) codifies the agency's existing deference policy, a policy not discussed or even mentioned in the proposed rule or any of the supporting documents in the docket. Under the Administrative Procedures Act, DHS would be called on to provide notice and reasoning for departing from an established regulatory policy. It has not done so here, and it would be difficult to envision that reasoning. The deference policy allows for consideration of a prior approval in the adjudication of a subsequent application involving the same parties, where there has not been any material change. The policy results in more efficient adjudications and provides needed predictability to U.S. employers and workers in a range of nonimmigrant classifications.

For these reasons, we urge DHS to withdraw the proposed rule and retain the duration of status framework for international students and scholars. To maintain our country's competitiveness, U.S. businesses across industries need flexibility and predictability in their talent pipeline. Allowing international students and scholars to transition seamlessly to the American workforce is key to our country's ability to meet skills needs critical to American innovation leadership and to the well-being of American workers and families. DHS has effective tools already at its disposal to ensure the integrity of the international student system, without the addition of a burdensome process that would further discourage international students and scholars from coming to the United States and helping to build American economic strength.

Respectfully,

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