

# *Virtual Town Hall: Recent Immigration Action*

## **Proposed Rule on Duration of Status (D/S)**

*Department of Homeland Security (DHS) proposed regulatory changes:  
Elimination of D/S admission for F and J nonimmigrant visa holders*

*October 16, 2020 ♦ 11:00 am EDT*



UNIVERSITY *of*  
ROCHESTER

ISO  
INTERNATIONAL  
SERVICES OFFICE

# Agenda

## ***Opening Remarks:***

**Jane Gatewood**

Vice Provost for Global Engagement

## ***Presentation:***

**Ravi Shankar**

Assistant Vice Provost &  
Director of International Services

**Stephanie Krause**

Associate Director,  
ISO Student Services

## ***Hot Topics & Questions:***

Pre-submitted online, and entered to Q&A tool via Zoom

*This analysis represents the University's best interpretation of proposed regulations. We believe it is consistent with the stated goals of the published language, but the University cannot control how the US government may choose to proceed in future interpretation or enforcement. A Final Rule is also subject to change. We will endeavor to communicate revisions as promptly as possible.*

# Overview: Notice of Proposed Rulemaking (NPRM)

**September 25, 2020 – Notice of Proposed Rulemaking was published for public review**

- [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)
- **Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS)**  
Concerns over a “lack of predetermined points in time for ... immigration officers to directly evaluate whether F, J, and I nonimmigrants are maintaining their status”

**30-day Public Comment Period through Monday, October 26th**

- Comments will *only* be accepted through the designated Federal eRulemaking Portal online: <https://www.regulations.gov/comment?D=ICEB-2019-0006-0001>
- Form allows up to 5000 characters, or electronic documents can be attached (10MB each)

**Implementation of the Final Rule: Uncertainty about scope and timing**

- DHS must review all comments & prepare any revisions; Final Rule can carry future date

# Overview: Basic Concepts

## Admission to the US for Duration of Status (D/S)

- For eligible visa categories, travelers may be admitted to the country for a flexible period of stay, provided they continue to maintain their immigration status
- F-1 Students, J-1 Exchange Visitors, & Dependents  
Reflected on **Form I-94** or **US Port of Entry stamp**
- Permission to remain in the US is based on the unexpired I-20 or DS-2019, and adhering to all requirements and permissions of that category
- Changes in SEVIS extend/shorten period of stay!



### Most Recent I-94

Admission (I-94) Record Number : 51415565885  
Most Recent Date of Entry: 2017 July 25  
Class of Admission (F1)  
Admit Until Date (D/S)  
Details provided on the I-94 Information form:

Last/Surname :

First (Given) Name :



## Admission to the US for a Fixed Period of Stay (Date Certain)

- Travelers are admitted through a specific expiration date, calculated on eligibility criteria for their visa category
- Prior to the Form I-94 expiration date, they must prepare to depart the US or apply for an *Extension of Stay*



## Overview: Basic Concepts

### **Extension of Stay (EOS), via travel & reentry *OR* application to USCIS (currently Form I-539)**

- Customs and Border Protection (CBP) determines a traveler's eligibility for admission to the US from outside the country, including any relevant period of stay
- US Citizenship and Immigration Services (USCIS) determines an applicant's eligibility to extend or change status from within the country, along with other immigration benefits
- Action to depart the US or file an EOS must be taken prior to the status expiration date
  - Fixed period of stay is based on Form I-94 expiration, plus any relevant grace period
  - [D/S has relied on additional data (SEVIS, I-20/DS-2019, etc.), without requiring EOS]

### **General Implications: F & J visa holders will face less flexibility, greater costs, uncertainty**

- Explicit DHS authorization would be required for any continuation or change of program
- Increased financial burden for travel and/or USCIS application fees at regular intervals
- Delayed EOS processing times vs. Scheduling challenges for travel & campus obligations
- Discretion & Scrutiny: DHS to evaluate program objectives/progress (despite SEVIS!)

# Provisions of the Proposed Rule

*Focusing on impact to F-1 Students & J-1 Exchange Visitors*

**Eliminate Duration of Status (D/S); Establish a Fixed Period of Stay**

**Changes to I-20 | DS-2019 will require timely DHS adjudication**

**Impact to work permissions while Extension of Stay is pending**

**Reduction of F-1 grace period following program completion**

**Lifetime limits on study at the same or lower level of education**

**Transition planning for D/S records, as of Final Rule effective date**

## ***Proposed Rule: Replace D/S with Fixed Period of Stay***

### **Admission to the US will be limited to a fixed period of stay, per Form I-94 Record**

- Period of stay will align with I-20 or DS-2019 completion date, up to maximum period
- Maximum admission period cannot exceed 4 years, but is reduced to 2 years for:
  - Nationals of designated State Sponsors of Terrorism – Iran, North Korea, Sudan, Syria
  - Citizens of countries with a recent F/M/J Overstay Rate greater than 10% \*\*
  - Schools without nationally recognized accreditation
  - Schools that do not participate fully in the DHS E-Verify system
  - Any criteria deemed a matter of US national interest – sensitive fields, fraud, etc.
  - Study in language training programs (also subject to a lifetime limit of 24 months)

**\*\* Per 2019 DHS Entry/Exit Overstay Report: 58 countries would be impacted by this rule**

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, 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

## ***Proposed Rule: Replace D/S with Fixed Period of Stay***

### **Relevant considerations for the reduced 2-year admission period**

- DHS will publish changes in criteria by Federal Register Notice (FRN), with effective date
- Countries impacted by designations for overstay risk or terrorism will change over time
- University of Rochester is currently enrolled in E-Verify for Federal contract purposes
  - ISO is advocating that UR become *fully* enrolled, in light of DHS proposed rule

### ***Example: Upon admission to the US, F/J visa holders will receive a date-specific Form I-94***

- Bachelor's student: Citizen of Brazil, with valid Form I-20 & unexpired F-1 visa sticker
- *I-20 Program Dates:* 1/17/2020 to 12/22/2024
- *F-1 Visa Validity:* Multiple entry, through 6/7/2025
- *Upcoming entry to US:* 1/25/2021
- *Form I-94 Expiration:* 12/22/2024 (4-year period of stay > I-20 completion date)  
01/24/2022 (2-year period of stay)
- Plans to remain in US *without travel* would require EOS to be filed before this date!

# ***Proposed Rule: DHS adjudication for a Change in Program***

## **Updates reported in SEVIS (on I-20 or DS-2019) may require review by DHS for approval**

- Changes that fall within the current authorized period of stay would not require review, such as a *new Major, Site of Activity, Reduced Course Load, CPT authorization, etc.*
- Changes that result in additional time or new objective would likely need EOS or travel: *Program Extension, Immigration Transfer, Change of Educational Level, OPT/STEM/AT*
- Action in SEVIS by ISO will be viewed as a recommendation, but not necessarily approval

## **Application preparation, Timing, and Processing considerations**

<b>Extension of Stay (EOS) application to USCIS</b>	<b>Travel abroad and Readmission to US</b>
Apply to USCIS before Form I-94 expiration date	Departure from US within eligible grace period
Subject to fees (\$455) & Biometric data collection	Must have valid visa or time to renew while abroad
Failure to timely file is status violation > Reinstatement	Overstay > Accrual of Unlawful Presence each day
EOS may remain valid even after departure from US while pending; CBP will have discretion upon readmission: 1) Grant new period of stay > Form I-94      2) Readmit to previous period of authorized stay > EOS decision	

## ***Proposed Rule: DHS adjudication for a Change in Program***

### **DHS intends to evaluate merits of “making reasonable efforts toward program completion”**

- Extensions for additional time to complete a program of study/research due to:
  - Compelling academic reasons (i.e. change in major, unexpected research problems)
  - Documented illness or medical condition (substantiated by doctor/psychologist)
  - Exceptional circumstances beyond the individual’s control (natural disaster, crisis)
- NOT probation, suspension, or “repeated inability or unwillingness to complete a course of study”, such as patterns of failing classes or delays due to academic performance
- Evidence to support grounds for the extension will be needed: Letters, transcripts, etc.

### **Pending EOS: DHS will grant a period of authorized stay, *versus* valid nonimmigrant status**

- Permission to remain in the US temporarily and engage in academic/program activities
- F-1 students may continue to pursue a full course of study pending USCIS decision, including a new term or course of study & not subject to an explicit time limit
- J-1 exchange visitors may continue all program objectives and activities, *up to 240 days*

## ***Proposed Rule: Work permissions with pending EOS***

### **Restrictions imposed on F-1 work permissions until new period of stay is authorized**

- On-campus employment & authorized Economic Hardship remain valid *up to 180 days*
- CPT or OPT will *not be available* beyond the fixed period of stay, without EOS approval
- STEM Extension applications pending both benefit & EOS approval remain subject to an automatic extension of current OPT work permission (expired EAD + Receipt Notice)

### **Other regulatory adjustments related to F-1 employment**

- Eligibility to file for OPT up to 120 days before & 30 days after program completion
- OPT Cap Gap Extensions (following a timely filed H-1B Change of Status petition) will be granted automatically through 3/31, inclusive of extended stay & work permissions

### **J-1 work permissions remain unrestricted during EOS, within program objectives**

- On-campus employment, Economic Hardship, Academic Training, & incidental activities
- J-2 dependents may not use incidental work permission (EAD card) while EOS is pending

# ***Proposed Rule: Dependents, Grace Periods, & Lifetime Limits***

## **Considerations for F-2 | J-2 Dependents**

- Dependents are subject to the same period of stay restrictions as the F-1 or J-1 principle
- May be included in the same EOS petition to USCIS, or separately if necessary (w/ fee)

## **Reduction of F-1 grace period following program completion**

- F-1 students who complete their course of study will be eligible for a 30-day grace period (reduced from 60 days) to prepare for departure or pursue other eligible action
- J-1 exchange visitors will retain the current 30-day grace period for departure or action
- Following authorized academic withdrawal, DHS will retain 15-day grace period for F-1

## **Lifetime limits on study at the same or lower level of education**

- Continued study in a new program, via SEVIS Transfer or Change of Educational Level
- No more than *3 instances* of study at the same educational level already earned in US
- No more than *1 instance* of study at a level below an education level already completed

## ***Proposed Rule: Transitions to a Fixed Period of Stay***

### **Current students will not be exempted from implementation**

- DHS intends for current students already in the US to become subject to the new rule
- Uncertainty around timing implications & where students might be located (COVID-19)

### **Planning for individuals with a D/S admission, as of Final Rule effective date**

- Period of stay to be calculated from I-20 | DS-2019, the day a Final Rule takes effect
- Up to program end date (max of 4 years), *plus* 60 days for F-1/F-2 or 30 days for J-1/J-2
- Resulting period of stay will be in effect automatically, without filing an EOS petition, and applicable only to individuals within the US under D/S admission once effective

### **Travel and/or changes in program will require explicit DHS determination**

- Despite transitional period current students & scholars may become subject to new rule
- Any departure & reentry, or continued/new program objectives beyond fixed period
- Then ... timely EOS filing or US departure within calculated grace period will be required!

## Example: Impact to an F-1 student under Fixed Period of Stay

**Doctoral student; Citizen of Vietnam; Valid Form I-20; Unexpired F-1 visa sticker\***

*Assumes publication of Final Rule exactly as proposed, with effective date of 12/7/2020*

- *I-20 Program Dates:* 8/19/2018 to 5/31/2025
- *Recent entry to US:* 1/5/2020 Class F-1; Until D/S
- *Transition Period:* 2/6/2025 (as of 12/7: I-20 comp. > 4 years, plus 60 days)
- *Short trip in Dec 2020:* Depart 12/19 Return 1/25/21 \* *Visa expires June 2022*  
*New I-94 exp.:* 1/24/2023 (overstay list: I-20 comp. > 2 years)
- *Summer Internship:* CPT authorized May to August, 2021 (*no EOS, no Travel*)
- *OPT, excluding Thesis:* Comp. 11/30/22; OPT Recommended 12/1/2022 to 11/30/2023  
*Deadline to file OPT:* 12/30/2022 *Deadline to file EOS:* 1/24/2023 (file jointly)  
*Application Fees:* \$550 (I-765) \$400 (I-539) \$85 (Biometrics) = \$1,035

## Summary & Next Steps

### **Oppressive, unnecessary regulations; University of Rochester will advocate in opposition**

- New rule will significantly limit flexibility that is uniquely needed in academia/research
- Considerable cost, stress, workload, and uncertainty for individuals and schools (+ DHS!)
- F | J populations already heavily monitored and regulated via SEVIS, CBP, USCIS, & State

### **Consider submitting a comment via [www.regulations.gov](http://www.regulations.gov)!**

- *Must use **DHS Docket No. ICEB-2019-0006** to find/identify a submission*
- Impact to academic and career goals; Financial burden to file an EOS every 2 to 4 years
- Potential delays by USCIS in adjudicating the EOS petition or other applications
- Your contributions to the university's teaching and research missions
- Examples of your research/projects with community impact (economic, social, etc.), and how those relate to US national interest, if appropriate (i.e. COVID, cancer, data, optics)
- General perceptions of US higher education and research, particularly in STEM

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### *Additional Questions?*

*Submit to Q & A tool; Recording will be posted online soon.*



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