



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

On September 25, 2020, US Department of Homeland Security (DHS) published a Notice of Proposed Rulemaking on the subject of [*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 \(DHS Docket No. ICEB-2019-0006\)*](#). The proposed rule would eliminate the use of Duration of Status (D/S) for nonimmigrants seeking permission to enter the US or change their status under the F, J, or I visa categories. The rule poses a significant shift in government policy, requiring international students and scholars to obtain a fixed period of time to pursue their academic objectives and secure explicit DHS authorization for any continuation or change of program. A summary of the proposed rule follows.

Background Information & Legal Concepts

- Department of Homeland Security (DHS) oversees many elements of the nation's immigration system. Several agencies fall under DHS, including Citizenship & Immigration Services (USCIS), Customs & Border Protection (CBP), Immigration & Customs Enforcement (ICE) and the Student & Exchange Visitor Program (SEVP).
- Duration of Status (D/S) is a period of admission granted to certain US visa categories that allows for flexibility in the individual's permission to stay in the country. Namely, their immigration status will remain valid as long as they continue to pursue their intended purpose (study, research, etc.) and follow the regulatory requirements of that visa category. The alternative of a fixed period of stay grants permission to remain in the US until a specific date. The period of admission, either "D/S" or a date, is recorded on the Form I-94 Arrival/Departure Record.
- Extension of Stay (EOS) is the official process to extend an individual's permission to stay in the US once their fixed period of stay is at or nearing expiration. This can be secured via application to USCIS or through departure and successful readmission by CBP at a US Port of Entry. It is a violation of immigration rules to remain in the US following the Form I-94 expiration date without obtaining an EOS, which can carry significant consequences.
- Justifications for the proposed rule indicate that D/S admission for targeted visa categories (F, J, I) does not provide immigration officers sufficient occasions to review and confirm those individuals are adhering to the requirements of their status, and that this new policy will deter and prevent fraud within the US immigration system.

Provisions of the proposed rule for UR's F and J nonimmigrants

- Elimination of Duration of Status (D/S): Limits admission for students and exchange visitors to a fixed period of stay, which will be listed on their Form I-94. The maximum period of stay will be up to 4 years, reduced to 2 years under certain circumstances, and may not exceed the program completion date provided on their I-20 or DS-2019.
 - DHS will publish a Federal Register Notice (FRN) to identify and maintain specific circumstances that would restrict an individual's admission to the reduced 2-year period of stay, including:
 - Nationals of designated State Sponsors of Terrorism (currently Iran, North Korea, Sudan, & Syria).
 - Citizens of a country with a total F/J/M overstay rate greater than 10% according to an annual DHS Entry/Exit Overstay Report. (Over 50 nations likely impacted based on the current list.)
 - Matters of US national interest, as determined by the Secretary of DHS (i.e. sensitive fields, fraud).
 - Students & Exchange Visitors attending a school that does not maintain recognized accreditation, or is not enrolled and fully participating in the E-Verify database.
 - Language training programs not to exceed 24 months, for admission and under an aggregate lifetime limit.
 - F-2/J-2 dependents will be subject to the same period of stay restrictions as the F-1/J-1 principle.
- Grace Periods: F-1 students will be subject to a 30-day grace period following program completion, reduced from 60 days allowed under current regulations; J-1 exchange visitors will retain the current 30-day grace period.
 - F-1 students will retain eligibility for a 15-day grace period following authorized withdrawal from classes.

- **Extension of Stay (EOS):** Requires students and exchange visitors to obtain DHS authorization to remain in the US and continue their program objectives beyond the previously authorized fixed period of stay. Updates to the SEVIS program completion date will be viewed as a recommendation for continued participation, but school officials will no longer have the authority to approve such actions independently. To maintain valid status in the US, individuals nearing the end of their authorized stay will need to file an EOS application with USCIS prior to the Form I-94 expiration date, or depart the country within their authorized grace period.
 - When applying for EOS within the US, applicants will be subject to filing fees and biometric data collection.
 - When extending status by travel, a valid visa, I-20 or DS-2019, and supporting documents are required.
 - DHS will have discretionary authority to review the applicant's academic progress and evaluate whether they have demonstrated a willingness/ability to achieve their stated program objectives. DHS will consider extensions for compelling academic reasons, documented medical condition, or circumstances beyond the individual's control. Delays for probation, suspension, patterns of course failures, etc. will not qualify.
 - Denial of an EOS will not carry a grace period, requiring immediate departure from the US and accrual of unlawful presence (with significant penalties for extended periods in the US without lawful status).
 - USCIS processing is often considerably delayed. If an applicant departs the US while the EOS is pending, DHS will have discretion to determine whether the application is abandoned based on a subsequent request for readmission at a Port of Entry. CBP may grant admission under the prior F/J period of stay and USCIS will continue processing the EOS petition. Alternatively, if CBP grants a new period of stay according to eligibility rules and evidenced on a new Form I-94, the EOS petition will be considered abandoned.
 - Failure to timely file the EOS application will be considered a violation of status and require reinstatement.
 - Common scenarios that would require a new EOS include continued or extended participation to complete remaining program objectives, applications for post-completion work authorization (OPT, STEM, Academic Training), and an Immigration Transfer or Change of Level to begin a new program.
- **Authorized Stay pending EOS:** Following a timely filed Extension of Stay, the previous fixed period of stay may expire before USCIS issues a decision. DHS will authorize the applicant to remain in the US temporarily and engage in program activities according to specific provisions (see below for F-1 employment considerations):
 - F-1 students will retain their ability to pursue a full course of study until USCIS issues a decision (no limit). As needed, students may start a new term or course of study while USCIS adjudication is pending.
 - J-1 exchange visitors may continue their program objectives and related activities for up to 240 days, inclusive of authorized employment. J-2 spouses may not use an authorized EAD until the EOS is approved.
- **F-1 Employment Considerations:** Significant and variable changes to F-1 work permissions are included in the rule.
 - On-campus employment and economic hardship will remain valid up to 180 days while an EOS is pending.
 - Eligible CPT/OPT will not be available beyond the current fixed period of stay until DHS approves the EOS.
 - Upon filing for a STEM Extension, F-1 OPT will be extended automatically for up to 180 days (no change).
 - When filing for OPT, the application period will shift to 120 days before completion & up to 30 days after.
 - The automatic OPT Cap-Gap Extension for H-1B beneficiaries will extend through 3/31 (vs. 9/30 currently).
- **Restrictions on F-1 study at the same or lower level:** For students pursuing an Immigration Transfer or Change of Educational Level, DHS will impose a lifetime limit on the pursuit of another degree at the same level already earned (no more than 3 programs total at one level). DHS will also restrict lifetime participation in a new program that is offered at a lower educational level than was already earned in the US (not more than once).
- **Transition Plan:** Individuals in the US for D/S when this rule takes effect will become subject to a fixed period of stay of 4 years, not to exceed their I-20 or DS-2019 completion date, plus an additional 60 days (F) or 30 days (J).
 - Subsequent departure and readmission will adjust their period of stay based on the new standard rule.

Public Comment Period through October 26th

As a Notice of Proposed Rulemaking, this regulatory change is subject to a public comment period. The deadline to submit comments is October 26th (30 days) and must identify DHS Docket No. ICEB-2019-0006. Comments should be submitted through the designated Federal eRulemaking Portal: <https://www.regulations.gov/comment?D=ICEB-2019-0006-0001>. Comments can be typed directly (up to 5000 characters) or uploaded via PDF attachments (up to 10 files, 10MB each).

The University of Rochester will submit a comment in opposition to the proposed rule. The International Service Office continues to monitor and analyze these issues and will offer additional information to the UR community, as possible.

Adapted in part from NPRM resources courtesy of NAFSA: Association of International Educators, the Association of American Universities (AAU), and the American Council on Education (ACE).