

October 26, 2020

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 St. SW
Washington, DC 20536

Re: DHS Docket No. ICEB-2019-0006

Dear Acting Regulatory Unit Chief Hageman,

On behalf of the Council of Graduate Schools (CGS), I write in response to the 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) published in the Federal Register on September 25, 2020.¹ The Council of Graduate Schools represents approximately 500 colleges and universities across the United States, Canada, and abroad. Collectively, our members grant 87% of all U.S. doctorates and the majority of U.S. master’s degrees. We oppose this rule and have significant concerns with it, which are outlined below. Our organization has sent a letter to DHS and also joined our other higher education colleagues in requesting an extension to the 30-day comment period, which we believe is an appropriate request given a proposed rule of this magnitude.^{2,3} Ultimately, however, we respectfully request that the Department of Homeland Security (DHS) withdraw the proposed rule entirely. Until then, we offer the following perspectives.

For decades, the United States has been the gold standard in international education, attracting top talent from across the globe. International students and scholars seeking education, research,

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:

<https://www.federalregister.gov/documents/2020/09/25/2020-20845/establishing-a-fixed-time-period-of-admission-and-an-extension-of-stay-procedure-for-nonimmigrant>.

² CGS letter to DHS requesting an extension to the public comment period:

<https://cgsnet.org/ckfinder/userfiles/files/CGS%20Letter%20Requesting%20Extension%20of%20Comment%20Period.pdf>.

³ Community letter to DHS requesting an extension to the public comment period:

<https://cgsnet.org/ckfinder/userfiles/files/FInal-100620-letter-on-extension-for-D-S-proposed-rule.pdf>.

AFFILIATES

Conference
of Southern
Graduate Schools

Midwestern
Association
of Graduate Schools

Northeastern
Association
of Graduate Schools

Western
Association
of Graduate Schools

and work training opportunities have looked to the U.S. as a premier destination. As a result, international students' and scholars' intellectual and cultural contributions have not only benefited colleges and universities, but also the U.S. research enterprise, the workforce, and the communities in which they live and learn. With over one million international students attending U.S. institutions each year, their economic contributions to our country are also significant: international students contributed \$41 billion and supported over 458,000 jobs in academic year 2018-2019 alone.⁴

In fall 2019, international students comprised 17.8% of total enrollment at CGS member institutions and regional affiliates, with 27.4% at "Very High Research Doctoral Institutions," as designated by the Carnegie Classification system.⁵ Given the timeframe of the survey from which this data originate, the results do not take into account the effects of the novel coronavirus (COVID-19) pandemic, which have added significant challenges to recruitment and retention leading up to the publication of this proposed rule. International graduate students are integral members of the campus community- they offer diverse perspectives that benefit U.S. domestic students and foster cross-cultural understanding. Many international graduate students contribute to the education of undergraduate students at U.S. institutions by serving as teaching assistants, or advance research endeavors by serving as research assistants. While in America, they forge relationships with employers through Optional Practical Training (OPT), and as a result, those who are offered post-graduation employment via the H-1B visa continue to advance our country's economic prowess.

This proposed rule would erode our nation's standing as a welcoming environment for international students and scholars. We are concerned about the "chilling effect" that this would have on the prospective international student pipeline, particularly for international PhD graduate students who on average spend more than four years completing their degree, as well as the many graduate students who participate in post-completion Optional Practical Training (OPT). Prospective students may be wary about committing to a U.S. academic institution if there is no guarantee DHS will grant them a period of admission that allows them to complete their program, or that DHS will grant them an extension of stay.

Eliminating Duration of Status and Instituting Two and Four-Year Maximum Periods of Admission

We are extremely concerned with the proposal to eliminate duration of status and instead replace it with two or four-year maximum periods of admission to the U.S. for individuals with F-1 and J-1 status. While these periods of admission would be inadequate for a significant number of students across the entire postsecondary education continuum, we wish to specifically address how this would be problematic for graduate students, and in particular doctoral PhD students.

According to the proposed rule, DHS notes that,

⁴ NAFSA: Association of International Educators. NAFSA International Student Economic Value Tool. Retrieved from: <https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2>.

⁵ Okahana, H., Zhou, E., & Gao, J. (2020). *Graduate enrollment and degrees: 2009 to 2019*. Washington, DC: Council of Graduate Schools.

“The total number of F-1 students pursuing a bachelor’s degree...constitute[ed] almost 40 percent of the 2018 nonimmigrant population,” and that “the total number of F-1 students pursuing a master’s degree represent[ed] almost 38 percent of the nonimmigrant student population. Taken together [along with baccalaureate students], this population represents almost 80 percent of the nonimmigrant students in the United States. Therefore, DHS believes that a 4-year period of admission would not pose an undue burden on them, because many F and J nonimmigrants would complete their studies within a 4-year period, and not have to request additional time from DHS.”¹

By DHS’ own admission, this justification omits consideration of over 20 percent of the international student population. DHS seemingly acknowledges that these students would not complete their programs within the two or four-year periods of admission and anticipates that would need to file an extension of stay. This would most impact the doctoral student population, as time to degree completion for PhD students typically exceeds four years. According to 2018 data from the Survey of Earned Doctorates, the median time to a doctoral degree since entering a doctoral program for international students is 5.3 years, and the median time to a doctoral degree for an international student who enters into the graduate level (master’s) is 7.5 years (compared to 5.8 years and 7.3 years for students who are U.S. citizens or permanent residents).⁶ Additionally, an international student participating in a dual bachelor/master’s program can expect to be enrolled for approximately five years. Moreover, this would also impact international research scholars who come to the U.S. for postdoctoral opportunities. These scholars make great contributions to our research enterprise.

The proposed rule would also apply to current international students and scholars, requiring them to transition to a fixed period of admission based on their length of program study. Students currently residing outside of the U.S. who had to return home due to COVID-19 would find themselves transitioning to a fixed period of admission when they come back to the U.S. A sudden enforcement of this rule would create additional confusion and burden for students and institutions. Students would be forced to adjust their academic progress in the midst of a global pandemic, which has already caused hurdles that have forced students and institutions to quickly pivot.

We are also concerned about the process by which DHS would determine whether an individual was eligible for either the two-year maximum or four-year maximum period of admission. The proposed rule outlines criteria that could limit an F-1 or J-1 visa holder to the shorter two-year period. Again, we do not support implementing fixed periods of admission, and would like to raise specific concerns with some of the criteria DHS highlights that could trigger the two-year period:

Countries with historic overstay rates of greater than 10 percent

DHS could impose the two-year maximum period for international students and scholars who originate from countries that have an “overstay rate” greater than 10 percent. In its rationale for this determination, DHS refers to its “Fiscal Year 2019 Entry/Exit Overstay

⁶ National Science Foundation. (2018). Survey of Earned Doctorates, data table 31. Retrieved from: <https://nces.nsf.gov/pubs/nsf20301/report>.

Report,” which presents an inaccurate framing of data.⁷ According to the National Foundation for American Policy, DHS calculates overstay rates plus arrivals whose departures could not be verified, stating, “An examination of the Department of Homeland Security report finds the overstay rate for F-1 international students is not an actual overstay rate but only an upper-bound estimate of individuals who DHS could not positively identify as leaving the United States,” meaning that actual overstays and unrecorded departures may inaccurately inflate the degree to which overstay violations are actually occurring.⁸

Moreover, for countries that send very relatively few students to the U.S., even a handful of students who “overstay” could push their country into the greater than 10 percent overstay category, thereby disproportionately penalizing these students compared to those from countries that send tens of thousands of students to the U.S. each year. CGS data show that over the past two years, both rates of application (up 11%) and first-time enrollment (up 22%) of international graduate students from countries in sub-Saharan Africa have grown.⁹ However, these countries send relatively few students to U.S. universities. For Fall 2019, just three percent of total enrollment of international graduate students were from Sub-Saharan Africa.⁹ Therefore, applying the 10 percent threshold across the board for all countries will disproportionately impact these countries.

For example, the Sub-Sahara countries of Chad, Eritrea, and Malawi all have overstay rates above 10 percent, according to DHS’ report.⁷ However, these countries send relatively few numbers of students and scholars to the U.S. compared to other countries; DHS notes “expected departures” of exchange visitors on F, M, and J visas in FY 2019 for Chad, Eritrea, and Malawi as 107, 96, and 320, respectively.⁷ Imposing this criterion onto prospective students and scholars from these countries would likely deter them from selecting the United States for their education and research pursuits, thus allowing other countries to welcome them.

State Sponsor of Terrorism List

We are concerned that basing period of admission eligibility on a student or scholar’s country of birth does not take into account instances in which the student or scholar has never had close ties to their country of birth, or in fact, may currently be a citizen of another country. For example, a student might have been born in a country on the list but emigrated to another country at an early age. Using country of birth as factor would discriminate against students who do not identify with their country of birth.

U.S. National Interests

The proposed rule notes that DHS may limit length of admission for international

⁷ Department of Homeland Security. (2019). Fiscal year 2019 entry/exit overstay report. Retrieved from: https://www.dhs.gov/sites/default/filesma/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf.

⁸ National Foundation for American Policy. (2020). International students and DHS data. Retrieved from: <https://nfap.com/wp-content/uploads/2020/09/Analysis-of-DHS-Data-on-International-Students.NFAP-Policy-Brief.September-2020-1.pdf>.

⁹ Zhou, E., Mitic, R., West, C.P.L., & Okahana, H. (2020). *International graduate applications and enrollment: Fall 2019*. Washington, DC: Council of Graduate Schools.

students based on “U.S. national interests” and lists “course of study” as one factor. The proposed rule language lists “nuclear science” as an example of a course of study that might draw scrutiny and flag a student for the maximum two-year period. This introduces additional authority for DHS to make decisions that could further disincentivize prospective students and scholars from pursuing a graduate degree or research in the U.S.

Extension of Stay Process

The proposed “extension of stay” (EOS) process introduces several concerns. Should an individual with F-1 or J-1 status require additional time beyond their designated two or four-year maximum period of stay, they would need to file for an extension demonstrating the reason (program length exceeds the maximum period, the student has medical issues, etc.). DHS would have the authority to determine whether or not the reason for an EOS is deemed valid and whether it should be granted. Equally alarming is the fact that denials would **not** be eligible for an appeal. If an international student is denied an EOS, they would be forced to depart the U.S. immediately, as well as any of their dependents.

Additionally, the EOS process would introduce a burden on international graduate students and their U.S. institutions both in terms of time and money. Among a list of cost estimates, the basic filing fee is listed as \$370. However, DHS estimates \$1,047 for outside assistance when filing a paper EOS and \$1,031 for filing an electronic one.¹ If a graduate student or scholar has dependents who came with them to the U.S., they would also need to file an EOS through a separate process, which would incur additional costs. Navigating the form submission process, especially if more than one extension is needed, may be a significant deterrent for prospective students.

Optional Practical Training

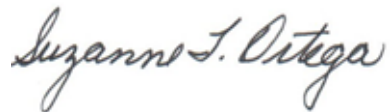
OPT attracts talented individuals from across the globe to U.S. institutions of higher education as it addresses the demand for “real-world” work experience to complement one’s program of study. Students embrace skills in the workplace and OPT provides exposure to American employers, the economy, and to become better integrated into U.S. culture. U.S. companies with international offices also look to attract employees who have this type of work training. OPT is critical in making the U.S. a competitive destination for international education given that prospective international students have an array of options. Other countries, including China and the U.K., offer work training/work visa programs with terms that may be more favorable than what the U.S. currently offers.

After a minimum of one year in an approved academic program, individuals on an F-1 visa are eligible to apply for 12 months of OPT during or after completion of their academic program. Students in certain Science, Technology, Engineering, and Mathematics (STEM) programs may be eligible to apply for a 24 month extension, culminating in 36 months total. We are concerned with the proposed rule’s language, which would require students wishing to participate in post-completion OPT and STEM-OPT to file for an extension of stay, in addition to filing for work authorization. The dual processing of these requests raises questions and concerns about the feasibility of USCIS’ ability to process both of these in a timely manner, given that both are required in order for participants to embark on their OPT experience. CGS members have noted that in 2018-2019, there was a greater than usual number cases involving delay/denial of OPT

applications, visa applications, and entry into the U.S.⁹ We are already concerned about DHS' ability to process OPT authorizations in a timely manner, and believe that the influx of extension of stay requests would further exacerbate this issue. Lastly, we are concerned with the proposal to reduce the post-completion grace period for those with an F-1 visa from 60 days to 30 days, after which they would need to leave the U.S., which could impact students who are intending to participate in OPT or are in the queue for an H-1B visa.

Again, CGS remains extremely concerned with the contents of this proposed rule, and request that it be rescinded. Our association stands ready to work with DHS and the administration to help develop policies that will help maintain our country's ability to attract the best and the brightest from abroad, while addressing concerns DHS may have. If you have any questions, please contact CGS' Vice President of Public Policy and Government Affairs, Lauren Inouye, at Linouye@cgs.nche.edu.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne T. Ortega".

Suzanne T. Ortega
President