



Impact on International Graduate Students/Concerns with the Proposed Rule Talking Points for CGS Members

Bottom-Line Message: CGS and its higher education colleagues **do not support** the Department of Homeland Security's (DHS) [proposed rule](#) (issued September 25, 2020) to eliminate duration of status. We also do not support replacing duration of status with the proposed fixed length of stay periods (two or four year maximums), nor do we support the notion that international students would be required to submit for "extension of stay" if they need more time, particularly given the uncertainty as to whether DHS would grant them.

Furthermore, we request DHS extend the public comment period so that stakeholders can appropriately respond to a rule of this magnitude.

Outlined below are additional concerns about the proposed rule and talking points CGS members may find helpful with collaborating with campus partners in responding to DHS.

Further Eroding the U.S. as a Welcoming Environment for International Students

DHS' proposed changes are the latest among a series of proposed and actual changes the administration has taken to impact the international student community. CGS remains concerned about the "chilling effect" that these policies will have when prospective international graduate students consider their destination.

- The U.S. has enjoyed a long history of welcoming international students to our nation's academic institutions, and removing duration of status signals mistrust and wariness of these highly-talented individuals.
- International student are already vetted prior to their arrival to the United States.
- This would undermine designated schools officials (DSOs) at academic institutions who serve as navigators for international students and prospective international students. They can help answer specific questions that international students have related to their academic program, filing forms, and arriving to the institution. DSOs also serve as liaisons between their institution, federal agencies, and the students. At a time when the U.S. is at risk of losing its share of international talent, we should preserve the roles of DSOs as good stewards of U.S. academic institutions.

Expanding DHS Authority on Educational Issues

This proposed rule, if adopted into a final regulation, would expand DHS' authority on decisions about international students that are largely made by U.S. institutions of higher education. Granting extensions of stay, for example, introduces a new process where DHS would play a primary role in determining the academic outcome of a student who demonstrates they need additional time to complete their program.

DHS may limit length of admission for international students based on “U.S. national interests” and lists “course of study” as one factor. The proposed rule language lists “nuclear science” as one example of a course of study that might draw scrutiny.

- Granting DHS additional authority to restrict by field of study could restrict the U.S.’ talent pipeline, particularly as we seek to position ourselves in an increasingly competitive global STEM environment.
- There is also potential concern for how this would impact pipelines of international PhD students from certain countries, including China.

DHS’ Eligibility Requirements for Length of Stay do not Provide a Fully Accurate Assessment

In determining whether a student would be eligible for a two or four year length of stay, DHS would take into consideration whether the student’s country of origin has an “overstay rate” of greater than 10 percent. If so, this could trigger the shorter two year period.

- According to the National Foundation for American Policy, DHS’ method for calculating visa overstay rates is misleading. According to a report, DHS calculates overstay rates plus arrivals whose departure could not be verified, meaning that actual overstays and unrecorded departures may inaccurately inflate the degree to which overstay violations are occurring.¹ And yet, DHS is proposing to use “overstay rate” of one’s country of origin in determining length of stay for an F-1 nonimmigrant.
- For countries that send very few students to the U.S., even one or two students who “overstay” could push their country into the >10 percent category, disproportionately penalizing these students compared to countries that send thousands of students to the U.S. each year.

Proposed Four and Two-Year Periods Are Problematic and Do Not Address PhD Students

According to DHS: “DHS notes that the total number of F-1 students pursuing a master's degree, generally 2-year programs, in 2018 was 498,625, representing 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

- Restricting length of stay to these proposed periods would curb opportunities for international students who want to explore other academic programs or learning opportunities.
- Time to degree completion for doctoral students typically exceeds four years. According to the 2018 data from the Survey of Earned Doctorates:²

¹ 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>.

² National Science Foundation National Center for Science and Engineering. (2019). Doctorate recipients from u.s. universities. Table 32. Retrieved from: <https://ncses.nsf.gov/pubs/nsf20301/report>.

- 7.3 years: Median time to degree since entering graduate school for all graduate students (master's and doctoral)
- 7.5 years: Median time to degree since entering graduate school for all international graduate students (master's and doctoral)
- 5.8 years: Median time to degree since entering doctoral program for all doctoral students
- 5.3 years: Median time to degree since entering doctoral program for international doctoral students

Uncertainty about Extension of Stay (EOS) Request Process

It is unclear to what level of discretion DHS will use in granting EOS requests. This could significantly deter prospective international graduate students from attending a U.S. institution if there is a risk of not being granted an EOS (or multiple EOSs) to complete their program or Optional Practical Training (post-completion and STEM-OPT). It is unclear how many could be granted per applicant.

- It is not uncommon for graduate students, including international graduate students, to need adjusted timelines for completing their research work. Compounding this is the potential for unanticipated events, such as the COVID-19 pandemic, which may include minor delays up to needing to completely restart lab work. DHS has noted that it is proposing a new factor of circumstances beyond a student's control, such as a national disaster or a national health crisis.
 - How will DHS work to ensure that it could 1) handle a massive influx of extension requests and 2) ensure graduate students and postdocs can remain the U.S. when an event such as global pandemic makes it difficult to forecast an appropriate adjusted end date?
 - Denials would not be eligible for appeal, which is extremely problematic.

Optional Practical Training (OPT)

Students intending to participate in post-completion OPT and STEM-OPT would be required to apply for an EOS as well as employment authorization, which may create concerns about timeliness of processing these requests in parallel fashion, via separate processes.

- Delays with visa processing and authorization for OPT participation are already of concern to the graduate education community. According to CGS data, a number of CGS member institutions reported an increase in student visa and OPT processing delays/denials over the past two years.³
- Currently, post-completion OPT applicants have up to 60 days post completion to apply for authorized work (DOS must recommend OPT on Form I-20, notify SEVIS, and submit I-765 for employment authorization). DHS would decrease this post-completion filing period to 30 days, while increasing the filing period for applications to apply prior to

³ Zhou, E., Mitic, R.R., West, C.P.L., & Okahana, H. (2020). *International graduate applications and enrollment: Fall 2019*. Washington, DC: Council of Graduate Schools. Available online: <https://cgsnet.org/sites/default/files/civicrm/persist/contribute/files/CGS%20Fall%202019%20International%20Report.pdf?v=1>.

completion of their program from 90 days to 120 days. This would narrow the window for students for whom filing post-completion is more ideal.

Adding Administrative and Financial Burden to DHS, Institutions, and International Students

- There would likely be additional costs to the student and institution for additional processing of EOS requests. This could be a significant deterrent for students from traditionally underrepresented countries in the U.S. international student pipeline.
- Since current F-1 and J-1s would require transition to a fixed period of stay, the administrative burden on IHEs and DHS raises questions about the feasibility of DHS processing transition requests in a timely manner.
 - This would also be disruptive to current international graduate students, and perhaps especially to doctoral students who have anticipated their program to last longer than 4 years.

Additional Concerns

- F visa holders would have a shorter amount of time (30 days instead of 60 days currently allowable) to depart the U.S. after completion of a course of study or post-completion of Optional Practical Training.