



## Summary of Notice of Proposed Rulemaking:

### 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, the Department of Homeland Security (DHS) proposed [a new regulation](#) that would bring an end to “duration of status” periods of admission for individuals granted student visas (F visas), exchange visitors (J visas), and members of the international media (I visas). Instead, DHS proposes to require individuals granted those visas to be given a fixed period of admission generally corresponding to the length of the program.

The proposed rule would also transition students and exchange visitors currently in the United States on a duration of status admission to a new fixed period of admission corresponding to the “program end date” listed on their I-20 (student) or DS-2019 (exchange visitor) form, even if that was longer than four years in the future. However, individuals who left the United States would lose that transitional status and be subject to the new rule.

Individuals subject to the new rule could still file an [I-539](#) Extension of Status request in order to remain in the United States beyond the initial admission period. Under the proposed rule, filing for an extension of status would grant an automatic extension of status for individuals while the application was pending, as well as a more limited extension of work authorization for students and exchange visitors. U.S. Citizenship and Immigration Services (USCIS) estimates of the current processing time for extension of status requests range from five months to 10 months for students, suggesting that many students might be unable to obtain an extension of status in time.

DHS also proposes to, among other things, limit the basis on which individuals could receive an extension of status, halve the time that an individual is allowed to stay in the United States after completing a course of study before being required to depart from 60 days to 30 days, modify the process for applying for Optional Practical Training (OPT), and limit the number of times that a student could change a course of study.

Despite the scale of the rule, DHS has provided only 30 days to comment. The agency will accept comments until October 26, 2020. Those who wish to leave a comment on the rule can do so [here](#).

After the comment period ends, the agency is required by law to consider all unique comments and respond to concerns raised in them. After the agency has reviewed the comments and taken them into consideration, the agency may either publish a final rule implementing the proposal or choose to withdraw the proposal before finalizing it.

## New maximum periods of admission

The proposed rule would institute a maximum period of admission of two to four years for individuals granted F and J visas, and 240 days for individuals granted I visas. Under the proposed rule, students and exchange visitors who receive F and J visas would generally be granted a period of admission corresponding to the length of the exchange program or course of study, not to exceed the new maximum lengths provided by the rule. U.S. Customs and Border Protection officials would maintain the discretion to grant periods of admission below the maximum, if necessary.

In addition to the proposed new maximum periods of admission, language training students would be limited to an aggregate 24-month period of stay, including breaks and an annual vacation. Students attending public high school will continue to be limited to an aggregate 12-month period of stay, but now including breaks and annual vacation.

The proposed rule would impose maximum periods of admission of two years for individuals who fall within any of the following categories, regardless of whether they were planning to enroll in a program or course of study which lasted more than two years:

- Citizens of countries with a student/exchange visitor visa overstay rate of 10% or higher, as provided in the most recent [DHS Entry/Exit Overstay Report](#).
- Citizens of, or people who are in born in, a country that appears on the State Department's list of [State Sponsors of Terrorism](#).
- Individuals seeking to pursue a course of study at a program sponsor or host organization which is not a participant in good standing of E-Verify.
- Individuals for whom DHS determines it is in the national interest to limit the period of admission to a maximum of two years, such as "certain technical fields," under circumstances that DHS would designate through a Federal Register notice.
- For students alone, individuals "who are not attending institutions accredited by an accrediting agency recognized by the Secretary of Education."

DHS would publish a new Federal Register notice each year listing which countries will be subject to two-year maximum periods of stay. If a country were placed on the list after a national of that country had already been granted a period of admission greater than two years, the person would be permitted to remain for the longer period of admission so long as they did not leave the United States. Upon exit from the United States, the person would be subject to the new restrictions on maximum period of admission.

Under these provisions, citizens of the following countries seen in Figure 1 could be subject to the two-year maximum period of admission, based on the Fiscal Year 2019 DHS Entry/Exit Overstay Report and the current State Sponsors of Terrorism list.

**Figure 1** Countries Subject to Proposed Two-Year Restrictions on Maximum Period of Admission



- Afghanistan
- Benin
- Bhutan
- Burkina Faso
- Burundi
- Cabo Verde
- Cameroon
- Central African Republic
- Chad
- Congo (DRC)
- Congo (ROC)
- Côte d'Ivoire
- Djibouti
- Equatorial Guinea
- Eritrea
- Ethiopia
- Gabon
- Gambia
- Ghana
- Guinea-Bissau
- Guyana
- Haiti
- Iran\*
- Iraq\*
- Kenya
- Kosovo
- Kyrgyzstan
- Liberia
- Libya
- Malawi
- Mali
- Mauritania
- Moldova
- Mongolia
- Nepal
- Niger
- Nigeria
- North Korea\*
- Papua New Guinea
- Philippines
- Rwanda
- Samoa
- Senegal
- Sierra Leone
- Somalia
- South Sudan
- Sudan\*
- Syria
- Tajikistan
- Tanzania
- Togo
- Tonga
- Turkmenistan
- Tuvalu
- Uganda
- Uzbekistan
- Vietnam
- Yemen
- Zambia

\*Because these countries are currently listed on the State Sponsor of Terrorism list, restrictions would apply to individuals born in that country, even if they are not a citizen of that country.

## Changes to the Extension of Status Process for International Students and Exchange Visitors

Under the proposed rule, students and their dependents who timely file for extension of status may remain in the U.S. and the student may continue with a full course load while the extension application is pending. The student also will receive an automatic extension of 180 days for on-campus employment authorization, off-campus employment authorization due to severe economic hardship, or science, technology, engineering, and mathematics (STEM) OPT employment authorization. Should the extension of status request still be pending after 180 days, the student must stop working.

J-1 exchange visitors and their dependents who file a timely extension of status request would be granted an automatic extension of stay, and the J-1s only would continue to be authorized to work, when applicable, for at most 240 days following the expiration of the admissions period. If USCIS approves the extension application before the auto-extension period ends, then the J status would be extended for the approved time period. If USCIS denies, then the individual must depart the U.S.

DHS also proposes to heavily modify the current process under which international students can obtain program extensions. Under current rules, students may obtain extensions so long as they are making “normal progress” towards the completion of a course of study.

Citing the lack of a standard definition for “normal progress,” DHS proposes to require students to first obtain a new I-20 from the designated school official (DSO) recommending that their program be extended, and then request an extension of status from USCIS.

Under the proposed rule, USCIS would only grant an extension of status to a student beyond the program end date if USCIS determines that “additional time is needed due to a compelling academic reasons, documented medical illness or medical condition,” or “exceptional circumstance beyond the control of the [student].” USCIS would deny an extension if it determined that the student had violated any terms of their visa category, such as dropping below a full course of study without authorization. DHS indicates that students who had a “pattern of failing grades” would generally not be permitted to receive an extension of status.

Students, as well as exchange visitors, would be required to appear for a new biometrics appointment in connection with the extension of status request. Students may also be required to appear in person for an interview with a USCIS officer in support of the request, and submit evidence supporting the request, including proof that students have “sufficient funds” to cover at least one additional year of study.

USCIS also proposes to limit the number of times a student would be permitted to enroll in a new course of study. Students who have completed a program at one educational level (such as bachelor’s degree) would only be permitted to change to a different course of study (for example, seeking a new bachelor’s degree in a different subject) twice, for a maximum total of three programs in the same educational level for the student’s lifetime. F-1 students would also be limited to a single change in educational level downwards in the student’s lifetime.

## Changes to employment authorization and Optional Practical Training

Under current rules, individuals who seek to remain in the United States following a course of study to engage in post-completion OPT are required to first have their DSO recommend OPT, then file a request for employment authorization with USCIS.

DHS now proposes that students seeking OPT would be required to file both a request for employment authorization *and* an additional extension of status application, as the period of authorized stay would be set to expire upon completion of the course of study. If the student timely files the extension application, then the student's stay would be extended for up to 180 days while USCIS adjudicates the application. But just like the current rules, the student cannot begin post-completion OPT until USCIS approves the employment authorization request and the student receives the employment authorization document.

DHS also proposes several changes to the filing timelines, allowing students to file a request for OPT employment authorization 120 days ahead of the program end date (compared to 90 days under current rules). DHS would also correspondingly shorten the amount of time in which students are required to file an application for post-completion OPT after completing their degree program from 60 days to 30 days.

DHS has also proposed two provisions which could be helpful for students on OPT. First, students would no longer be required to file for OPT within 30 days of the DSO's recommendation of OPT. Second, USCIS would extend "cap gap" OPT authorization from its current October 1 expiration date to April 1 of the following year. Under the proposed rule, when an H-1B petition with change of status and an October 1 start date is timely filed for a student, the student's F-1 status and OPT authorization will be automatically extended while the H-1B petition is pending. This automatic extension ends if the H-1B petition is approved with change of status before April 1, or if the H-1B petition is rejected, denied, or revoked by USCIS or withdrawn by the H-1B employer. (If the H-1B petition is denied, the student must stop working but will have the 30 additional days to depart the U.S.). This eliminates the current "cap-gap" problem that can force some individuals with "cap gap" OPT extensions to stop working if USCIS has not approved their H-1B petition by October 1.

USCIS also proposes a new, but more restrictive, "cap gap" for certain J-1 exchange visitors for whom an H-1B petition with change of status has been timely filed. USCIS must first determine that the H-1B "cap" will be reached before the end of the fiscal year and publish a Federal Register notice setting the time period during which J-1 status and work authorization are extended.

## Changes to visa admission for members of the international media

Under the current rules, members of a foreign media organization with "I" visas typically are admitted for their "duration of employment" in the United States. In the proposed rule, DHS would end a duration of status period of admission for international media and replace it with a maximum period of admission of 240 days. Members of the international media would be able to apply for an extension of status for an additional 240 days to complete any work for which they were originally admitted. If timely filed, and the individual has complied with the terms of their I visa status, they will receive an automatic extension with continued work authorization for

up to 240 days while the application remains pending. The individual's additional time in the U.S. would be limited to the extension time period approved by USCIS. The regulation is unclear as to whether additional extensions following the extra 240 days would be permitted, or if the person would have to depart the United States following the first extension.

DHS would also for the first time define the term "foreign media organization" as "an organization engaged in the regular gathering, production, or dissemination via print, radio, television, internet distribution, or other media, of journalistic information and has a home office in a foreign country."

Members of the international media seeking admission in, extension of stay in, or change of status to the I visa category would be required to submit a letter from their employer verifying the employment, the work to be performed, and the amount they are being paid for the work. If self-employed or freelancing, they would be required to provide an attestation verifying those factors and demonstrate an intent to depart the United States "within a reasonable time frame" consistent with the purpose of travel.

The rule would also provide stricter time limits for individuals from the People's Republic of China, including Hong Kong but excluding Macau. Individuals from mainland China or Hong Kong would be limited to a maximum 90-day period of admission, with an automatic extension of stay also limited to an additional 90 days.