



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

Proposed Rule DRAFT Summary as of 9/29/20

30-Day Comment Period

Comments Due by October 26, 2020

[Federal Register Link](#)

F (student), J (exchange), and I (foreign media) nonimmigrants all fall under the impact of the proposed rule. The proposed rule would eliminate the current policy of duration of status (D/S), which provides a period of admission without a specified end date to allow students to maintain a valid visa for the duration of their academic program(s), and implement a fixed period of time (four or potentially two years) for authorized admission. DHS argues D/S has not required F and J nonimmigrants to interact with DHS, except for a few limited instances, and does not afford immigration officers enough predetermined opportunities to directly verify those granted nonimmigrant statuses are engaging only in those activities their respective classifications authorize while they are in the U.S. and to assess potential national security concerns. The Department believes providing fixed time periods for F and J nonimmigrants provides consistency with requirements applicable for most other nonimmigrant classifications. DHS expects this change would deter and prevent fraud, as a requirement to check-in directly with an immigration officer inherently is likely to deter some bad actors from exploiting perceived vulnerabilities.

Summary of Proposed Changes

- Creates a new Extension of Stay (EOS) Form and extension of stay process at USCIS.
- Requires F-1 students and J-1 exchange participants to request an extension of stay (EOS) from USCIS to stay beyond their specifically authorized admission period (two or four years). If F-1/J-1 does not apply for an extension, they must leave the country within 30 days (decreased from 60 days) after the end of their status.
- Requires full compliance for all visas within four years. Provides a transition period for those who enter and are in active status under D/S (more details on transition period below).
- Implements a maximum admission period of up to two years for certain students and exchange visitors based on factors DHS has identified (more details below) as involving national security concerns and public safety concerns, with the goal of encouraging compliance with immigration laws.
- Preserves the “cap-gap” extension for students requesting a change of status from F-1 to H-1B status. Since DHS has often been unable to process “cap-gaps” change of status requests before Oct 1 (the current deadline), they intend to extend the gap period to April 1 of the fiscal year for which the H-1B petition is filed. If change of status is still pending after that date, employment authorization would terminate on March 31 and applicant would no longer be authorized as of April 1. If H-1B petition is denied, F-1 beneficiary has 30 days to leave the country.
- EOS Process:

- Requires F-1 students Designated School Officials (DSO) and J-1 exchange Responsible Officers (RO) to recommend to USCIS if a status should be extended.
- Requires F-1 nonimmigrants applying for EOS to establish they are admissible. Failure to do so will result in denial of the EOS.
- If an F-1 whose admission period as indicated on his/her Form I-94 has expired, but has timely filed an EOS application, would be authorized to continue pursuing a full course of study after the end date of his/her admission until USCIS adjudicates the EOS application. This change would provide ongoing authorization to continue studies as long as the student has timely filed his/her EOS and will not penalize students if USCIS is unable to adjudicate an EOS application before a student's new term or course of study is underway.
- If a student misses EOS filing deadline (determined by student's program end date) they would have to file for reinstatement of F-1 status because they would have failed to maintain status and be ineligible for an EOS.
- A J-1 exchange program participant seeking extension of their program would first request through the RO (as is now the case). If an extension is recommended by RO, the J-1 must apply for an EOS with USCIS to remain beyond the status expiration date on their I-94. J-1/J-2s traveling during time of EOS application would not be considered to have abandoned their application/status.
- Reasons USCIS would accept an F-1 EOS request:
 - *Compelling academic reasons.* A pattern of behavior which demonstrates repeated inability or unwillingness to complete his/her studies (such as failing classes) is not an acceptable reason for EOS.
 - *A documented illness or medical condition.* If a student drops below a full course of study, that drop must be properly authorized and documented.
 - *Exceptional circumstances beyond the student's control.* Natural disasters, national health crisis, or closure of an institution are beyond a student's control.
- Pending Extension of Stay & Employment Authorization:
 - DHS is proposing that F-1s' Form I-94 or Employment Authorization Document (EAD), for F-1s requiring an EAD, when combined with a notice issued by USCIS indicating receipt of a timely filed EOS application, would be considered unexpired until USCIS issues a decision on the EOS application, not to exceed 180 days. Continued employment authorization for F-1s seeking work as an intern for an international organization, engage in CPT, or pre-or-post-completion OPT present materially different circumstances.
 - For students involved in on-campus employment, no EAD required. DHS would allow students to continue to be authorized in F-1 status while their EOS applications are pending (not to exceed 180 days). 180-day extension is granted to "minimize disruptions to on-campus employment by teaching assistants, post-graduate working on research projects, and other positions that are integral to an F-1 student's educational program."
 - For students seeking off-campus employment and have demonstrated severe economic hardship (loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency/exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of

the student's source of support, medical bills, or other substantial and unexpected payments), are granted a 180-day automatic extension for employment authorization while waiting for EOS application approval (EAD processing is typically 90-120 days).

- J-1s are authorized to work per the terms of their program, and they do not have to apply to USCIS for authorization to engage in employment. Upon timely EOS filing, DHS proposes to allow the J-1 to continue engaging in activities consistent with the terms and conditions of their program, including employment authorization, beginning on the day after the admission period expires, for up to 240 days.
- Optional Practical Training (OPT):
 - Allows students to apply for OPT days up to 120 days before program end date (90 days under existing policy) and shortens the number of days students have to file an application for post-completion OPT after the program end date from 60 to 30 days.
 - For those waiting on an EOS to complete post-completion Optional Practical Training (OPT), an automatic extension of status would not apply as USCIS review is necessary to make sure students are eligible for OPT. Students may not engage in OPT until employment authorization is granted. An automatic extension for STEM OPT participants is authorized for up to 180 days per existing policy.
- Limits the number of times a student can change to another program within an educational level. A student (who completed a program) would be allowed to change to another program within the same education level no more than two additional times, for a total of three programs for the lifetime of the student. F-1s would be allowed to change to a lower educational level one time in F-1 status (DHS recognizes SEVIS will need updates to enforce this and may delay or suspend implementation if it determines the change in education level limitation is inoperable).

Exceptions

Factors for Two-Year Authorized Admission

- Citizens of countries on the State Sponsor of Terrorism List (North Korea, Iran, Sudan, and Syria).
- Citizens of countries with a student/exchange visitor overstay rate of greater than 10% (FY19 Overstay Report includes 56 countries that have an overstay rate greater than 10%). List would be published in a Federal Register Notice (FRN) with a final rule and any changes to the list of overstay countries would be announced by another FRN.
- National Interest may include but not be limited to circumstances where they may be national security concerns or risks of fraud and abuse. DHS would publish an FRN with limitations based on national interest.
- Students attending institutions not accredited by an accrediting agency recognized by the Department of Education.
- Students at schools or exchange programs who do not fully participate in E-Verify.

Transition Period

- F and J nonimmigrants who are in the U.S. for D/S on the future effective date of a final rule would expire on the program end date on the student's Form I-20/DS-2019 that is valid on the final rule's effective date, not to exceed a period of four years from the final rule's effective date, plus an additional 60 days for F-1s and 30 days for J-1s.

- Aliens who need additional time to complete their current course of study, including new requests for post-completion OPT or STEM OPT, or exchange visitor program, or would like to start a new course of study or exchange visitor program must apply for an EOS with USCIS.
- Pending employment authorizations (applications already filed) for OPT or STEM OPT applicants would not have to file for an EOS or re-file for employment authorization if they have a timely and properly filed for employment authorization pending with USCIS on the effective date of the final rule.