

October 8, 2020

Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

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 Street SW
Washington, DC 20536

Re: Request for 60-Day Comment Period for Proposed Rule on 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)

Dear Acting Secretary Wolf and Acting Chief Hageman:

We, the 90 undersigned organizations and higher education institutions, write to respectfully request that the U.S. Department of Homeland Security (DHS) extend the public comment period for *Proposed Rule on 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 (NPRM, or “proposed rule”) from 30 days to a minimum of 60 days. We make this request due to the wide and varied impact of the 73-page rule, so that the public may have a meaningful opportunity to comment while we continue navigating the challenges presented by a global pandemic.

On September 24, 2020, DHS released a proposed rule that would severely restrict international students and exchange visitors by making it difficult for them to complete their studies. In summary, the proposed rule would:

1. Eliminate the “duration of status,” which allows those on F-, I-, or J-visas to remain in the United States for the duration of their studies instead of a fixed period of time;
2. Introduce a “fixed time period” of admission for these visas, requiring renewal or extension after a maximum of four years, regardless of the length of the relevant educational program; and
3. Limit student visa admissions to two years for: (a) natives or citizens of countries on the State Sponsor of Terrorism List, regardless of their current country of residence; (b) citizens of countries with a visa overstay rate of over ten percent; and (c) those accepted to an unaccredited school or a school that does not use E-Verify.

I. Minimum of 60 Days is Required for Meaningful Public Comment on the NPRM

A. The Global COVID-19 Pandemic Results in Delays and Overwhelmed Stakeholders that Require More Time to Adequately Assess and Respond

On March 13, 2020, the White House proclaimed a national emergency in light of the COVID-19 pandemic, a state of emergency that continues to this day.¹ The pandemic has drastically affected stakeholders' ability to adequately respond to the proposed rule. The situation on the ground has continued to shift throughout the crisis requiring students, professors, institutions, businesses, and researchers to repeatedly accommodate new circumstances and standards. This is especially the case for colleges and universities, who have had to decrease staff, work and teach remotely, and monitor the health of every person on their campuses. Advocates and legal practitioners have had to remain up to date and informed on each change and its consequences, all with limited access to the information, technology, resources, and clients needed to adequately respond to the NPRM. In particular, more time is necessary to reach out to current and prospective international students and exchange visitors to assess the impact of the proposed rule, including those who were denied entry this year because of the DHS restriction on online programs.²

In light of the urgent conditions of the pandemic, members of Congress from the House and the Senate requested that the administration halt the federal rulemaking process and administrative actions that did not pertain to the COVID-19 response, as well as extend the formal comment period for the duration of the crisis.³ Other agencies have extended their comment periods due to COVID-19, and DHS should follow suit.⁴

There were also technical delays to submitting a comment. The Federal Register indicates that stakeholders must submit comments using www.regulations.gov, but during the first part of the comment period the webpage was undergoing development, and on Tuesdays and Thursdays visitors to the site were redirected to the development page at beta.regulations.gov.⁵ Frequent

¹ Donald J. Trump, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, Mar. 13, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

² Elizabeth Redden, New International Students Barred From All-Online Classes, Inside Higher Ed, Jul. 27, 2020, <https://www.insidehighered.com/news/2020/07/27/ice-clarifies-new-international-students-cant-take-all-online-courses>.

³ Letter from Representatives to Office of Management and Budget (April 1, 2020), available at (<https://edlabor.house.gov/imo/media/doc/Committee%20Chairs%20Letter%20re%20Comment%20Period%20Extension.pdf>), (requesting that OMB direct federal agencies to extend public comment periods by at least 45 days beyond the end of the declared national emergency); See also Letter from Senators to Office of Management and Budget (April 8, 2020), available at <https://www.tomudall.senate.gov/imo/media/doc/4.8.20%20United%20States%20Senate%20Letter%20to%20OMB%20Acting%20Director%20Vought%20FINAL%5b1%5d.pdf>.

⁴ See Bureau of Consumer Financial Protection, Debt Collection Practices (Regulation F); Extension of Comment Period, 85 Fed. Reg. 30890 (May 21, 2020) (agreeing that “the pandemic makes it difficult to respond to the SNPRM thoroughly” and providing an additional 90 days to comment on a proposal “in light of the challenges posed by the COVID-19 pandemic”).

⁵ See instructions at <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> (“You must submit comments on the proposed rule identified by DHS Docket No. ICEB-2019-0006, only through the following method: Federal eRulemaking Portal (preferred): <http://www.regulations.gov>. Follow the website instructions to submit comments. Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or U.S. Immigration and Customs Enforcement (ICE) officials, will not be considered comments on the proposed rule and may not receive a response from DHS.”).

outages and loading delays made it very difficult to access the page to submit comments during that time, meaning that some commenters may have been delayed or prevented from submitting their comments, or even reading the proposed rule.

B. The NPRM Will Have a Widespread and Complex Impact on Stakeholders that Requires Careful Analysis

Executive Order 12866 states that agencies should allow “not less than 60 days” for public comment in most cases, in order to “afford the public a meaningful opportunity to comment on any proposed regulation.”⁶ Executive Order 13563 also states that “[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally be at least 60 days.”⁷ Moreover, DHS, as a matter of policy, has generally allowed an extra 60 days for all types of immigration applications during COVID, an acknowledgement of the challenges of responding during the pandemic.

Even without the conditions of the pandemic, it takes time to collect metrics and data from students, exchange visitors, institutions, and businesses in all 50 states to adequately assess the impact of the proposed rule. For example, though international students support over 458,000 jobs in the United States and contribute \$41 billion to the U.S. economy, the economic impact of the proposed rule was not adequately addressed in the proposal’s cost benefit analysis and will thus need to be assessed and reported by stakeholders themselves.⁸ We request this extension of the comment period to allow our organizations, the many colleges and universities, and the public adequate time to review the proposed changes and provide meaningful feedback. A minimum 60-day comment period would allow more stakeholders to carefully examine the NPRM, providing the DHS with essential information to consider the scope of related issues, assess unintended consequences, and prevent potential waste of resources.

Given the current conditions under the pandemic and wide and varied potential impact of the proposed rule, we believe that an extended comment period is not only warranted but necessary. We thank you for the consideration of our request, please feel free to contact Jose Magaña-Salgado at jose@presidentsalliance.org or (480) 678-0040 with any questions or concerns.

Sincerely,

Higher Education Institutions

Amherst College
Augustana College
Beloit College
Bentley University
Boston Architectural College
Boston Graduate School of Psychoanalysis

⁶ Executive Order 12866 of Sept. 30, 1993, 58 Fed. Reg. 190, Oct. 4, 1993, *available at* <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

⁷ Executive Order 13563 of Jan. 18, 2011, 76 Fed. Reg. 14, Jan. 21, 2011, *available at* https://www.reginfo.gov/public/jsp/Utilities/EO_13563.pdf.

⁸ Rebecca Morgan and Kasey Penfield, New NAFSA Data: Despite Stagnant Enrollment, International Students Contribute Nearly \$41 Billion to the U.S. Economy, NAFSA, Nov. 18, 2019, <https://www.nafsa.org/about/about-nafsa/new-nafsa-data-despite-stagnant-enrollment>.

Boston University
Brandeis University
California Institute of the Arts
California State University Northridge
Clark College
College of Southern Nevada
Colorado College
Edmonds College
Foothill-De Anza Community College District
Georgetown University
Green River College
Grinnell College
Highline College
Illinois Institute of Technology
Indiana University
Knox College
Lake Washington Institute of Technology
Maryland Institute College of Art
Marymount University
Montgomery College
New York University
Palo Alto University
Pierce College District
Pomona College
Portland Community College
Purdue University
Reed College
Rhode Island School of Design
Rochester Institute of Technology
Rutgers Biomedical and Health Sciences
Rutgers University-Camden
Rutgers University-Newark
Rutgers, The State University of New Jersey
Sacred Heart Seminar and School of Theology
Santa Clara University
St. Olaf College
Stevens Institute of Technology
Tacoma Community College
Teachers College, Columbia University
Temple University
The New School
University of California, Riverside
University of Colorado

University of Massachusetts
University of Miami
University of Minnesota
University of Oregon
University of Rochester
University of the Sciences
University of Utah
Whatcom Community College

National Organizations

African Communities Together
Alianza Americas
Alianza Nacional de Campesinas
America's Voice
American Business Immigration Coalition
American Immigration Lawyers Association
American International Recruitment Council
Catholic Legal Immigration Network, Inc.
Church World Service
Committee of Interns and Residents/SEIU Healthcare
Community College Consortium for Immigrant Education
Freedom Network USA
International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)
Middle States Commission on Higher Education
National Association for College Admission Counseling (NACAC)
National Association of Graduate-Professional Students
National Immigration Forum
National Network for Immigrant & Refugee Rights
National Partnership for New Americans
New American Economy
Southeast Asia Resource Action Center
The National Association of Graduate-Professional Students
U.S. Committee for Refugees and Immigrants (USCRI)
UNITED SIKHS
WASC Senior College & University Commission (WSCUC)
World Education Services
Presidents' Alliance on Higher Education and Immigration

State and Local Organizations

Centralia College
Seattle Colleges
Tacoma Community College

The Office of Global Engagement at UNCP
The University of North Carolina System
Waterbury Hospital