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September 29, 2025

Office of Regulatory Affairs and Policy
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street SW
Washington, DC 20536

Re: 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, Docket No. ICEB-2025-0001

Dear Acting Director Lyons,

The Center for Immigration Studies (CIS) respectfully submits the following public comment to the U.S. Department of Homeland Security (DHS) in response to the department’s notice of proposed rulemaking (NPRM), “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,” Docket No. ICEB-2025-0001, as published in the Federal Register on August 28, 2025.

CIS is a national, nonprofit, public-interest organization comprised of millions of concerned citizens who share a common belief that our nation's immigration laws must be enforced, and that policies must be reformed to better serve the national interest. CIS examines trends and effects, educates the public on the impacts of sustained high-volume immigration, and advocates for sensible solutions that enhance America’s environmental, societal, and economic interests today, and into the future.

I. Background

Foreign students, exchange visitors, and representatives for foreign information media can visit the United States on a temporary basis in the F, J, and I visa classifications, respectively.¹ Unlike most temporary visitors in nonimmigrant visa classifications, however, visitors entering under the F, J, and I visa classifications are admitted to the United States for an unspecified amount of time, referred to as “duration of status” (D/S).² Nonimmigrants visiting the United States on D/S visas do not have a fixed end date, on which their authorized period of stay terminates, printed

¹ See Immigration and Nationality Act (INA) § 101(a)(15)(F), (J), (I).

² See 8 C.F.R. § 214.2(f)(5)(i), (j)(1)(ii), (i).



CENTER FOR IMMIGRATION STUDIES

on the Form I-94, Arrival/Departure Record. Instead, these nonimmigrants are allowed to remain in the United States for as long as they maintain the conditions of their immigration status.³

D/S is not a feature that is original to the F, J, and I visa programs.⁴ From 1973 to 1979, foreign students entering F nonimmigrant visas, for example, were admitted for a period of authorized stay of just one year and could be granted an extension of stay (EOS) in increments of up to 12 months if they adequately demonstrated that they were maintaining their status (i.e., continued to be enrolled in a course of study, among other requirements).⁵ Because of administrative costs and the desire “to reduce the continual need to process vast numbers of applications for extension of stay” following growth of the foreign student arrivals, the former Immigration and Nationalization Service (INS) amended pertinent regulations in 1979 to change the F-1 nonimmigrant visa classification to a D/S classification.⁶

In 1981, INS changed pertinent regulations against to require that change admission of F-1 nonimmigrant visa classification to a fixed period of authorized stay corresponding to the time necessary to complete a course of study, with the opportunity to receive an EOS, as necessary. INS at that time explained that this change was necessary because “this procedure resulting in questionable control over the foreign students and has contributed to problems in record keeping.”⁷

This change was likely influenced by national security concerns during the Iran hostage crisis, in which Iranian students seized the U.S. Embassy in Tehran and detained more than 50 Americans. This crisis began in November 1979 and ended on January 20, 1981. INS noted that, “Recent events have highlighted the problem of control of foreign students in the United States. To meet this obligation, the Service proposed eliminating duration of status for foreign students and imposing an annual reporting requirement.”⁸ INS reinstated D/S in 1983.⁹

Similarly, both the J and I nonimmigrant visa classifications were created with authorized periods of stay for one year with the possibility of extensions.¹⁰ These programs shifted to D/S statuses in 1985 primarily to reduce administrative challenges related to processing large numbers of EOS requests.

³ *Id.*, see also, U.S. Citizenship & Immigration Servs., *Policy Manual*, Vol. 2, Pt. F, Ch. 3(A) (last visited Sept. 29, 2025).

⁴ See 43 Fed. Reg. 54618 (Nov. 22, 1978) and 50 Fed. Reg. 42006 (Oct. 17, 1985).

⁵ *Id.*

⁶ 44 Fed. Reg. 21853, 21854 (Apr. 30, 1979).

⁷ 46 Fed. Reg. 25079, 25080 (May 5, 1981).

⁸ *Id.*

⁹ 48 Fed. Reg. 14,575 (Apr. 5, 1983).

¹⁰ INA §§ 101(a)(15)(I), (J); 8 C.F.R. §§ 214.2(i)(1), 214.2(j)(1)(ii).



CENTER FOR IMMIGRATION STUDIES

In 2020, the first Trump administration proposed a regulation that would have changed the authorized period of stay for F, J, and I nonimmigrant visa holders from D/S to fixed periods. DHS found that, for example, “[s]ome aliens have used the F classification to reside in the United States for decades by continuously enrolling in or transferring between schools, a practice facilitated by the [duration of status] framework”¹¹ and it identified aliens who had been in the United States in F-1 status since the 1990s and early 2000s, some of whom were still in active F-1 status as of the time of the publication of the proposed rule.¹² DHS argued that:

[The duration of status] framework, because it reduces opportunities for direct vetting of foreign academic students by immigration officers, creates opportunities for foreign adversaries to exploit the F-1 program and undermine U.S. national security. ... Foreign adversaries are using progressively sophisticated and resourceful methods to exploit the U.S. educational environment, including well-documented cases of espionage through the student program. ... DHS believes that replacing [duration of status with a fixed period of admission] would help mitigate these national security risks by ensuring an immigration official directly and periodically vets applicants for extensions of stay and, in so doing, confirms they are engaged only in activities consistent with their student status.¹³ ...

DHS believes a shorter admission period, up to 2 years, would be appropriate for a subset of the F and J population due to heightened concerns related to fraud, abuse, and national security. ... For this subset of the F and J population, DHS believes that a 2-year maximum period of admission would be appropriate. This would give the Department an opportunity to verify that they are complying with the terms and conditions of their status more frequently and thereby better address any national security concerns.¹⁴ ...

For example, the Secretary of Homeland Security could determine that it is appropriate to limit the length of admission of students who are enrolled in specific courses of study, such as nuclear science.¹⁵

The Biden administration rescinded the 2020 proposed rule in July 2021.¹⁶

The proposed rule at issue provides similar regulatory proposals as the first Trump administration’s 2020 rule. Specifically, this rule proposes, in addition to other substantive, technical, and clarifying amendments, to:

¹¹ 85 Fed. Reg. 60526, 60535 (Sept. 25, 2020).

¹² *Id.*

¹³ *Id.* at 60535.

¹⁴ *Id.* at 60538.

¹⁵ *Id.* at 60544.

¹⁶ 86 Fed. Reg. 35410 (Jul. 6, 2021).



CENTER FOR IMMIGRATION STUDIES

- Providing for a fixed time period of authorized stay for F, J, and I nonimmigrants and providing procedures specific to the transition from D/S;
- Setting the authorized admission and extension periods for F and J nonimmigrants to the program length, not to exceed a 4-year period;
- Prohibiting F-1 students at the graduate education level from changing programs at any point during a program of study;
- Outlining procedures and requirements for F-1 nonimmigrants who change educational objectives while in F-1 status and requiring any nonimmigrant who has completed a program at one educational level to only be allowed to begin another program at a higher educational level while in F-1 status and prohibiting a change to the same or a lower educational level while in F-1 status;
- Decreasing from 60 to 30 days the allowed period for F-1 nonimmigrants to prepare to depart from the United States after completion of a course of study or authorized period of post-completion practical training;
- Providing for collection of biometric information in conjunction with an EOS application;
- Limiting language training students to an aggregate 24-month period of stay;
- Replacing D/S for I nonimmigrants with admission for a fixed time period until they complete the activities or assignments consistent with the I classification, not to exceed 240 days, with EOS availability;
- Codifying the definition of a foreign media organization for I nonimmigrant status.¹⁷

CIS strongly supports the changes proposed by this proposed rule and DHS's overall goal to mitigate fraud and abuse of these nonimmigrant visa programs. CIS believes this rule maintains sufficient opportunities for foreign students and exchange visitors to extend their stay beyond the NPRM's proposed fixed period of stays while balancing the reality of DHS's administrative and resource restraints. CIS believes that INS assigned too much weight to administrative costs associated with processing EOS and too little to challenges associated with maintaining the integrity of the programs.

II. DHS Must Replace D/S for F, J, and I Visa Classifications with a Fixed Period of Authorized Duration of Stay.

DHS must replace the current "duration of status" framework with a fixed period of authorized stay. Duration of status undermines multiple statutory and policy objectives Congress has carefully enacted. First, it erodes congressional intent behind the unlawful-presence penalties—the three- and ten-year bars established in the *Illegal Immigration Reform and Immigrant*

¹⁷ 90 Fed. Reg. 43070, 42704 (Aug. 28, 2025).



CENTER FOR IMMIGRATION STUDIES

Responsibility Act of 1996 (IIRIRA) – by allowing certain nonimmigrants to avoid triggering unlawful presence accrual despite remaining well beyond the time Congress envisioned. Second, it weakens the integrity and accountability of the immigration system by fostering uncertainty, limiting DHS’s ability to track compliance, and creating opportunities for exploitation by bad-faith actors. Finally, duration of status creates vulnerabilities that can be exploited to the detriment of U.S. national security, since the absence of clear, fixed end dates impedes enforcement, monitoring, and risk assessment.

A. D/S Undermines Congressional Intent in Enacting INA § 212(a)(9)(B)(i) and INA § 212(a)(9)(C)(i)(I).

DHS must repeal regulations that allow nonimmigrants to be admitted to the United States with D/S because it undermines Congress’s intent in enacting the three- and ten- year bars to admission, which are found at INA § 212(a)(9)(B)(i) and INA § 212(a)(9)(C)(i)(I), prohibit an alien from being admitted to the United States within three years of leaving the United States before removal proceedings begin after that alien has accrued more than 180 days but less than one year of unlawful presence during a single stay in the United States. An alien is barred from admission for ten years of leaving or being removed from the United States if they accrue one year or more of unlawful presence during a single stay in the United States.

Moreover, Congress, by enacting INA § 212(a)(9)(C)(i)(I), made an alien permanently inadmissible if they have accrued an aggregate period of more than one year of unlawful presence in the United States on or after April 1, 1997, left or were removed from the United States, and entered or attempted to reenter the United States without a DHS officer admitting or paroling them. Unlawful presence is “any period of time when you are present in the United States without being admitted or paroled, or when you are present in the United States after your ‘period of stay authorized by the Secretary’ expires.”¹⁸

Congress intended these provisions to deter overstays, promote compliance with immigration law, and impose meaningful consequences for noncitizens who remained unlawfully. The bars are a central enforcement tool in IIRIRA’s broader scheme to tighten compliance with immigration law.

Under the Administrative Procedure Act (APA), courts must “hold unlawful and set aside” agency actions found to be “an abuse of discretion or otherwise no in accordance with law... or in excess of statutory ... authority.”¹⁹ The Supreme Court has repeatedly held that an agency rule that runs contrary to Congress’s statutory scheme is impermissible.²⁰ Moreover, the Court, in

¹⁸ U.S. Citizenship & Immigration Servs., *Unlawful Presence and Inadmissibility* (Jan 25, 2025).

¹⁹ 5 U.S.C. § 706(2).

²⁰ *See, e.g., FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000).



CENTER FOR IMMIGRATION STUDIES

Loper Bright Enterprises v. Raimondo, held that court may no longer defer to an agency interpretation of a statute simply because the statute is ambiguous.²¹ Rather, courts must now exercise independent judgment in statutory interpretation, removing the protective shield of deference DHS may have utilized when it promulgated rules employing D/S for these immigration statuses.

D/S statuses frustrate Congress's scheme in enacting IIRIRA because this framework makes it nearly impossible for DHS to understand when an alien in F, J, or I statuses have begun accruing unlawful presence for the purpose of enforcing these statutory bars to admission. As DHS admitted, "nonimmigrants admitted for D/S generally do not accrue unlawful presence for the purpose of the 3- and 10-year bars described in INA 212(a)(9)(B) and (C) ... unless an immigration officer finds they have violated their status in the context of adjudicating an immigration benefit request, or an immigration judge orders them excluded, deported, or removed."²² DHS further explained that, "Because F-1 nonimmigrant students are admitted for D/S, they generally do not file applications or petitions, such as EOS applications, with USCIS, and therefore, immigration officers do not generally have an opportunity to determine whether they are engaging in F-1 nonimmigrant activities in the United States and maintaining their F-1 nonimmigrant status."²³ The practical effect of D/S is that an alien who has fallen out of status will only begin accruing unlawful presence once they are caught and their removability is adjudicated.²⁴

As a hypothetical, under the current regulatory framework, if a F-1 nonimmigrant visa holder stops going to classes and engages in nefarious conduct, the alien will not begin to accrue unlawful status until the F-1 visa holder is issued a notice to appear in immigration court and an immigration judge determines that they have fallen out of status.²⁵

As of the third quarter of FY 2025, however, the Executive Office of Immigration Review (EOIR) immigration courts have a backlog of almost 3.8 million cases nationwide.²⁶ According to the Transactional Records Access Clearinghouse Immigration Project (TRAC Immigration), the average wait time for an immigration court merits hearing is over four years nationally, with first

²¹ See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

²² 90 Fed. Reg. 42070, 42077-78 (Aug. 28, 2025).

²³ *Id.*

²⁴ U.S. Citizenship & Immigration Servs., *USCIS Interoffice Memorandum, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act"* (May 6, 2009).

²⁵ *Id.*

²⁶ U.S. Dep't of Just., Exec. Off. for Immigration Rev., *Adjudication Statistics, Pending Cases, new Cases and Total Completions* (Jul. 31, 2025).



master calendar hearings occurring months or up to two years after NTA issuance.²⁷ Data from TRAC Immigration shows that that an alien it may take anywhere from two to 24 years for an alien to receive a final order in their removal proceedings. Current DHS policy, under a D/S framework, would therefore prohibit an F-1 visa holder from accruing lawful presence for the purposes of these statutory bars to admission until that happens, obstructing Congress’s intent that such aliens be barred from admission after just 180 days of falling out of status.²⁸

Finally, the statutory text provides no basis for duration of status. Congress set up a bright-line system: once a period of authorized stay ends, unlawful presence should start accruing.²⁹ DHS’s current D/S framework is thus an impermissible narrowing of the statute’s penalty scheme, which courts have invalidated in analogous contexts.³⁰ Agencies cannot create carve-outs or safe harbors from statutory penalties like D/S creates for F, J, and I nonimmigrants by insulating these statuses from accruing unlawful presence.

B. D/S Undermines the Integrity of the Immigration System.

Eliminating D/S will support the integrity of the immigration system by allowing DHS to more easily uncover fraud and abuse in the F, J, and I nonimmigrant visa programs. Imposing a fixed period of authorized stay will provide immigration officers with a mechanism to evaluate whether a visa holder is maintaining the conditions of their visa program at the time these nonimmigrants apply to extend their stays and to determine whether an extension of status is warranted, on a case-by-case basis.

There are many documented cases of visa abuse or fraud across U.S. visa categories.³¹ For instance, CIS has recorded, as DHS notes in its preamble for this proposed rule, that there have been numerous instances of “pay-to-stay” fraud in the F nonimmigrant visa program. “Pay-to-stay” fraud is a criminal enterprise where school officials, in return for cash payments, falsely report that F-1 students who do not attend school are maintaining their student status.³² CIS has

²⁷ TRAC Immigration, *Pending Cases and Wait Times Until Hearings Scheduled by Court Location*. Please note that detained cases, which are less typical for F, J, or I visa holders, are typically scheduled must sooner – days or weeks – after issuance of an NTA.

²⁸ See INA § 212(a)(9)(B).

²⁹ See INA § 212(a)(9)(B)(ii).

³⁰ See, e.g., *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *Encino Motorcars, LLC. V. Navarro*, 579 U.S. 211 (2016) (invalidating an DOL rule excluding service advisors from the Fair Labor Standards Act overtime exemption).

³¹ See, e.g., Vaughan, Jessica, Statement for the U.S. House of Representatives Committee on the Judiciary, *Restoring Integrity and Security to the Visa Process* (Jun. 25, 2025); U.S. Gov’t Accountability Off., *U.S. Citizenship and Immigration Services: Additional Actions Needed to Manage Fraud Risks*, GAO-22-105328 (Sept. 19, 2022); North, David, Center for Immigration Studies, *The Dregs of Higher Education Damage Our Immigration System* (Sept. 11, 2017).

³² 90 Fed. Reg. 42070, 42077 (Aug. 28, 2025).



CENTER FOR IMMIGRATION STUDIES

reported that in some of these cases, school owners operate multiple schools and transfer students between these schools to help conceal the fraud.³³

In some of these cases, CIS and DHS have reported that DSOs, the agents that the current regulatory framework assigns to certify F-1 visa holder's compliance with their status, are also complicit in the fraud and documented cases where DSOs "intentionally recorded a student's status inaccurately; ... issued program extensions to students who did not have a compelling medical or academic reasons for failing to complete their program by its end date, and ... permitted students who failed to maintain status to transfer to another school rather than apply for reinstatement."³⁴

In addition to bad-acting school officials and DSOs, CIS has tracked cases (of which DHS has also acknowledged) of students that have abused the F nonimmigrant visa program to reside in the United States for decades by becoming "lifelong" students. The current D/S regulatory framework has allowed at least 2,100 aliens who have entered the United States under the F nonimmigrant visa program between 2000 and 2010 (15-25 years ago) to remain active in their F-1 status as of April 2026. As DHS explained in the NPRM, "To extend their stay, these aliens enrolled in consecutive educational programs, they transferred to new schools, or DSOs repeatedly extended their program end dates. This practice is not limited to any one particular type of school; students at community or junior colleges, universities, and language training schools have maintained F-1 status for lengthy periods."³⁵ Providing F, J, and I classification with a firm end date to their authorized period of stay would end this practice in cases where extensions are not warranted by statute or there is sufficient evidence of abuse.

As DHS acknowledged in the proposed rule's preamble, "Under the current D/S framework, DHS might not detect an individual status violation for an extended period if the alien stays enrolled in a school, does not seek readmission to the United States, and does not apply for additional immigration benefits."³⁶ In the case of I nonimmigrant visa holders, providing an end date for I nonimmigrant's period of authorized stay and requiring these individuals to apply for an EOS to remain in the United States beyond that date will also provide immigration officers a mechanism to review their activities in the United States and confirm that such activities are consistent with both their visa status and the interests of the United States.

³³ See, e.g., North, David, Center for Immigration Studies, *Higher Education Fraud Comes in Two Different Packages, Part 1* (Jan. 8, 2018).

³⁴ 90 Fed. Reg. 42070, 42077 (Aug. 28, 2025); see North, David, Center for Immigration Studies, *The Dregs of Higher Education Damage Our Immigration System* (Sept. 11, 2017).

³⁵ *Id.*

³⁶ 90 Fed. Reg. 42070, 42078 (Aug. 28, 2025).



Moreover, DHS’s annual Entry/Exit Overstay Reports consistently show that student and exchange visitors categories have higher-than-average overstay rates compared to other nonimmigrant categories.³⁷ This is true even though DHS cannot easily pinpoint when a D/S nonimmigrant falls out of compliance, meaning overstays in these categories often go undetected until much later than they initially occur, if ever. Because DHS cannot track compliance with D/S statuses in real time, F, J, and I visa holder face few immediate consequences for ignoring the terms of their stay.

Congress created these nonimmigrant visa programs acknowledging significant benefits to academic and media institutions, understanding that these programs foster mutual understanding between the United States³⁸ and other countries and media visitors promote freedom of the press and international exchange of information.³⁹ But Congress created these opportunities as temporary nonimmigrant benefits, not statuses that can be used to allow indefinite or long-term residency in the United States. Imposing an extendable fixed period of authorized stay helps the U.S. government ensure that these visa programs are used for the purposes they were created.

C. Eliminating D/S for F, J, and I Classifications Will Promote National Security.

Eliminating “duration of status” for F, J, and I nonimmigrant classifications is a necessary step to promote national security. By allowing these categories of nonimmigrants to remain in the United States for an open-ended period tied only to program participation, rather than a fixed date certain, the current framework creates significant oversight gaps. These gaps make it difficult for the government to monitor compliance with visa conditions, to detect status violations in real time, and to prevent exploitation of the student and exchange visitor system by those who would seek to do harm.

The September 11, 2001, terrorist attacks demonstrated the vulnerabilities of this structure: several of the attackers had entered or remained in the United States through student-related visa categories, and the 9/11 Commission identified the student visa program as a point of weakness that could be exploited by terrorists.⁴⁰ Replacing duration of status with a fixed period of

³⁷ U.S. Dep’t of Homeland Sec., U.S. Customs & Border Prot., *Entry/Exit Overstay Report: Fiscal Year 2023 Report to Congress* (Aug. 5, 2024). In FY 2023, the most recent year in which data is available, DHS reported a total overstay rate of 3.67 percent, or nearly 50,000 overstays for these visa categories. Broken down by class, F visa holders had a total overstay rate of 3.5 percent; M visa holders had a total overstay rate of almost 8 percent; and J visa holders had a total overstay rate of 3.9 percent. These rates are modestly reduced from FY 2022’s data, which showed a total overstay rate of 4.44 percent or over 55,000 people.

³⁸ 22 U.S.C. § 2451 (“The purpose of this chapter is to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange...”).

³⁹ H.R. Rep. No. 82-1365, at 40 (1952).

⁴⁰ See U.S. Gen. Accounting Off., *Border Security: INS Needs to Improve Controls to Reduce the Risk of Student Visa Abuse 2* (GAO-02-586, May 2002).



CENTER FOR IMMIGRATION STUDIES

authorized stay – consistent with other nonimmigrant visa categories – would implement the recommendations of the 9/11 Commission, close a long-standing security loophole, and ensure that immigration authorities can enforce visa compliance more effectively.

The 9/11 Commission Report devoted significant attention to the student visa program, identifying it as one of several vulnerabilities in the U.S. immigration system that were exploited and could continue to be exploited by terrorists and others seeking to harm the United States.⁴¹ Specifically, with regard to the student visa programs, the Commission Report pointed to the absence of a real-time verification system which allows individuals to obtain visas and enter the country with little follow-up. Converting these categories to fixed periods of authorized stay would allow DHS to track lapses in lawful status promptly, ensuring that violations are detected and acted upon in a manner consistent with the Commission’s national security concerns.

The U.S. Government Accountability Office (GAO) also emphasized similar concerns. “The September 11, 2001, terrorist attacks drew renewed attention to foreign students when it was determined that several of the terrorists either were in the United States on student visas, had recently changed their visa status to a student status, or had attended flight schools. ... Although the INS knew how many foreign students entered the United States, it was unable to keep track of them to ensure that they complied with their visa requirements.”⁴²

Moreover, the 9/11 Commission found that information sharing between the Department of State, INS, and intelligence agencies was inadequate, leaving critical gaps in the government’s ability to prevent terrorist travel.⁴³ A system based on D/S makes information-sharing even harder, since the absence of a fixed end date provides no clear trigger for agencies to update one another on compliance or departure. Replacing D/S with fixed expiration dates would create predictable intervals at which compliance data must be exchanged, thereby strengthening interagency coordination and ensuring that no single agency is left in the dark about whether an individual has maintained lawful status.

While DHS has created the Student and Exchange Visitor System (SEVIS) which mandatory reporting by schools to close some of the gaps that was highlighted by the 9/11 Commission Report, the program’s accuracy depends entirely on school and DSO compliance. As discussed in in section II(B) (above), many instances of student visa-related fraud and abuse occur precisely at the hands of school officials and DSOs. GAO has repeatedly found gaps in SEVIS data, delays

⁴¹ Nat’l Comm’n on Terrorist Attacks Upon the U.S., *The 9/11 Commission Report* (e.g. p. 383-385) (2004).

⁴² U.S. Gov’t Accountability Off., *Border Security: INS Needs to Improve Controls to Reduce the Risk of Student Visa Abuse 2* (GAO-02-586, May 2002).

⁴³ *Id.* at 384–85.



in updating SEVIS and in oversight and enforcement against noncompliant schools.⁴⁴ Moreover, GAO has repeatedly identified vulnerabilities in OPT oversight, including tracking OPT employers.

Creating a firm end date for students' authorized period of stay would again give the government another opportunity to confirm that the visa holders are bona fide students, enrolled in bona fide educational programs, and engaged in activities that maintain their status. It would also facilitate information sharing between the numerous federal agencies that have a role in protecting national security.

III. DHS Should Require Nonimmigrants Who Have Completed an Educational Level in the United States to Only Be Allowed to Begin Another Program at a Higher Educational Level and Prohibit a Change to the Same or Lower Educational Level While in F-1 Status.

The F-1 visa exists to facilitate bona fide academic study in the United States. Allowing students to remain in the U.S. while repeatedly enrolling at the same or lower educational levels undermines this purpose. By requiring advancement to a higher level, DHS would ensure that the visa program continues to serve its intended mission—promoting academic progress and intellectual exchange, not functioning as a long-term residency mechanism for individuals with no intent to complete a coherent educational trajectory.⁴⁵

As DHS reported, some F-1 students exploit the flexibility of the system by “school hopping”—moving from one institution to another at the same or even a lower level to extend their stay indefinitely.⁴⁶ This practice not only strains DHS’s monitoring resources (through SEVIS compliance tracking) but also opens the door to visa fraud. Restricting changes of program to a higher level would close a loophole that permits nonimmigrants to remain in the U.S. for years without meaningful academic progress, contrary to congressional intent that the F-1 program provide temporary, not long-term, periods of authorized stay.⁴⁷

Moreover, when students linger in lower-level programs, they often work on campus or participate in Curricular Practical Training (CPT) and Optional Practical Training (OPT) authorizations for employment.⁴⁸ This creates unfair labor market competition, particularly when individuals are not genuinely advancing in their studies. Requiring education level advancement

⁴⁴ See, e.g., U.S. Gov’t Accountability Office, *Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions*, GAO-12-572, at pp. 13–15, 23–25 (Jun. 18, 2012); see also U.S. Gov’t Accountability Office, *Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight*, GAO-19-297, at p. 27 (Mar. 2019).

⁴⁵ U.S. Immigration & Customs Enf’t, *Student and Exchange Visitor Program* (Jul. 14, 2025).

⁴⁶ 90 Fed. Reg 42070, 42077 (Aug. 28, 2025).

⁴⁷ See INA § 101(a)(15)(F)(i).

⁴⁸ U.S. Immigration & Customs Enf’t, *Student and Exchange Visitor Program, Practical Training* (Dec. 10, 2024).



ensures that work opportunities tied to education benefit those who are truly pursuing advanced knowledge and skills, rather than being used as a back-door employment authorization.

Finally, by ensuring that nonimmigrants can only move forward to higher levels of education, DHS would reinforce the expectation that foreign students come to the United States to study, complete their academic goals within reasonable timeframes, and either return home or lawfully transition to another lawful immigration status.⁴⁹ This reform would harmonize with this administration's broader policy objectives: supporting international education while minimizing system abuse.⁵⁰

IV. DHS Should Reduce the F-1 Visa Departure Grace Period from 60 Days to 30 Days.

CIS supports DHS's proposal to amend current 8 C.F.R. § 214.2(f)(5)(iv) to provide a departure grace period of 30 days for F-1 nonimmigrant visa students, rather than 60 days. During this grace period, F-1 visa holders may prepare for departure, apply for a change of status, or transfer to another program.⁵¹ This policy was designed to provide flexibility for foreign students navigating the end of their programs. However, a 60-day grace period has become out of step with enforcement goals and contributes to overstay risks and creates loopholes that are inconsistent with the 9/11 Commission's recommendations regarding tighter visa monitoring.

As discussed above, DHS overstay reports consistently show that student and exchange visitor visa categories have above-average overstay rates relative to all nonimmigrant visa categories. In FY 2023, the most recent year in which data is available, DHS reported a total overstay rate of 3.67 percent, or nearly 50,000 overstays for these visa categories. Broken down by class, F visa holders had a total overstay rate of 3.5 percent; M visa holders had a total overstay rate of almost 8 percent; and J visa holders had a total overstay rate of 3.9 percent. These rates are modestly reduced from FY 2022's data, which showed a total overstay rate of 4.44 percent or over 55,000 people.⁵²

Reducing the grace period from 60 days to 30 would cut in half the window during which individuals can remain in the United States without an active purpose consistent with their visa classification (in this case: study or training). A short grace period also sends a clear message that student visas provide only temporary authorization to remain in the country for a limited

⁴⁹ See 8 C.F.R. § 214.2(f)(6)(i)(A) (defining "full course of study" as "Successful completion of the full course of study must lead to the attainment of a specific educational or professional objective....").

⁵⁰ See U.S. Dep't of State, *U.S. Visas, Study & Exchange* (2025) ("The United States supports international education and welcomes foreign students and exchange visitors.").

⁵¹ 8 C.F.R. § 214.2(f)(5)(iv) and proposed 8 C.F.R. § 214.2(f)(5)(v).

⁵² U.S. Dep't of Homeland Sec., U.S. Customs & Border Prot., *Entry/Exit Overstay Report, Fiscal Year 2023 Report to Congress* (Aug. 5, 2024).



purpose, not a backdoor to long term residence. This change would align with DHS's broader objectives of reducing pull factors that encourage status violations.⁵³

This change would also harmonize F-1 nonimmigrant visa rules with other nonimmigrant visa classifications. For example, M-1 nonimmigrant visa holders (vocational students) are only provided a 30 day grace period for departure after completion of studies or training;⁵⁴ J-1 nonimmigrant visa holders are only provided a 30 day grace period for departure after completion of their J-1 eligible program;⁵⁵ B-1/B-2 nonimmigrants (tourists and business visitors) have no grace period and must depart by the expiration of their authorized period of stay printed on their I-94; and H-1B, H2B, H-3, O, P, E-1/E-2, TN and other employment-based nonimmigrants are given a ten day grace period before petition validity begins and day days after it ends, during which they may remain in the United States but cannot work.⁵⁶ Only in certain situations can these employment-based nonimmigrants receive a discretionary 60-day grace period if their employment is terminated early, but they may only remain in the United States in these circumstances until the end of their authorized period of stay, whichever is shorter.⁵⁷ Moreover, A, G, and K (diplomatic/IO personnel, and fiancé respectively) and most other nonimmigrants are expected to depart immediately upon the termination of their duties or expiration of their authorized period of stay.⁵⁸

This change would also make the U.S. foreign student program consistent with international standards. Many countries who receive foreign students allow little to no grace period at the end of student's authorized period of stay. For example, the European Union (Schengen states) generally gives foreign students residence permits rather than student visas, but when a foreign student studies end, the permit expires and the student must leave the EU unless they have transitioned into another status.⁵⁹

V. DHS Must Eliminate Post-Graduate Optional Practical Training Because It Violates the Conditions of the F-1 Visa Program.

DHS must rescind all regulations and policies that allow F-1 nonimmigrant visa holders (students) to work in the United States in violation of their status following graduation. OPT was created by DHS without statutory authorization and violates the conditions Congress created for the F-1 visa. The INA specifically requires that an F-1 nonimmigrant be an "alien having a residence in a foreign country which he has no intention of abandoning, who is a *bona fide*

⁵³ U.S. Dep't of Homeland Sec., *DHS Strategic Plan: Fiscal Years 2023-2027* (Nov. 2024).

⁵⁴ 8 C.F.R. 214.2(m)(5).

⁵⁵ 22 C.F.R. § 62.43(d).

⁵⁶ 8 C.F.R. § 214.1(l)(1).

⁵⁷ 8 C.F.R. § 214.1(l)(2).

⁵⁸ 8 C.F.R. § 214.2(a)(1); 8 C.F.R. § 214.2(g)(1); 8 C.F.R. § 214.2(k)(5); 8 C.F.R. § 214.2(k)(9)(iv).

⁵⁹ European Union, *Your Europe, Citizens, Residence, Residence rights, Students -residence rights* (Dec. 5, 2025).



CENTER FOR IMMIGRATION STUDIES

student qualified to pursue a full course of study and who seeks to enter ... temporarily and solely for the purpose of pursuing such a course of study.”⁶⁰ Once a F-1 visa holder completes their course of study, they are no longer entitled to an extension of their status or work authorization in the United States.

DHS has taken the position that it is authorized to allow F-1 visa holders who have graduated to nevertheless extend their stay and receive work authorization by virtue of DHS’s statutory authority to set the time and conditions of admission for nonimmigrants.⁶¹ The unambiguous reading of this authority, however, is to allow DHS to supplement – not disregard – the conditions laid out in INA § 1101. This is supported by section 1184(a)(1), which provides that DHS may require “the giving of a bond ... **to insure that** at the expiration of such time or **upon failure to maintain the status under which he was admitted**, or to maintain any [other nonimmigrant] status subsequently acquired ...such alien will depart....” (Emphasis added.)

Indeed, the Supreme Court has affirmed this interpretation in the context of the required intent to not abandon a foreign residence that is inherent to the F-1 and most other nonimmigrant programs. In *Elkins v. Moreno*, 435 U.S. 647 (1978), the Court ruled that “Congress expressly conditions admission for some purposes on an intent not to abandon a foreign residence or, by implication, on an intent not to seek domicile in the United States... **[S]ince a nonimmigrant alien who does not maintain the conditions attached to his status can be deported...it is...clear that Congress intended that ... nonimmigrants in restricted classes who sought to establish domicile would be deported.**” (Emphasis added.) (Citations omitted.)⁶² Accordingly, the Court recognized that the requirements, or “conditions,” of entry are also the requirements and conditions of good standing in the United States.

Moreover, only Congress, not the Executive Branch, has the authority to designate categories of aliens who are eligible to work in the United States. DHS must protect job opportunities for American workers consistent with the employment-based admission limitations passed by Congress.

Article I of the U.S. Constitution gives Congress plenary power over immigration, and Congress has established an extensive scheme for the admission of immigrant and nonimmigrant foreign workers into the United States through the creation of numerous visa programs.⁶³ Congress has never conferred nor delegated the authority to DHS to create employment eligibility for classes of aliens not already provided by law. Designating new classes of eligible populations

⁶⁰ INA § 101(a)(15)(F)(i).

⁶¹ INA § 214(a)(1).

⁶² *Elkins v. Moreno*, 435 U.S. 647, 665-66 (1978).

⁶³ See INA. § 101 et seq.



CENTER FOR IMMIGRATION STUDIES

undermines the deliberate scheme created by Congress which has contemplated intricate social, economic, and foreign policies beyond the scope of DHS's interests and mission.

Further, contrary to DHS's regulatory position (which DHS has disavowed in litigation⁶⁴), Congress did not confer such authority with the enactment of the definition of "unauthorized alien," in section 1324a of the INA. Section 1324a was enacted by the *Immigration Reform and Control Act of 1986* to criminalize and impose civil sanctions on the act of hiring an alien who is not authorized to work in the United States.⁶⁵ Section 1324a(h)(3) defines those aliens that it is unlawful for an employer to hire. This section, however, is merely definitional and refers to the authorities the Secretary already possesses through enactment of other provisions in the INA. It does not itself grant any authority.⁶⁶

Rather, since the enactment of this position, Congress has specifically extended and limited DHS's authority to grant work authorization to similar classes of aliens on numerous occasions.⁶⁷ Interpreting the definition of "unauthorized alien" to confer such broad authority would also render Congress's later enactments superfluous and violate the non-delegation doctrine as an impermissible delegation of legislative authority without sufficient intelligible principles to guide the Secretary.⁶⁸

VI. DHS Should Require Education Institutions to Enroll in E-Verify as a Condition for Hosting Student and Exchange Visitors.

DHS should amend this rulemaking to require that any education institution that hosts student and exchange visitors enroll in E-Verify. Universities and colleges are among the largest

⁶⁴ "Section 1324a . . . cannot reasonably be interpreted to have 'brought about the enormous and transformative expansion' in the Secretary's authority. . . ." Rep. Br. for the Pet'rs, Dep't of Homeland Security, et al. v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020) (No. 18-587) (quoting Util. Air Regulatory Grp. v. Env'tl. Prot. Agency, 573 U.S. 302, 324 (2014)).

⁶⁵ Pub. L. No. 99-603, § 101, 100 Stat. 3445 (creating the new section § 274a of the INA).

⁶⁶ See *W. Union Tel. Co. v. Fed. Comm'n's Comm'n*, 665 F.2d 1126, 1136-37 (D.C. Cir. 1981) (holding a section was "only definitional" where it began with "as used in this section" and contained only definition subsections); *Texas v. United States*, 787 F.3d 733, 760 (5th Cir. 2015), aff'd by an equally divided court, 136 S. Ct. 2271 (2015) (observing § 1324a(h)(3) was merely definitional).

⁶⁷ For example, the Omnibus Consolidated Appropriations Act 1997 provided that "[a]n applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General." Pub. L. No. 104-208, § 604, 110 Stat. 3009, 3009-693.

⁶⁸ The Supreme Court "repeatedly [has] said that when Congress confers decision making authority upon agencies Congress must 'lay down by legislative act an intelligible principle to which the person or body authorized to act' is directed to conform." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001) (quoting *J. W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928); see also *Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 685(1980) (Rehnquist, J. concurring) ("[The nondelegation doctrine] ensures . . . that important choices of social policy are made by Congress, the branch of our Government most responsive to the popular will.").



employers in many states. Beyond students, they hire thousands of faculty, researchers, healthcare professionals (at teaching hospitals), custodial staff, contractors, and vendors.⁶⁹

Unauthorized work is a primary driver of unlawful migration.⁷⁰ Expanding mandatory E-Verify into sectors like higher education removes one more potential avenue of employment. Congress, DHS, and some state and local lawmakers have steadily expanded E-Verify mandates since the program's creation as a pilot program under IIRIRA in 1996 (federal contractors, some state requirements).⁷¹ Adding schools continues this trajectory, building toward a comprehensive employer compliance regime.

Moreover, like corporations, schools face the same obligation under INA § 274A to hire only authorized workers. Mandating E-Verify ensures compliance across higher education systems' vast and varied workforce. Without mandatory E-Verify, schools can inadvertently become attractive worksites for unauthorized employment, undermining the integrity of the student visa system and labor markets alike.

F-1, M-1, and J-1 programs are premised on maintaining student or exchange status, and work authorization opportunities are available for these visitors in appropriately limited circumstances. Mandatory E-Verify ensures that institutions sponsoring these individuals uphold the law consistently across all hiring practices. Moreover, at a time of heightened political scrutiny of immigration programs, showing that the student visa system incorporates strong compliance tools, such as E-Verify use, could bolster confidence in educational exchanges.

VII. DHS Should Add an Appropriate Categorical Exclusion to its National Environmental Policy Act (NEPA) Procedures to Strengthen Its Position that the Proposed Rule Does Not Require Environmental Analysis (EA).

CIS recommends that DHS add an appropriate categorical exclusion to its NEPA procedures to strengthen the Department's position that the proposed rule does not require an EA. This categorical exclusion could apply to rules that do not increase immigration to the United States.

NEPA was signed into law on January 1, 1970. NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. Title I of NEPA contains a Declaration of National Environmental Policy. This policy requires the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. Section 102 in Title I of the Act requires federal agencies

⁶⁹ See U.S. Dept. of Education, *Number of People Employed by Postsecondary Institutions* (2023), in IPEDS Trend Generator (showing over 4 million employed in postsecondary institutions nationwide).

⁷⁰ U.S. Comm'n on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy* (1997) (commonly known as the "Jordan Commission Report").

⁷¹ See U.S. Dep't of Homeland Sec., *E-Verify History and Milestones* (updated 2024).



CENTER FOR IMMIGRATION STUDIES

to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach.

Specifically, all federal agencies are required to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment.⁷² These statements are commonly referred to as Environmental Impact Statements (EIS) and EAs. The EA is conducted to determine whether an EIS is needed, if the agency determines that the proposed action will not have a significant impact on the environment, it may issue a Finding of No Significant Impact (“FONSI”).⁷³

However, agencies do not have to conduct an EA or EIS for types of actions that they have found, through prior experience, are of a category that can be expected not to cause significant impacts. In such cases, agencies may cite a “categorical exclusion” instead.⁷⁴

In order to invoke such a categorical exclusion, agencies adopt NEPA procedures which direct them how to implement NEPA, using the guidance of the Council for Environmental Quality, and these procedures include categorical exclusions.⁷⁵ The invocation of a categorical exclusion prior to adopting an action, such as a new regulation, is the agency’s NEPA compliance. Currently, in accordance with President Trump’s Executive Order 14154, *Unleashing American Energy*, all agencies including DHS are adopting new NEPA procedures, which will include new categorical exclusions.⁷⁶

CIS, based on its above analysis of the proposed rule, does not believe that it would have a significant effect on the environment requiring the agency to conduct an EIS before adopting it because the proposed rule would not increase immigration to the United States. Immigration policies that increase population clearly have a significant impact that must be analyzed under NEPA. In fact, NEPA itself was explicitly concerned with population growth, the first concern mentioned in NEPA’s “Congressional declaration of national environmental policy”:

The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government,

⁷² 42 U.S.C. § 4332(C).

⁷³ See 40 C.F.R. §§ 1501.5, 1501.6.

⁷⁴ 40 C.F.R. §§ 1501.4(a)(2), 1508.1(d).

⁷⁵ See 40 C.F.R. §§ 1507.3, 1508.1(d).

⁷⁶ See Memorandum for Heads of Federal Departments and Agencies, *Implementation of the National Environmental Policy Act*, from Katherine Scarlett, Feb. 19, 2025.



CENTER FOR IMMIGRATION STUDIES

in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.⁷⁷

Because this rule does not increase immigration, if DHS did an EA of the proposed rule, it would properly be able to issue a FONSI. Instead, DHS invoked a categorical exclusion. However, the categorical exclusion cited by DHS in this proposed rulemaking itself is flawed. In the NPRM, DHS states that:

DHS has analyzed this proposed rule under MD 023-01 Rev. 01 and IM 023-01-001-01 Rev. 01. DHS has determined that this proposed rulemaking action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule completely fits within the Categorical Exclusion found in IM 023-01-001-01 Rev. 01, Appendix A, Table 1, number A3(d): “Promulgation of rules. that interpret or amend an existing regulation without changing its environmental effect.”⁷⁸

DHS’s citation of this categorical exclusion fails to meet even the arbitrary and capricious standard. A categorical exclusion that creates a category of actions that do not have a significant effect on the environment on the basis that they do not have a significant effect on the environment is a tautology that could be invoked for any proposed rulemaking. DHS has invoked this particular categorical exclusion for proposed rulemakings that expand immigration without any analysis, inappropriately in those cases. DHS’s inability to include any reasoning that could not be applied to any change to any rule demonstrates its need to adopt an appropriate categorical exclusion.

DHS could properly establish a categorical exclusion for proposed rules that do not increase immigration. DHS does not currently have such a categorical exclusion, nor does it currently have any categorical exclusions that relate to immigration specifically. The adoption of such a reasonable categorical exclusion would be an appropriate “procedural cross-check” in the regulation of immigration policy in keeping with current environmental law.⁷⁹ The Center recommends that DHS adopt such a categorical exclusion in its NEPA procedures. The Center

⁷⁷ 42 U.S. § 4331 (a).

⁷⁸ 90 Fed. Reg. 42070, 42106 (Aug. 28, 2025).

⁷⁹ See *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. ____ (2025).



CENTER FOR IMMIGRATION STUDIES

also believes that the invocation of such a categorical exclusion in the final version of this rule, or an EA noting that this rule does not increase immigration, would strengthen the rule.

VIII. Conclusion

CIS strongly supports DHS's 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* (Docket No. ICEB-2025-0001).

Amending the rules governing the F, J, and I Visa Classifications to impose a fixed period of authorized stay, rather than allowing these visitors to remain in the United States under duration of status, is consistent with congressional intent in enacting the three- and ten- year bars to admission, strengthens the integrity of the immigration system, is consistent with how DHS governs other nonimmigrant visa programs, and will strengthen national security.

CIS also supports DHS's proposal to reduce F-1 visa holder's grace period for departure from 60 days to 30. This reform brings policies governing the F-1 visa in line with those governing similar nonimmigrant visa program and international standards.

In addition to the reforms proposed in this rule, CIS strongly recommends that DHS repeal its rules allowing foreign students to participate in work authorization and OPT after a student graduates or has otherwise completed their course of study. At this time, these aliens are no longer students, and therefore, are no longer maintaining the terms of their status. Accordingly, DHS is exceeding its statutory authority to allow these individuals to be authorized to work in the United States by virtue of their F-1 visa.

Finally, CIS recommends that DHS add a categorical exemption to its NEPA procedures. This change will strengthen the Department's position that the proposed rule does not require an EA and can be applied to other rules that are not designed to increase immigration to the United States.