



**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Parts 214, 248, and 274a.12**

**[DHS Docket No. ICEB-2019-0006]**

**RIN 1653-AA78**

**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**

**AGENCY:** U.S. Immigration and Customs Enforcement, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In fiscal year 2018, the Department of Homeland Security (DHS or the Department) admitted over 2 million foreign nationals into the United States in the F academic student, J exchange visitor, and I representatives of foreign information media nonimmigrant categories. This is a testament to the United States' exceptional academic institutions, cutting-edge technology, and environment that promotes the exchange of ideas, research, and mutual enrichment. Currently, aliens in the F, J, and I categories are admitted into the United States for the period of time that they are complying with the terms and conditions of their nonimmigrant category ("duration of status"), rather than an admission for a fixed time period. This duration of status framework generally lacks predetermined points in time for U.S. Citizenship and Immigration Services (USCIS) or U.S. Customs and Border Protection (CBP) immigration officers to directly evaluate whether F, J, and I nonimmigrants are maintaining their status and poses a challenge to the Department's ability to effectively monitor and oversee these categories of nonimmigrants. Specifically, because nonimmigrants admitted in the F, J, and I classifications generally do not currently begin to accrue unlawful presence until the day after there is a formal finding of a status violation by USCIS or an immigration judge, they are often able to avoid

accrual of unlawful presence for purposes of statutory inadmissibility grounds of unlawful presence, in part, because they do not file applications or petitions, such as extension of stay, that would result in a formal finding. The Department accordingly is concerned about the integrity of the programs and a potential for increased risk to national security. To address these issues, DHS proposes to amend its regulations by changing the admission period of F, J, and I aliens from duration of status to an admission for a fixed time period. Admitting individuals in the F, J, and I categories for a fixed period of time will require all F, J, and I nonimmigrants who wish to remain in the United States beyond their specifically authorized admission period to apply for an extension of stay directly with USCIS or to depart the country and apply for admission with CBP at a port of entry (POE). This change would provide the Department with additional protections and mechanisms to exercise the oversight necessary to vigorously enforce our nation's immigration laws, protect the integrity of these nonimmigrant programs, and promptly detect national security concerns.

**DATES:** Written comments and related material must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** 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 e-mails 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. Please note that DHS and ICE cannot accept any comments that are hand delivered or couriered. In

addition, due to COVID-19, ICE cannot accept mailed comments whether paper or contained on any form of digital media storage devices, such as CDs/DVDs and USB drives.

*Collection of information.* You must submit comments on the collection of information discussed in this notice of proposed rulemaking to either DHS's docket or the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). OIRA will have access to and view the comments submitted in the docket. OIRA submissions can also be sent using any of the following alternative methods:

- *Email (alternative):* [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov) (include the docket number and “Attention: Desk Officer for U.S. Immigration and Customs Enforcement, DHS” in the subject line of the email).
- *Fax:* 202-395-6566.
- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; Attention: Desk Officer, U.S. Immigration and Customs Enforcement, DHS.

For additional instructions on sending comments, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Sharon Hageman, Acting Regulatory Unit Chief, Office of Policy and Planning, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12<sup>th</sup> Street SW, Washington, DC 20536. Telephone 202-732-6960 (not a toll-free number).

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## **I. Public Participation**

DHS encourages all interested parties to participate in this rulemaking by submitting written data, views, comments and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Under the guidelines of the Office of the Federal Register, all properly submitted comments will be posted to <http://www.regulations.gov> as part of the public record and will include any personal information you have provided. See the ADDRESSES section for information on how to submit comments.

### **A. Submitting Comments**

You must submit your comments in English or provide an English translation. The most helpful comments will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority supporting the recommended change. If you submit comments, please include the docket number for this rulemaking (ICEB-2019-0006), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and materials online. Due to COVID-19-related restrictions, ICE has temporarily suspended its ability to receive public comments by mail.

**Instructions:** To submit your comments online, go to <http://www.regulations.gov>, and insert “ICEB-2019-0006” in the “Search” box. Click on the “Comment Now!” box and input your comment in the text box provided. Click the “Continue” box, and, if you are satisfied with your comment, follow the prompts to submit it.

DHS will post them to the Federal eRulemaking Portal at <http://www.regulations.gov> and will include any personal information you provide. Therefore, submitting this information makes

it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines is offensive. For additional information, please read the “Privacy and Security Notice,” via the link in the footer of <http://www.regulations.gov>.

DHS will consider all properly submitted comments and materials received during the comment period and may change this rule based on your comments.

#### B. Viewing Comments and Documents

Docket: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert “ICEB-2019-0006” in the “Search” box. Click on the “Open Docket Folder,” and you can click on “View Comment” or “View All” under the “Comments” section of the page. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting ICE through the **FOR FURTHER INFORMATION CONTACT** section above. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

#### C. Privacy Act

As stated in the Submitting Comments section above, please be aware that anyone can search the electronic form of comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. The Department may withhold information from public viewing that it determines is

offensive. For additional information, please read the Privacy and Security Notice posted on <http://www.regulations.gov>.

## **II. Executive Summary**

### **A. Purpose of the Regulatory Action**

Studying and participating in exchange visitor and academic programs in the United States offers foreign nationals access to world-renowned faculty, cutting edge resources, state-of-the-art courses, and individualized instructional programs. Similarly, the United States fosters an environment that promotes the exchange of ideas and encourages open discussions when there are differences of opinions, which the United States also encourages by allowing foreign news and media members the same unimpeded access and opportunity to share in the constitutional freedoms of the press as domestic news and media members. These benefits have attracted hundreds of thousands of foreign nationals to the United States in the F academic student,<sup>1</sup> J exchange visitor,<sup>2</sup> and I representatives of foreign information media<sup>3</sup> categories. DHS values the benefits these nonimmigrants, in turn, bring to the United States.

Unlike aliens in most nonimmigrant categories who are admitted until a specific departure date, F, J, and I nonimmigrants are admitted into the United States for an unspecified period of time to engage in activities authorized under their respective nonimmigrant classifications. This unspecified period of time is referred to as “duration of status” (D/S). D/S for F academic students is generally the time during which a student is pursuing a full course of study at an educational institution approved by DHS, or engaging in authorized practical training

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<sup>1</sup> INA 101(a)(15)(F), 8 U.S.C. 1101(a)(15)(F).

<sup>2</sup> INA 101(a)(15)(J), 8 U.S.C. 1101(a)(15)(J).

<sup>3</sup> INA 101(a)(15)(I), 8 U.S.C. 1101(a)(15)(I).

following completion of studies, plus authorized time to depart the country.<sup>4</sup> D/S for J exchange visitors is the time during which an exchange visitor is participating in an authorized program, plus authorized time to depart the country.<sup>5</sup> D/S for I representatives of foreign information media is the duration of his or her employment.<sup>6</sup> For dependents of principal F, J, or I nonimmigrants, D/S generally tracks the principal's period of admission so long as the dependents are also complying with the requirements for their particular classifications.<sup>7</sup> Since D/S was first introduced,<sup>8</sup> the number of F, J, and I nonimmigrants admitted each year into the United States has significantly increased. In 2019 alone, there were over a million admissions in F status, a dramatic rise from the 263,938 admissions in F status when the legacy Immigration and Naturalization Service (INS) shifted to D/S admission in 1978.<sup>9</sup> Similar growth in the J population has also occurred over the past decades. In 2018, there were 611,373 admissions in J

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<sup>4</sup> Statutory and regulatory requirements restrict the duration of study for an alien who is admitted in F-1 status to attend a public high school to an aggregate of 12 months of study at any public high school(s). *See* Immigration and Nationality Act (INA) section 214(m), 8 U.S.C. 1184(m); *see also* 8 CFR 214.2(f)(5)(i).

<sup>5</sup> *See* 8 CFR 214.2(j)(1)(ii) (explaining the initial admission period) and (j)(1)(iv) (explaining that extensions of stay can be obtained with a new Form DS-2019). *See also* 22 CFR 62.43 (permitting responsible officers to extend J nonimmigrant's program beyond the original DS-2019 end date according to length permitted for the specific program category).

<sup>6</sup> 8 CFR 214.2(i).

<sup>7</sup> *See* 8 CFR 214.2(f)(3), (f)(5)(vi)(D) (discussing F-2 period of authorized admission); 214.2(j)(1)(ii), (j)(1)(iv) (discussing J-2 authorized period of admission); INA 101(a)(15)(I), 8 U.S.C. 1101(a)(15)(I); 22 CFR 41.52(c); USCIS Policy Manual, 2 USCIS-PM K.2 (Apr. 7, 2020).

<sup>8</sup> In 1985, when D/S was introduced for I and J nonimmigrants, there were 16,753 admissions in I status, 141,213 admissions in J status, and 251,234 admissions in F-1 status. *See* 1997 Statistical Yearbook of the Immigration and Naturalization Service at [https://www.dhs.gov/sites/default/files/publications/Yearbook\\_Immigration\\_Statistics\\_1997.pdf](https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_1997.pdf) (last visited Jan. 7, 2020).

<sup>9</sup> In fiscal year (FY) 2019, there were 1,122,403 admissions in F-1 status. *See* DHS Office of Immigration Statistics (OIS) Legal Immigration and Adjustment of Status Report Data Tables (FY 2019), available at <https://www.dhs.gov/immigration-statistics/readingroom/special/LIASR> (last visited Aug. 27, 2020). In fiscal year 2016, there were approximately 1.11 million F and J nonimmigrants residing in the United States. *See* DHS OIS Population Estimates, Nonimmigrants Residing in the United States: Fiscal Year 2016 (Mar. 2018), available at [https://www.dhs.gov/sites/default/files/publications/Nonimmigrant\\_Population%20Estimates\\_2016\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/Nonimmigrant_Population%20Estimates_2016_0.pdf) (last visited Jan. 22, 2020). That same year, 48,405 aliens were admitted into the United States in I status. *See* DHS OIS 2018 Yearbook of Immigration Studies (Nov. 13, 2019) available at <https://www.dhs.gov/immigration-statistics/yearbook/2018> (last visited Jan. 29, 2020).



status, up over 300 percent from the 141,213 J admissions into the United States in 1985.<sup>10</sup> Finally, there were 44,140 admissions for foreign media representatives in the United States in 2018, over 160 percent growth from the 16,753 admissions into the U.S. in 1985.<sup>11</sup> DHS appreciates the academic benefits, cultural value, and economic contributions these foreign nationals make to academic institutions and local communities throughout the United States.<sup>12</sup>

However, the significant increase in the volume of F academic students, J exchange visitors, and I foreign information media representatives poses a challenge to the Department's ability to monitor and oversee these categories of nonimmigrants while they are in the United States. During the length of their stay for D/S, a period of admission without a specified end date, these nonimmigrants are not required to have direct interaction with DHS, except for a few limited instances, such as when applying for employment authorization for optional practical training or for reinstatement if they have failed to maintain status. Admission for D/S, in general, does not afford immigration officers enough predetermined opportunities to directly verify that aliens granted such nonimmigrant statuses are engaging only in those activities their respective classifications authorize while they are in the United States. In turn, this has undermined DHS's ability to effectively enforce compliance with the statutory inadmissibility grounds related to unlawful presence and has created incentives for fraud and abuse.

Given these concerns, DHS believes that the admission of F, J, and I nonimmigrants for D/S is no longer appropriate. With this notice of proposed rulemaking (NPRM), DHS proposes

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<sup>10</sup> See DHS OIS Annual Flow Report, Annual Flow Report, U.S. Nonimmigrant Admissions: 2018 (Oct. 2019) available at [https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/nonimmigrant\\_admissions\\_2018.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/nonimmigrant_admissions_2018.pdf) (last visited Jan. 22, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> NAFSA: Association of International Educator's latest analysis finds that international students studying at U.S. colleges and universities contributed \$41 billion and supported 458,290 jobs to the U.S. economy during the 2018-2019 academic year. See <https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2>.

to replace the D/S framework for F, J, and I nonimmigrants with an admission period with a specific date upon which an authorized stay ends. Nonimmigrants who would like to stay in the United States beyond their fixed date of admission would need to apply directly with DHS for an extension of stay.<sup>13</sup> DHS anticipates that many F, J, and I nonimmigrants would be able to complete their activities within their period of admission. However, those who could not generally would be able to request an extension to their period of admission from an immigration officer. In addition, as proposed, certain categories of aliens would be eligible for shorter periods of admission based on national security, fraud, or overstay concerns but like all aliens with fixed admission periods, would have a specific date upon which they would be required to depart the United States or would need to apply to DHS to have their continued eligibility for F, J, or I status reviewed by immigration officers. DHS believes that this process would help to mitigate risks posed by foreign adversaries who seek to exploit these programs.

Replacing admissions for D/S with admissions for a fixed period of authorized stay is consistent with most other nonimmigrant categories,<sup>14</sup> would provide additional protections and oversight of these nonimmigrant categories, and would allow DHS to better evaluate whether these nonimmigrants are maintaining status while temporarily in the United States. DHS does

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<sup>13</sup> See generally 8 CFR 214.1(c) (setting forth the general extension of stay (EOS) requirements applicable to most other nonimmigrants).

<sup>14</sup> For example, see 8 CFR 214.2(a)(1) (setting forth a period of admission for the A-3 nonimmigrant classification); (b)(1) (period of admission for aliens admitted under the B nonimmigrant classification); (c)(3) (period of admission for aliens in transit through the United States); (e)(19) (periods of admission for most E nonimmigrants); (g)(1) (period of admission for the G-5 nonimmigrant classification); (h)(5)(viii) (9)(iii) and (13) (various periods of admission and maximum periods of stay for the H-1B, H-2A, H-2B, and H-3 nonimmigrant classification); (k)(8) (period of admission for the K-3 and K-4 nonimmigrant classification); (l)(11)-(12) (periods of admission and maximum periods of stay for the L nonimmigrant classification); (m)(5), (10) (period of stay for the M nonimmigrant classification); (n)(3) (period of admission for certain parents and children eligible for admission as special immigrants under section 101(a)(27)(I)); (o)(6)(iii) and (10) (period of admission for the O nonimmigrant classification); (p)(8)(iii) and (12) (period of admission for the P nonimmigrant classification); (q)(2) (period of admission for the Q nonimmigrant classification); (r)(6) (period of admission for the R nonimmigrant classification); (s)(1)(ii) (period of admission for the NATO-7 nonimmigrant classification); (t)(5)(ii) (period of admission for the S nonimmigrant classification); and (w)(13) and (16) (period of admission for the CW-1 nonimmigrant classification).

not believe such a requirement would place an undue burden on F, J, and I nonimmigrants. Rather, providing F, J, and I nonimmigrants a fixed time period of authorized stay that would require them to apply to extend their stay, change their nonimmigrant status, or otherwise obtain authorization to remain in the United States (e.g., by filing an application for adjustment of status) at the end of this specific admission period is consistent with requirements applicable to most other nonimmigrant classifications.

These changes would ensure that the Department has an effective mechanism to periodically and directly assess whether these nonimmigrants are complying with the conditions of their classifications and U.S. immigration laws, and to obtain timely and accurate information about the activities they have engaged in and plan to engage in during their temporary stay in the United States. If immigration officers discover a nonimmigrant in one of these categories has overstayed or otherwise violated his or her status, the proposed changes may result in the alien beginning to accrue unlawful presence for purposes of unlawful presence-related statutory grounds of inadmissibility under the Immigration and Nationality Act (INA). DHS believes this greater oversight would deter F, J, or I nonimmigrants from engaging in fraud and abuse and strengthen the integrity of these nonimmigrant classifications.

The Department believes that the provisions of each new regulatory amendment function sensibly independent of other provisions. However, to protect the Department's goals for proposing this rule, DHS proposes to add regulatory text stating that the provisions be severable so that, if necessary, the regulations may continue to function even if a provision is rendered inoperable.

## B. Summary of the Proposed Regulatory Revisions

DHS proposes the following major changes:

- Amend 8 CFR 214.1, Requirements for admission, extension, and maintenance of status, by:
  - Striking all references to D/S for F, J, and I nonimmigrants;
  - Describing requirements for F and J nonimmigrants seeking admission;
  - Updating the cross reference and clarifying the standards for admission in the automatic extension visa validity provisions that cover F and J nonimmigrants applying at a port-of-entry after an absence not exceeding 30 days solely in a contiguous territory or adjacent islands;
  - Outlining the process for extension of stay (EOS) applications for F, J, and I nonimmigrants;
  - Specifying the effect of departure while an F or J nonimmigrant's application for an EOS in F or J nonimmigrant status and/or employment authorization (and an associated employment authorization document (EAD)) is pending;
  - Providing procedures specific to the transition from D/S to admission for a fixed time period of authorized stay for F, J, and I nonimmigrants; and
  - Replacing references to specific form names and numbers with general language, to account for future changes to form names and numbers.
  
- Amend 8 CFR 214.2, Special requirements for admission, extension, maintenance, and change of status, by:
  - Setting the authorized admission and extension periods for F and J nonimmigrants (with limited exceptions) up to the program length, not to exceed a 2- or 4-year period;

- Listing the circumstances, including factors that relate to national security and program integrity concerns, when the period of admission for F and J nonimmigrants may be limited to a maximum of 2 years;
- Outlining procedures and requirements for F-1 nonimmigrants who change educational levels while in F-1 status;
- Providing limits on the number of times that F-1 nonimmigrants can change educational levels while in F-1 status;
- Decreasing from 60 to 30 days the allowed period for F aliens to prepare to depart from the United States after completion of a course of study or authorized period of post-completion practical training ;
- Proposing to lengthen the automatic EOS for individuals covered by the authorized status and employment authorization provided by 8 CFR 214.2(f)(5)(vi) (the H-1B cap gap provisions);
- Initiating a routine biometrics collection in conjunction with an EOS application for F, J, and I nonimmigrants;
- Limiting language training students to an aggregate 24-month period of stay, including breaks and an annual vacation;
- Providing that a delay in completing one's program by the program end date on Form I-20, due to a pattern of behavior demonstrating a student is repeatedly unable or unwilling to complete his or her course of study, such as failing grades, in addition to academic probation or suspension, is an unacceptable reason for program extensions for F nonimmigrants;

- Providing that F nonimmigrants who have timely filed an EOS application and whose EOS application is still pending after their admission period indicated on Form I-94 has expired will receive an automatic extension of their F nonimmigrant status and, as applicable, of their on-campus employment authorization, off-campus employment authorization due to severe economic hardship, or Science Technology Engineering and Mathematics Optional Practical Training (STEM OPT) employment authorization, as well as evidence of employment authorization, for up to 180 days or until the relevant application is adjudicated, whichever is earlier;
- Allowing F nonimmigrants whose timely filed EOS applications remain pending after their admission period has expired to receive an auto-extension of their current authorization for on-campus and off-campus employment based on severe economic hardship resulting from emergent circumstances under 8 CFR 214.2(f)(5)(v). The length of the auto-extension of employment authorization would be up to 180 days or the end date of the Federal Register notice (FRN) announcing the suspension of certain regulatory requirements related to employment, whichever is earlier;
- Prohibiting F nonimmigrants whose admission period, as indicated on their Form I-94, has expired while their timely filed EOS applications and applications for employment authorization based on either an internship with an international organization, curricular practical training (CPT), pre-completion Optional Practical Training (OPT), or post-completion OPT are pending to engage in such employment until their applications are approved;

- 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 an EOS available for I nonimmigrants who can meet specified EOS requirements;
  - Codifying the definition of a foreign media organization for I nonimmigrant status, consistent with long-standing USCIS and Department of State (DOS) practice;
  - Updating the evidence an alien must submit to demonstrate eligibility for the I nonimmigrant category;
  - Clarifying that I and J-1 nonimmigrants, who are employment authorized with a specific employer incident to status, continue to be authorized for such employment for up to 240 days under the existing regulatory provision at 8 CFR 274a.12(b)(20), if their status expires while their timely filed EOS application is pending, whereas J-2 spouses, who must apply for employment authorization as evidenced by an EAD, do not have the benefit of continued work authorization once the EAD expires;
  - Striking all references to “duration of status” and/or “duration of employment” for the F, J, and I nonimmigrant categories; and
  - Including a severability clause. In the event that any provision is not implemented for whatever reason, DHS proposes that the remaining provisions be implemented in accordance with the stated purposes of this rule.
- Amend 8 CFR 248.1, Eligibility, by:

- Establishing requirements to determine the period of stay for F or J nonimmigrants whose change of status application was approved before the Final Rule’s effective date and who depart the United States, then seek readmission after the Final Rule’s effective date; and
- Codifying the long-standing policy under which DHS deems abandoned an application to change to another nonimmigrant status, including F or J status, if the alien who timely filed the application departs the United States while the application is pending.
- Amend 8 CFR 274a.12, Classes of aliens authorized to accept employment, by:
  - Striking references to “duration of status,” to Form I-539, Application to Extend/Change a Nonimmigrant Status, and to Form I-765, Application for Employment Authorization;
  - Updating the employment authorization provisions to incorporate the proposed revisions in 8 CFR 214.2.

### C. Legal Authorities

The Secretary of Homeland Security’s (the Secretary) authority to propose the regulatory amendments in this rule can be found in various provisions of the immigration laws and the changes in this rule are proposed pursuant to these statutory authorities.

Section 102 of the Homeland Security Act of 2002 (HSA) (Pub. L. 107-296, 116 Stat. 2135), 6 U.S.C. 112, and section 103(a)(1) and (3) of the Immigration and Nationality Act (INA), 8 U.S.C. 1103 (a)(1),(3), charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. Section 214(a) of the INA, 8 U.S.C. 1184(a), gives the Secretary the authority to prescribe, by regulation, the time and conditions of



admission of any alien as a nonimmigrant, including F, J, and I nonimmigrant aliens. *See also* 6 U.S.C. 271(a)(3), (b) (describing certain USCIS functions and authorities, including USCIS' authority to establish national immigration services policies and priorities and adjudicate benefits applications) and 6 U.S.C. 252(a)(4) (describing ICE's authority to collect information relating to foreign students and exchange visitor program participants and to use such information to carry out its enforcement functions).

Section 248 of the INA, 8 U.S.C. 1258, permits DHS to allow certain nonimmigrants to change their status from one nonimmigrant status to another nonimmigrant status, with certain exceptions, as long as they continue to maintain their current nonimmigrant status and are not inadmissible under section 212(a)(9)(B)(i) of the Act, 8 U.S.C. 1182(a)(9)(B)(i). Like extensions of stay, change of status adjudications are discretionary determinations.<sup>15</sup> Also, section 274A of the INA, 8 U.S.C. 1324a, governs the employment of aliens who are authorized to be employed in the United States by statute or in the discretion of the Secretary.

Finally, the INA establishes who may be admitted as F, J, or I aliens. Specifically, section 101(a)(15)(F) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), established the F nonimmigrant classification for, among others, bona fide students qualified to pursue a full course of study who wish to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an academic or language training school certified by ICE, Student and Exchange Visitor Program (SEVP), as well as for the spouse and minor children of such aliens. *See also* INA 214(m), 8 U.S.C. 1184(m) (limiting the admission of nonimmigrants for certain aliens who intend to study at public elementary and secondary schools).

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<sup>15</sup> *See* INA 248(a), 8 U.S.C. 1258(a); 8 CFR 248.1(a).

Section 101(a)(15)(I) of the INA, 8 U.S.C. 1101(a)(15)(I), established, upon a basis of reciprocity, the I nonimmigrant classification for bona fide representatives of foreign information media (such as press, radio, film, print) seeking to enter the United States to engage in such vocation, as well as for the spouses and children of such aliens.

Section 101(a)(15)(J) of the INA, 8 U.S.C. 1101(a)(15)(J), established the J nonimmigrant classification for aliens who wish to come to the United States temporarily to participate in exchange visitor programs designated by the DOS, as well as for the spouses and minor children of such aliens.

Within DHS, ICE's SEVP is authorized to administer the program to collect information related to nonimmigrant students and exchange visitors under various statutory authorities. Section 641 of The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009-546, 3009-704 (Sep. 30, 1996) (codified as amended at 8 U.S.C. 1372) (IIRIRA), authorizes the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F and J nonimmigrants during the course of their stays in the United States, using electronic reporting technology where practicable. Consistent with this statutory authority, DHS manages these programs pursuant to Homeland Security Presidential Directive-2 (HSPD-2), Combating Terrorism Through Immigration Policies (Oct. 29, 2001), as amended, <http://www.gpo.gov/fdsys/pkg/CPRT-110HPRT39618/pdf/CPRT-110HPRT39618.pdf>, and section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173, 116 Stat. 543, 563 (May 14, 2002) (EBSVERA). HSPD-2 requires the Secretary of Homeland Security to conduct periodic, ongoing reviews of institutions certified to accept F nonimmigrants, and to include checks for compliance with recordkeeping and reporting requirements. Section 502 of EBSVERA directs

the Secretary to review the compliance with recordkeeping and reporting requirements under 8 U.S.C. 1101(a)(15)(F) and 1372 of all schools approved for attendance by F students within two years of enactment, and every two years thereafter.

#### D. Costs and Benefits

Currently, aliens in the F (academic student), J (exchange visitor), and I (representatives of foreign information media) categories are admitted to the United States under the duration of status framework. However, admitting a nonimmigrant for duration of status creates a challenge to the Department's ability to efficiently monitor and oversee these nonimmigrants, because they may remain in the United States for indefinite periods of time without being required to have immigration officers periodically assess whether they are complying with the terms and conditions of their status. Nor are immigration officers required to make periodic assessments of whether these nonimmigrants present national security concerns. Under the D/S framework, these nonimmigrants are required to have direct interaction with DHS officials only if they file certain applications, such as when applying for employment authorization for optional practical training or for reinstatement if they have failed to maintain status, or if they are the subject of an enforcement action. To address these vulnerabilities, DHS proposes to replace D/S with an admission for a fixed time period. Admitting individuals in the F, J, and I categories for a fixed period of time would require all F, J, and I nonimmigrants who wish to remain in the United States beyond their specific authorized admission period to apply for authorization to extend their stay with USCIS if in the United States or if abroad then to apply for admission at a POE with CBP, thus requiring periodic assessments by DHS in order to remain in the United States for a longer period. This change would impose incremental costs on F, J, and I nonimmigrants,

but would in turn protect the integrity of the F, J and I programs by having immigration officers evaluate and assess the appropriate length of stay for these nonimmigrants.

The period of analysis for the rule covers 10 years and assumes the proposed rule would go into effect in 2020. Therefore, the analysis period goes from 2020 through 2029. This analysis estimates the annualized value of future costs using two discount rates: 3 percent and 7 percent. In Circular A-4, OMB recommends that a 3 percent discount rate be used when a regulation affects private consumption, and a 7 percent discount rate be used in evaluating a regulation that will mainly displace or alter the use of capital in the private sector. The discount rate accounts for how costs that occur sooner are more valuable. The NPRM would have an annualized cost ranging from \$229.9 million to \$237.8 million (with 3 and 7 percent discount rates, respectively).

### **III. Background**

#### **A. Regulatory History of Duration of Status**

##### **i. F Classification**

Section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), permits aliens who are bona fide students to temporarily be admitted to the United States solely for the purpose for pursuing a full course of study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic language training program.

Principal applicants are categorized as F-1 nonimmigrant aliens and their spouses and minor children may accompany or follow to join them as F-2 dependents.<sup>16</sup>

From 1973 to 1979, F students were admitted for 1-year and could be granted an EOS in increments of up to 1-year if they established that they were maintaining status.<sup>17</sup> However, on

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<sup>16</sup> INA 101(a)(15)(F)(i)-(ii), 8 U.S.C. 1101(a)(15)(F)(i)-(ii); 8 CFR 214.2(f)(3).

<sup>17</sup> See 38 FR 35425 (Dec. 28, 1973) (The period of admission of a non-immigrant student shall not exceed one-year.)

July 26, 1978, given the large number of nonimmigrant students in the United States at the time and the need to continually process their EOS applications, legacy INS proposed amending the regulations to permit F-1 aliens to be admitted for the duration of their status as students.<sup>18</sup>

Legacy INS explained the changes would facilitate the admission of nonimmigrant students, provide dollar and manpower savings to the Government, and permit more efficient use of resources.<sup>19</sup> On November 22, 1978, the final rule was published amending the regulations at 8 CFR 214 to allow INS to admit F-1 aliens for the duration of their status as students.<sup>20</sup> The new rule became effective on January 1, 1979.<sup>21</sup>

Subsequently, the regulations addressing the admission periods for nonimmigrant students were amended four more times between January 23, 1981, and October 29, 1991.<sup>22</sup> On January 23, 1981, the former INS issued a rule eliminating D/S for F-1 nonimmigrants and limiting their admission to a fixed period of admission, i.e., the time necessary to complete the course of study, with the opportunity for an EOS on a case-by-case basis.<sup>23</sup> Legacy INS explained this was necessary because admitting nonimmigrants students for D/S resulted in questionable control over foreign students and contributed to problems in record keeping.<sup>24</sup>

On April 5, 1983, legacy INS reinstated D/S, while addressing areas of concern identified after the 1978 implementation of D/S for nonimmigrant students.<sup>25</sup> The amendments

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<sup>18</sup> See 43 FR 32306 (Jul. 26, 1978).

<sup>19</sup> See 43 FR 32306, 32306-07 (Jul. 26, 1978).

<sup>20</sup> See 43 FR 54618 (Nov. 22, 1978) (The period of admission of a nonimmigrant student shall be for the duration of Status in the United States as a student if the information on his/her form I-20 indicates that he/she will remain in the United States as a student for more than 1 year . . . If the information on form I-20 indicates the student will remain in the United States for 1 year or less, he/she shall be admitted for the time necessary to complete his/her period of study).

<sup>21</sup> *Id.*

<sup>22</sup> See 46 FR 7267 (Jan. 23, 1981), 48 FR 14575 (Apr. 5, 1983); 52 FR 13223 (Apr. 22, 1987); 56 FR 55608 (Oct. 29, 1991).

<sup>23</sup> See 46 FR 7267 (Jan. 23, 1981).

<sup>24</sup> *Id.*

<sup>25</sup> See 48 FR 14575 (Apr. 5, 1983).

implemented new notification procedures for transfers between schools and new record-keeping and reporting requirements for Designated School Officials (DSO).<sup>26</sup> These amendments also limited D/S to the period when a student was enrolled in one educational level and required nonimmigrant students to apply for an EOS and, if applicable, a school transfer to pursue another educational program at the same level of educational attainment.<sup>27</sup>

On April 22, 1987, legacy INS refined the April 5, 1983, regulatory package, again amending regulations regarding F-1 students.<sup>28</sup> Additional regulations explained which medical and academic reasons allowed F-1 students to drop below a full-time course of study and remain in status and clarified when F-1 students must request an EOS or reinstatement.<sup>29</sup>

In 1991, the regulations were further revised to implement Section 221(a) of the Immigration Act of 1990 (IMMACT 90), Pub. L. No. 101-649, 104 Stat. 4978, which established a three-year off-campus program for F-1 students.<sup>30</sup> In the 1991 Final Rule, legacy INS also clarified and simplified the procedures for F-1 students seeking EOS and employment authorization. This included giving DSOs authority to grant a program extension (and therefore an EOS) for in-status students with a compelling academic or medical reason for failing to complete their educational program by the program end date on their Form I-20.<sup>31</sup> The rule required DSOs to notify legacy INS of the extension.<sup>32</sup> In the rulemaking, legacy INS

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<sup>26</sup> A Designated School Official (DSO) means a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. *See* 8 CFR 214.3(l).

<sup>27</sup> *See* 48 FR 14575, 84 (Apr. 5, 1983).

<sup>28</sup> *See* 52 FR 13223 (Apr. 22, 1987).

<sup>29</sup> *Id.*

<sup>30</sup> *See* 56 FR 55608 (Oct. 29, 1991).

<sup>31</sup> Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, is the document used by DHS that provides supporting information for the issuance of a student visa. Applicants (including dependents) must have a Form I-20 to apply for a student visa, to enter the United States, and to apply for an employment authorization document to engage in optional practical training. *See* SEVP's webpage, Form I-20, "Certificate of Eligibility for Nonimmigrant Student Status" at [https://studyinthestates.dhs.gov/student-forms?form=Forms\\_I-20](https://studyinthestates.dhs.gov/student-forms?form=Forms_I-20) (last visited Jan. 29, 2020).

<sup>32</sup> *See* 56 FR 55608 (Oct. 29, 1991).

specifically agreed to allow DSOs to issue program extensions, explaining that “with the DSOs screening out ineligible students, the Service is satisfied that the purposes of the EOS can be effectively met through the notification procedure.”<sup>33</sup> Pursuant to the 1991 Final Rule, DHS has relied on DSOs to report student status violators, issue program extensions, and transfer students between programs and schools.

## ii. J Classification

The J nonimmigrant classification was created in 1961 by the Mutual Educational and Cultural Exchange Act of 1961, also known as the Fulbright-Hays Act of 1961, Pub. L. 87–256, 75 Stat. 527 (22 U.S.C. 2451, *et seq.*), to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. It authorizes foreign nationals to participate in a variety of exchange visitor programs in the United States. The Exchange Visitor Program regulations cover the following program categories: Professors and research scholars, short-term scholars, trainees and interns, college and university students, teachers, secondary school students, specialists, alien physicians, international visitors, government visitors, camp counselors, au pairs, and summer work travel.<sup>34</sup>

Prior to 1985, J exchange visitors were granted an initial admission for the period of their program up to one year.<sup>35</sup> In 1985, the regulations were amended to allow J exchange visitors to be admitted for the duration of their program plus 30 days.<sup>36</sup> This change from being admitted for a fixed period to D/S was implemented as part of a continuing effort to reduce reporting

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<sup>33</sup> *Id.*

<sup>34</sup> *See* INA 101(a)(15)(J), 8 U.S.C. 1101(a)(15)(J), and 22 CFR 62.20-62.32.

<sup>35</sup> *See* 8 CFR 214.2(j)(1)(ii) (1985).

<sup>36</sup> *See* 50 FR 42006 (Oct. 17, 1985).

requirements for the public as well as the paperwork burden associated with processing extension requests on the agency.<sup>37</sup>

A prospective exchange visitor must be sponsored by a DOS-designated program sponsor to be admitted to the United States in the J nonimmigrant category and participate in an exchange visitor program. The DOS designated sponsor will issue a prospective J exchange visitor a Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status. The DS-2019 permits a prospective exchange visitor to apply for a J-1 nonimmigrant visa at a U.S. embassy or consulate abroad or seek admission as a J-1 nonimmigrant at a port of entry. A J-1 exchange visitor is admitted into the United States for D/S, which is the length of his or her exchange visitor program.<sup>38</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, is the document required to support an application for an exchange visitor visa (J-1). It is a 2-page document that can only be produced through the Student and Exchange Visitor Information System (SEVIS). SEVIS is the DHS database developed to collect information on F, M, and J nonimmigrants (see 8 U.S.C. 1372 and 6 U.S.C. 252(a)(4)). The potential exchange visitor's signature on page one of the form is required. Page 2 of the current Form DS-2019 consists of instructions and certification language relating to participation. No blank Forms DS-2019 exist. Each Form DS-2019 is printed with a unique identifier known as a "SEVIS ID number" in the top right-hand corner, which consists of an "alpha" character (N) and 10 numerical characters (e.g., N0002123457). The Department of State's Office of Private Sector Exchange Designation in the Bureau of Education and Cultural Affairs (ECA/EC/D) designates U.S. organizations to conduct exchange visitor programs. These organizations are known as program sponsors. When designated, the organization is authorized access to SEVIS and is then able to produce Form DS-2019 from SEVIS. The program sponsor signs the completed Forms DS-2019 in blue ink and transmits them to the potential exchange visitor and his or her spouse and minor children. J visa applicants must present a signed Form DS-2019 at the time of their visa interview. Once the visa is issued, however, the SEVIS record cannot be updated until the participant's program is validated ("Active" in SEVIS). The sponsor is required to update the SEVIS record upon the exchange visitor's entry and no corrections to the record can be made until that time. In addition, in the event a visa is needed for a dependent spouse or child, the system will not permit a new Form DS-2019 to be created until after the primary's SEVIS record is validated. See 9 FAM 402.5-6(D)(1) (U) The Basic Form available at [https://fam.state.gov/fam/09FAM/09FAM040205.html#M402\\_5\\_6\\_D](https://fam.state.gov/fam/09FAM/09FAM040205.html#M402_5_6_D) (last visited Jan. 29, 2020). While applicants must still present a paper Form DS-2019 to DOS in order to qualify for a visa, the SEVIS record is the definitive record of student or exchange visitor status and visa eligibility. See 9 FAM 402.5-4(B) (U), Student and Exchange Visitor Information System (SEVIS) Record is Definitive Record, available at <https://fam.state.gov/FAM/09FAM/09FAM040205.html> (last visited Jan. 29, 2020).



Extensions of J exchange visitor programs are governed by DOS regulations.<sup>39</sup> If there is authority to extend a program, the exchange visitor program sponsor's Responsible Officer (RO),<sup>40</sup> similar to the DSO in the F-1 student context, is authorized to extend a J exchange visitor's program by issuing a duly executed Form DS-2019.<sup>41</sup> Requests for extensions beyond the maximum program duration provided in the regulations must be approved by DOS, which adjudicates these extensions. USCIS does not adjudicate these program extensions.

### iii. I Classification

Section 101(a)(15)(I) of the INA defines the I classification as, upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him. Nonimmigrant foreign information media representatives are currently admitted for the duration of their employment. They are not permitted to change their information medium or employer until they obtain permission from USCIS.<sup>42</sup>

From 1973 to 1985, aliens admitted to the United States in I nonimmigrant status were admitted for a period of 1 year with the possibility of extensions.<sup>43</sup> In 1985, legacy INS amended the regulations to allow nonimmigrant foreign information media representatives to be admitted

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<sup>39</sup> See 22 CFR Part 62. These programs vary in length. For example, professors and research scholars are generally authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, provided such time does not exceed five years. See 22 CFR 62.20(i)(1). And alien physicians, are generally limited to seven years. See 22 CFR 62.27(e)(2).

<sup>40</sup> A Responsible Officer (RO) is an employee or officer of a sponsor who has been nominated by the sponsor, and approved by the Department of State, to carry out the duties outlined in 22 CFR 62.11.

<sup>41</sup> See 22 CFR 62.43. A RO must be a citizen of the United States or a lawful permanent resident of the United States. See 22 CFR 62.2.

<sup>42</sup> See 8 CFR 214.2(i).

<sup>43</sup> See 38 FR 35425 (Dec. 28, 1973). See also 50 FR 42006 (Oct. 17, 1985), stating that prior to the publication of this rule, I nonimmigrants were admitted for one year.

for the duration of their employment.<sup>44</sup> This change from a set time period of admission to admission for duration of employment for I nonimmigrants was implemented as part of a continuing effort to reduce reporting requirements for the public, as well as the paperwork burden associated with processing extension requests on the agency.<sup>45</sup> Through its administration of the regulations authorizing I nonimmigrants admission for duration of employment, DHS currently admits all I nonimmigrants for D/S with the exception of those presenting a passport issued by the People's Republic of China.<sup>46</sup>

## B. Risks to the Integrity of the F, J, and I Nonimmigrant Classifications

### i. General Risks

DHS welcomes F academic students, J exchange visitors, and I representatives of foreign information media, but it also acknowledges that the sheer size of the population complicates its oversight and vetting functions. Since legacy INS introduced D/S in 1979, the number of F nonimmigrant students admitted into the United States has more than quadrupled. Similarly, since D/S was introduced for J and I nonimmigrants in 1985, the number of exchange visitors admitted into the United States has more than quadrupled while the number of representatives of foreign information media has more than doubled.<sup>47</sup>

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<sup>44</sup> See 8 CFR 214.2(i); 50 FR 42006 (Oct. 17, 1985).

<sup>45</sup> *Id.*

<sup>46</sup> 85 FR 27645 (May 11, 2020). Note that the requirements in the May 11, 2020 Final Rule do not apply to Hong Kong Special Administrative Region (SAR) or Macau SAR passport holders. This proposed rule updates the requirements to remove the exception for Hong Kong passport holders, who will be admitted in the same manner as those presenting a passport issued by the People's Republic of China.

<sup>47</sup> As noted above, in fiscal year (FY) 2016, there were approximately 1.11 million F and J nonimmigrants residing in the United States. See DHS Office of Immigration Statistics (OIS) Population Estimates, Nonimmigrants Residing in the United States: Fiscal Year 2016 (March 2018), [USCIS: see edits]available at [https://www.dhs.gov/sites/default/files/publications/Nonimmigrant\\_Population%20Estimates\\_2016\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/Nonimmigrant_Population%20Estimates_2016_0.pdf) (last visited Jan. 22, 2020). In 2018, 48,405 aliens were admitted into the United States in I status. See DHS OIS 2018 Yearbook of Immigration Studies (Nov. 13, 2019) available at <https://www.dhs.gov/immigration-statistics/yearbook/2018> (last visited Jan. 29, 2020).

The Department uses the Student and Exchange Visitor Information System (SEVIS), a web-based system, to maintain information regarding: SEVP-certified schools; F-1 students studying in the United States (and their F-2 dependents); M-1 students enrolled in vocational programs in the United States (and their M-2 dependents); DOS-designated Exchange Visitor Program sponsors; and J-1 Exchange Visitor Program participants (and their J-2 spouses and dependents).

Employees of educational institutions and program sponsors, specifically DSOs and ROs, play a large role in SEVIS. They are responsible for monitoring students and exchange visitors, accurately entering information about the students' and exchange visitors' activities into SEVIS, and properly determining whether the student or exchange visitor's SEVIS record should remain in active status or change to reflect a change in circumstances.<sup>48</sup> Under this framework, an academic student or exchange visitor generally maintains lawful status by complying with the conditions of the program, as certified by the DSO or RO. However, a program extension and an extension of an alien's nonimmigrant stay are different. The Department believes it is appropriate for the DSO to recommend an extension of an academic program and an RO to recommend an extension of an exchange visitor program; however, an EOS involves an adjudication of whether an alien is legally eligible to extend his or her stay in the United States in a given immigration status and has been complying with the terms and conditions of his or her admission. The Department believes that the determinations of program extension and extension of stay should be separated, with the DSO's and RO's recommendation being one factor an immigration officer reviews while adjudicating an application for EOS. Changing to a fixed

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<sup>48</sup> 8 CFR 214.3(g)(1), (g)(2) (detailing a DSO's reporting requirements); 214.4(a)(2) (stating that failure to comply with reporting requirements may result in loss of SEVP certification).

period of admission would give immigration officers a mechanism to make this evaluation at reasonably frequent intervals.

Additionally, 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 in the F and J nonimmigrant categories. The same benefits of direct evaluation, better recordkeeping, and fraud prevention also would apply to the I population.

ii. Risks to the F Classification.

While the F program provides enormous benefits to academic institutions and local communities, the Department is aware that the F-1 program is subject to fraud, exploitation, and abuse. Since 2008, multiple school owners and others have been criminally prosecuted for “pay-to-stay” fraud, in which school officials, in return for cash payments, falsely report that F-1 students who do not attend school are maintaining their student status.<sup>49</sup> In some cases, convicted school owners operated multiple schools and transferred students among them to conceal the

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<sup>49</sup> DOJ Press Release, “Operator of English language schools charged in massive student visa fraud scheme,” April 9, 2008, available at <https://www.justice.gov/archive/usao/cac/Pressroom/pr2008/038.html> (last visited Jan. 27, 2020); DOJ Press Release, “Owner/Operator and employee of Miami-based school sentenced for immigration-related fraud,” Aug. 30, 2010, available at <https://www.justice.gov/archive/usao/fls/PressReleases/2010/100830-02.html> (last visited Jan. 27, 2020); ICE Press Release, “Pastor sentenced to 1 year for visa fraud, ordered to forfeit building housing former religious school,” June 13, 2011, available at <https://www.ice.gov/news/releases/pastor-sentenced-1-year-visa-fraud-ordered-forfeit-building-housing-former-religious> (last visited Jan. 27, 2020); DOJ Press Release, “School Official Admits Visa Fraud,” Mar. 12, 2012, available at [https://www.justice.gov/archive/usao/pae/News/2012/Mar/tkhir\\_release.htm](https://www.justice.gov/archive/usao/pae/News/2012/Mar/tkhir_release.htm) (last visited Jan. 27, 2020); ICE Press Release, “Owner of Georgia English language school sentenced for immigration fraud,” May 7, 2014, available at <https://www.ice.gov/news/releases/owner-georgia-english-language-school-sentenced-immigration-fraud> (last visited Jan. 27, 2020); ICE Press Release, “3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud,” (last visited Jan. 27, 2020); Apr. 30, 2015, available at <https://www.ice.gov/news/releases/3-senior-executives-profit-schools-plead-guilty-student-visa-financial-aid-fraud> (Jan. 27, 2020); ICE Press Release “Owner of schools that illegally allowed foreign nationals to remain in US as ‘students’ sentenced to 15 months in federal prison,” Apr. 19, 2018, available at <https://www.ice.gov/news/releases/owner-schools-illegally-allowed-foreign-nationals-remain-us-students-sentenced-15> (last visited Jan. 27, 2020).

fraud.<sup>50</sup> DHS is also concerned that DSOs at these schools were complicit in these abuses; some DSOs intentionally recorded a student's status inaccurately,<sup>51</sup> some issued program extensions to students who did not have compelling medical or academic reasons for failing to complete their program by its end date,<sup>52</sup> and some DSOs permitted students who failed to maintain status to transfer to another school rather than apply for reinstatement.<sup>53</sup> Beyond cases publicly identified by DHS and the Department of Justice (DOJ), DHS is concerned about cases where DSOs were not aware of status violations by students.

Apart from concerns about DSOs and school owners involved in fraudulent schemes, DHS also has concerns about the actions of the aliens themselves. Some aliens have used the F classification to reside in the United States for decades by continuously enrolling in or

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<sup>50</sup> ICE Press Release, "3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud," April 30, 2015, available at <https://www.ice.gov/news/releases/3-senior-executives-profit-schools-plead-guilty-student-visa-financial-aid-fraud> (last visited Jan. 27, 2020).

<sup>51</sup> DOJ Press Release, "Operator of English language schools charged in massive student visa fraud scheme," April 9, 2008, see <https://www.justice.gov/archive/usao/cac/Pressroom/pr2008/038.html>; DOJ Press Release, "Owner/Operator and employee of Miami-based school sentenced for immigration-related fraud," Aug. 30, 2010, see <https://www.justice.gov/archive/usao/fls/PressReleases/2010/100830-02.html>; ICE Press Release, "Pastor sentenced to 1 year for visa fraud, ordered to forfeit building housing former religious school," June 13, 2011, see <https://www.ice.gov/news/releases/pastor-sentenced-1-year-visa-fraud-ordered-forfeit-building-housing-former-religious>; DOJ Press Release, "School Official Admits Visa Fraud," Mar. 12, 2012, see [https://www.justice.gov/archive/usao/pae/News/2012/Mar/tkhir\\_release.htm](https://www.justice.gov/archive/usao/pae/News/2012/Mar/tkhir_release.htm); ICE Press Release, "Owner of Georgia English language school sentenced for immigration fraud," May 7, 2014, see <https://www.ice.gov/news/releases/owner-georgia-english-language-school-sentenced-immigration-fraud>; ICE Press Release, "3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud," Apr. 30, 2015, see <https://www.ice.gov/news/releases/3-senior-executives-profit-schools-plead-guilty-student-visa-financial-aid-fraud>; ICE Press Release "Owner of schools that illegally allowed foreign nationals to remain in US as 'students' sentenced to 15 months in federal prison," Apr. 19, 2018, see <https://www.ice.gov/news/releases/owner-schools-illegally-allowed-foreign-nationals-remain-us-students-sentenced-15>.

<sup>52</sup> For example, DHS identified a nonimmigrant who has been an F-1 student at a dance school since 1991 and who has been issued 16 program extensions since 2003, when the use of SEVIS was first mandated. Although the reported normal length of the program is 5 years, the school has issued multiple program extensions by claiming that "[t]he student needs more time" despite 28 years of enrollment. In another concerning extension of an academic program, an F-1 student was enrolled at an accredited language training school from 2007 to 2020, requiring 15 program extensions. Another student who was enrolled at the same school from 2009 to 2020 and has been an F-1

transferring between schools, a practice facilitated by the D/S framework.<sup>54</sup> DHS has identified aliens who have been in the United States in F-1 status since the 1990s and early 2000s, some of whom are in active F-1 status today. To extend their stay, these aliens enrolled in consecutive educational programs, transferred to new schools, or repeatedly requested DSOs to extend 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. While these instances of extended stay may not always result in technical violations of the law, DHS is concerned that such stays violate the spirit of the law, given that student status is meant to be temporary and for the primary purpose of studying, not as a way to remain in the United States indefinitely.

The use of the F classification to remain in the United States for decades raises doubts that the alien's intention was to stay in the United States temporarily, as required by the INA.<sup>55</sup> It also raises concerns as to whether those aliens are bona fide nonimmigrant students who are maintaining valid lawful status by complying with the terms of their admission, which include solely pursuing a full course of study and progressing to completing a course of study. Likewise, it raises concerns as to whether these aliens have the financial resources to cover tuition and living expenses without engaging in unauthorized employment

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student since 2005, was granted 14 program extensions. The school, which has had its SEVP-certification withdrawn, issued multiple program extensions for each student with the justification of “[e]xtended studies.” F-1 students in doctoral programs have taken over 20 years to complete their programs. F-1 students at community colleges have been enrolled in associate degree programs for periods in excess of 5 years – some for as long as a decade.

<sup>53</sup> ICE Press Release, “3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud,” April 30, 2015, *see* <https://www.ice.gov/news/releases/3-senior-executives-profit-schools-plead-guilty-student-visa-financial-aid-fraud>.

<sup>54</sup> Monitoring F-1 students on post-completion OPT can be even more complicated because the students are no longer attending classes. *See* GAO, Student and Exchange Visitor Program, DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization, GAO-14-356 (Washington, D.C., Feb. 27, 2014).

<sup>55</sup> *See* INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i).

Further, while some school owners and school executives have faced legal consequences for their violation of the law, nonimmigrants admitted for D/S generally do not accrue unlawful presence for purposes of the 3- and 10-year bars described in INA 212(a)(9)(B) and (C), 8 U.S.C. 1182(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.<sup>56</sup> Because F-1 nonimmigrant students are admitted for D/S, they generally do not file applications or petitions, such as extension of stay, 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.

The U.S. Government Accountability Office (GAO) has reported on DHS's concerns about DSOs and nonimmigrant students. In 2019, GAO and ICE published a report identifying fraud risks to SEVP related to managing school recertification and program training. The report included vulnerabilities associated with involving school owners and DSOs in overseeing the maintenance of status of F-1 students.<sup>57</sup> In the report, GAO identified fraud vulnerabilities on the part of both students and schools. Examples include students claiming to maintain status when they are not, such as failing to attend class or working without appropriate authorization, or

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<sup>56</sup> See 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).

<sup>57</sup> In a 2019 report, GAO was asked to review potential vulnerabilities to fraud in the Student and Exchange Visitor Program. GAO examined, among other things, the extent to which ICE (1) implemented controls to address fraud risks in the school certification and recertification processes and (2) implemented fraud risk controls related to DSO training. See DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight, GAO-19-297: Published: Mar 18, 2019 available at <https://www.gao.gov/assets/700/697630.pdf>; Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs, GAO-11-411: Published Apr. 15, 2011. Available at <https://www.gao.gov/assets/320/317762.pdf>; and Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions, GAO-12-572: Published June 18, 2012 available at <https://www.gao.gov/assets/600/591668.pdf>.

school owners not requiring enrolled students to attend classes or creating fraudulent documentation for students who are ineligible for the academic program. GAO recommended that ICE develop a fraud risk profile and use data analytics to identify potential fraud indicators in schools petitioning for certification, develop and implement fraud training for DSOs, and strengthen background checks for DSOs. ICE is making a concerted effort to comply with GAO's recommendations, and has implemented controls to address the fraud risks identified in the GAO report through stricter scrutiny during the SEVP school certification, recertification and compliance process.<sup>58</sup>

DHS believes it can mitigate these fraud risks in part through, as this rule proposes, setting the authorized admission and extension periods for F nonimmigrants as the length of the F nonimmigrant's specific program, not to exceed a 2- or 4-year period. It would establish a mechanism for immigration officers to assess these nonimmigrants at defined periods (such as when applying for an extension of stay in the United States beyond a 2- or 4-year admission period) and determine whether they are complying with the conditions of their classification. Immigration officers receive background checks, clearances, and training before DHS authorizes them to implement the nation's immigration laws, which includes as part of adjudicating the application, whether nonimmigrants meet the requirements to extend their stay, whether a student has violated his or her nonimmigrant status without the DSO's awareness or whether DSOs are engaging in fraud by not requiring students to attend classes or by falsifying

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<sup>58</sup> Since publishing its 2019 report, GAO has updated its website to include comments to the Recommendations for Executive Action included therein. The comments indicate that ICE is in the process of addressing GAO's concerns and has taken steps to implement the report's recommendations, including making a public announcement regarding changing the timeline for the recertification notification process for schools. *See* U.S. Government Accountability Office, Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight, RECOMMENDATIONS, GAO.gov, [https://www.gao.gov/products/GAO-19-297?mobile\\_opt\\_out=1#summary\\_recommend](https://www.gao.gov/products/GAO-19-297?mobile_opt_out=1#summary_recommend) (last visited April 7, 2020).



documents. Immigration officers are further trained to assess applications for fraud indicators, and conduct reviews and vetting that may assist in the detection of fraud or abuse. This would allow DHS to identify and hold accountable aliens who violate their F-1 status and their educational institutions. Under the current D/S framework, DHS might not detect an individual F-1 status violation for an extended period if the student stays enrolled in a school, does not seek readmission to the United States, and does not apply for additional immigration benefits. If DHS makes periodic assessments to verify that F-1 students are maintaining their student status, DHS could better detect and mitigate against these violations as well as violations by their school.<sup>59</sup> The proposed rule creates opportunities for this scrutiny if these nonimmigrants wish to remain beyond their fixed period of admission. This may also have the effect of deterring actors who would otherwise seek to come to the United States and engage in some of the behaviors discussed above, believing they would be able to do so undetected for long periods of time. DHS believes this is a more appropriate way to maintain the integrity of the U.S. immigration system. Additionally, the Department believes that the proposed changes would allow immigration officers to directly verify, among other things, that students applying for an EOS: have the funds needed to live and study in the United States without engaging in unauthorized work; are maintaining a residence abroad to which they intend to return; have pursued and are pursuing a full course of study; and are completing their studies within the 4 year generally applicable timeframe relating to their post-secondary education programs in the United States or are able to provide a permissible explanation for taking a longer period of time to complete the program.

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<sup>59</sup> For example, SEVP may withdraw a school's certification or deny a school's recertification if a DSO issues a false statement, including wrongful certification of a statement by signature, in connection with a student's school transfer or application for employment or practical training. *See* 8 C.F.R. § 214.4(a)(2)(v).

Finally, the D/S 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. An open education environment in the United States offers enormous benefits, but it also places research universities and the nation at risk for economic, academic, or military espionage by foreign students. 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.<sup>60</sup> Detecting and deterring emerging threats to U.S. national security posed by adversaries exploiting the F-1 program requires additional oversight. DHS believes that replacing admissions for D/S for F-1 students with admission for a fixed time period 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. F-1 nonimmigrants applying for EOS will also be required to establish they are admissible, and failure to do so will result in denial of the EOS. Admissibility

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<sup>60</sup> In Dec. 2019, Weiyin Huang, the owner of Findream and Sinocontech pleaded guilty to conspiracy to commit visa fraud in the U.S. District Court in Chicago. In return for payments, Findream listed aliens as OPT workers, providing them with what appeared to be legal status. The FBI has charged one of those aliens with spying. See <https://media.nbcbayarea.com/2019/09/KellyHuangCriminalComplaint.pdf>. This vulnerability presented in the nonimmigrant student category has been highlighted by the FBI. In a 2018 hearing before the Senate Intelligence Committee, the FBI Director testified about the threat from China noting, “that the use of nontraditional collectors, especially in the academic setting, whether it's professors, scientists, students, we see in almost every field office that the FBI has around the country. It's not just in major cities. It's in small ones as well. It's across basically every discipline. I think the level of naiveté on the part of the academic sector about this creates its own issues. They're exploiting the very open research and development environment that we have, which we all revere, but they're taking advantage of it. So, one of the things we're trying to do is view the China threat as not just a whole of government threat, but a whole of society threat on their end. I think it's going to take a whole of society response by us. So, it's not just the intelligence community, but it's raising awareness within our academic sector, within our private sector, as part of the defense.” See Senate Select Committee on Intelligence Hearing (Feb. 13, 2018), transcript available at <https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-0#>. See also Foreign Threats to Taxpayer – Funded Research: Oversight Opportunities and Policy Solutions: Hearing before the Senate Finance Committee (2019) (Statement of Louis A. Rodi III). DSOs are not trained immigration officers nor are they in a position to make such determinations.

grounds are complex and are properly assessed by a trained DHS officer. Such an assessment is not currently made when F-1 nonimmigrants apply for an extension of their program with their institution.<sup>61</sup> Significantly, under the proposed changes to the period of admission of F nonimmigrants and the applicable EOS process, DHS would collect biometrics and other information (such as evidence of financial resources to cover expenses and evidence of criminal activity) from F nonimmigrant students more frequently, thereby enhancing the Government's oversight and monitoring of these aliens.

### iii. Risks to the J Classification

DHS believes that the national security risks posed by D/S admissions for individuals admitted under the J classification are similar to those posed by the F classification.<sup>62</sup> According to a December 2018 report by a panel of experts commissioned by the National Institutes of Health (NIH) to study foreign influence on federally-funded scientific research, "Small numbers of scientists have committed serious violations of NIH's policies and systems by not disclosing foreign support (grants), laboratories, or funded faculty positions in other countries."<sup>63</sup> There are multiple examples of these ongoing national security threats. For example, in September 2019, a stark illustration of state-sponsored efforts to illegally obtain U.S. technology emerged when the FBI charged Chinese government official Liu Zhongsan with conspiracy to fraudulently procure

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<sup>61</sup> In addition, DSOs may not be aware of a student's failure to maintain status, including engaging in criminal activity, nor do they have the authority or ability to acquire such information. Admitting F-1s for a fixed period of admission would provide trained immigration officers with the opportunity to vet these individuals.

<sup>62</sup> In its 2019 Report to Congress, the U.S.-China Economic and Security Review Commission, the Commission described the U.S. Government's efforts to curb China's extensive influence and espionage activities in academic and commercial settings. The Commission noted that these efforts took the form of visa restrictions for Chinese nationals, greater scrutiny of federal funding awarded to universities, legal action against those suspected of theft or espionage, and new legislation. *See* U.S.-China Economic And Security Review Commission, 2019 Annual Report to Congress (Nov. 2019) available at <https://www.uscc.gov/annual-report/2019-annual-report>.

<sup>63</sup> U.S. National Institutes of Health Advisory Committee to the Director (ACD), ACD Working Group for Foreign Influences on Research Integrity, Dec. 2018, discussing measures to address concerns about foreign influences related to graduate students and post-doctoral fellows, as well as foreign employees.

U.S. research scholar visas for Chinese officials whose actual purpose was to recruit U.S. scientists for high technology development programs within China.<sup>64</sup> Additionally, in December 2019, a 29-year-old graduate student in J-1 status participating in an exchange visitor program at Harvard University was stopped at Boston Logan International Airport. Federal agents determined he was a “high risk for possibly exporting undeclared biological material” after finding 21 vials of brown liquid wrapped in a plastic bag inside a sock in his checked luggage; typed and handwritten notes indicated “that [the exchange visitor] . . . was knowingly gathering and collecting intellectual property . . . possibly on behalf of the Chinese government.”<sup>65</sup> Recently, in June 2020, a Chinese national who entered the United States on a J-1 visa to conduct research at the University of California, San Francisco (UCSF) was arrested at Los Angeles International Airport while attempting to return to China, and charged with visa fraud. According to court documents, he allegedly is an officer with the People’s Republic of China’s (PRC) People’s Liberation Army and provided fraudulent information about his military service in his visa application. He allegedly was instructed by his military lab supervisor to bring back to China information about the lab at UCSF.<sup>66</sup>

Exchange visitor program categories include college and university students, which share similarities with the F-1 nonimmigrant classification. Students enrolled in such programs are pursuing post-secondary studies alongside F-1 nonimmigrants. J-1 college and university

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<sup>64</sup> U.S. Department of Justice, Chinese Government Employee Charged in Manhattan Federal Court with Participating in Conspiracy to Fraudulently Obtain U.S. Visas, Sept. 16, 2019.

<sup>65</sup> See <https://www.bostonherald.com/2019/12/30/peoples-republic-of-china-may-be-behind-theft-of-bio-samples-by-harvard-sponsored-chinese-student-feds-say/>. See also <https://www.thedailybeast.com/china-might-be-behind-harvard-student-zaosong-zheng-theft-of-cancer-research-feds-claim>.

<sup>66</sup> U.S. Department of Justice, Officer of China’s People’s Liberation Army Arrested At Los Angeles International Airport, June 11, 2020, <https://www.justice.gov/usao-ndca/pr/officer-china-s-people-s-liberation-army-arrested-los-angeles-international-airport>, (last accessed June 20, 2020).

students in a degree program may be authorized to participate in the exchange visitor program so long as they meet the requirements for duration of participation, including pursuing a full course of study, echoing the full course of study requirements for F-1 nonimmigrants. Their programs may also be extended by the ROs, subject to regulation and/or approval by DOS, without an application to DHS. These similarities give rise to the same concerns related to F-1s about national security, as described above, and about fraud and abuse by J-1s and their ROs. By requiring the same fixed period of admission for F-1s and J-1s, J-1 college and university students in exchange visitor programs would be unable to circumvent the intent of this proposed rule, which is to protect the integrity of these programs and provide additional protections and mechanisms for oversight. Because J exchange visitors are also tracked in SEVIS, DHS believes it would be more effective for an immigration officer to periodically confirm that an alien has properly maintained status, rather than relying on the checks of an RO that the J-1 is pursuing the activities permitted by the exchange visitor program. As noted above, DHS believes it is more appropriate for immigration officers, with their background checks, clearances, and training from the U.S. government, to adjudicate maintenance of nonimmigrant status and whether an alien is eligible for an additional admission period. Switching from D/S to a fixed period of admission would permit immigration officers the opportunity to determine whether an alien is eligible for an additional period of time. If an officer finds a violation of status while adjudicating the alien's request, the consequences could be immediate. Applicants for EOS must also establish that they are admissible, and failure to do so will result in denial of the EOS.<sup>67</sup> Admissibility grounds are complex and are properly assessed by a trained DHS officer. Such an assessment is not currently

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<sup>67</sup> See 8 CFR 214.1(a)(3).

made when J exchange visitors apply for an extension of their program with their RO.<sup>68</sup> Thus, admitting J exchange visitors for a fixed time period, instead of for D/S, would give DHS more frequent opportunities to directly vet these foreign visitors and ensure they are bona fide exchange visitors. Under the proposed changes to the period of admission of J exchange visitors and the applicable EOS process, DHS would more frequently collect biometrics and other information from J exchange visitors, enhancing the Government's oversight and monitoring of these aliens.

#### iv. Risks to the I Classification

Admitting I nonimmigrants for duration of status affords them different treatment from most other nonimmigrants, who are admitted for a specified period of time. The Department believes admitting aliens temporarily in the United States for a fixed period would strengthen vetting and information collection and help immigration officers ensure that the I nonimmigrants are, and will be, engaged in activities that are permissible under INA 101(a)(15)(I). In addition, this rulemaking proposes to require individuals who wish to remain in I nonimmigrant status beyond the end date for their authorized stay to apply for an EOS with USCIS, at which point immigration officers can review their activities in the United States. It also clarifies what DHS would require these individuals to present as evidence supporting their EOS request.<sup>69</sup>

## **IV. Discussion of the Proposed Rule**

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<sup>68</sup> ROs may not be aware of a student's failure to maintain status, including engaging in criminal activity. Admitting J-1s for a fixed period of admission would provide trained DHS officers with the opportunity to vet these individuals.

<sup>69</sup> These proposed changes, including additional evidence relating to foreign media organizations and activities the alien intends to engage in while in I status, would also apply to a nonimmigrant in the United States who requests to change his/her nonimmigrant status to that of an I nonimmigrant.

All persons arriving at a port-of-entry to the United States must be inspected by a CBP officer and must apply for admission into the United States with CBP.<sup>70</sup> In the case of an alien, a CBP officer determines whether an alien is eligible for admission and, if they are, issues the Form I-94, Arrival/Departure Record with the nonimmigrant category and period of admission.<sup>71</sup> For the vast majority of aliens, their Form I-94 includes a specific date through which their status is valid; they must depart the United States on or before that date. An alien who wishes to lawfully remain in the United States in the same status past that date generally must apply for an EOS with USCIS.

However, as described above, certain nonimmigrant categories, including F academic students, J exchange visitors, and I representatives of foreign information media, and their dependents, may be admitted into the United States for D/S instead of a period of time with a specific departure date. DHS is proposing changes to the admission provisions for these particular nonimmigrant classifications, including replacing admissions for “duration of status” with a fixed admission period. This would enable immigration officers to independently and directly verify the continued eligibility of foreign visitors in F, J, or I nonimmigrant status. It would also require aliens who fall under certain criteria to apply more frequently for additional admission periods.

#### A. General Period of Admission for F and J Nonimmigrants

As a foundational matter, DHS proposes to add a new paragraph explaining the period of admission for nonimmigrants described in section 101(a)(15)(F) and (J) who are seeking

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<sup>70</sup> 8 CFR 235.

<sup>71</sup> The Form I-94 is used by the U.S. Government to track arrivals and departures of nonimmigrants. Originally the form was designed in two parts – one for the Government and one for the nonimmigrant. The second part would be stapled into the nonimmigrant’s passport and then removed upon departure. The form is now maintained electronically and can be accessed by nonimmigrants by downloading it from the CBP website. *See* I-94 Website, U.S. Customs and Border Protection, <https://i94.cbp.dhs.gov/I94/#/recent-search> (last visited Dec. 9, 2019).

admission after [effective date of the final rule]. In formulating this proposed rule, DHS considered and addressed various circumstances that might apply when F and J nonimmigrants apply for admission at a POE.

i. Application for Admission in F or J Nonimmigrant Status

Aliens applying for an admission in either F or J status who, under this proposal, would be eligible to be admitted for the length of time indicated by the program end date noted in their Form I-20 or DS-2019, not to exceed 4 years, unless they are subject to a 2-year admission proposed in 8 CFR 214.2(f)(20) or (j)(6), plus a period of 30 days following their program end date, to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 214.1(a)(4)(i)(A) and (ii)(A).

ii. Application for Admission in the Same Status Following Departure from the United States

a. Aliens with Pending Extension of Stay Applications at Time of Application for Admission whose Previous Period of Authorized Stay Has Expired.

Aliens who departed the United States and are applying for admission before their timely filed EOS application has been adjudicated, but after their previously authorized period of stay has expired, could be eligible to be admitted for the length of time required to reach the program end date noted in their most recent Form I-20 or DS-2019, not to exceed 4 years, unless they are subject to the 2-year admission proposed in 8 CFR 214.2(f)(20) or (j)(6), plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States, similar to an initial period of admission. *See* proposed 8 CFR 214.1(a)(4)(i)(A) and (ii)(A). USCIS would consider the alien's EOS application abandoned because the alien's



new fixed date of admission based on the most recent I-20 or DS-2019 had already been determined by CBP upon the most recent admission to the United States, and thus the pending EOS application is extraneous. *See* proposed 8 CFR 214.1(c)(6).

- b. Aliens with Pending Extension of Stay Applications at Time of Application for Admission whose Previous Period of Authorized Stay Has **Not** Expired.

Aliens who departed the United States and are applying for admission before their timely filed EOS application has been adjudicated, but before their previously authorized period of stay has expired, could be eligible to be admitted either for:

- i. The length of time as indicated by the program end date noted in their most recent Form I-20 or DS-2019, not to exceed 4 years, unless they are subject to the 2-year admission proposed in 8 CFR 214.2(f)(20) or (j)(6), plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States, similar to an initial period of admission. If the alien is admitted for the program length (not to exceed 2 or 4 years, as applicable), USCIS would consider the alien's EOS application abandoned because the alien's new fixed date of admission based on the most recent I-20 or DS-2019 had already been determined by CBP upon the most recent admission to the United States, and thus the pending EOS application is extraneous; or

- ii. The period of time remaining on their previously authorized period of admission. As proposed, CBP could admit the alien for a period of time not to exceed the unexpired period of stay that was authorized before the alien's departure, plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. In this scenario, in accordance with proposed 8 CFR 214.1(c)(6), an alien's EOS application is not considered abandoned and USCIS will grant a new period of stay upon subsequent adjudication of the EOS. *See* proposed 8 CFR 214.1(a)(4)(i)(B) and (a)(4)(ii)(B).
- c. Aliens Applying for Admission without a Pending Application of Extension of Stay.

Aliens who departed the United States and are applying for admission in F or J status would be eligible to be admitted up to the length of their program listed on the Form I-20 or Form DS-2019, not to exceed a period of 4 years, plus an additional 30 days at the end of the program, as specified in 8 CFR 214.2(f)(5) and (j)(1)(ii)(A), respectively, if the alien seeks admission with a Form I-20 or DS-2019 for a program end date beyond their previously authorized period of admission, or for a period up to the unexpired period of stay authorized prior to departure. *See* proposed 8 CFR 214.1(a)(4)(i)(A) and (a)(4)(ii)(A).

- d. Aliens Applying for Admission After EOS is granted.

For aliens who departed the United States after timely filing an EOS application and are applying for admission in F or J status after their EOS application is granted, DHS proposes that CBP could admit them for a period of time not to exceed the time authorized by their approved EOS,

plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 214.1(a)(4)(i)(C) and (a)(4)(ii)(C).

e. Aliens Applying for Admission to Engage in Post-Completion or STEM OPT

F nonimmigrants who departed the U.S. and are applying for admission to engage in post-completion or STEM OPT. *See* proposed 8 CFR 214.1(a)(4)(i)(D). These aliens may, generally, be admitted either up to the end date of the approved employment authorization or up to the DSO's recommended employment end date for post-completion or STEM OPT specified on their Form I-20, whichever is later, plus a 30-day period to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. In instances where the EAD has not been approved and the alien is admitted based on the DSO's recommended employment end date on the Form I-20, USCIS's subsequent approval of the alien's EAD may result in less time for the EAD than the time for which the alien was admitted. Therefore, in the limited circumstance where the alien ceases employment because his or her EAD expires before the alien's fixed date of admission as noted on their I-94, the alien generally will be considered to be in the United States in a period of authorized stay from the date of the expiration noted on their EAD until the fixed date of admission as noted on their I-94.

When applying for admission at a POE while their application for employment authorization is pending, they should have a notice issued by USCIS indicating receipt of the employment authorization application necessary for post-completion or STEM OPT (currently Form I-797).

Finally, under this proposal, aliens applying for admission pursuant to the provisions relating to automatic extension of visa validity could be admitted for the unexpired period of stay authorized prior to their departure. *See* proposed 8 CFR 214.1(b)(1).

All of these cases assume, consistent with this proposed rule, that the admission period any F or J nonimmigrant previously admitted for D/S would be transitioned to a fixed date of admission. To provide adequate notice to aliens previously admitted for D/S regarding the date when their admission period ends pursuant to the proposed transition, DHS proposes that an alien's period of admission would expire on the program end date on the alien's Form I-20 or DS-2019 that is valid on the final rule's effective date, not to exceed a period of 4 years from the final rule's effective date, plus an additional period of 60 days for F nonimmigrants and 30 days for J nonimmigrants. *See* proposed 8 CFR 214.2(f)(5) and (j)(1). DHS believes that this proposal would provide adequate notice because all students and exchange visitors in F or J nonimmigrant status who want to extend their program currently need to apply for permission with their DSO or RO. At that time, the DSO or RO could explain that they are approving a program extension, but the nonimmigrant must apply for an EOS directly with DHS and such EOS must be granted to remain lawfully in the United States. Under current policy, F and J nonimmigrants do not accrue unlawful presence until the day after USCIS formally finds a nonimmigrant status violation while adjudicating a request for another immigration benefit or on the day after an immigration judge orders the alien excluded, deported, or removed (whether or not the decision is appealed), whichever comes first.<sup>72</sup> In reliance on this policy, some F and J nonimmigrants

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<sup>72</sup> *See* "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, available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/2009/revision\\_redesign\\_AFM.PDF](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/revision_redesign_AFM.PDF) (last accessed June 20, 2020). The policy reflected by this memorandum currently applies to F, J, and I

admitted for D/S may not have taken the appropriate steps to maintain status, otherwise change status, or depart the United States. This proposed rule is concerned with providing adequate notice to allow F and J nonimmigrants who are maintaining status to transition to a new date-certain admission.

Although some F and J nonimmigrants may have program end dates longer than 4 years, DHS believes that using the program end date on the Form I-20 or DS-2019, up to 4 years from the effective date of the final rule, as the fixed date of admission best aligns with the normal progress these nonimmigrants should be making. This alignment is based on the general structure of post-secondary education in the United States. According to the Department of Education (ED), students can normally earn a bachelor's degree in 4 years.<sup>73</sup> The total number of F-1 students pursuing a bachelor's degree in 2018 was 522,155, constituting almost 40 percent of the 2018 nonimmigrant student population. The total number of F-1 students pursuing a master's degree, generally 2-year programs, in 2018 was 498,625, representing almost 38 percent of the nonimmigrant student population. Taken together, this population represents almost 80 percent of the nonimmigrant students in the United States. Therefore, DHS believes that a 4-year period of admission would not pose an undue burden on them, because many F and J nonimmigrants would complete their studies within a 4-year period, and not have to request additional time from DHS.<sup>74</sup> The smaller proportion of students not pursuing a bachelor's or master's degree are

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nonimmigrants in relation to duration of status but will change accordingly when duration of status no longer applies to them.) ICE does not make findings of status violations that result in the accrual of unlawful presence.

<sup>73</sup> See the Mobile Digest of Education Statistics, 2017, "The Structure of American Education," available at

[https://nces.ed.gov/programs/digest/mobile/The\\_Structure\\_of\\_American\\_Education.aspx](https://nces.ed.gov/programs/digest/mobile/The_Structure_of_American_Education.aspx) (last visited Feb. 4, 2020).

<sup>74</sup> See the Student and Exchange Visitor Program (SEVP), "2018 SEVIS by the Numbers Report" available at <https://www.ice.gov/doclib/sevis/pdf/sevisByTheNumbers2018.pdf> (last visited Feb. 4, 2020).

enrolled in different programs, which may last more or less than 4 years.<sup>75</sup> As a significantly smaller percentage of students are engaged in programs which may last longer than 4 years, DHS considered that the proposed framework would accommodate many students, creating a less burdensome process.

The proposed 4-year period of admission would not apply to all F and J nonimmigrants. 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, as discussed below. *See* proposed 8 CFR 214.2(f)(20) and (j)(6). 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. Using this risk-based approach, which focuses on certain factors predetermined by DHS and presented by some aliens, DHS anticipates that most F and J nonimmigrants would not need to file an EOS application at some point during their stay, and DHS consequently could allocate its resources more efficiently.

Before arriving at the 2- and 4-year admission periods, DHS considered various options. DHS considered a standard 1-year admission for all F and J nonimmigrants. This option would treat all nonimmigrants with F and J status equally and would likely allow for easier implementation by CBP at the POEs. Nevertheless, it could result in significant costs to nonimmigrants and the Department. There are more than 1 million F students enrolled in programs of study that last longer than 1 year.<sup>76</sup> With a 1-year admission period, students and

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<sup>75</sup> Other programs include Associate's degrees, language training programs, and Ph.Ds., among others. *Id.*

<sup>76</sup> *See* the Student and Exchange Visitor Program (SEVP), "2018 SEVIS by the Numbers Report" available at <https://www.ice.gov/doclib/sevis/pdf/sevisByTheNumbers2018.pdf> (last visited Feb. 4, 2020).

exchange visitors participating in programs of greater duration would need to apply for additional time. This would be a significant cost to students and exchange visitors, and DHS is particularly mindful of those who comply with the terms and conditions of their admission and participate in programs, such as undergraduate programs, that typically require several years to complete.

Another alternative DHS considered was to admit all F and J nonimmigrants to their program end date, not to exceed 3 years. This option would give the Department more frequent direct check-in points with nonimmigrants than a 4-year maximum period of admission would. However, DHS was concerned it would unduly burden many F and J nonimmigrants. As discussed above, 4 years best accounts for the normal progress for most programs. Even considering those F or J nonimmigrants who are admitted into the U.S. after having already completed a portion of their program outside of the U.S., instituting a 3-year maximum period of stay would have required each nonimmigrant pursuing a 4 year program to extend, while 4 years allows additional time to complete a 4-year degree. This alternative also would place greater administrative burdens on USCIS and CBP compared to the proposed 4-year maximum period of admission. USCIS would have to adjudicate EOS applications more frequently, and CBP's workload would increase as individuals would travel to request admission at the POE, with a 3-year maximum period of stay than a 4-year one. Therefore, DHS believes an admission for the program end date, not to exceed 4 years (except for limited exceptions that would limit admissions to 2 years) is the best option. DHS welcomes comments on this proposal.

#### B. Automatic Extension of Visa Validity at Port of Entry

DHS proposes to change the admission language in the provision relating to extension of visa validity from "shall" to "may" clarifying that CBP always maintains the discretion to

determine whether to admit an alien and for the period of admission. This change removes any ambiguity about whether CBP has an absolute duty to admit an alien to clarify that CBP has the discretion to admit an alien for a certain period of time. *See* proposed 8 CFR 214.1(b)(1).

DHS proposes technical revisions to the visa revalidation provisions that allow certain F, J, and M nonimmigrants to apply for readmission if eligible for admission as an F, J, or M nonimmigrant and if they are applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands. *See* 8 CFR 214.1(b). Such technical revisions include updating language to clarify that “visa revalidation” refers to automatic extension of visa validity at the port of entry. These provisions apply when, for example, a nonimmigrant finds himself or herself applying for reentry after going to Mexico on spring break without realizing that his or her visa had expired. Instead of having to get a new visa, CBP can readmit the nonimmigrant whose visa validity is automatically extended by operation of Department of State regulations. *See* 22 CFR 41.112(d). DHS does not believe it is necessary to make a nonimmigrant get a new visa under these circumstances.

DHS proposes minor technical updates to account for inaccurate or no longer applicable terms and cites: First, DHS proposes to strike the reference to INA 101(a)(15)(Q)(ii) and reserve it, as that program no longer exists and is no longer in the INA<sup>77</sup>. *See* proposed 8 CFR 214.1(b)(1)-(3). Second, DHS proposes to update the cross reference to 22 CFR, from 22 CFR 41.125(f) to 22 CFR 41.112(d), which is the current provision describing automatic extension of visa validity at ports of entry. Third, DHS proposes to strike the reference to “duration of status” in 8 CFR 214.1(b)(1).

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<sup>77</sup> See Irish Peace Process Cultural and Training Program Act of 1998, Public Law 105-319, 112 Stat. 3013 (Oct. 30, 1998), as amended by Public Law 108-449, 114 Stat. 1526 (Dec. 10, 2004).



### C. Extension of Stay (EOS)

This proposed rule would not create a new form for an EOS application; however, USCIS is in the process of transitioning from paper-based to electronic form processing and some form names and numbers may change. While DHS plans to update existing forms allowing F, J, and I nonimmigrants to apply for an EOS with USCIS, DHS believes it would be more efficient to replace references to specific form names and numbers throughout the current regulations with generally applicable language, specifically, “extension request in the manner and on the form prescribed by USCIS, together with the required fees and all initial evidence specified in the applicable provisions of 8 CFR 214.2, and in the form instructions, including any biometrics required by 8 CFR 103.16.”

Using general language in the regulatory text instead of referring to specific form names and numbers helps both the Department and stakeholders. It allows for technical changes without requiring an entirely new rulemaking to update form names. Stakeholders would receive notice and specific guidance on USCIS’ website and in the appropriate form instructions, as they already do for various other benefits. Therefore, DHS proposes to use this language in 8 CFR 214.1(c)(2) and to strike the current phrase exempting F and J nonimmigrants from the requirement to file an EOS, as they would be required to file an EOS if they wish to remain in the United States beyond their specified date of admission. *See* proposed 8 CFR 214.1(c)(2).

Like the technical updates to strike the specific form name from 8 CFR 214.1(c)(2), DHS is proposing to strike the references to forms “I-129” and “I-539” in 8 CFR 214.1(c)(5), replacing those specific form numbers with the aforementioned general language. *See* proposed 8 CFR 214.1(c)(5). The substance of that provision, including the language that does not allow an alien to appeal an EOS denial would remain the same.

Additionally, DHS proposes to strike “other than as provided in 214.2(f)(7)” from 8 CFR 214.1(c)(3)(v) to make it clear students must apply for an EOS. This requirement would not apply to other nonimmigrants admitted for D/S, such as A-1 or A-2 representatives of foreign governments and their immediate family members; they would remain ineligible to file an EOS.

As part of the EOS application, USCIS requires biometric collection and will require such collection from F, J, and I nonimmigrants under the proposed rule. USCIS has the general authority to require and collect biometrics (such as fingerprints, photograph, and or a digital signature) from applicants, petitioners, sponsors, beneficiaries, or other individuals residing in the United States for any immigration and naturalization benefit. *See* 8 CFR 103.16, and 103.2(b)(9). Biometric collection helps USCIS confirm an individual’s identity and conduct background and security checks. Further, USCIS may also require any applicant, petitioner, sponsor, beneficiary or individual filing a benefit request, or any group or class of such persons submitting requests to appear for an interview. *See* 8 CFR 103.2(b)(9). USCIS may require such an interview as part of USCIS’ screening and adjudication process that helps confirm an individual’s identity, elicit information to assess the eligibility for an immigration benefit, and screen for any national security or fraud concerns.

Finally, DHS considered how to address the admission of F, J, and I nonimmigrants who timely filed an EOS and any corresponding applications for employment authorization but left the United States before receiving a decision from USCIS. DHS anticipates this scenario would apply mostly to F-1 students applying for post-completion OPT and STEM OPT extensions.

While USCIS generally does not consider an application for EOS abandoned when the nonimmigrant leaves the United States,<sup>78</sup> DHS recognizes the potential for conflict if a nonimmigrant receives authorization from both CBP and USCIS for what amounts to the same request (a specific period of time to pursue authorized activities).

Where an alien in F, J, or I status timely files an application for EOS, leaves the United States before USCIS approves that EOS application, and applies for admission to continue his or her activities for the balance of the previously authorized admission period, USCIS would not consider the EOS application abandoned. *See* proposed 8 CFR 214.1(c)(6)(i). In such circumstances, the pending EOS would remain relevant and ultimately determine the alien's fixed date of admission.

However, where the alien leaves the United States and applies for admission while his or her EOS application is pending and is admitted with a Form I-20 or DS-2019 for a program end date beyond their previously authorized period of admission, the pending EOS is deemed abandoned, and the admit until date provided by CBP on the alien's Form I-94 governs. *See* proposed 8 CFR 214.1(c)(6)(ii). This is because, in these cases, CBP's grant of a new period of authorized stay would supersede the pending EOS application seeking a period of authorized stay, rendering it superfluous.

The Department considered a policy whereby an F, J, or I nonimmigrant would automatically abandon an EOS application upon departing the United States. However, the Department believes such a strict requirement would not be practical, because people cannot always predict when they will have to travel.

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<sup>78</sup> *See* Memo, Cook, Acting Asst. Comm. Programs, HQ 70/6.2.9 (June 18, 2001), reprinted in 70 No. 46 Interpreter Releases 1604, 1626 (Dec. 6, 1993).

Regarding applications for employment authorization for F-1s and J-2s, CBP does not adjudicate applications for employment authorization. USCIS would continue processing any such applications, notwithstanding a departure, and, if the application is approved, USCIS will not issue an EAD with a validity date that exceeds the fixed date of admission provided to the alien at the POE. For example, an F-1 student wishing to engage in post-completion or a STEM OPT extension would need to file both an EOS application and an application for employment authorization. Where the alien had departed the United States before his or her application are adjudicated, USCIS would not consider the employment authorization application abandoned.

In all events, when an F-1 or a J-2 nonimmigrant travels while the employment authorization or EOS application is pending, he or she is still expected to respond to any Request for Evidence (RFE) and to timely submit the requested documents. Because USCIS only sends RFEs to U.S. addresses, aliens traveling outside the United States while applications are pending are advised to make necessary arrangements to determine whether they have received an RFE relating to their application and to timely respond to any RFE.<sup>79</sup> Failure to do so could result in USCIS denying an employment authorization or EOS application for abandonment.

#### D. Transition Period

##### i. F and J Nonimmigrants

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<sup>79</sup> See SEVP's Study in the States Webpage, "Traveling as an International Student" available at <https://studyinthestates.dhs.gov/traveling-as-an-international-student> (last visited Jan. 9, 2020). See also ICE's Re-entry for F-1 Non-immigrants Travelling Outside the United States for Five Months or Fewer Webpage, which notes, "Can I reenter if my request for OPT is pending? Yes, but traveling during this time should be undertaken with caution. USCIS may send you a request for evidence while you are away, however, so you would want to make sure you have provided a correct U.S. address both to your DSO and on the application and would be able to send in requested documents. Also, if USCIS approves your OPT application, you will be expected to have your EAD in hand to re-enter the United States. Like a request for further information, USCIS can only send the EAD to your U.S. address," available at <https://www.ice.gov/sevis/travel> (last visited Jan. 9, 2020).

DHS proposes to generally allow all F and J nonimmigrants present in the United States on [the Final Rule's effective date], who are validly maintaining that status and who were admitted for D/S, to remain in the United States in F or J status, without filing an EOS request, up to the program end date reflected on their Form I-20 or DS-2019 that is valid on the Final Rule's effective date, not to exceed 4 years from the effective date of the Final Rule, plus an additional 60 days for F nonimmigrants and 30 days for J nonimmigrants. An alien who departs the United States and seeks admission after the Final Rule's effective date becomes subject to the fixed date framework imposed by this rule. *See* proposed 8 CFR 214.1(m)(1).

F and J nonimmigrants who depart the United States after the rule's effective date and before the end date reflected on their Form I-20 or DS-2019 would be readmitted with a new fixed admission period, like any other newly admitted F or J nonimmigrant, as provided for in proposed 8 CFR 214.1(a)(4). Aliens whose admission period is converted from D/S to a fixed period who would like to seek additional time to complete their studies, including those requesting post-completion OPT or STEM OPT extensions or starting a new course of study or exchange visitor program, would need to file an EOS application with USCIS for an admission period up to the new program end date listed on the Form I-20 or DS-2019, or successor form, reflecting such an extension or transfer, up to a maximum of 4-years, or 2 years, as appropriate. *See* proposed 8 CFR 214.1(m)(1) and 8 CFR 214.2(f)(20).

Regarding pending applications for employment authorization during the transition period, aliens in F status who are subject to the transition and who are seeking post-completion OPT and STEM-OPT employment authorization would be authorized to remain in the United States while the application is pending with USCIS if: (1) they are in the United States on the effective date of the final rule with admission for D/S; (2) they properly filed an application for

employment authorization; and (3) their application is pending on the final rule's effective date. Unless otherwise advised by USCIS, they would not have to file for an EOS or re-file an application for employment authorization. *See* proposed 8 CFR 214.1(m)(2). If the application for employment authorization is approved, the F-1 will be authorized to remain in the United States in F status until the expiration date of the employment authorization document, plus 60 days as provided in their previous admission. If the employment application is denied, the F-1 would continue to be authorized to remain in the United States until the program end date listed on their Form I-20, plus 60 days as provided in their previous admission, as long as he or she continues to pursue a full course of study and otherwise meets the requirements for F-1 status.

Aliens in F-1 status with pending employment authorization applications, other than post-completion OPT and STEM OPT, also do not need to file for an extension or refile an employment authorization application. As long as these F-1s continue to pursue a full course of study and otherwise meet the requirements for F-1 status, they continue to be authorized to remain in the United States until the program end date listed on the Form I-20, plus 60 days, regardless of whether the employment authorization is approved or denied.

DHS believes that this transition proposal would not be unreasonably burdensome on F and J nonimmigrants. Many would be able to complete their programs per the terms of their initial admission (D/S) using the original program end date as an expiration of their authorized period of stay. DHS would grant such periods, which include an additional 60 days for Fs and 30 days for Js as provided in their previous admission, automatically without an application or fee. With this option, DHS believes that the majority of F and J nonimmigrants will be shifted to a fixed period of admission of 4 years or less, except for some F-1 students and J-1 exchange visitors. For example, J-1 research scholars and alien physicians who have program end dates for

up to 5 or 7 years respectively, would need to apply for an EOS before the 4-year maximum period of stay expires, i.e., the date that falls four years after the rule becomes effective.

Another benefit of this option is that it would enable DHS to transition F and J nonimmigrants to an admission for a fixed time period without unduly burdening them, USCIS or CBP. This option would ensure that no F and J nonimmigrants remain in the United States indefinitely by requiring all F and J nonimmigrants admitted for D/S who wish to extend their stay beyond their program end date or the four year maximum, whichever is applicable, to either file an EOS request or depart the United States and apply for admission at a POE by their program end date or the four year maximum period of stay from the final rule's effective date, plus an additional 60 days for Fs, and 30 days for Js.

In proposing these transition procedures, DHS took into consideration the effect of transitioning to a fixed period of admission will have on F and J nonimmigrants originally admitted for D/S who chose to temporarily come to the United States to pursue a program of study or an exchange visitor program. DHS believes the proposed changes would not significantly affect the reliance interests of these nonimmigrants admitted for D/S. DHS is not proposing to change the fundamental requirements to qualify for these nonimmigrant statuses, rather the proposal is only to change the length of time that an individual may lawfully remain in the United States in F or J status without filing an extension of stay. Admitting these categories of nonimmigrants for a fixed period of admission simply confirms that the admission is temporary and clearly communicates when that temporary admission period ends. Further, as is the case for the fixed period of admission policy more generally, a fixed date of admission simply places these nonimmigrants in the same position as most other nonimmigrants who are temporarily in the United States. They would still be able to continue to pursue their full course

of study or exchange visitor program; however, if they need additional time in F or J status, the burden would now be upon them to request authorization directly from DHS and establish eligibility to extend their period of stay in such status, whereas previously they obtained an extension of lawful status in conjunction with a program extension through a DSO or RO.

At the same time, this proposed process would provide immigration officials an opportunity to directly review and determine whether F and J nonimmigrants who wish to remain in the United States beyond their fixed period of admission are complying with U.S. immigration law and are indeed eligible to retain their nonimmigrant status. If there are F or J nonimmigrants relying on a D/S admission in an attempt to permanently remain in the United States, or otherwise circumvent their authorized status, this proposed process would allow DHS to detect and deny an extension of stay request.

DHS considered several alternatives before determining the above proposal was the best option. First, DHS considered whether to impose a consistent length for the fixed admission for all F and J nonimmigrants transitioning from a D/S admission, such as 1 or 3 years from the final rule's effective date. While this proposal would provide a standard end date, DHS was concerned about the expense and workload implications of this option on all stakeholders and DHS. As noted, DHS expects most F and J nonimmigrants to complete their program of study or exchange visitor program within a 4-year period. A date that does not align with this expectation could place a significant burden on the affected F and J nonimmigrants and on their academic institutions or exchange visitor programs' sponsors and employers, as applicable. USCIS would be especially affected if a significant percentage of these nonimmigrants chose to remain in the United States and file for an EOS in order to complete the balance of their program, study, or work activity. While USCIS could try to anticipate the volume, the sheer number of



simultaneous nonimmigrants filing for EOS could significantly lengthen processing times. Because the proposed option is less burdensome on F and J nonimmigrants and on DHS, DHS does not believe that ending D/S for all F and J nonimmigrants at timeframes that do not align with the expected length of stay presents the best way to transition from D/S to admission for a fixed time period. The proposed transition period is consistent with the generally applicable policy and allows for the normal progress for most programs that nonimmigrants should be making. Further, it ensures that these nonimmigrants are complying with the terms and conditions of their status by requiring them to apply to extend their status by the end date on the I-20 or DS-2019, not to exceed four years.

A second option that DHS considered was to allow F and J nonimmigrants to keep their D/S period of admission until they depart the United States. The Department rejected this alternative, however, because one of the main reasons for proposing this rule is to address current abuse tied to the D/S period of authorized admission. Adopting this alternative would allow aliens currently violating their nonimmigrant status to largely avoid the consequences of non-compliance with U.S. immigration laws by simply remaining in the United States, as otherwise described in this rule.

Third, DHS evaluated an option to allow F and J nonimmigrants to retain their D/S admission up to their program end date, with the transfer to a fixed admission date implemented through any of the following actions of the nonimmigrant: (i) departure from the United States; (ii) transfer to a different institution or sponsor; (iii) failure to maintain a full course of study; (iv) approval for reinstatement<sup>80</sup>; (v) having a DSO or RO extend the program end date; (vi) approval

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<sup>80</sup> See 8 CFR 214.2(f)(16), allowing an F-1 student, under certain circumstances, to apply for reinstatement with USCIS after receiving recommendation from the DSO, following a failure to maintain status.

for a post-completion OPT or a STEM OPT extension; or (viii) engaging in any action that requires the issuance of a new Form I-20 or DS-2019. However, DHS felt that this alternative may fail to provide adequate notice to all affected nonimmigrants given the several scenarios under which the transfer to a fixed period of admission could occur, and could lead to some fraud by DSOs intentionally providing an unnecessarily long program end date on the Form I-20 prior to the final rule's effective date. Although this option is relatively similar to the proposed transition process, to make the transition easier for Fs, Js, ROs, and DSOs, triggering events were limited to those that result in a change to the program end date, as well as re-entry to the United States. In addition, while this option would allow DHS to effectuate the transition of the F and J population without requiring the expense and workload associated with large numbers of simultaneous filings, it would not capture those who have program end dates beyond 4 years from the effective date of the proposed rule.

Fourth, DHS weighed whether requiring various categories of F or J nonimmigrants to apply for an EOS within 60 days after the final rule's effective date would better address national security and fraud issues rather than transitioning all nonimmigrants from D/S to an admission for a fixed time period by using the program end date up to a maximum period of four years. To identify the categories that would be required to file an EOS soon after the final rule's effective date, DHS considered adopting the limiting factors listed at proposed 8 CFR 214.2(f)(20) and (j)(6) (including certain countries and U.S. national interests, unaccredited institutions, E-Verify participation, and language training programs). While such an approach could prioritize certain aliens for prompt, direct vetting and oversight, applying it to hundreds of thousands of nonimmigrants who had been admitted into the United States under D/S could have a significant impact. DHS believes that this approach could result in lengthy processing timeframes as the

affected population would be required to file an EOS at the same time. Given USCIS' processing times, DHS does not believe there would be significant efficiency to excepting certain F or J categories from applying for EOS later than other F or J categories. In addition, this short timeframe to file EOS may be burdensome on F, Js, and the institutions and sponsors as they adapt to a new process, as compared with the proposed transition period within the 4-year period.

In sum, DHS's proposal is to transition all F and J nonimmigrants to a fixed admission date by using the program end date noted on their Form I-20 or DS-2019 (with the exception of F students engaging in post-completion or a STEM OPT extension who would use their EAD's expiration date), not to exceed 4 years, plus an additional 60 days for Fs and 30 days for Js as provided in their previous admission. DHS believes this is a natural way to transition the majority of these nonimmigrants to a fixed admission date without creating any loopholes, such as those that could be created by allowing Fs and Js to retain their duration of status, potentially permitting those who are abusing their status to continue to do so without the oversight and vetting conducted through EOS. It would also provide all affected nonimmigrants adequate notice of the events that would trigger the transition to a fixed admission date to a fixed admission date and their responsibilities resulting from such change.

ii. I Nonimmigrants

Turning to I nonimmigrants, DHS proposes an automatic extension of the length of time it takes the alien to complete his or her activity, for a period of up to 240 days. *See* proposed 8 CFR 214.1(m)(3). DHS based this proposed timeframe on the period of stay authorized in 8 CFR 274a.12(b)(20), which generally provides an automatic extension of employment authorization of 240 days to continue employment with the same employer, including for I nonimmigrants who have timely filed a Form I-539, Application to Extend/Change Nonimmigrant Status, *see* 8

CFR 214.2(i), which currently is required when an I nonimmigrant changes information mediums.<sup>81</sup> DHS believes that adopting an already established timeframe, to which I nonimmigrants are already accustomed, is reasonable. I nonimmigrants who seek to remain in the United States longer than the automatic extension period provided would be required to file an extension of stay request with USCIS.<sup>82</sup> In addition to I nonimmigrants being familiar with the timeframe under 8 CFR 274a.12(b)(20), DHS anticipates that this provision would reduce any gaps in employment due to USCIS' processing timeframes between the I nonimmigrant's application for extension and USCIS approval of the application. It would also facilitate an I nonimmigrant's ability to complete his or her assignment while temporarily in the United States on behalf of a foreign media organization, in that it would give ample time to any I nonimmigrant to either complete that assignment or ask for an extension, as needed.

Finally, the transition procedures would not apply to F, J, or I aliens who are outside the United States when the final rule takes effect, or to any aliens present in the United States in violation of their status. *See* proposed 8 CFR 214.1(m)(1)-(m)(3).

#### E. Requirements for Admission, Extension, and Maintenance of Status of F Nonimmigrants

DHS is proposing various changes under the regulations that provide the framework for admission, extension, and maintenance of status for F nonimmigrants. These changes would eliminate D/S, require students to file an EOS if requesting to remain in the United States beyond the period of their admission, and clarify terms to ensure that the activities an F nonimmigrant has engaged in are consistent with those of a bona fide student.

##### i. Admission for a Fixed Time Period

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<sup>81</sup> *See* Instructions for Application to Extend/Change Nonimmigrant Status, available at <https://www.uscis.gov/i-539> (last visited April 13, 2020).

<sup>82</sup> Typically, fewer than 50,000 aliens enter the U.S. in I classification annually. *See 2017 Yearbook of Immigration Statistics*, Published by the DHS Office of Immigration Statistics, July 2019, page 63.

As a preliminary matter, DHS is proposing to strike the current regulation that allows F nonimmigrants to be admitted for D/S. DHS would replace it with a provision allowing F nonimmigrants to be granted status for the length of their program, not to exceed 4 years and subject to eligibility limitations, as well as national security and fraud concerns.

Second, DHS proposes to retain in the regulations the statutory limitation that restricts public high school students to an aggregate of 12 months of study at any public high school(s). *See* 8 CFR 214.2(f)(5)(i). However, this proposed rule moves this provision to a new section and further clarifies that the 12-month aggregate period includes any school breaks and annual vacations. *See* proposed 8 CFR 214.2(f)(5)(i)(D). Current requirements, including paying the full cost of education, would also remain in place.

Third, F-1 students who are applying to attend an approved private elementary or middle school or private academic high school would continue to be covered by the provisions of paragraph (f)(6)(i)(E). These provisions require the DSO to certify a minimum number of class hours per week prescribed by the school for normal progress toward graduation. *See* 8 CFR 214.2(f)(6)(i)(E). However, like all other F-1 students, they would be subject to the 4-year or 2-year maximum period of admission and they would need to apply for an extension of stay with DHS if staying beyond this period. *See* proposed 8 CFR 214.2(f)(7)(vi).

Fourth, DHS is proposing to exempt border commuter students from the general length of admission provisions. *See* proposed 8 CFR 214.2(f)(5)(i)(C). The regulations at 8 CFR 214.2(f)(18) would continue to govern these border commuter students, including that DHS to admit them for a fixed time period.

Fifth, F-1 students in a language training program would be restricted to a lifetime aggregate of 24 months of language study, which would include breaks and an annual vacation.

*See* proposed 8 CFR 214.2(f)(5)(i)(B). DHS is proposing this limitation as a way to prevent abuse of the F-1 program. Public Law 111-306, enacted on December 14, 2010, and effective since 2011, requires language training schools enrolling F-1 students to be accredited by an accrediting agency recognized by the Secretary of Education. DHS consistently sees students enrolled in language training schools for very lengthy periods of time, including instances of enrollment for over a decade, either by extending a program at one school or transferring between language schools.<sup>83</sup> DHS has also found students enrolling in lengthy periods of language training despite previously enrolling in or completing undergraduate and graduate programs requiring English language proficiency.<sup>84</sup> Unlike degree programs that typically have prescribed course completion requirements, there are no nationally-recognized, standard completion requirements for language training programs and students are able to enroll in language training programs for lengthy periods of time. The lengthy enrollment in a language program, including enrollment in language courses for long periods subsequent to completion of a program of study that requires proficiency in English, raises concerns about whether the F-1s meet the statutory definition of a bona fide student with the intent of entering the U.S. for temporary study.<sup>85</sup> Therefore, DHS proposes a 24-month aggregate limit for F-1 students to participate in a language training program, as it would provide a reasonable period of time for students to attain proficiency while mitigating the Department's concerns about the integrity of the program. This timeframe generally comports with the length of language training classes

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<sup>83</sup> For example, at one accredited English language training school, five students have been enrolled in language training since 2010; eight since 2011; three since 2012; two since 2013; two since 2014; and two since 2015.

<sup>84</sup> For example, one student has been enrolled in English language training programs at four different schools since 2015 despite being an F-1 student since at least 2002. She was enrolled in an English language training program from 2002 – 2004 and subsequently enrolled in an associate's program that required English language proficiency from 2004 – 2008. Her Form I-20 noted that she had the required English language proficiency for that program.

<sup>85</sup> *See* INA (101)(a)(15)(F).

offered by schools that are accredited by ED-recognized agencies.<sup>86</sup> DHS seeks comments on whether 24 months is sufficient for a language training program.

Sixth, DHS proposes a maximum admission period of up to 2 years for certain students. *See* proposed 8 CFR 214.2(f)(5)(i)(A) and (f)(20). This period is based on factors that DHS identified as involving national security and public safety concerns, with the goal of encouraging compliance with immigration laws. They are:

- Aliens who were born in or are citizens of countries on the State Sponsor of Terrorism List. The State Sponsor of Terrorism List are countries, as determined by the Secretary of State, to have repeatedly provided support for acts of international terrorism pursuant to three laws: section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act. Designation as a “State Sponsor of Terrorism” under these authorities also implicates other sanctions laws that penalize persons and countries engaging in certain trade with state sponsors. There are currently four countries designated as a state sponsor of terrorism under these authorities: The Democratic People’s Republic of Korea (North Korea), Iran, Sudan, and Syria. Under this proposal, DHS anticipates admitting those who were born in or are citizens of those countries for a maximum period of up to 2 years. The Department believes it is appropriate to apply additional scrutiny on those born in these countries and citizens of these countries who are temporarily studying in the United States to ensure that these aliens do not pose risks

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<sup>86</sup> Courses listed by language training schools accredited by the Accrediting Council For Continuing Education & Training reflect that most Intensive English Programs can be completed within 24 months, website available at <https://accet.org/> (last visited Feb. 7, 2020). For example, ELS Language Center’s longest English as a Second Language (ESL) program is 1440 hours. Attending 18 clock hours per week, the minimum for a full course of study, for that period of time would result in 18.4 months.

to the national security of the United States. For easier reference and to ensure affected stakeholders have advanced notice of the countries on the State Sponsors of Terrorism List prior to choosing a country and institution to study in, DHS proposes to publish a Federal Register notice (FRN) with the DOS list. If DOS makes changes to the list, DHS proposes to publish an FRN with the updated list. Any future FRN will also announce the date that the new maximum 2-year period of admission would apply.

- Aliens who are citizens of countries with a student and exchange visitor total overstay rate of greater than 10 percent according to the most recent DHS Entry/Exit Overstay report.<sup>87</sup> The DHS Entry/Exit Overstay report compiles overstay rates for different classifications. It provides overstay rates per country for F, M, and J nonimmigrants together, rather than a separate overstay rate by classification, per country. Given the overlap between the F and J classifications, utilizing the data for both exchange visitors and students to establish overstay rates is useful in that it may deter aliens who may attempt to seek admission in one status rather than the other in order to obtain a lengthier period of admission. A key goal of shifting aliens in F status from D/S to an admission for a fixed time period is to provide pre-defined time periods for immigration officers to evaluate whether a nonimmigrant has maintained his or her status. If an immigration officer finds that an alien violated his or her status prior to or during the course of an EOS adjudication and denies the EOS request, the alien generally would begin accruing unlawful presence the day after issuance of the

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<sup>87</sup> The overstay report for 2019 can be found at [https://www.dhs.gov/sites/default/files/publications/20\\_0513\\_fy19-entry-and-exit-overstay-report.pdf](https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf). See Table 4, Column 6.



denial.<sup>88</sup> The Department finds it appropriate to apply additional oversight to nonimmigrants from countries with consistently high student and exchange visitor overstay rates, by requiring these aliens to more frequently request extensions of stay. Because there is an increased risk of overstay by nonimmigrants from these countries as reflected by the DHS Entry/Exit Overstay reports, DHS would be able to identify such violations sooner. Further, DHS believes this more frequent oversight could deter aliens from engaging in activities that would violate their status, as the consequences of doing so would arise more quickly.

A primary aim of this proposed rule is to institute policies that would encourage aliens to maintain lawful status and reduce instances in which F, J, and I nonimmigrants unlawfully remain in the United States after their program or practical training ends. Under this proposed rule, aliens who remain in the United States beyond a fixed time period generally would begin accruing unlawful presence. Depending on the extent of unlawful presence accrual, an alien may become inadmissible upon departing the United States and will be ineligible for benefits for which admissibility is required, such as adjustment of status to that of a lawful permanent resident. *See* INA 212(a)(9)(B), (C), 8 U.S.C. 1189(a)(9)(B), (C); INA 245(a), 8 U.S.C. 1255(a). Placing restrictions on citizens of countries with high overstay rates incentivizes timely departure. The aggregate effect of the policy may help reduce a country's overstay rate on the DHS Entry/Exit report below 10 percent,

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<sup>88</sup> *See* USCIS Policy Memo, *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, available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/2009/revision\\_redesign\\_AFM.PDF](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/revision_redesign_AFM.PDF) (last accessed June 20, 2020). This policy currently applies to F, J, and I nonimmigrants in relation to duration of status but will change accordingly when duration of status no longer applies to them).

in which case nationals of the country would become eligible for a longer period of admission under the F nonimmigrant classification.

Finally, the “greater than 10%” student and exchange visitor overstay rate threshold aligns with the percentage described by the Administration as a ‘high’ overstay rate for the purpose of enabling DHS and DOS to “immediately begin taking all appropriate actions that are within the scope of their respective authorities to reduce overstay rates for all classes of nonimmigrant visas.”<sup>89</sup> The “greater than 10%” overstay rate threshold is more than double the general overstay rate for nonimmigrant student and exchange visitors as noted in the 2018 DHS Entry/Exit Overstay report,<sup>90</sup> meaning that countries with such overstay rates are well outside the norm. DHS believes that it is appropriate to require more frequent check-ins on citizens of those countries to ensure that they are in compliance with the terms and conditions of their admission.

To ensure affected stakeholders have notice of which countries have an overstay rate exceeding that threshold, DHS proposes to issue FRNs listing countries with overstay rates triggering the 2-year admission period. The first such FRN would also list countries that have been designated as State Sponsors of Terrorism, and

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<sup>89</sup> See Presidential Memorandum on Combating High Nonimmigrant Overstay Rates (April 22, 2019) available at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-combating-high-nonimmigrant-overstay-rates/> (last visited April 13, 2020). The Presidential Memorandum identified countries with a total overstay rate greater than 10 percent in the combined B-1 and B-2 nonimmigrant visa category as appropriate for additional engagement by the DOS, which “should identify conditions contributing to high overstay rates among nationals of those countries...”

<sup>90</sup> According to the FY 2018 DHS Entry/Exit Overstay Report, for nonimmigrants who entered on a student or exchange visitor visa (F, M, or J visa) there were 1,840,482 students and exchange visitors scheduled to complete their program in the United States, of which 3.73 percent (68,593) stayed beyond the authorized window for departure at the end of their program.

provide a link where stakeholders could access information about schools that have been accredited by an ED-recognized accrediting agency.<sup>91</sup>

DHS proposes to publish this FRN contemporaneously with the final rule.

Any changes to the list would be made by a new FRN.

- U.S. national interest. Other factors that would be incorporated into a FRN would be a limitation of a student's period of stay to a maximum of a 2-year period based on factors determined to be in the U.S. national interest, which may include but not be limited to circumstances where they may be national security concerns or risks of fraud and abuse. 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. DHS believes collecting information more often and applying additional vetting helps mitigate national security risks. If the DHS Secretary determines that U.S. national interests warrant limiting admission to a 2-year maximum period in certain circumstances, then it would publish an FRN to give the public advance notice of such circumstance.
- Aliens who are not attending institutions accredited by an accrediting agency recognized by the Secretary of Education. The goal of accreditation is to ensure that by post-secondary institution provides an education that meets acceptable levels of quality. Specifically, the accreditation process involves the periodic review of institutions and programs to determine whether they meet established standards. and are achieving their stated educational objectives. Schools meeting the accreditation

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<sup>91</sup> The Department of Education (ED) provides this information on its Database of Accredited Postsecondary Institutions and Programs webpage at <https://ope.ed.gov/dapip/#/home> (last visited Feb. 1, 2020).

requirement are subjected to significant oversight by the accrediting body, including recurring assessment of the institutions' programs to ascertain their effectiveness in helping students attain both academic knowledge and professional skills. The intervals at which schools must submit to accreditation review vary across accrediting agencies, but review typically occurs at least every 10 years, with the accrediting agencies themselves subject to review by ED, to determine whether to grant or renew recognition, at least every 5 years.<sup>92</sup>

Accreditation may be institutional, meaning it applies to the school as a whole and covers any educational programs the school offers, or specialized/programmatic, meaning it covers specific programs only.<sup>93</sup> ED classifies each recognized accrediting agency as institutional or programmatic to help schools identify which agencies might be appropriate for their needs.<sup>94</sup> DHS believes the independent, third-party checks offered through accreditation minimize the risk of fraud and abuse by schools and DSOs.

The history of problems encountered at unaccredited schools approved for the attendance of F-1 students demonstrates the value of promoting attendance at accredited schools. For example, in 2014, the founder of Tri-Valley University, an unaccredited institution in Pleasanton, California, Susan Xiao-Ping Su, was sentenced to more than 16 years in prison for her role in a massive, highly profitable visa fraud

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<sup>92</sup> Report from U.S. Department of Education Office of the Inspector General, *U.S. Department of Education's Recognition and Oversight of Accrediting Agencies*, ED-OIG/A09R 0003, June 27, 2018.

<sup>93</sup> *Id.*

<sup>94</sup> List of ED's Database of Accredited Postsecondary Institutions and Programs, <https://ope.ed.gov/dapip/#/agency-list> (last visited Feb. 4, 2020).

scheme that lasted 2 years.<sup>95</sup> To execute the fraud, Su submitted fabricated paperwork to DHS to obtain certification to enroll nonimmigrant students. Once certified, Su issued F-1 visa-related documents to students on false premises, with no criteria for admission or graduation, and no requirement that students maintain the course loads required for F-1 status.<sup>96</sup> While it was operating, the school helped approximately 1,500 foreign nationals enter the country for work or other purposes by helping them illegally obtain F-1 visas.<sup>97</sup>

Also in 2014, the former head of College Prep Academy in Duluth, Georgia, another unaccredited institution, was sentenced to nearly 2 years in prison for overseeing an immigration fraud scheme that brought women into the country through illegally obtained F-1 visas.<sup>98</sup> Once in the United States, the women were put to work in bars operated by associates of the school's owner, with no expectation that they would ever attend classes at the school.<sup>99</sup>

More recently, in 2018, the owner of four unaccredited schools in and around Los Angeles was sentenced to over 1 year in prison for his role in conducting a “sophisticated, extensive, and lucrative” immigration document fraud scheme that

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<sup>95</sup> See U.S. Department of Justice (DOJ), U.S. Attorney's Office Northern District of California News Release, “CEO and President of East Bay University Sentenced to 198 Months for Fraud Scheme,” (Nov. 3, 2014) available at <https://www.justice.gov/usao-ndca/pr/ceo-and-president-east-bay-university-sentenced-198-months-fraud-scheme> (last visited Feb. 7, 2020).

<sup>96</sup> *Id.*

<sup>97</sup> See The Chronicle of Higher Education, “Little-Known Colleges Exploit Visa Loopholes to Make Millions Off Foreign Students” (March 20, 2011) available at <https://www.chronicle.com/article/Little-Known-Colleges-Make/126822> (last visited Feb. 7, 2020).

<sup>98</sup> See DOJ News Release, “English Language School Owner Sentenced for Immigration Fraud,” (May 7, 2014) available at <https://www.justice.gov/usao-ndga/pr/english-language-school-owner-sentenced-immigration-fraud> (last visited Feb. 7, 2020).

<sup>99</sup> *Id.*

lasted for at least 5 years.<sup>100</sup> The owner and his co-conspirators falsified student records and transcripts for thousands of foreign nationals as part of a “pay-to-stay” scheme. They enabled the nonimmigrants to remain in the United States illegally, despite rarely or ever attending the classes for which they were allegedly enrolled.<sup>101</sup>

DHS believes that the accreditation limitation will curtail the potential for fraudulent use of F-1 student status. It will provide a direct check-in point with the Department if a nonimmigrant enrolled in an unaccredited school wishes to remain in the U.S. beyond 2 years. While DHS is not imposing an ED-accreditation requirement on post-secondary institutions in order to be certified by SEVP to accept foreign students, the Department is proposing to rely on the accreditation process as a means to promote the integrity of the immigration system. DHS hopes that post-secondary institutions enrolling foreign students thereby would be incentivized to pursue accreditation by an ED-recognized agency, including meeting all requirements, rather than potentially lose future international students and associated revenue to those schools that do.

Because ED only has the authority to recognize post-secondary accreditors, aliens attending elementary, middle or high school would not be subject to this limitation and may be eligible for the maximum 4-year period of admission. A link to information about ED-accredited agencies would be included in a FRN that would be published concurrently with the final rule and updated as needed (including if ED

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<sup>100</sup> See DOJ News Release, *Owner of Schools that Illegally Allowed Foreign Nationals to Remain in U.S. as ‘Students’ Sentenced to 15 Months in Federal Prison*, <https://www.justice.gov/usao-cdca/pr/owner-schools-illegally-allowed-foreign-nationals-remain-us-students-sentenced-15> (last visited April 13, 2020).

<sup>101</sup> *Id.*

changes the webpage where it publishes accredited agencies).

- E-Verify Participation. USCIS administers E-Verify, a web-based system that electronically compares information from an employee's Employment Eligibility Verification (Form I-9) with records available to DHS. E-Verify accesses millions of government records available to DHS and the Social Security Administration. It is the best means for employers to confirm the identity and employment eligibility of their new hires. E-Verify has over 850,000 enrolled employers and other participants of all sizes, encompassing more than 2.5 million hiring sites. It is one of the Federal Government's highest-rated services for user satisfaction. Twenty-two states currently have various forms of statutes or other legal requirements making participation in E-Verify a condition of business licensing or state contracting laws.

DHS believes that schools that are willing to go above and beyond to ensure compliance with immigration law in one respect (verifying identity and employment eligibility as required under section 274A of the INA and taking the additional step to confirm Form I-9 information using E-Verify) are more likely to comply with immigration law in other respects (SEVP purposes) by successfully monitoring their F students. DHS therefore proposes that E-Verify participation warrants a 4-year admission period for students of those schools, subject to other limitations on admission that may apply. Conversely, there is less confidence in schools that are unwilling to do all they can to ensure they have a legal workforce to support students' academic programs by participating in E-Verify. Accordingly, DHS proposes that it would monitor whether students of such schools maintain status more frequently by limiting their admission period to 2 years.

DHS believes that the E-Verify proposal would incentivize more schools to enroll in E-Verify. Should more schools enroll in E-Verify, DHS would be better assured that schools were meeting the certification standards at 8 CFR 214.3(a)(3). This provision is associated with evaluating whether an educational institution is a bona fide school possessing the necessary facilities, personnel, and finances. It helps ensure that F nonimmigrants are choosing educational institutions that have demonstrated a willingness to best ensure compliance with immigration laws in one respect (i.e., hiring), and which DHS believes therefore would be more likely to comply with requirements pertaining to school certification and enrollment of F nonimmigrants.

E-Verify could also provide DHS another data point to assess and independently verify whether an educational institution has teachers, employees, and/or offices proportionate to the number of students that are enrolled and in attendance. When enrolling in E-Verify, employers indicate the size of the organization which can provide DHS with additional information about whether the school has necessary personnel as required by 8 CFR 213.3(a)(3). A school that uses E-Verify when they hire such employees is doing as much as it can to ensure they have a stable workforce to operate as a school. While the school's certification requirements would not be assessed when a student applies for EOS, the fact that a school participates in E-Verify should give DHS a greater level of assurance that the school is likely to comply with all other federal requirements and operates in accordance with the certification standards for which it is responsible.



When determining how to apply the 2-year admission limitation, DHS considered how to address situations when an alien admitted in F status for a 4-year period subsequently would become subject to a 2-year period if seeking admission. For example, a student may have a 4-year period of admission, but in the midst of this period, an FRN may be published indicating that his or her home country now has a student and exchange visitor total overstay rate of greater than 10 percent, as stated in the DHS Entry/Exit Overstay Report. Notwithstanding such intervening events, aliens will remain subject to the period of admission approved upon his or her application for admission, extension of stay, or change of status. Further, changing the terms of admission at irregular intervals for particular classes of F nonimmigrants would introduce significant confusion, make their stay unpredictable, and so potentially discourage some students from pursuing their studies in the United States. Therefore, DHS is proposing to allow such aliens to remain in the United States for the remainder of whatever period of admission is afforded them when they are admitted in, extend their stay in, or change status to F-1 status.

However, if such aliens depart the United States, the departure and subsequent application for admission would trigger a new review and these aliens would be treated the same as any other aliens applying for admission. At that point they would become subject to applicable terms and conditions of admission, including the 2-year limitation. Similarly if a student needs to file an EOS application in the midst of his or her 4-year admission period (for example, a student decides to request pre-completion OPT and receives a Form I-20 reflecting the new program end date), and their EOS application is filed on or after the student is subject to a 2-year maximum period of stay, that would trigger the new 2-year maximum period of stay. Similarly, if a student needs to file an EOS or departs and applies for readmission, and the student files or applies after

he or she is no longer subject to the 2-year limitation, that would trigger the 4-year maximum period of stay.

DHS invites comments on all these proposals, and specifically the limitations on the language training schools, the U.S. national interest factor, E-Verify, whether additional limitations should be added, and whether exemptions to the limitations on admission should be possible.

#### ii. Changes in Educational Levels

Under current regulations, F-1 students who continue from one educational level to another are considered to be maintaining status. *See* 8 CFR 214.2(f)(5)(ii). However, DHS has observed that some students continuously enroll in different programs at the same degree level, such as by pursuing multiple associate, master's, undergraduate, or certificate programs. Alternatively, some students change to a lower educational level, such as by completing a master's degree and then changing to an associate's program. This has enabled some aliens to remain in the United States for lengthy periods of time in F-1 student status, raising concerns about the temporary nature of their stay. In 2019, DHS identified nearly 29,000 F-1 students who, since SEVIS was implemented in 2003, have spent more than 10 years in student status.<sup>102</sup> This includes individuals who enrolled in programs at the same educational level as many as 12 times, as well as students who have completed graduate programs followed by enrolling in undergraduate programs, including associate's degrees.

While there are legitimate cases of students wishing to gain knowledge at a lower or the same educational level, the traditional path of study progresses from a lower educational

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<sup>102</sup> DHS compiled this information while conducting an internal case analysis; however, the Department is withholding this information to prevent the disclosure of PII.

program to a higher one. The regulations contemplate a model consistent with the vast majority of bona fide students following this upward trajectory. The term “full course of study” as defined in the regulations requires that the program “lead to the attainment of a specific educational or professional objective.”<sup>103</sup> Frequent or repeated changes within an educational level or to a lower level are not consistent with attainment of such an objective. This understanding was reflected in the preamble to a 1986 rulemaking proposing changes to the F regulations, which stated: “The proposed regulation...places limitations on the length of time a student may remain in any one level of study. Thus, the Service has eliminated applications for extension of stay for students who are progressing from one educational level to another but has placed a control over students who, for an inordinate length of time, remain in one level of study.”<sup>104</sup>

DHS thus proposes to limit the number of times a student can change to another program within an educational level, such as to pursue another bachelor’s or master’s degree. Specifically, any student who has completed a program at one educational level would be allowed to change to another program at the same educational level no more than two additional times while in F-1 status, for a total of three programs for the lifetime of the student. *See* proposed 8 CFR 214.2(f)(5)(ii)(B). DHS believes this would accommodate the legitimate academic activities of bona fide students that are not following the typical upward progression, such as a desire to pursue a different field of study, or to pursue more specialized studies in their field. In addition, an F-1 student who has completed a program at one educational level would be allowed to change to a lower educational level one time while in F-1 status. *See* proposed 8 CFR 214.2(f)(5)(ii)(C). These restrictions limiting the number of times a student can complete

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<sup>103</sup> 8 CFR 214.2(f)(6)(i).

<sup>104</sup> Nonimmigrant Classes, Change of Nonimmigrant Classification, 51 FR 27867 (proposed Aug. 4, 1986).

additional programs in one educational level or begin a new program at a lower educational level are lifetime restrictions; they do not reset, for instance, with a new admission as an F-1 student.

DHS believes that it is reasonable in most cases for a student to progress to a higher educational level rather than continue at the same level or pursue a lower level of education. When, after completion of one program, an F-1 wishes to pursue a new program at a lower educational level more than once or a new degree at the same educational level more than twice (for a total of three programs), concerns are raised regarding whether the F-1 alien is a bona fide student who intends to temporarily and solely pursue a full course of study rather than pursuing different degrees as a de facto way to permanently stay in the United States.

Aliens in F-1 status seeking to change to a new program following completion of a program at the same educational level (up to two additional times after completion of the initial program) or seeking to change to a lower educational level (no more than one additional time after completion of the initial program) would need to obtain a new Form I-20 from their DSO reflecting the new program. If the new program completion date exceeds the authorized period of admission, the alien would then apply for EOS on the form designated by USCIS, with the required fee and in accordance with form instructions, including any biometrics required by 8 CFR 103.16. *See* proposed 8 CFR 214.2(f)(5)(ii)(D).

DHS, of course, determines in all instances on a case-by-case basis whether an alien who has completed his or her initial program and seeks to change programs within the same level or to a lower educational level, has the requisite nonimmigrant intent, is a bona fide student, and has adequate financial resources to continue their studies, or is misusing the F-1 program as a pretext to unlawfully extend their stay in the United States.

DHS recognizes that this proposal will require updates to SEVIS and other systems. Because the timeframe for those updates is not fixed and there could be technical issues regarding implementation, DHS is proposing to include a provision whereby the Department may delay or suspend implementation, in its discretion, if it determines that the change in educational level limitation is inoperable for any reason. *See* proposed 8 CFR 214.2(f)(5)(ii)(E). If DHS delays or suspends the provisions in this section governing the change in degree level, DHS would make an announcement of the delay or suspension to the academic community through SEVP's various communication channels, including ICE.gov/SEVP, Study in the States (<https://studyinthestates.dhs.gov>) and SEVIS Broadcast Message. DHS would also announce the implementation dates of the change in degree level provision through SEVP's communication channels (ICE.gov/SEVP, Study in the States, and SEVIS Broadcast Message) at least 30 calendar days in advance. *Id.*

DHS considered a complete ban on changes to a lower or same educational level, supported by the assumption that these F-1 aliens are not reliably continuing to make normal progress towards the completion of their educational objectives. However, the Department believes such an option to be overbroad -- there may be exceptions to the general upward progression in educational levels. For example, a student might wish to pursue an MBA following the completion of his or her Ph.D.

Additionally, DHS proposes to retain the term "educational" with respect to the change in level as the Department believes it more accurately reflects current academic models. Specifically, "educational" captures programs for non-degree students, whereas using a term such as "degree" may not. For example, currently, an F-1 student would not qualify for additional post-completion OPT if he or she changes to a certificate program, given that the

certificate program is not a “higher educational level.” Similarly, certificate programs for professional advancement are typically not considered to be a “higher educational level” allowing students to qualify for additional post-completion OPT.

DHS believes these proposals will encourage foreign students to pursue a general upward progression in degree levels, which is expected from a qualified bona fide student who is coming to the United States temporarily and solely to pursue a course of study. While this change could dissuade some foreign nationals from choosing to study in the United States, the Department believes that this restriction would not significantly impact the choice of bona fide students who come to the United States temporarily to complete a full course of study. The F-1 program, with its statutory requirement that an alien be a bona fide student who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study, should not be used by aliens wishing to remain in the United States permanently or indefinitely. These proposals would better ensure that this statutory intent is fulfilled without hindering the options presented to bona fide students seeking higher educational levels and thus create a balanced solution to this issue. DHS welcomes comments on this proposal.

### iii. Preparation for Departure

DHS believes that the time allotted for F students to prepare for departure should be revised. Under current regulations, F-1 students are provided 60 days following the completion of their studies and any practical training to prepare for departure from the United States. *See* 8 CFR 214.2(f)(5)(iv). However, this is twice as long as other student and exchange visitor categories – J exchange visitors and M vocational students are only allowed 30 days. *See* 8 CFR 214.2(j)(1)(ii) and (m)(10)(i).

This 60-day period is also six times longer than certain nonimmigrants who are authorized to remain in the United States for years, but are only provided with a 10-day period to depart the United States. For example, DHS provides a 10-day period following the end of the alien's admission period as stated on his or her Form I-94 for individuals in the E-1, E-2, E-3, H-1B, L-1, and TN classifications in a 2016 rulemaking.<sup>105</sup> In the rulemaking discussing this 10-day period for departure, DHS noted that a grace period of up to 10 days after the end of an authorized validity period provides a reasonable amount of time for such nonimmigrants to depart the United States or take other actions to extend, change, or otherwise maintain lawful status.<sup>106</sup> It is thus unclear to DHS why F students would need a significantly longer period of time - 60 days - to prepare for departure when other nonimmigrants have less time to prepare for departure.<sup>107</sup>

DHS believes that 30 days for the F nonimmigrant population is the appropriate balance between a 60-day and a 10-day period of departure. DHS believes that the F category, albeit distinct from M or J, shares a core similarity in that many aliens in these categories are seeking admission to the United States to study at United States educational institutions. Thus, DHS thinks that these categories should have a standard period of time to prepare for departure, or take other actions to extend, change, or otherwise maintain lawful status. DHS thinks that 30

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<sup>105</sup> See 8 CFR 214.1(l)(1) (providing for 10-day grace periods for certain nonimmigrants).

<sup>106</sup> See Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 FR 82,398, 82,401 (Nov. 18, 2016).

<sup>107</sup> Rulemakings in the mid-1980s mention this 60-day period for departure but did not provide any explanation as to why this period of time to depart was given to students. See e.g., Nonimmigrant Classes; F-1 Students, 52 FR 13,223 (Apr. 22, 1987) (referencing the proposed rule, and stating that in the "proposed regulations, duration of status was defined to mean the period during which a student is pursuing a full course of studies in any educational program, and any period or periods of authorized practical training, plus sixty days," but not indicating the reason for the 60-day period). Nonimmigrant Classes; Change of nonimmigrant Classification, 51 FR 27,867 (Aug. 4, 1986) (proposing that duration of status would consist of an additional "sixty days within which to depart from the United States," but silent on the reason for the 60-day period of departure).

days is an adequate period for F-1 students to prepare for departure and is in line with similar categories (the M and J departure periods) but welcomes comments on whether a different period for departure would be more appropriate for the F nonimmigrant classification, including whether there are meaningful distinctions between F nonimmigrant students and both J exchange visitors and M vocational students that should be considered. DHS also welcomes comments regarding whether the 30-day departure period should be reflected in the Form I-94. *See* proposed 8 CFR 214.2(f)(5)(v) and (f)(10)(ii)(D).

Additionally, in the 2016 rulemaking establishing a 10-day grace period for certain nonimmigrant classifications, DHS chose to remove the phrase “to prepare for departure from the United States or to seek an extension or change of status based on a subsequent offer of employment” from the proposed regulatory text relating to the purpose of the grace period, with the justification that it was unnecessarily limiting and did not fully comport with how the existing 10-day grace period may be used by individuals in the H, O and P nonimmigrant [visa] classifications.<sup>108</sup> DHS clarified that the 10-day grace period may be granted to these nonimmigrants at time of admission or upon approval of an extension of stay or change of status and may be used for other permissible non-employment activities such as seeking to change one's status to that of a dependent of another nonimmigrant or vacationing prior to departure.<sup>109</sup> DHS notes that seeking an extension of stay or change of status is an allowable activity for F aliens during the 30 day departure period following the completion of their program and believes this same clarification should be incorporated into this proposed rulemaking. *See* proposed 8 CFR 214.2(f)(5)(iv).

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<sup>108</sup> Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 FR 82,398, 82402, 82437 (Nov. 18, 2016).

<sup>109</sup> *Id.* at 82437.



DHS also proposes to clarify that the proposed period to prepare for departure or otherwise maintain status is 30 days from the Form I-94 (or successor form) end date or the expiration date noted on the Employment Authorization Document (Form I-766 or successor form), as applicable, to prepare for departure from the United States, or otherwise obtain lawful status. *See* proposed 8 CFR 214.2(f)(5)(iv).

Finally, DHS proposes to retain the current regulatory language that allows a 15-day period for departure from the United States if an alien is authorized by the DSO to withdraw from classes, but no additional time for departure if the alien fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status. *See* 8 CFR 214.2(f)(5)(iv). Because DSOs generally authorize withdrawal based on compelling academic or medical circumstances when a student proactively requests permission, DHS believes retaining the 15-day period is appropriate. However, aliens who fail to maintain their full course of study or otherwise impermissibly violate their status are required to immediately depart the United States, as is consistent with other nonimmigrant categories. DHS considered allowing a short “grace period” for departure after an EOS denial, but does not see a compelling reason to treat F nonimmigrants who have received a denial more favorably than other nonimmigrant categories. As in other nonimmigrant categories, failure to immediately depart under these circumstances could result in accrual of unlawful presence and subject an individual to removal.

#### iv. Automatic Extension of Status

##### 1. Authorized Status and Employment Authorization under 8 CFR 214.2(f)(5)(vi)

Each year, a number of U.S. employers seek to employ F-1 students and file a Form I-129, Petition for a Nonimmigrant Worker, with USCIS, along with a change of status request, to obtain classification of the F-1 student as an H-1B nonimmigrant worker. The H-1B

nonimmigrant visa program allows U.S. employers to temporarily employ foreign workers in specialty occupations, defined by statute as occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree in the specific specialty, or its equivalent. *See* INA sections 101(a)(15)(H)(i)(b) and 214(i); 8 U.S.C. 1101(a)(15)(H)(i)(b) and 1184(i). The H-1B classification, however, is subject to annual numerical allocations. *See* INA sections 214(g)(1)(A) and (g)(5)(C); 8 U.S.C. 1184(g)(1)(A) and (g)(5)(C).<sup>110</sup> For purposes of the H-1B numerical allocations, each fiscal year begins on October 1. Petitioners may not file H-1B petitions more than six months before the date of actual need for the employee.<sup>111</sup> Thus, the earliest date an H-1B cap-subject petition may be filed for an allocation for a given fiscal year is April 1, six months prior to the start of the applicable fiscal year for which initial H-1B classification is sought. Many F-1 students complete a program of study or post-completion OPT in mid-spring or early summer. Per current regulations, after completing their program or post-completion OPT, F-1 students have 60 days (which DHS is proposing to change to 30 days) to take the steps necessary to maintain legal status or depart the United States. *See* 8 CFR 214.2(f)(5)(iv). However, because the change to H-1B status cannot occur until October 1, an F-1 student whose program or post-completion OPT expires in mid-spring has two or more months following the 60-day period before the authorized period of H-1B status can commence. To address this situation, commonly known as the “cap-gap,” DHS established regulations that automatically extended F-1 D/S and, if applicable, post-completion

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<sup>110</sup> Under INA 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A), 65,000 aliens may be issued H-1B visas or otherwise provided H-1B nonimmigrant status in a fiscal year. This limitation does not apply to aliens who have earned a master's or higher degree from a U.S. institution of higher education, as defined in 20 U.S.C. 1001(a), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000. INA 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C).

<sup>111</sup> *See* 8 CFR 214.2(h)(2)(i)(I).

OPT employment authorization for certain F-1 nonimmigrants to October 1 for eligible F-1 students. *See* 8 CFR 214.2(f)(5)(vi). The extension of F-1 D/S and OPT employment authorization is commonly known as the “cap-gap extension.”

DHS proposes to retain the cap-gap provisions automatically granting, for a certain period of time, the extension of F-1 students’ stay and grant of employment authorization for aliens who are the beneficiaries of timely filed H-1B cap-subject petitions with an employment start date of October 1, and requesting a change of status. Under current regulations, the automatic cap-gap extension is valid only until October 1 of the fiscal year for which H-1B status is being requested. *See* 8 CFR 214.2(f)(5)(vi). With the consistently high volume of H-1B petitions each year, however, USCIS has been unable to complete adjudication of H-1B cap-subject petitions by October 1, resulting in situations where some individuals must stop working on October 1 because the employment authorization provided under 8 CFR 214.2(f)(5)(vi) terminates on that date, although generally these individuals may remain in the United States while the H-1B change of status application is pending.<sup>112</sup>

To account for this operational issue, DHS is proposing to revise 8 CFR 214.2(f)(5)(vi) to provide an automatic extension of F-1 status and post-completion OPT, as applicable, until April 1 of the fiscal year for which the H-1B petition is filed. The F-1 student would not need to file a separate EOS if their fixed date of admission passed during the period before April 1, as this provision would extend the applicant’s F-1 status automatically if an H-1B petition requesting a change of status is timely filed on behalf of the F-1 student. *See* proposed 8 CFR

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<sup>112</sup> In 2018, USCIS issued a web alert notifying the public that significant numbers of beneficiaries would lose their employment authorization and stating that individuals can generally remain in the United States without accruing unlawful presence while their application is pending, provided they do not work without authorization, available at <https://www.uscis.gov/news/alerts/f-1-cap-gap-status-and-work-authorization-extension-only-valid-through-sept-30-2018> (last visited Jan. 12, 2020).

214.2(f)(5)(vi)(A). However, if the F-1 student's COS is still pending at the end of the cap-gap period, then his or her employment authorization would terminate on March 31, and the applicant would no longer be employment authorized on this basis as of April 1. If the H-1B petition underlying the cap-gap extension is denied, then, consistent with existing USCIS practice, the F-1 beneficiary of the petition, as well as any F-2 dependents, will receive the standard F-1 grace period (which this rule proposes to change to 30 days) to depart the United States.

DHS believes that proposing to change the automatic extension end date from October 1 to April 1 would avoid disruptions in employment authorization that some F nonimmigrants seeking cap gap extensions have been experiencing over the past several years. DHS fully expects USCIS would be able to adjudicate all H-1B cap-subject petitions requesting a change of status from F-1 to H-1B by that April 1 deadline. In addition to avoiding employment disruptions, the lengthier extension of F status and employment authorization for aliens with pending H-1B petitions until April 1, up to one year, depending on when the H-1B petition was filed, accounts for USCIS' competing operational considerations and would enable the agency to more appropriately balance workloads across petition types.

DHS is also proposing to clarify that the cap-gap provision does not authorize employment for dependents who seek to change status from F-2 status to H-1B or H-4 (spouse or child of H nonimmigrant) status. *See* proposed 8 CFR 214.2(f)(5)(vi)(D). Dependents may not accept employment as an F-2 nonimmigrant. Thus, there is no work that would be disrupted by a loss of employment authorization while the F-2 dependent's COS application remains pending with USCIS for adjudication. As is the case under the current regulation, an F-1 nonimmigrant's

automatic extension of status under the cap-gap provision also applies to his or her F-2 dependents who timely file a change of status application to H-4.<sup>113</sup>

DHS believes that these changes would result in more flexibility for both students and the Department and would help to avoid disruption to U.S. employers who are lawfully employing F-1 students while a qualifying H-1B petition is pending. However, DHS is concerned with the impacts of this provision on U.S. workers and students, especially if it would result in increased competition for certain jobs, and invites comments from the public on this issue.

2. F-1 status and employment authorization while EOS and employment authorization applications are pending

DHS proposes to strike “duration of status” from 8 CFR 214.2(f)(5)(vi) and clarify that an alien with F-1 status whose admission period as indicated on his or her Form I-94 has expired, but who has timely filed an EOS application, would be authorized to continue pursuing a full course of study after the end date of his or her admission until USCIS adjudicates the EOS application. *See* proposed 8 CFR 214.2(f)(5)(vii). This change would provide ongoing authorization to continue studies as long as the student has timely filed his or 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. In such cases, students would be able to continue pursuing their full course of study.

The shift to a fixed date of admission has implications for employment authorization. Currently, DSOs may authorize certain types of employment authorization, including on campus employment and CPT,<sup>114</sup> and students generally do not need to be concerned about a specific

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<sup>113</sup> 8 CFR 214.2(f)(5)(vi)(D).

<sup>114</sup> *See* 8 CFR 214.2(f)(10)-(12), 8 CFR 274a.12(b)(6)(iv).

expiration date for their student status, and thus their employment authorization, because they are admitted for duration of status. This rule would change that framework with different implications for various types of employment authorization.

For on-campus employment where no EAD is needed, DHS proposes to allow aliens in F-1 status to continue to be authorized for on-campus employment while their EOS applications with USCIS are pending, not to exceed a period of 180 days.<sup>115</sup> See proposed 8 CFR 214.2(f)(5)(vii). If the EOS application is still pending after 180 days have passed, the F-1 student would no longer be authorized for employment and would need to stop engaging in on-campus employment. DHS is proposing a 180-day automatic extension period in order to minimize disruptions to on-campus employment by teaching assistants, post-graduates working on research projects, and other positions that are integral to an F-1 student's educational program. A 180-day period would be consistent with the other automatic extension for F-1 STEM OPT students.<sup>116</sup> That timeframe has been in existence since 2008 and DHS expects the F-1 population of students and employers to be familiar with it. DHS welcomes comments on whether the 180 day period of automatic extension for employment is an appropriate time period.

Likewise, DHS is proposing an automatic extension of off-campus employment authorization for up to 180-days during the pendency of the EOS application, for F-1 aliens who have demonstrated severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C). These circumstances may include loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate

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<sup>115</sup> See 8 CFR 214.2(f)(9)(i) for a description of on-campus employment. For on-campus employment that is based on severe economic hardship resulting from emergent circumstances pursuant to 8 CFR 214.2(f)(5)(v), see later discussion for additional restrictions.

<sup>116</sup> 8 CFR 274a.12(b)(6)(iv).

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 expenses. *Id.* In such cases, DHS believes a 180-day automatic extension of employment authorization would help alleviate the severe economic hardship and avoid a disruption in their employment, especially given the fact that an Employment Authorization Document is required and frequency at which these students must submit an application for employment authorization.<sup>117</sup>

Additionally, given that USCIS' average EAD processing time is typically 90-120 days, a 180-day timeframe provides sufficient flexibility in case of unexpected delays.<sup>118</sup> A longer auto-extension period for automatic extension of employment authorization is unnecessary.

For F-1 aliens granted off-campus employment authorization on the basis of severe economic hardship resulting from emergent circumstances pursuant to 8 CFR 214.2(f)(5)(v), DHS is proposing an automatic extension of such employment authorization with a different validity period than the general 8 CFR 214.2(f)(9)(ii)(C) severe economic hardship employment authorization extension described above while their EOS applications are pending. As first promulgated in 1998, the regulations provide necessary flexibility to address unforeseeable emergencies by allowing DHS, by notice in the Federal Register, to suspend the applicability of some or all of the requirements for on- and off-campus employment authorization for specified F-1 students where an emergency situation has arisen calling for this action. These F-1 students must continue to attend classes, but are allowed to take a reduced course load. By regulation,

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<sup>117</sup> See 8 CFR 274a.12(c)(3). 8 CFR 214.2(f)(9)(ii)(F)(2) provides that employment authorization based upon severe economic hardship may be granted in one-year intervals up to the expected date of completion of the student's current course of study.

<sup>118</sup> See Check Case Processing Time, available at <https://egov.uscis.gov/processing-times/> (last visited June 19, 2020). The Potomac Service Center, which adjudicates all applications for Employment Authorization for Optional Practical Training, lists processing times from 3.5 to 5.5 months.

aliens must take at least 6 semester or quarter hours of instruction at the undergraduate level or 3 semester or quarter hours of instruction at the graduate level. *See* 8 CFR 214.2(f)(5)(v). Failure to take the required credits could be considered a failure to maintain F-1 status. The special student relief (SSR) regulations are announced by notice in the Federal Register and that employment may only be undertaken during the validity period of the SSR notice. Currently, any extension of SSR-based employment would have to be granted before the expiration of the prior grant of SSR employment-based employment authorization, if it is not granted before the expiration of the prior authorization, the student must stop working under that SSR-based employment authorization benefit, until the renewal is reauthorized. Because students are currently admitted for D/S, these aliens generally do not have to be concerned about their F-1 period of authorized stay. However, with the shift to a fixed admission period, these aliens would have to be cognizant of that date in order for the EOS to be approved. DHS believes it is appropriate to provide an automatic extension of SSR-based employment so aliens' ability to benefit from this long-standing regulatory relief is not interrupted by USCIS processing times. Consistent with existing practice for certain nonimmigrants who require an EAD,<sup>119</sup> DHS proposes to automatically extend SSR authorization if an F-1 alien has a timely-filed EOS pending for up to the end date stated in the Federal Register notice announcing the suspension of certain requirements, or 180 days, whichever is earlier.

As evidence of these automatic extensions of employment authorization, DHS is proposing that the F-1 aliens' Form I-94 (or successor form) or Employment Authorization Document (EAD, Form I-766, or successor form), for F-1s requiring an EAD, when combined with a notice issued by USCIS indicating receipt of a timely filed extension of stay application

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<sup>119</sup> See 8 CFR 274a.13(d).



(such as the Form I-797), would be considered unexpired until USCIS issues a decision on the EOS application, not to exceed 180 days. *See* proposed 8 CFR 214.2(f)(5)(vii). SSR-based employment authorization that has been automatically extended can be evidenced by the F-1 alien's EAD and receipt notice issued by USCIS (the Form I-797), not to exceed the lesser of 180 days or the end date stated in the Federal Register notice announcing the suspension of certain requirements.

DHS believes that continued employment authorization for aliens wishing to work as an intern for an international organization, engage in CPT, or in pre-or post-completion OPT present materially different circumstances from those pertaining to aliens who are experiencing emergent circumstances, severe economic hardship, or engaging in on campus employment, and that the same automatic extension policies therefore should not apply to them.

First, related to the employment authorization requests to engage in an internship with an international organization, such requests arise when a student has an opportunity for an internship with certain organizations and these make up a smaller proportion of employment authorization applications. These requests are not tied to economic necessity or emergent circumstances. Therefore, DHS is not recommending an automatic extension of employment authorization while these aliens have a timely filed EOS pending.

Second, students engaging in CPT or pre-completion OPT are still enrolled in school and pursuing a curriculum. DHS expects that DSOs would not authorize any practical training for a length of time beyond their fixed date of admission on the I-94, so an automatic extension of employment authorization would be inappropriate. DHS proposes to add a sentence at the end of 8 CFR 214.2(f)(10)(i) stating that curricular practical training may not be granted for a period exceeding the alien's fixed date of admission as noted on his or her Form I-94, and that such

alien must not engage in curricular practical training until USCIS approves his or her timely-filed EOS request. *See* proposed 8 CFR 214.2(f)(10)(i).

Third, where a student timely files an EOS and an application to engage in post-completion OPT employment, DHS believes the current and longstanding policy of obtaining authorization from USCIS, in the form of an EAD, before an alien may work in the United States is appropriate. Applications must be reviewed and adjudicated to determine that students are eligible for OPT. Students engaging in post-completion OPT often have less contact with their schools and DSOs, and this underscores the importance for DHS to directly examine these applicants, ensuring that their contact information is accurate, as well as checking that they have not engaged in any unauthorized activities.

DHS does not propose any changes to the STEM OPT extension provision at 8 CFR 274a.12(b)(6)(iv) under which an Employment Authorization Document issued for OPT is automatically extended for a period of up to 180 days while a timely filed application for employment authorization (Form I-765) for STEM OPT extension is pending. Students who are eligible for the STEM OPT extension have previously applied for OPT and received an EAD. Their applications were adjudicated by USCIS to determine that they were eligible for OPT. In addition, the STEM OPT program has requirements and safeguards for both students and employers that other practical training programs do not. For example, the student's STEM OPT employer is required to be enrolled in E-Verify, and the terms and conditions of a STEM practical training opportunity, including duties, hours, and compensation, must be commensurate with the terms and conditions applicable to the employer's similarly situated U.S. workers in the area of employment. *See* 8 CFR 214.2(f)(10)(ii)(C)(7). DHS also has oversight into this program

through site visits to employer locations in which STEM OPT students are employed. Thus, DHS does not think changes to the automatic extension provision are needed.

Finally, DHS is proposing some technical amendments. In 8 CFR 214.2(f)(9)(i), the word “Commissioner” would be replaced by “Secretary”; the term “residents” following “United States” would be replaced by “workers” for better accuracy; the term “Form I-20 A-B” would be replaced by the currently used form, “Form I-20”; and the end of the paragraph would be revised to clarify that an alien who has a timely filed application for an EOS may engage in on-campus employment for a period not to exceed 180 days, or until USCIS approves his or her application, whichever is earlier. *See* proposed 8 CFR 214.2(f)(9)(i). DHS also proposes to strike and reserve 8 CFR 214.2(f)(10)(i)(A), which refers to a non-SEVIS process for requesting curricular practical training authorization. Because all schools enrolling F students must be SEVP-certified and use SEVIS to indicate CPT authorization, the provision is outdated. *See* proposed 8 CFR 214.2(f)(10)(i)(A).

#### v. New Process for EOS Applications

Under current regulations, F-1 students are able to obtain a program extension from a DSO as long as they are maintaining status and making normal progress toward the completion of their educational objectives. *See* 8 CFR 214.2(f)(7)(i) and (iii). The problem with the “normal progress” standard is that it is undefined, and DHS believes that retaining it could lead to inconsistent adjudications. Even now, the lack of a standard definition for normal progress leads DSOs to inconsistently extend F-1 students’ program end dates and thus their stay in the United States. Some DSOs use a strict standard, evaluating, for example, documentation to support a student’s claim of a compelling medical illness that serve as the basis for the student’s request for extension of the student’s current program. However, other DSOs claim that the student is

making “normal progress” whenever a student simply needs more time to complete the program. This inconsistency results in some students being able to remain in F-1 status for years simply by having the DSO update the Form I-20 without providing a justification as to how the student is making “normal progress” and what academic or medical circumstances necessitate the extension of the program.

Therefore, DHS proposes not to use a “normal progress” standard with respect to seeking an extension of an authorized period of stay. In addition to the requirement that the applicant obtain an I-20 from the DSO recommending extension of the program, the applicant will be required to file an EOS application to request additional time to complete their current course of study beyond their authorized period of admission. *See* proposed 8 CFR 214.2(f)(7)(i).

Apart from pursuing a new course of study, DHS appreciates that the time for study can legitimately fluctuate given the changing goals and actions of the student. For example, a student may experience compelling academic or medical reasons, or circumstances beyond their control that cause them to need additional time in the United States beyond the predetermined end date of the program in which they were initially enrolled. DHS understands these circumstances arise and believes these scenarios present an appropriate situation for the Department to directly evaluate the nonimmigrant’s eligibility for additional time in the United States. However, instead of effectively extending their stay through a DSO’s program extension recommendation in SEVIS, students would have to obtain an I-20 from the DSO recommending a program extension and apply to USCIS for an extension of stay. Immigration officers thereby would be able to conduct appropriate background and security checks on the applicant at the time of the extension of stay application and directly review the proffered evidence to ensure that the alien is eligible

for the requested extension of stay, including through assessing whether the alien remains admissible. *See* 8 CFR 214.1(a)(3)(i).

In these circumstances, the Department would only extend the stay beyond the prior admission date (typically the program end date for which the student was admitted to the United States as a F-1 nonimmigrant or was granted based on a change of status or extension of stay) of an otherwise eligible F-1 student requesting additional time to complete their program if the additional time needed is due to a compelling academic reason, documented medical illness or medical condition, or circumstance that was beyond the student's control. As with all nonimmigrant extensions of stay, an alien seeking an extension of stay generally must have continually maintained status.<sup>120</sup> And if a student dropped below a full course of study, that drop must have been properly authorized. Students seeking extensions of stay must primarily be seeking to temporarily stay in the United States solely to pursue a full course of study, INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i), not for other reasons separate from, or in addition to, pursuing a full course of study.

By way of illustration, a student with a fixed date of admission may request an additional 4 months to complete his program because he was authorized to drop below a full course of study for one semester due to illness. The student would need to request an updated I-20 from the DSO recommending a program extension. In such an instance, an immigration officer could review the proffered evidence and ensure that the claim is supported by documentation from a medical doctor. Conversely, a student may request an EOS for additional time to complete an

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<sup>120</sup> Failure to file before the expiration of the previously accorded status or failure to maintain such status may be excused at the discretion of USCIS if the alien demonstrates that at the time of filing: the delay was due to extraordinary circumstances beyond the control of the applicant, and USCIS finds the delay commensurate with the circumstances, the alien has not otherwise violated his or her status, and is not subject to deportation. 8 CFR 214.1(c)(3)(viii).

associate program, but fail to submit evidence they were properly authorized to drop below a full course of study. Under the proposed regulation, the immigration officer would have discretion to request transcripts from the student. If a student's transcripts reflect the student failed multiple classes one semester, an immigration officer could determine the student has failed to maintain status due to a failure to carry a full course of study as required. In another example, a student could submit an EOS request to continue in the same program because he or she was unable to take all the required classes for his or her major due to over-enrollment at the school. Again, an officer could request additional information, if needed, to determine that the student was maintaining a full course of study (or, if not, was properly authorized to reduce his or her course load), but due to the school's high enrollment, the student may validly require an additional semester to complete the degree requirements in order to graduate.

Therefore, DHS is proposing to eliminate a reference to "normal progress" with respect to seeking a program extension, and incorporate a new standard that makes it clear that acceptable reasons for requesting an extension of a stay for additional time to complete a program are: (1) compelling academic reasons; (2) a documented illness or medical condition; and (3) exceptional circumstances beyond the control of the alien. *See* proposed 8 CFR 214.2(f)(7)(iii).<sup>121</sup> The first two factors are based on the current regulatory provisions for program extension, 8 CFR 214.2(f)(7)(iii), from current text (i.e., changes of major or research topics, and unexpected research problems). DHS proposes to clarify that, in addition to academic

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<sup>121</sup> DHS does not propose to update the term "normal progress" as defined in 8 CFR 214.2(f)(6)(i)(E) because the Department does not feel it addresses the same concerns as it does at 8 CFR 214.2(f)(5). The provision at 8 CFR 214.2(f)(6)(i)(E) relates to study at an approved private elementary or middle school or public or private academic high school. In that context, it is clear that "normal progress" is the completion of the academic year (for example, 6<sup>th</sup> grade).

probation and suspension, a pattern of behavior which demonstrates a student's repeated inability or unwillingness to complete his or her course of study, such as failing classes, is not an acceptable reason for an extension of stay for additional time to complete a program. *See* proposed 8 CFR 214.2(f)(7)(iii)(B)(I). Current program extension requirements do not address students who have failed to carry a full course of study due to failed classes in an academic term or students who have a pattern of failing grades during their studies. DHS expects bona fide students to be committed to their studies, attending classes as required, carrying a full course of study, and making reasonable efforts toward program completion. Passing a class, or not, is something that is within the student's control. Therefore, a student who has a pattern of failing grades or has failed to carry a full course of study due to failing grades would not be qualified for an extension of stay. This prohibition would not include students, such as those university students who, pursuant to DHS regulations, are permitted to take 12 semester hours of coursework and, therefore, necessarily would not complete their programs within 4 years. Absent academic probation or suspension, or negative factors such as repeatedly failing classes, these students would be eligible for extension based upon compelling academic reasons. This prohibition would also not include cases where the student was properly authorized to drop below a full course of study due to academic difficulties or medical conditions or has been reinstated to student status based on a reduction in course load that would have been within a DSO's power to authorize. The student would be expected to provide evidence demonstrating the compelling academic reason in order for the DSO to recommend program extension and then the student may apply for extension of stay. While a letter from the student may be sufficient to meet his or her burden of proof, an immigration officer will evaluate the individual case and make the determination if additional evidence (such as a letter from a member of the school

administration or faculty) is needed to adjudicate the case.

Next, DHS is proposing to clarify that a student can qualify for a program extension and corresponding extension of stay based on a medical reason, but it must be a documented illness or medical condition. To provide an objective standard, DHS proposes to codify standards already included in 8 CFR 214.2(f)(6)(iii)(B), which requires a student to provide medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist to substantiate the illness or medical condition if seeking a reduced course load. *See* proposed 8 CFR 214.2(f)(7)(iii)(B)(2). As this is already a long-standing requirement for DSOs and students in a similar context, DHS believes that it would be appropriate and easy to implement in the program extension and corresponding extension of stay process. Further, requiring applicants to provide documentation of their medical illness or medical condition that caused their program delay is a reasonable request, because they are asking DHS to provide them additional time in the United States.

DHS is also proposing a new factor in the extension of stay provisions - circumstances beyond the student's control, including a natural disaster, a national health crisis, or the closure of an institution. *See* proposed 8 CFR 214.2(f)(7)(iii)(B)(3). As in the reinstatement context, DHS believes that there might be additional reasons beyond compelling academic or documented medical reasons that result in a student's inability to meet the program end date listed on the Form I-20.

Therefore, DHS is proposing a third prong that would encompass scenarios that are not envisioned in the current provisions governing the extension of a program end date, such as those noted above. Some of these examples are currently in the reinstatement provisions, 8 CFR 214.2(f)(16)(i)(F), and DHS believes that they merit favorable consideration in extension



requests. However, the circumstances surrounding the closure of a school, if relevant, may be considered in determining whether the student qualifies for an extension of stay. For example, if a school closes as a result of a criminal conviction of its owners for engaging in student visa fraud by not requiring students to attend, and the student is unable to demonstrate that he or she was attending classes prior to closure as required to fulfill a full course of study, the closure of the institution might not qualify the student for a program extension.

The requirements to timely request an extension of the program end date would remain largely unchanged; however, DHS proposes a technical change to replace all references to the DSO “granting” an extension of the program with the term “recommend” an extension of the program in order for the student to file for EOS because USCIS, not the DSO, would “grant” the extension of stay. *See* proposed 8 CFR 214.2(f)(7)(iii)(C). For example, a student may not necessarily be granted an extension of stay by USCIS if an adjudicator determines the student has not actually maintained status or does not actually have compelling academic or documented medical reasons for the delay, despite the DSO’s recommendation for program extension. Where the alien requests a recommendation to extend the program end date, the DSO could only make a recommendation to extend the program if the alien requested the extension before the program end date noted on the most recent Form I-20, or successor form. *Id.* Additionally, consistent with changes throughout this NPRM, once the DSO recommends the extension of the program, the alien would need to timely file for an EOS on the form and in the manner designated by USCIS, with the required fees and in accordance with the filing instructions, including any biometrics required by 8 CFR 103.16 and a valid, properly endorsed Form I-20 or successor form, showing the new program end date, *id.*, barring extraordinary circumstances, *see* 8 CFR 214.1(c)(4).

If seeking an EOS to engage in any type of practical training, the alien in F-1 status would also need to have a valid Form I-20, properly endorsed for practical training, and be eligible to receive the specific type of practical training requested. Finally, as with all immigration benefit requests, an immigration officer would generally not grant an EOS where an alien in F-1 status failed to maintain his or her status. *Id.*

Finally, a student's failure to timely request from the DSO a recommendation for extension of the program end date, which would result in the DSO recommending an extension of the program end date in SEVIS *after* the end date noted on the most recent Form I-20 or successor form, would require the alien to file for a reinstatement of F-1 status, because the alien would have failed to maintain status and would be ineligible for an EOS. *See* proposed 8 CFR 214.2(f)(7)(iii)(D). A request for reinstatement must be filed in the manner and on the form designated by USCIS, with the required fee, including any biometrics required by 8 CFR 103.16. DHS is also requiring F-2 dependents seeking to accompany the F-1 principal student to file applications for an EOS or reinstatement, as applicable. These requirements are consistent with current provisions.

With the transition from D/S to admission for a fixed time period, F-1 students would need to apply for an EOS directly with USCIS, by submitting the appropriate form and following the requirements outlined in the form instructions. USCIS anticipates accepting the Form I-539, Application to Change/Extend Nonimmigrant Status, for this population but would like the flexibility to use a new form if more efficient or responsive to workload needs. Thus, DHS is proposing to use general language to account for a possible change in form in the future. If the form ever changes, USCIS would provide stakeholder's advanced notice on its webpage and comply with Paperwork Reduction Act requirements.

Like all other aliens who file a Form I-539, F-1 applicants would be required to submit biometrics and may be required to appear for an interview pursuant to 8 CFR 103.2(b)(9). In addition, applicants would need to demonstrate that they are eligible for the nonimmigrant classification sought. Accordingly, applicants must submit evidence of sufficient funds to cover expenses. A failure to provide such evidence would render the applicant ineligible for the extension of stay. *See* proposed 8 CFR 214.2(f)(7)(iv).

While the sponsoring school is required to verify the availability of financial support before issuing the Form I-20, they may not be well-versed in foreign documentation submitted by applicants and circumstances may change between issuance of a Form I-20 and a request for an extension of stay. Further, it is incumbent upon DHS to determine the veracity of the evidence submitted, and officers must ensure that the student has sufficient funds to study in the United States without resorting to unauthorized employment. The phrase "sufficient funds to cover expenses" is referred to in Department of State regulations concerning issuance of F and M nonimmigrant student visas, 22 CFR 41.61(b)(1)(ii), and Department of State policy requires an applicant to provide documentary evidence that sufficient funds are, or will be, available to defray all expenses during the *entire* period of anticipated study.<sup>122</sup> While this does not mean that the applicant must have cash immediately available to cover the entire period of intended study, which may last several years, the applicant must demonstrate enough readily available funds to meet all expenses for the first year of study.<sup>123</sup> DHS believes requiring evidence of financial resources to cover expenses for one year of study is reasonable given that F students are familiar with this requirement because this is the standard used by the Department of State in the issuance

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<sup>122</sup> *See* 9 FAM 402.5-5(G).

<sup>123</sup> *Id.*

of F nonimmigrant visas. DHS also considers that this standard is appropriate because it establishes concrete resources for one full academic year of the program. Further, applicants must demonstrate that, barring unforeseen circumstances, adequate funds will be available for each subsequent year of study from the same source or from one or more other specifically identified and reliable financial sources. Such evidence for one year and subsequent years could include, but is not limited to: complete copies of detailed financial account statements for each account intended to be used to fund the student's education; other immediately available cash assets; receipts and/or a letter from the school accounts office indicating tuition payments already made and any outstanding account balance; affidavits of support from a sponsor; proof of authorized private student loans;<sup>124</sup> and/or other financial documentation.

F-1 applicants would need to timely file their EOS application – meaning that USCIS would need to receive the application on or before the date the authorized admission period expires. *See* proposed 8 CFR 214.2(f)(7)(v). This timeframe would include the 30-day period of preparation for departure allowed after the completion of studies or any authorized practical training. However, if the extension application is received during the 30-day period of preparation for departure provided in proposed 8 CFR 214.2(f)(5)(iv) following the completion of studies, the alien in F-1 status may continue studying but may not continue or begin engaging in practical training or other employment until the extension request is approved and, as applicable, an employment authorization document is issued. *See* proposed 8 CFR 214.2(f)(7)(v).

The length of the extension granted could be up to the period of time needed to complete the program or requested practical training, not to exceed 4 years, unless the alien is a border commuter, enrolled in language training, attending a public high school, or the two-year limits

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<sup>124</sup> Federal student loans are only available to U.S. citizens and permanent residents.

on admission at paragraph (f)(20) apply in which case further restrictions apply, as described above. By permitting admission only “up to” the prescribed period, USCIS and CBP are afforded discretion as to the ultimate length of time to grant the applicant, and consider factors such as program length. Additionally, this proposal would replace the current provision at 8 CFR 214.2(f)(7)(iv), which references SEVIS and non-SEVIS schools and is outdated.

F-2 dependents seeking to accompany the F-1 principal student would need to file applications for an EOS or reinstatement, as applicable. *See* proposed 8 CFR 214.2(f)(7)(vii). Dependent F-2 spouses and children seeking to accompany the principal F-1 student during the additional period of admission would need to either be included on the primary applicant’s request for extension or properly file their own EOS applications on the form designated by USCIS. If the dependent files a separate Form I-539, he or she would need to pay a separate Form I-539 filing fee. However, if the dependent files a Form I-539A as part of the primary applicant’s EOS request on a Form I-539, only one fee would be required.

USCIS would need to receive the extension applications before the expiration of the previously authorized period of admission, including the 30-day period following the completion of the course of study, as indicated on the F-2 dependent’s Form I-94. To qualify for an EOS, the F-2 dependent would need to demonstrate the qualifying relationship with the principal F-1 student who is maintaining status, also be maintaining his or her own status, and not have engaged in any unauthorized employment. *See* proposed 8 CFR 214.2(f)(7)(vii). Extensions of stay for F-2 dependents would not be able to exceed the authorized admission period of the principal F-1 student. *Id.*

Under proposed 8 CFR 214.2(f)(7)(viii), if USCIS denies the request for an extension, and the period of admission for the student and his or her dependents has expired, then the

student and his or her dependents would need to immediately depart the United States. As with other nonimmigrant categories, they would not be given any period of time to prepare for departure from the United States after the denial, and there may be significant immigration consequences for failing to depart the country immediately. For example, such aliens generally would begin to accrue unlawful presence the day after the issuance of the denial. DHS believes this standard provides parity across nonimmigrant categories and invites the public to submit comments on this issue as well as the proposed EOS application process.

#### vi. School Transfers and Changes in Educational Levels

As discussed above, a significant concern with the current D/S framework is that it has enabled “pay-to-stay” fraud in which school owners falsely report to DHS that a student is maintaining status in return for cash payments even though the student is not attending or is otherwise violating his or her status. In some cases, school owners have operated multiple schools and transferred students between these schools to conceal this fraud. For example, in 2018, a defendant was sentenced by a federal judge in the Central District of California to 15 months in prison and ordered to forfeit more than \$450,000 for running such a scheme involving three schools that he owned.<sup>125</sup> Furthermore, as discussed more thoroughly in Section 4.L.ii above, the D/S framework has enabled some aliens to become “professional students” who spend years enrolled in programs at the same educational level (for example, multiple associate programs) or complete programs at one educational level and enroll in lower educational levels

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<sup>125</sup> DOJ Press Release, *Owner of Schools that Illegally Allowed Foreign Nationals to Remain in U.S. as ‘Students’ Sentenced to 15 Months in Federal Prison*, (Apr. 19, 2018), available at <https://www.justice.gov/usao-cdca/pr/owner-schools-illegally-allowed-foreign-nationals-remain-us-students-sentenced-15> (last accessed April 11, 2020).

(such as completing a master's degree then enrolling in an associate program). DHS believes the proposed changes previously discussed regarding admission for a fixed time period and limitations on program changes within and between educational levels will help to address these concerns and serve to further strengthen the integrity of the F nonimmigrant visa category by better ensuring that aliens are in the United States primarily to study, rather than to reside permanently in the United States. *See* proposed 8 CFR 214.2(f)(8)(i)(B).

In addition to proposing new restrictions for the number of programs an F-1 nonimmigrant can complete at the same or a lower educational level, DHS proposes to retain some of the current school transfer and change of educational level conditions. First, as is the case currently, aliens would need to begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I-20; and second, if the alien is authorized to engage in post-completion OPT, he or she must be able to resume classes within 5 months of changing programs or transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is earlier. *See* proposed 8 CFR 214.2(f)(8)(i)(A) and (B).

Another indication of a violation of F-1 status is failing to pursue a full course of study at the school that the alien is authorized to attend. *See* proposed 8 CFR 214.2(f)(8)(ii). DHS is proposing to retain the current provisions, rendering aliens who do not pursue a full course of study ineligible to change programs or transfer schools, and is clarifying that failure to pursue a full course of study includes, but is not limited to, a student whose pattern of behavior demonstrates a repeated inability or unwillingness to complete his or her course of study, such as failing grades, resulted in the student not carrying a full course of study unless the student was previously authorized for a reduced course load. Just as delays caused by unacceptable patterns

of behavior, academic probation or suspension would not be acceptable reasons for program extensions and corresponding EOS of a student's current program, neither would they be an acceptable reason for failing to carry a full course load. Such aliens would have failed to maintain F status, are ineligible for a change of program and school transfers, and would be required to file for a reinstatement of status, if eligible. *See* proposed 8 CFR 214.2(f)(8)(ii).

Finally, DHS proposes some technical updates. First, the Department would strike outdated provisions in 8 CFR 214.2(f)(8)(ii) to account for the fact that all schools must now be SEVP-certified and to clarify that the transfer provision applies only to transfers from a SEVIS school to a SEVIS school. *See* proposed 8 CFR 214.2(f)(8)(iii). Second, DHS proposes to update the current process by which DSOs notify USCIS of certain events, such as failure to maintain a full course load, to reflect the fact that SEVIS is used for this purpose and that a paper Form I-20 is no longer used for this purpose. *See* proposed 8 CFR 214.2(f)(8)(iv). Third, if the new program to which the student changes or transfers will not be completed within the authorized admission period established in paragraphs (f)(5)(i) or (f)(20) of this section, then, consistent with the other provisions throughout this proposed rule the F-1 student would need to apply for EOS in the manner and on the form designated by USCIS, with the required fee and in accordance with form instructions, together with a valid, properly endorsed Form I-20 indicating the new program end date, and would need to provide biometrics as authorized by 8 CFR 103.16. *See* proposed 8 CFR 214.2(f)(8)(v).

#### vii. OPT Employment Authorization

##### 1. Pending Employment Authorization Requests

Currently, 8 CFR 214.2(f)(10)(ii)(D) provides for "duration of status" to include periods students spend in the United States on post-completion OPT. As D/S admissions would be



replaced with admission for a fixed time period throughout this rulemaking, DHS is proposing to clarify that an alien in F-1 status recommended for post-completion OPT must apply for employment authorization and an EOS, and may not engage in post-completion OPT unless such employment authorization is granted.<sup>126</sup> *See* proposed 8 CFR 214.2(f)(10)(ii)(D).

Like several other types of employment, a student would need to stop working if USCIS does not adjudicate the employment authorization application before the specific end date for the period of authorized stay is reached. While DHS recognizes the challenge presented by the transition from a D/S regime to a fixed time period, the proposition that employment must cease until the EAD grant or renewal is approved is not unique to this scenario. 8 CFR 274a.13(d) automatically extends EADs upon the filing of a renewal request for 180 days, after which the alien must cease employment if the renewal is still pending. This policy is thus consistent with the treatment of several other nonimmigrant categories and DHS does not believe it would cause significant disruption to F-1 students as most are not working prior to this application for post-completion OPT.

Where the application for EOS and post-completion OPT are granted, the alien would receive an additional 30-day period [from the program end date or EAD end date, as applicable to prepare for departure from or otherwise maintain status in the United States following the expiration of the status approved to complete post-completion OPT. *See* proposed 8 CFR 214.2(f)(5)(iv).

## 2. Proposed changes to form name and filing timeframes

DHS proposes to remove references in paragraphs 8 CFR 214.2(f)(11)(i)(A) and (C) to

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<sup>126</sup> The regulations set out the requirement that F-1 nonimmigrants seeking OPT and STEM OPT are required to apply for work authorization at 8 CFR 274a.12(c) and (c)(3).

the Form I-765 currently used by nonimmigrants to request employment authorization and replace them with language used throughout the proposed rule: “by filing the form designated by USCIS with the required fee and in accordance with form instructions.” The Department believes that such language gives USCIS the flexibility to change the form number or name without having to engage in a full rulemaking. In all cases, DHS would provide applicants with advanced notice of which form to use and the accompanying instructions. Additionally, DHS proposes technical changes in 8 CFR 214.2(f)(11), such as replacing the term ‘student’ with ‘alien in F-1 status’ and other edits reorganizing and rewording some paragraphs to improve readability.

The other change that DHS proposes regarding filing applications for OPT-based employment authorization is to provide more time for aliens to submit their applications.

Currently, the following filing deadlines are in place:

- Pre-completion OPT: aliens may file the application for employment authorization up to 90 days before being enrolled for one full academic year, provided that the employment will not begin prior to the completion of the full academic year. 8 CFR 214.2(f)(11)(i)(B)(1).
- Post-completion OPT: file the application for employment authorization up to 90 days before program end date and no later than 60 days after program end date. 8 CFR 214.2(f)(11)(i)(B)(2).
- STEM OPT: file the application for employment authorization up to 90 days before the expiration of current EAD and within 60 days of the DSO’s recommendation. 8 CFR 214.2(f)(11)(i)(C).

DHS proposes to increase the number of days applicants have to file prior to the program end date from 90 days to 120 days and shorten the number of days students have to file an

application for post-completion OPT after the program end date from 60 days to 30 days. *See* proposed 8 CFR 214.2(f)(11)(i)(B)(2). Likewise, DHS proposes to strike the requirement in 8 CFR 214.2(f)(11)(i)(B)(2) and (C) which require students file their Form I-765 with USCIS within 30 days and 60 days, respectively, of the date that the DSO enters the recommendation into SEVIS. DHS believes that such a timeframe for obtaining the DSO recommendation seems unnecessary given that students would always be required to first get their DSO's recommendation before filing their Form I-765 requesting OPT employment authorization and a regulatory timeframe for submitting the I-765 is already in place. Once they get their DSO's recommendation, they would then be eligible to file their Form I-765 within 30 days after their program end date or up to 120 days before the expiration of their current EAD.

While USCIS anticipates timely processing these cases, there would be an increase in volume of EOS applications following the effective date of the final rule as those nonimmigrants who are required to file EOS begin to do so, and the Department believes that allowing applicants more time to file an EOS application would stagger the applications, helping to maintain a consistent volume. This, in turn, could enable USCIS to more efficiently manage this OPT-related workload, so the agency may be better equipped to adjudicate these requests in a timely manner and diminish the likelihood of gaps in employment. Additionally, DHS believes that shortening the filing window after the program end date would better align with the proposed period to prepare for departure. And, finally, DHS recommends technical changes such as replacing "shall" with "will" and clarifying edits throughout proposed 8 CFR 214.2(f)(11) for readability.

viii. Temporary Absence from the United States of F-1 Student Granted Employment Authorization

DHS proposes to strike and reserve 8 CFR 214.2(f)(13), which specifies how an F-1 student who has been granted employment authorization may apply for admission and resume employment, if readmitted to attend the same school which granted the employment authorization, when he or she returns to the U.S. from a temporary absence abroad . *See* 8 CFR 214.2(f)(13)(i) . The regulatory provision at 8 CFR 214.2(f)(13)(ii) states that an F-1 student who has an unexpired EAD, issued for post-completion practical training, and who is otherwise admissible, may return to the United States to resume employment after a period of temporary absence. As DHS sets forth admission procedures to pursue off campus employment, post-completion training, and STEM OPT in proposed 8 CFR 214.1(a)(4)(i)(D), the reference in 8 CFR 214.2(f)(13) is redundant and could lead to confusion.

#### ix. Border Commuter Students

DHS proposes to replace “nonimmigrant student” with “alien with F-1 status” consistent with proposed revisions throughout the NPRM, and to strike the sentence referencing how “duration of status” is inapplicable to border commuter students because DHS is proposing to eliminate duration of status for all F nonimmigrants. *See* proposed 8 CFR 214.2(f)(18)(iii).

### F. Requirements for Admission, Extension, and Maintenance of Status of I Nonimmigrants

#### i. Definition of foreign media organization

Changes in technology and in the way that the public consumes media information have raised novel questions as to whether certain individuals fit within the statutory and regulatory provisions that are applicable to representatives of foreign information media. To address these questions, DHS proposes to define a 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.” *See* proposed 8 CFR 214.2(i)(1). This proposal clarifies long-standing practice that the alien be a representative of a media organization with a home office in a foreign country by codifying what is considered a foreign media organization when seeking qualification as an I nonimmigrant.<sup>127</sup> By requiring evidence that shows that the foreign organization that employs or contracts the I nonimmigrant has a home office in a foreign country, and that the office in a foreign country continues to operate while the I nonimmigrant is in the United States, DHS would help ensure that the I nonimmigrant, at the time of application for admission, change of status, or application for extension of stay, is a bona fide representative of *foreign* media organization. *See* proposed 8 CFR 214.2(i)(2). Further, to conform to the statutory intent of the I classification, DHS is proposing to clarify and codify the DOS and USCIS long-standing practice interpreting “foreign information media” under INA 101(a)(15)(I) as “journalistic information.” This standard is in place when aliens apply for an I visa abroad or seek to change to I nonimmigrant status in the United States and aligns with statutory intent, which is to facilitate foreign press and journalism, rather than for entertainment or promotional purposes, such as performing or appearing on reality television programs. There are other options for those aliens, such as the P nonimmigrant classifications.<sup>128</sup>

DOS is the entity that determines whether an alien qualifies for an I visa, while USCIS is the entity that determines whether an alien who is in the United States in another nonimmigrant status can change to I status or whether an I alien who is already in the United States and seeks to change his or her employer or information medium continues to qualify for an I status. USCIS and DOS guidance discuss the distinction between journalistic content and content that is

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<sup>127</sup> *See generally* USCIS Policy Manual, Vol. 2, Part K, Chap. 2. Available at <https://www.uscis.gov/policy-manual/volume-2-part-k-chapter-2> (last visited 6/18/2020); 22 CFR 41.52; 9 FAM 402.11-3(a)(1).

<sup>128</sup> INA section 101(a)(15)(P), 8 U.S.C. 1101(a)(15)(P).

primarily for entertainment. DOS considers journalistic information as “content that is primarily informational in nature, such as the reporting on recent or important events, investigative reporting, or producing educational materials, such as documentaries. It does not include content that is primarily designed to provide entertainment rather than information, including scripted or contrived situations, such as most “reality television” shows. It also does not include most personal content, such as discussions of personal experiences in the United States or materials aimed at fan engagement, or works produced for promotional or marketing purposes.”<sup>129</sup> DOS’ definition aligns with current USCIS practice where the “officer should consider whether the intended use is journalistic, informational, or educational, as opposed to entertainment. The officer should also consider the foreign distribution of the film or video footage in addition to other factors, including the timeliness of the project relative to the subject event.”<sup>130</sup>

Consistent with DOS guidance and current USCIS practice, whether content is journalistic information would depend on the nature of the content featured on the new media outlet. For example, a political blogger traveling to the United States to cover an election could qualify for I status, as election coverage would generally be considered journalistic information. In this example, the applicant would still need to demonstrate that he or she satisfies the other qualifications of an information media representative, including that he or she represents an organization involved in the regular gathering, production, or dissemination of journalistic information that has a home office in another country.<sup>131</sup>

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<sup>129</sup> See DOS guidance for consular officers adjudicating I visa applications at 9 FAM 402.11-3.

<sup>130</sup> See USCIS Policy Manual, Vol. 2, Part K, Chap. 3. Available at <https://www.uscis.gov/policy-manual/volume-2-part-k-chapter-3> (last visited 4/13/2020) (stating that “[i]ncreasingly, because of the growing popularity of documentary-type biographies and similar nonfiction film productions, the distinction between commercial filmmaking for entertainment and genuine news gathering is less clear. For example, filmed biographies may be regarded as documentary filmmaking or as news gathering).

<sup>131</sup> See 9 FAM 402.11-10, New Media - Blogging And Other Electronic Media Platforms, available at <https://fam.state.gov/FAM/09FAM/09FAM040211.html> (last visited Jan. 16, 2020).

Similarly, a professional travel blogger traveling to the United States to obtain and produce materials on national parks in the United States could also qualify for I classification if all aspects of the definition of an information media representative are established, including the requirement that the media content generated will be journalistic information and that he or she represents an organization having an office in a foreign country and that is involved in the regular gathering, production, or dissemination of journalistic information. However, a blogger traveling to the United States to report on his or her own activities at a national park may not qualify for I status if the applicant does not represent an organization involved in the regular gathering, production, or dissemination of journalistic information and the media content is not primarily journalistic information. Individuals who are not professional bloggers, but maintain a personal blog and will produce content on their blog based on their personal experiences in the United States, such as providing information and reviews of their personal vacation, generally would not qualify for I classification, but may qualify for a B classification, depending on the circumstances. Likewise, a blogger promoting a line of products would not qualify for I status.

These standards facilitate the travel of representatives of foreign information media. These proposed standards codify and clarify existing U.S. government practice and thus would not significantly alter the current guidance used by DHS officers adjudicating these cases or by DOS when determining whether an I visa should be issued. Rather, codifying these standards in the regulation would clarify how representatives of foreign press, radio, film or other journalistic information media qualify for the I classification. DHS does not anticipate that the changes proposed in this rule would represent a significant departure from current processing

ii. Evidence

In order to be granted I classification, an alien would need to meet his or her burden of proof to establish eligibility for admission in that nonimmigrant category. DHS believes that evidence presented by such individuals to establish employment as a bona fide representative of foreign press, radio, film or other journalistic information media should be provided in a letter from the employing foreign media organization verifying the employment, the work to be performed, and the remuneration involved. This evidence would provide a standard basis for DHS to evaluate whether the applicant intends to comply with the I category and only engage in the regular gathering, production or dissemination via print, radio, television, internet distribution or other media of journalistic information and represents, as an employee or under contract, an organization with an office in a foreign country. For example, such a letter would be able to describe the content that the foreign information media representative is covering in the United States, which must be primarily journalistic information in nature, such as the reporting on recent or important events, investigative reporting, or producing educational materials, such as documentaries. Foreign media organizations would be able to describe how the content is primarily designed to provide information rather than entertainment, such as scripted or contrived situations, such as most “reality television” shows, which do not qualify an individual for admission under the I nonimmigrant category.<sup>132</sup>

Where an alien is self-employed or freelancing, the alien must provide an attestation that verifies the employment, establishes that he or she is a representative of a qualifying foreign media organization that meets the foreign home office requirement, and describes the remuneration and work to be performed. In order to maintain the home office in another country,

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<sup>132</sup> For more information about what qualifies as ‘journalistic information’ see 9 FAM 402.11-3 Definitions of “Information Media Representative” and “Journalistic Information”, available at <https://fam.state.gov/FAM/09FAM/09FAM040211.html> (last visited Jan. 14, 2020).



a self-employed applicant would need to demonstrate that he or she intends to depart the United States within a reasonable time frame consistent with the intended purpose of travel. Like the letter from the employing foreign media organization, the attestation from the alien would help to ensure that the individual is engaging in qualifying activities, not activities primarily intended for personal fan engagement, or promotional or marketing purposes, which are unrelated to the regular gathering, production, or dissemination of journalistic information. *See* proposed 8 CFR 214.2(i)(2).

iii. Admission period and EOS

DHS is proposing an admission period for I nonimmigrants of up to 240 days and another period of up to 240 days for an extension, based on the length of the activity. *See* proposed 8 CFR 214.2(i)(3) and (5). As I nonimmigrants who file a Form I-539 request with USCIS to request a change in information medium are currently allowed an automatic extension of employment authorization with the same employer while a Form I-539 application is pending for a period not to exceed 240 days, 8 CFR 274a.12(b)(20), DHS believes that it is appropriate to extend such period of time to other I nonimmigrant contexts. DHS seeks comments on whether this is an appropriate period of time and whether exceptions for I nonimmigrants covered by certain international agreements, including Section 11 of the United Nations Headquarters Agreement, should be added to the final rule.

Aliens applying for an EOS currently file a Form I-539 with USCIS, with required fee and in accordance with form instructions, but DHS is using general terms in the proposed regulatory text when referencing the EOS application. DHS is using general terms, rather than referencing form names and numbers, in the regulatory text to provide flexibility for the future – if the form name or number changes, the Department would not need to engage in rulemaking to

make the update. *See* proposed 8 CFR 214.2(i)(5). And, as with other applicants who file a Form I-539, under the proposed rule applicants would be required to submit biometrics. *See* proposed 8 CFR 214.2(i)(5). Specific guidance and any changes to the filing procedure would be provided in the form instructions, which USCIS would post on its website, making it easily accessible to applicants.

iv. Change in information medium or employer

DHS proposes to retain the requirement that aliens in I status may not change the information medium or the employer they will be working with until they receive permission from USCIS. *See* proposed 8 CFR 214.2(i)(4). This is the current requirement and DHS believes it is appropriate to continue ensuring DHS has an opportunity to review the requested changes and ensure the changes would constitute as qualifying activities under the I program. Aliens would request such permission by submitting the form designated by USCIS, in accordance with that form's instructions, and with the required fee, including any biometrics required by 8 CFR 103.16, as appropriate. Aliens currently submit Form I-539, Application to Extend/Change Nonimmigrant Status, for this purpose. As in other parts of the rule, the proposed regulation does not reference specific form names and numbers in the regulatory text to provide flexibility for the future in the event the form name or number changes. In all cases, applicants would be provided sufficient notice of the appropriate form on USCIS' webpage and in the form instructions.

v. Proposed changes to treatment of I nonimmigrants travelling or presenting a passport from the Hong Kong Special Administrative Region (SAR)

Earlier this year, DHS published a final rule (85 FR 27645, May 11, 2020) amending the I nonimmigrant provision in 8 CFR 214.2(i). The rule amended the regulations to achieve greater

reciprocity in the treatment of certain foreign nationals admitted to the United States in I nonimmigrant status as bona fide representatives of foreign information media who are foreign nationals travelling on a passport issued by the PRC, with the exception of Hong Kong Special Administrative Region (SAR) and Macau SAR passport holders. Under the rule, DHS has begun to admit aliens in I nonimmigrant status or otherwise grant I nonimmigrant status to aliens only for the period necessary to accomplish the authorized purpose of their stay in the United States, not to exceed 90 days. The rule also allows such visitors to apply for extensions of stay. Since the effective date of this rulemaking involving I nonimmigrants from the PRC, the National People's Congress of China announced in late May its intention to unilaterally and arbitrarily impose national security legislation on Hong Kong.<sup>133</sup> Accordingly, the President, under the authority vested to him by the Constitution and applicable laws of the United States, including, among others, section 202 of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5722), has determined that the Special Administrative Region of Hong Kong is no longer sufficiently autonomous to justify differential treatment in relation to the People's Republic of China under relevant U.S. laws, and issued an Executive Order that, among others things, directed agencies to begin the process of eliminating policy exemptions that give Hong Kong differential treatment in relation to PRC. In light of this Executive Order, DHS is proposing to amend its regulations to eliminate differential treatment of I aliens who present, or are traveling on, passports from the Hong Kong SAR, and grant these aliens a period of stay necessary to accomplish the authorized purpose of their I status, not to exceed 90 days. The rule also proposes to allow these I aliens to apply for extensions of stay, not to exceed 90 days. In addition, aliens in I nonimmigrant status

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<sup>133</sup> See the President's Executive Order on Hong Kong Normalization, July 14, 2020, See <https://www.whitehouse.gov/presidential-actions/presidents-executive-order-hong-kong-normalization/> (last visited July 21, 2020).

presenting passports issued by the Hong Kong SAR who are properly maintaining their status on the [FINAL RULE EFFECTIVE DATE] with admission for D/S are authorized to remain in the United States in I nonimmigrant status for a period necessary to complete their activity, not to exceed [DATE 90 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. I nonimmigrants who seek to remain in the United States longer than the automatic extension period provided would be required to file an extension of stay request with USCIS. These proposed changes are in line with the current requirements for I nonimmigrants who are traveling on, or have been issued a passport, by the PRC, which were enacted to achieve greater reciprocity between the United States and the PRC.

#### G. Requirements for Admission, Extension, and Maintenance of Status of J Exchange Visitors

##### i. Admission Period and Period of Stay

###### 1. Principal Applicants

The proposed revisions to the J regulations at 8 CFR closely align with the proposed changes for F nonimmigrants. Under proposed 8 CFR 214.2(j)(1), J exchange visitors would be able to receive a period of admission not to exceed the program end date as stated on the Form DS-2019, up to a period of 4 years, unless otherwise limited to a shorter period under proposed section 8 CFR 214.2(j)(6). Currently, the permissible initial time periods for the J programs (as opposed to the periods of admission) are as follows, though further extensions are possible with DOS approval for all categories:

- Professors and research scholars: the length of program, not to exceed 5 years. *See* 22 CFR 62.20(i)(1).
- Short-term scholars: the length of program, not to exceed 6 months. *See* 22 CFR 62.21(g).

- Trainees and interns: General trainees may be granted 18 months; trainees in the field of agriculture, hospitality and tourism may be granted 12 months, and interns may be granted 12 months. *See* 22 CFR 62.22(k).
- College and university students: the length of time necessary to complete the goals and objectives of the training. *See* 22 CFR 62.23(f)(4). For undergraduate and pre-doctoral training, not to exceed 18 months, and for post-doctoral training, not to exceed a total of 36 months. 22 CFR 62.23(f)(4). Students enrolled in a degree program do not have a definite admission period but must comply with duration of participation requirements at 22 CFR 62.23(h)<sup>134</sup>. If enrolled in a non-degree program, students may be granted up to 24 months. *See* 62.23(h)(2).
- Student intern: up to 12 months. *See* 22 CFR 62.23(h)(3) and (i).
- Teachers: the length of time necessary to complete the program, not to exceed 3 years, unless a specific extension of 1 or 2 years is authorized by DOS. *See* 22 CFR 62.24(j).
- Secondary school students: not more than two academic semesters (or quarter equivalency). *See* 22 CFR 62.25(c)(2).
- Specialists: the length of time necessary to complete the program, not to exceed 1 year. *See* 22 CFR 62.26(i).
- Alien physicians: limited to 7 years, unless the alien physician has demonstrated to the satisfaction of the Secretary of State that the country to which the alien physician will return at the end of additional specialty education or training has an exceptional need for

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<sup>134</sup> A student who is in a degree program may be authorized to participate in the Exchange Visitor Program as long as he or she is either: (i) Studying at the post-secondary accredited academic institution listed on his or her Form DS-2019 and: (A) Pursuing a full course of study as set forth in paragraph (e) of this section, and (B) Maintaining satisfactory advancement towards the completion of the student's academic program; or (ii) Participating in an authorized academic training program as permitted in paragraph (f) of this section. 22 CFR 62.23(h).

an individual with such additional qualification. *See* 22 CFR 62.27(e).

- International visitors: the length of time necessary to complete the program, not to exceed 1 year. *See* 22 CFR 62.28(g).
- Government visitors: the length of time necessary to complete the program, not to exceed 18 months. *See* 22 CFR 62.29(h).
- Camp counselors: 4 months. *See* 22 CFR 62.30(h)(2).
- Au pairs: not more than 1 year. *See* 22 CFR 62.31(c)(1).
- Summer work travel: up to 4 months. *See* 22 CFR 62.32(c).

As with the F category, many J exchange visitors are admitted to participate in programs shorter than 4 years. Some J exchange visitors, like most F nonimmigrants, enter as post-secondary students. Similar to the F-1 Ph.D. student, some J nonimmigrants, like physicians, may need to stay longer than a 4-year period to complete their J program. However, many categories of J nonimmigrants would be covered by the same 4-year period proposed for F nonimmigrants. As such, it makes sense for DHS to treat these similarly situated nonimmigrants in a consistent manner by providing them with the same proposed, maximum admission period *See* proposed 8 CFR 214.2(j)(1)(ii)(A). This would help ensure compliance by providing consistency between the J program and the F program, which have programmatic similarities.

DHS proposes to retain the 30-day period that J nonimmigrants are provided before the report date or start of the approved program listed on the DS-2019 and the 30-day period at the end of the program. As DHS expects these nonimmigrants to use the 30-day period of time after the program ends to prepare for departure, the Department proposes to revise the language currently in 8 CFR 214.2(j)(1)(ii) that reads, “period of 30 days for the purposes of travel or for the period designated by the Commissioner . . .,” to instead read “a period of 30 days at the end of

the program for the purposes of departure or to otherwise maintain status.” *See* proposed 8 CFR 214.2(j)(1)(ii)(C). DHS believes that the proposed language more accurately reflects the purpose of the period at the end of the program and accounts for other ways J exchange visitors may maintain status during this period, such as by filing an EOS or change of status application.

Similar to the limitations proposed in 8 CFR 214.2(f)(20), the factors proposed in section (j)(6) focus on fraud and national security concerns. The factors DHS identified for limiting initial admission to a maximum of 2 years are:

- Certain countries. Like F nonimmigrants, exchange visitors who were born in or are citizens of countries listed in the State Sponsor of Terrorism List. DHS would publish a notice in the Federal Register listing the countries whose nationals are subject to a 2-year maximum period of stay in J-1 status. Changes to the list would be made by issuance of a new Federal Register Notice. As the State Sponsor of Terrorism List are countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism, DHS believes it is appropriate to apply additional scrutiny to those who were born in these countries or are citizens of these countries who are temporarily in the United States to ensure that these aliens are complying with the terms of their admission and that they do not pose risks to the national security of the United States.
- Countries with high overstay rates. Like F nonimmigrants, exchange visitors who are citizens of countries with a nonimmigrant student and exchange visitor total overstay rate greater than 10 percent according to the most recent DHS Entry/Exit Overstay report.<sup>135</sup>

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<sup>135</sup> The overstay report for 2018 can be found at [https://www.dhs.gov/sites/default/files/publications/19\\_0417\\_fy18-entry-and-exit-overstay-report.pdf](https://www.dhs.gov/sites/default/files/publications/19_0417_fy18-entry-and-exit-overstay-report.pdf), see Table 4, Column 6.

The DHS Entry/Exit Overstay report compiles overstay rates for different classifications. It provides overstay rates per country for F, M, and J nonimmigrants together, rather than a separate overstay rate by classification, per country. Given the overlap between the F and J nonimmigrant classifications, utilizing the data for both exchange visitors and students to establish overstay rates is useful in that it may deter aliens who may attempt to seek admission in one status rather than the other in order to obtain a lengthier period of admission. DHS would publish a notice in the Federal Register listing the countries whose citizens are subject to a 2-year maximum period of stay in J-1 status. Changes to the list would be made by issuance of a new Federal Register Notice. Placing restrictions on citizens of countries with high overstay rates, consistent with the percent described by the Administration as a ‘high’ overstay rate for the purpose of enabling DHS and DOS to “immediately begin taking all appropriate actions that are within the scope of their respective authorities to reduce overstay rates for all classes of nonimmigrant visas,”<sup>136</sup> could encourage future compliance by incentivizing timely departures so that a country that exceeds the threshold might be removed from the list of high overstay rates on the DHS Entry/Exit report. The restriction also would permit DHS to have more frequent scrutiny of individuals from countries that present more risk, such that the agency may sooner ascertain whether an alien has violated their status.

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<sup>136</sup> See Presidential Memorandum on Combating High Nonimmigrant Overstay Rates (April 22, 2019) available at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-combating-high-nonimmigrant-overstay-rates/> (last visited April 14, 2020). The Presidential Memorandum identified countries with a total overstay rate greater than 10 percent in the combined B-1 and B-2 nonimmigrant visa category as appropriate for additional engagement by the DOS, which “should identify conditions contributing to high overstay rates among nationals of those countries...”



- U.S. national interest. DHS proposes to include a factor to limit the maximum period of admission to 2 years if it serves the U.S. national interest. As in the F program, this provision would provide the Secretary of Homeland Security and Secretary of State the requisite flexibility to identify potential risks of fraud and abuse to the United States' immigration programs and risks to national security that do not fit precisely within the other named categories. If the Department determines that certain technical fields pose a national security risk, more frequent vetting of the exchange visitors may serve in the national interest to mitigate the threats. If DHS determines that certain circumstances would be in the U.S. national interest to limit admission to a 2-year maximum period, then it would provide the public advance notice of such circumstance through publication of a Federal Register Notice.
- E-Verify participation. While this proposed change would not impose a requirement that the program sponsor or host institution be enrolled in or be a participant in good standing in E-Verify, it would encourage those organizations that are not currently enrolled or in good standing to attain such status rather than potentially lose future exchange visitors. E-Verify participation helps to combat document fraud, identifies errors in certain Government records belonging to employees, and may be used by law enforcement agencies to aid in the prevention of identity theft.<sup>137</sup> E-Verify participation is also a fast and easy way for sponsors and host institutions to demonstrate their commitment to maintaining a legal workforce.

Like the limiting factors for admission of F students, any one factor could trigger the

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<sup>137</sup> E-Verify.gov website, How does E-Verify use my information?, <https://www.e-verify.gov/faq/privacy/how-does-e-verify-use-my-information> (last visited Apr. 14, 2020).

designation of a maximum 2-year period of stay. And, like F students, J exchange visitors who depart the United States or for any reason would need to file an EOS application become subject to all terms and conditions of admission, including the 2-year limitation. This would include cases where an exchange visitor is admitted for a 4-year period, but in the midst of their 4-year admission, a new Federal Register Notice is published, making the exchange visitor subject to the 2-year admission; even though the alien generally may remain in the United States for the remainder of the 4-year period without seeking an extension of stay, if they depart the United States or for any reason need to file an EOS application, then they will be subject to the 2-year maximum period of admission. *See* proposed 8 CFR 214.2(j)(6)(iii).

The ultimate decision as to whether to admit the alien, and the maximum period of admission for such alien, would remain with the Secretary of Homeland Security, consistent with the Secretary's statutory obligation to administer and enforce the nation's immigration laws. *See, e.g.,* INA 103(a), 235; *see also* proposed 8 CFR 214.2(j)(6). The first FRN listing the countries triggering the 2-year admission period, along with other determinations related to this provision,<sup>138</sup> would be published contemporaneously with the final rule. Subsequent updates would be made as needed and would provide stakeholders with notice in advance of any change.

## 2. Dependents

Consistent with the extension of stay eligibility requirements for the J-1 found at 8 CFR 214.1(c)(4), DHS proposes to codify the policy that extensions for spouses or children who are granted J-2 status based on their derivative relationship as a spouse or child of the principal J-1 nonimmigrant may not exceed the period of authorized admission of the principal J-1. The current regulations state that the initial admission of a spouse or child may not be for longer than

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<sup>138</sup> This information is currently available at <https://ope.ed.gov/dapip/#/home> (last visited Jan. 26, 2020).

the principal exchange visitor.<sup>139</sup> That is, the authorized period of initial admission for J-2 dependents would be subject to the same requirements as the J-1 exchange visitor and may not exceed the period of authorized admission of the principal J-1 exchange visitor. *See* proposed 8 CFR 214.2(j)(1)(ii)(B).

ii. EOS

The shift from D/S to admission for a fixed time period would mean that J nonimmigrants wishing to remain in the United States beyond their authorized period of stay would need to file an EOS application with USCIS. Like other nonimmigrants applying for EOS, they would currently need to file a Form I-539 in accordance with that form's instructions, with the required fee, and including any biometrics or interview as required by 8 CFR 103.16. *See* proposed 8 CFR 214.2(j)(1)(iv)(A). J-1s seeking a program extension will continue to first request such an extension through the RO, as provided for under current regulations.<sup>140</sup> If such a program extension is recommended by the RO, the J-1 must apply for an EOS with USCIS to remain in the U.S. beyond the status expiration date on their I-94.

Dependent J-2 spouses and children seeking to accompany the J-1 exchange visitor during the additional period of admission would either need to be included on the primary applicant's request for extension or file their own EOS applications on the form designated by USCIS, and may be required to provide biometrics consistent with 8 CFR 103.16. *See* proposed 8 CFR 214.2(j)(1)(iv)(D). As with other nonimmigrant categories, the period of stay for J-2 dependents cannot exceed the period of stay authorized for the principal J-1 exchange visitor.

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<sup>139</sup> 8 CFR 214.2(j)(1)(ii).

<sup>140</sup> *See* 22 CFR 62.43, describing J-1 program extension procedures.

And, as with other nonimmigrant categories, if an EOS is denied, the aliens would need to immediately depart the United States once their authorized period of stay expires.

iii. Employment and pending EOS and employment authorization applications

Like I nonimmigrants, J-1 exchange visitors are authorized to engage in employment incident to status.<sup>141</sup> This means that they 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 filing of an EOS application, DHS proposes to allow the alien to continue engaging in activities consistent with the terms and conditions of the alien's program, including any employment authorization, beginning on the day after the admission period expires, for up to 240 days. *See* 8 CFR 274a.12(b)(20). Such authorization would be subject to any conditions and limitations of the initial authorization. *See* proposed 8 CFR 214.2(j)(1)(vii). This policy is consistent with current practice and prevents J-1 exchange visitors from being penalized on account of USCIS processing times, allows the alien to participate in the program without interruption, and, as applicable, prevents disruption to U.S. institutions employing or otherwise relying on the alien.

If the alien's initial date of admission passes, DHS proposes to consider the alien's Form I-94 unexpired when combined with a USCIS receipt notice indicating receipt of a timely filed EOS application and a valid, properly endorsed Form DS-2019 indicating his or her program's end date. An EOS application would be considered timely filed if the receipt notice for the application of EOS is on or before the date the authorized stay expires. The extension of an alien's authorized employment would terminate on the date of denial of an individual's

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<sup>141</sup> *See* 8 U.S.C. 1101(a)(15)(J) (including teaching, instructing, lecturing, and consulting among the permissible activities of nonimmigrants in the J category for participation in programs authorized by the Department of State); 8 CFR 214.2(j)(1)(v) (discussing employment authorization for J exchange visitors); 22 CFR 62.16 (stating that an exchange visitor program participant may receive compensation "when employment activities are part of the exchange visitor's program").

application for an EOS. *See* proposed 8 CFR 214.2(j)(1)(iv)(B). DHS believes that such provision would clarify how exchange visitors would demonstrate authorization to continue engaging in employment authorized pursuant to their program and better facilitate employer compliance with I-9 employment verification requirements.

Unlike J-1 exchange visitors, J-2 spouses and minor children may only engage in employment with authorization by USCIS. *See* 8 CFR 214.2(j)(1)(v) as also provided for in proposed 8 CFR 214.2(j)(1)(vii)(C). DHS also proposes to retain the current restriction on the J-2 dependent's income described in 8 CFR 214.2(j)(1)(v)(A); the J-2 nonimmigrant's income may be used to support the family's customary recreational and cultural activities and related travel, among other things, but not to support the J-1. *See* proposed 8 CFR 214.2(j)(1)(v)().

If a J-2 dependent nonimmigrant's requested period of employment authorization exceeds his or her current admission period, the J-2 dependent would need to file an EOS application, in addition to a new application for employment authorization, in the manner designated by USCIS, with the required fee and in accordance with form instructions. *See* proposed 8 CFR 214.2(j)(1)(v)().

As noted above in the discussion concerning EOS applications for F nonimmigrants, DHS considered but declined to adopt a policy that would result in abandonment of the EOS application upon traveling outside the United States while the EOS is pending. A J-1 or J-2 alien who travels during the time the EOS is pending will not be considered to have abandoned the EOS application. *See* proposed 8 CFR 214.1(c)(6)(i).

Finally, DHS proposes minor technical updates. First, DHS proposes to update outdated terms such as "Commissioner" and "Service" in 8 CFR 214.2(j)(1)(vi), replacing them with USCIS. Second, in 8 CFR 214.2(j)(1)(vi) DHS proposes to strike the reference to duration of

status and replace it with ‘*Extension of J-1 stay and grant of employment authorization for aliens who are the beneficiaries of a cap-subject H-1B petition*’ which is consistent to the terminology proposed in 8 CFR 214.2(f)(5)(vi). Third, because proposed 8 CFR 214.2(j)(1)(vii) is being revised to describe J nonimmigrants with pending extension of stay applications and their employment authorization, it is necessary to revise and reassign current 8 CFR 214.2(j)(1)(vii) and (viii) to proposed 8 CFR 214.2(j)(1)(viii) and (ix) respectively. Fourth, DHS proposes conforming amendments to the provision which requires exchange visitors to report legal changes to their name and any changes in their address, replacing the term ‘Service’ with ‘USCIS’ and clarifying the number of days during which changes need to be reported by revising from 10 days to 10 ‘calendar’ days for exchange visitors to report changes in their names and addresses and from 21 days to 10 business days for the RO to update SEVIS, in order to conform with existing DOS regulations.<sup>142</sup> See proposed 8 CFR 214.2(j)(1)(ix). This change is proposed because the differing number of days for ROs to report changes between DHS and DOS regulations may cause confusion given that the time frames are both regarding the requirement for ROs to update changes in SEVIS, and this change provides for a common timeframe. In that same provision, DHS proposes to strike the sentence which references non-SEVIS programs, as SEVIS enrollment is now a mandatory requirement. *Id.* Finally, DHS proposes changes to the regulatory provisions to refer to J nonimmigrants as “exchange visitors,” to promote consistency with DOS regulations.

## H. Change of Status

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<sup>142</sup> 22 CFR 62.10(d)(3) clarifies that the J-1 exchange visitor must inform the RO or ARO of address changes within "10 calendar days" of the change, and 22 CFR 62.10(d)(4) states that the reporting window for ROs or AROs to update SEVIS is "10 business days" from receiving the J-1 exchange visitor's address change notification from the J-1 exchange visitor.

DHS is proposing to add two provisions to 8 CFR Part 248, which governs changes of status. First, DHS is proposing to clarify that aliens who were granted a change to F or J status before the effective date of the final rule, and are applying for admission as an F or J after the final rule's effective date may be admitted up to the program end date as noted on the Form I-20 or DS-2019 that accompanied the change of status application that was approved prior to the alien's departure, not to exceed 4 years, unless they are subject to a 2-year admission proposed in 8 CFR 214.2(f)(20) or (j)(6), plus a period of 30 days following their program end date, to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 248.1(e). That is, CBP may admit these aliens into the United States up to the program end date, on the Form I-20 or DS-2019 that accompanied the approved change of status prior to the alien's departure, plus an additional 30 days, thus ensuring that they do not get more time than allocated by their program end date, since these Fs and Js would have received an admission period for D/S on the I-94 that accompanied the change of status approval.

Second, DHS is proposing to codify long-standing policy that, when an alien timely files an application to change to another nonimmigrant status, including F or J status, but departs the United States while the application is pending, USCIS will consider the application abandoned.<sup>143</sup> Under INA 248, DHS may authorize a change of status to a nonimmigrant who, among other things, continues to maintain his or her status. Thus, pursuant to a policy that has been in place for decades, the change of status application of an alien who travels outside of the United States during the pendency of his or her request for a change of status is deemed

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<sup>143</sup> *See* Letter, Bednarz, Chief, NIV Branch, Adjudications CO 238-C (Oct. 29, 1993), reprinted in 70 No. 46 Interpreter Releases 1604, 1626 (Dec. 6, 1993); INS Memorandum, HQ 70/6.2.9, *Travel After Filing a Request for a Change of Nonimmigrant Status*, (June 18, 2001).

abandoned.<sup>144</sup> *See* proposed 8 CFR 248.1(g). Note, however, if there is an underlying petition filed along with the change of status, that petition may still be approved, but the alien generally would have to obtain the necessary visa at a U.S. Embassy or Consulate abroad before applying for admission to the United States in the new nonimmigrant classification.

Additionally, DHS proposes minor technical edits: replacing the words “A district director” in newly re-designated paragraph (g) with “USCIS”; replacing “shall” in newly re-designated paragraph (g) with “will”; and replacing all instances of “shall” with “will” in newly re-designated paragraph (h).

#### I. Classes of Aliens Authorized to Accept Employment

DHS is proposing the following updates to regulations pertaining to employment authorization: First, as discussed above, DHS proposes to change 8 CFR 274a.12(b)(6)(i) to conform with proposed revisions in 8 CFR 214.2(f)(9)(i), which as discussed above, would terminate on-campus employment as of the alien’s fixed date of admission as noted on his or her Form I-94. If the alien has timely applied for an extension of stay, however, pursuant to proposed 8 CFR 214.2(f)(5)(vii), the current on-campus and severe economic hardship employment authorization of such an alien may be automatically extended for up to 180 days, or until adjudicated by USCIS, whichever is earlier, as described in that section. *See* proposed 8 CFR 274a.12(b)(6)(i). In cases where employment is authorized pursuant to severe economic hardship resulting from emergent circumstances under 8 CFR 214.2(f)(5)(v), the validity period of the employment authorization is provided by notice in the Federal Register and indicated by a Certificate of Eligibility for Nonimmigrant (F-1/M-1) Students, Form I-20 or successor form,

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<sup>144</sup> *Id.*



endorsed by the Designated School Official recommending such an extension. *See* proposed 8 CFR 274a.12(b)(6)(i).

Second, as discussed above, DHS proposes to clarify that CPT terminates on the alien's fixed date of admission as noted on their Form I-94. An F-1 alien whose fixed date of admission noted on their Form I-94 has expired may not engage in CPT until USCIS approves an alien's EOS request *See* proposed 8 CFR 274a.12(b)(6)(iii).

Third, as discussed above, DHS proposes to strike the reference to D/S in 8 CFR 274a.12(b)(6)(v) and update the language to be consistent with proposed cap-gap provisions at 8 CFR 214.2(f)(5)(vi).

Fourth, as discussed above, in proposed 8 CFR 274a.12(b)(10), DHS proposes to cross-reference proposed language in 8 CFR 214.2(i) for I nonimmigrants, which clarifies that limitations currently in the provision (an alien in this status may be employed only for the sponsoring foreign news agency or bureau) allow for freelance and self-employment situations where the I nonimmigrant may not have a "sponsoring" foreign news agency or bureau, and instead would need to show, among other requirements indicated in proposed 8 CFR 214.2(i), that they are working for a qualifying foreign media organization.

## **V. Statutory and Regulatory Requirements**

DHS developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. The below sections summarize our analyses based on a number of these statutes or executive orders.

### **A. Executive Orders 12866, 13563, and 13771: Regulatory Review**

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

This rule has been designated a “significant regulatory action” that is economically significant, under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

## **1. Summary**

Currently, aliens in the F (academic student), J (exchange visitor), and I (representatives of foreign information media) categories are admitted to the United States under the duration of status framework. However, this framework poses a challenge to the Department’s ability to efficiently monitor and oversee these nonimmigrants, as the duration of status framework does not require immigration officers to assess whether these nonimmigrants are complying with the terms and conditions of their stay, or whether they present a national security concern, unless some triggering event (such as an encounter in an enforcement setting, or a request for a benefit from USCIS) leads to a review of the nonimmigrant’s compliance. To address these vulnerabilities, DHS proposes to replace duration of status (D/S) with an admission for a fixed time period. Admitting individuals in the F, J, and I categories for a fixed period of time would require all F, J, and I aliens who wish to remain in the United States beyond their specific

authorized admission period to apply for authorization to extend their stay directly with USCIS or CBP. This change would impose incremental costs on F, J, and I aliens, but would in turn protect the integrity of the F, J and I programs by having immigration officers evaluate and assess the appropriate length of stay for these nonimmigrants.

The period of analysis for the rule covers 10 years and assumes the proposed rule would go into effect in 2020. Therefore, the analysis period goes from 2020 through 2029. This analysis estimates the annualized value of future costs using two discount rates: 3 percent and 7 percent. In Circular A-4, OMB recommends that a 3 percent discount rate be used when a regulation affects private consumption, and a 7 percent discount rate be used in evaluating a regulation that will mainly displace or alter the use of capital in the private sector. The discount rate accounts for how costs that occur sooner are more valuable. As shown in Table 1, the NPRM would have an annualized cost ranging from \$229.9 million to \$237.8 million (with 3 and 7 percent discount rates, respectively).

**Table 1. OMB A-4 Accounting Statement (2018\$)**

Category	7 Percent Discount Rate	3 Percent Discount Rate	Source Citation (RIA, preamble, etc.)
<i>BENEFITS</i>			
Annualized Monetized \$millions/year	N/A	N/A	N/A
Annualized Quantified	N/A	N/A	N/A
Qualitative	<ul style="list-style-type: none"> <li>• Would enhance DHS’s ability to enforce the unlawful presence provisions of the INA at conclusion of their fixed period of admission.</li> <li>• Would deter F, J, and I nonimmigrants from engaging in</li> </ul>		Preamble, RIA Section VI.A.4

	<p>fraud and abuse and strengthen the integrity of these nonimmigrant classifications.</p> <ul style="list-style-type: none"> <li>• Would provide DHS with additional information to promptly detect national security concerns.</li> <li>• Would increase DHS' ability to detect those nonimmigrants who are not complying with the terms and conditions of their status.</li> <li>• Would ensure that immigration officers, who are U.S. Government officials, are responsible for reviewing and deciding each F, J or I nonimmigrant's extension of stay request.</li> </ul>		
<i>COSTS</i>			
Annualized Monetized \$millions/year	\$237.8	\$229.9	RIA Section VI.A.4
Annualized quantified	N/A	N/A	N/A
Qualitative	<ul style="list-style-type: none"> <li>• Burden associated with government requests for additional information from or in-person interviews with nonimmigrants.</li> <li>• Potential reduction in enrollment of nonimmigrant students and exchange visitors</li> <li>• CBP and USCIS costs for proposed rule familiarization and training and additional steps at ports of entry to assess fixed period of time for admission.</li> <li>• Costs associated with EOS requests from F-1 nonimmigrants attending schools that are not enrolled in E-Verify.</li> <li>• Potential burden to schools/program sponsors and DHS to update batch processing systems that facilitate exchange of data between DSOs/ROs and SEVIS.</li> <li>• Potential costs to F-1 students and schools from limitations on changes in education levels.</li> <li>• Potential burden on F-1 English language training (ESL) program students who could no longer pursue an ESL course of study beyond 24 months.</li> </ul>		RIA Section V.A.4

<i>TRANSFERS</i>		
Annualized Monetized \$millions/year	<i>N/A</i>	<i>N/A</i>
Annualized quantified	<i>N/A</i>	<i>N/A</i>
Qualitative	Potential reduction in fees collected by SEVP and DOS to cover the cost of the programs due to a potential reduction in international enrollment.	<i>RIA V.A.4</i>
<i>Category</i>	<i>Effects</i>	<i>Source Citation (RIA, preamble, etc.)</i>
State, Local, and/or Tribal Government	Some public schools would incur incremental costs to comply with the proposed rule and a potential decline in international enrollment.	RIA V.A.4
Small business	Some small businesses would incur incremental costs to comply with the proposed rule.	Initial Regulatory Flexibility Analysis
Wages	None.	N/A
Growth	None.	N/A

## 2. Background and Purpose of the Proposed Rule

Unlike aliens in most nonimmigrant categories who are admitted until a specific departure date, F, J, and I nonimmigrants are admitted into the United States for a period of time necessary to engage in activities authorized under their respective [visa] classifications. This period of time is referred to as “duration of status” (D/S) and, under the D/S framework, nonimmigrants do not receive a fixed period of admission. Since the introduction of D/S, the number of F, J, and I nonimmigrants admitted into the United States has significantly increased. Admission for D/S, in general, does not give immigration officers enough opportunities to

directly verify that aliens granted such nonimmigrant status are engaging only in those activities authorized by their respective classifications while they are in the United States. In turn, this has undermined DHS's ability to effectively enforce the statutory inadmissibility grounds related to unlawful presence and has created incentives for fraud and abuse.

Additionally, the D/S framework creates opportunities for foreign adversaries to exploit these programs and undermine U.S. national security, in part due to the reduced opportunities for direct vetting of foreign academic students by immigration officers. An open education environment in the United States offers enormous benefits, but it also places research universities and the nation at risk for economic, academic, or military espionage by foreign students and exchange visitors. DHS believes that replacing admissions for D/S for F-1 students and J-1 exchange visitors with admission for a fixed time period would help mitigate these national security risks, by ensuring an immigration official directly and periodically vets their applications for extension of stay and, in doing so, confirm they are engaged only in activities consistent with their student or exchange visitor status. Under the proposed changes, DHS would more frequently collect biometrics and other information, enhancing the Government's oversight and monitoring of these aliens.

To address these concerns, the proposed rule would replace the D/S framework for F, J, and I nonimmigrants with a framework that authorizes an admission period with a specific date upon which an authorized stay ends. Nonimmigrants who would like to stay in the United States beyond their fixed date of admission would need to apply directly with DHS for an extension of stay. As the admission for a fixed time period of authorized stay is already in place for most other nonimmigrant categories, this change brings F, J and I nonimmigrants in line with most other classifications. Providing F, J and I nonimmigrants a fixed time period of authorized stay

would require them to apply to extend their stay, change their nonimmigrant status, or otherwise seek to obtain authorization to remain in the United States (e.g., by filing an application for adjustment of status) prior to the end of this specific admission period similar to most other nonimmigrants.

The proposed rule would ensure an effective mechanism for the Department to periodically and directly assess whether these nonimmigrants are complying with the conditions of their classifications and U.S. immigration laws, as well as to obtain timely and accurate information about the activities they have engaged in and plan to engage in during their temporary stay in the United States. In addition, as F, J, and I nonimmigrants would be admitted for a fixed period of admission under the proposed rule, they would generally begin to accrue unlawful presence following the expiration of their authorized period of admission, as noted on the Form I-94, and could potentially become inadmissible based on that accrual of unlawful presence under section 212(a)(9)(B) and (C), 8 U.S.C. 1182(a)(9)(B) and (C), upon departing the United States. Those grounds of inadmissibility have important and far-reaching implications on an alien's future eligibility for a nonimmigrant visa, admission to the United States, an immigrant visa, or adjustment of status to that of a lawful permanent resident, and therefore may deter F, J, and I nonimmigrants from failing to maintain status or engaging in fraud and abuse and strengthen the integrity of these nonimmigrant classifications.

### **3. Affected Population**

The proposed rule would primarily affect F, J, and I nonimmigrants and their dependents by requiring some nonimmigrants in these categories to file an EOS application to extend their stay beyond their fixed period of admission. F nonimmigrants are individuals enrolled as bona fide students at SEVP-certified schools, J nonimmigrants are individuals participating in work

and study-based exchange visitor programs, and I nonimmigrants are foreign information media representatives. In the sections below, DHS describes the data and methods used to (1) estimate the annual population size for each analyzed visa classification, (2) characterize these annual populations with respect to the need to file an EOS request, and (3) develop projections for the annual number of EOS requests for the evaluation period from 2020 to 2029. These analytical steps have been implemented using the R Project for Statistical Computing, an open-source analytical software platform.<sup>145</sup> The proposed rule's docket provides the SQL code used to query SEVIS and ADIS and the R code used to implement the logic for this analysis.

### Estimating the Affected Population

To identify potentially affected nonimmigrants, DHS used data from several agencies. Data for F and J nonimmigrants were extracted from the Student and Exchange Visitor Information System (SEVIS), including data on student participation in OPT, and J exchange visitor program sponsors. The Student and Exchange Visitor Program (SEVP) oversees schools certified to enroll F and M nonimmigrant students and their dependents. The Department of State (DOS) manages Exchange Visitor Programs for nonimmigrant exchange visitors in the J classification, and their dependents. Both SEVP and DOS use SEVIS to track and monitor schools; exchange visitor programs; and F, M, and J nonimmigrants while they are temporarily in the United States.<sup>146</sup>

Data on I nonimmigrants were extracted from the CBP Arrival and Departure Information System (ADIS). ADIS consolidates entry, exit, and admission status information

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<sup>145</sup> <https://www.r-project.org/about.html>

<sup>146</sup> More information on SEVIS can be found at <https://www.ice.gov/sevis/overview>.



from DHS components, DOS, and the Canada Border Services Agency. ADIS contains biographic information, biometric indicators, and encounter data.<sup>147</sup>

DHS used nonimmigrant student and exchange visitor program sponsor data from SEVIS and ADIS for fiscal year (FY) 2016, FY 2017, and FY 2018 to estimate the potentially affected population. For each year of data, DHS estimated the total number of nonimmigrants in each category and the total number of individuals who would have to file an EOS in that year if the rule were in effect. Next, DHS used an average of these 3 years as a best estimate of the affected population.

To estimate the total population of nonimmigrants in each year of the analysis, DHS took steps to remove incomplete and incorrect data entries from the SEVIS and ADIS data. For F and J nonimmigrants, DHS first eliminated records that were missing data critical to the analysis such as data entries without start and end dates for the individual's current program or entries that had a program start date that occurred after the program end date as this indicates that the start and end dates were entered improperly. In each fiscal year of data, this resulted in elimination of approximately 4 percent of unique SEVIS entries for F nonimmigrants but no appreciable data loss for J nonimmigrants. In order to only select individuals who were enrolled during the year of analysis, DHS selected entries that had a program end date that occurred on or after the beginning of the year of analysis,<sup>148</sup> and had a program start date that occurred on or before the end of the year of analysis.<sup>149</sup> DHS also took steps to (1) remove outliers in the data by removing data entries with an end date beyond 2050, (2) identify unique records by removing

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<sup>147</sup> More information on ADIS can be found at <https://www.dhs.gov/publication/arrival-and-departure-information-system>.

<sup>148</sup> In 2016, this cutoff is 10/01/2015; in 2017, it is 10/01/2016; in 2018 it is 10/01/2017.

<sup>149</sup> In 2016, this cutoff is 9/30/2016; in 2017, it is 9/30/2017; in 2018 it is 9/30/2018.

duplicate entries, and (3) retain a single entry for nonimmigrants with multiple records by keeping either the entry linked to a currently active entry, or if there were no active entries, keeping the entry with the latest end date. In total, DHS reduced the number of entries by approximately 240,000 records for each fiscal year of data for the F nonimmigrants and approximately 4,000 records for each fiscal year of data for the J nonimmigrants. This data reduction has been largely driven by elimination of multiple entries associated with a unique SEVIS identifier, rather than by elimination of incomplete entries.<sup>150</sup>

Table 2 shows the estimated total number of F, J, and I nonimmigrants for each fiscal year from 2016 to 2018, as well as the 3-year average. The F estimates include F-1 and F-2 nonimmigrants, J estimates include J-1 and J-2 nonimmigrants, and I estimates include both principal I and dependent I nonimmigrants as there are no multiple categories of I visas. Over the 3-year period, there were approximately 1.7 million F nonimmigrants, 607,000 J nonimmigrants, and 35,000 I nonimmigrants active per year. Overall, approximately 2.3 million persons participated annually in the F, J, and I nonimmigrant programs combined.

**Table 2. Total Number of Active Nonimmigrants by Category and Fiscal Year**

<b>Nonimmigrant Category</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>Average</b>
F	1,733,416	1,708,012	1,674,818	1,705,415
J	590,992	627,752	603,292	607,345
I	36,675	36,709	32,771	35,385
<b>Total</b>	<b>2,361,083</b>	<b>2,372,473</b>	<b>2,310,881</b>	<b>2,348,145</b>
Estimates derived from SEVIS and ADIS data.				

Each year, only a subset of the total nonimmigrant F, J, and I population would be affected by the proposed rule provisions. DHS applied the criteria contained within the proposed

<sup>150</sup> There are approximately 1.15 entries per unique SEVIS identifier for F nonimmigrants and 1.01 entries per unique SEVIS identifier for J nonimmigrants.

rule to estimate the subset of nonimmigrants that would be required to extend their authorized period of admission in each year of the analysis in order to continue the duration of studies observed in the fiscal year 2016-2018 SEVIS data. These criteria vary across the nonimmigrant categories.

### Estimating EOS Requests for F Nonimmigrants

F-1 nonimmigrants are bona fide students who seek to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an academic or language training school certified by SEVP. F-2 nonimmigrants are their dependents. F nonimmigrants include, but are not limited to, individuals enrolled in language training, bachelor's degrees, and those engaged in OPT.

This rule proposes a fixed period of admission of up to 2 or 4 years for F nonimmigrants, depending on whether a nonimmigrant presents heightened concerns related to fraud, abuse, and national security. The proposed rule includes the following criteria that could result in an EOS request:

- Program Length. The nonimmigrant's program length exceeds 4 years;<sup>151</sup>

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<sup>151</sup> DHS acknowledges that recent estimates of median time to bachelor's degree completion in the United States published by the Department of Education's National Center for Education Statistics (NCES) is 52 months. *See* U.S. Department of Education, National Center for Education Statistics, Status and Trends in the Education of Racial and Ethnic Groups 2018, available at [https://nces.ed.gov/programs/raceindicators/indicator\\_red.asp](https://nces.ed.gov/programs/raceindicators/indicator_red.asp). NCES statistics on all postsecondary students in the U.S. also show factors positively associated with completion of bachelor's degree in under four years include financial dependent status and age of less than 23 years. The prevalence of U.S. citizens who are studying part-time in the NCES data indicates that the NCES data is not representative of the time to completion for students studying full time, including foreign students. *See* U.S. Department of Education, National Center for Education Statistics, Fast Facts, available at <https://nces.ed.gov/fastfacts/display.asp?id=569>. A longitudinal study of students beginning their postsecondary studies in 2011-2012 shows 75% of students completing a full course-load in their freshman year alone finish within 4 years. *See* U.S. Department of Education, National Center for Education Statistics, Courses Taken, Credits Earned, and Time to Degree: A First Look at the Postsecondary Transcripts of 2011-12 Beginning Postsecondary Students, available at <https://nces.ed.gov/pubs2020/2020501.pdf>. DHS does not assert that all foreign students will complete their course of study on time and has analyzed and discussed SEVIS data that forms the basis of our estimated number of bona fide extension requests resulting from this proposed rule.

- Certain Countries. The nonimmigrant was born in or is a citizen of a country on the State Sponsors of Terrorism list, or is a citizen of a country with a student and exchange visitor total overstay rate greater than 10 percent according to the most recent DHS Entry/Exit Overstay report<sup>152</sup>;
- Other Factors of U.S. National Interest. The nonimmigrant is subject to other factors determined to be in the U.S. national interest, which may include but not be limited to circumstances where there may be national security concerns or risks of fraud and abuse. These factors may be incorporated into a Federal Register Notice (FRN) to limit a student's period of stay to a 2-year maximum;
- Accreditation. The nonimmigrant is enrolled at a post-secondary school that is not accredited by an accrediting body recognized by the Secretary of Education;
- Extended Period of Admission. The nonimmigrant makes a change to his or her program that affects the program end date and requires an extension of stay, such as a change from OPT to a STEM OPT extension or a change in educational level; and
- E-Verify Enrollment. The nonimmigrant's school is not enrolled in E-Verify or is not a participant in good standing in E-Verify as determined by USCIS.

In this analysis, DHS does not present the number of individuals meeting each limitation criterion, as some individuals may meet multiple criteria. The affected population estimates reflect the overall effect of all of the NPRM's limitations, rather than the marginal effects of each

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<sup>152</sup> A list of State Sponsors of Terrorism can be found at <https://www.state.gov/state-sponsors-of-terrorism/>. The overstay report for 2018 can be found at [https://www.dhs.gov/sites/default/files/publications/19\\_0417\\_fy18-entry-and-exit-overstay-report.pdf](https://www.dhs.gov/sites/default/files/publications/19_0417_fy18-entry-and-exit-overstay-report.pdf), see Table 4, Column 6. The DHS 2017 Entry/Exit Overstay Report can be found at [https://www.dhs.gov/sites/default/files/publications/18\\_1009\\_S1\\_Entry-Exit-Overstay\\_Report.pdf](https://www.dhs.gov/sites/default/files/publications/18_1009_S1_Entry-Exit-Overstay_Report.pdf), see Table 4, Column 6. The DHS 2016 Entry/Exit Overstay Report can be found at <https://www.dhs.gov/sites/default/files/publications/Entry%20and%20Exit%20Overstay%20Report%2C%20Fiscal%20Year%202016.pdf>, see Table 4, Column 6.

limitation. To estimate EOS requests, DHS analyzed nonimmigrant data to identify individuals who would be subject to the limitation criteria in the year of analysis using the following steps:

1. Program Length. This analysis assumes that individuals would require an EOS in the year of analysis if they had a program duration longer than 4 years, were not in the final year of their program, and were in a year of their program that was a multiple of four (e.g., 4, 8, 12).

2. Certain Countries. The rule proposes to limit the fixed time period of admission of up to 2 years for F nonimmigrants who were born in or are citizens of countries listed on the State Sponsors of Terrorism List or who are citizens of countries with a student and exchange visitor total overstay rate greater than 10 percent according to the most recent DHS Entry/Exit Overstay report.<sup>153</sup> F nonimmigrants subject to this limit would be eligible for an EOS of up to 2 years. To estimate the number of individuals meeting these criteria and needing an EOS in the year of analysis, DHS identified individuals who were born in or are citizens of countries on the State Sponsors of Terrorism list or who are citizens of countries with a student and exchange visitor total overstay rate greater than 10 percent according to the most recent DHS Entry/Exit Overstay report, not in the last year of their program, in a year of their program that was a multiple of two (e.g., year 2, 4, 6) and whose program duration is greater than 2 years.

3. Other Factors of U.S. National Interest. Although the proposed rule does not explicitly list other factors that may serve the U.S. national interest, the analysis uses enrollment in the

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<sup>153</sup> A list of State Sponsors of Terror can be found at <https://www.state.gov/state-sponsors-of-terrorism/>. The overstay report for 2019 can be found at [https://www.dhs.gov/sites/default/files/publications/20\\_0513\\_fy19-entry-and-exit-overstay-report.pdf](https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf), see Table 4, Column 6. The overstay report for 2018 can be found at [https://www.dhs.gov/sites/default/files/publications/19\\_0417\\_fy18-entry-and-exit-overstay-report.pdf](https://www.dhs.gov/sites/default/files/publications/19_0417_fy18-entry-and-exit-overstay-report.pdf), see Table 4, Column 6. The 2017 Overstay Report can be found at [https://www.dhs.gov/sites/default/files/publications/18\\_1009\\_S1\\_Entry-Exit-Overstay\\_Report.pdf](https://www.dhs.gov/sites/default/files/publications/18_1009_S1_Entry-Exit-Overstay_Report.pdf), see Table 4, Column 6. The 2016 Overstay Report can be found at <https://www.dhs.gov/sites/default/files/publications/Entry%20and%20Exit%20Overstay%20Report%2C%20Fiscal%20Year%202016.pdf>, see Table 4, Column 6. The analysis uses 87 countries with overstay rate greater than 10 percent in at least one of the analysis years (i.e., 2016, 2017, or 2018).

nuclear physics or nuclear engineering courses as examples of courses that could pose a risk to U.S. national security to estimate the potential impacts of this proposed requirement. The analysis assumes that nonimmigrants would require an EOS in the year of analysis if they were enrolled in these courses of study, not in the last year of their program, in a year of their program that was a multiple of two (e.g., year 2, 4, 6), and had a program duration of greater than 2 years.

4. Accreditation. Similarly, the analysis assumes that nonimmigrants would require an EOS if they were enrolled at a post-secondary school not accredited by an accrediting body recognized by ED, not in the last year of their program, in a year of their program that was a multiple of two (e.g., year 2, 4, 6), and had a program duration of greater than 2 years.

5. Extended Period of Admission. DHS identified nonimmigrants within each fiscal year who needed to change their authorized period of admission in the year of analysis. Individuals switching from an OPT program to a Science, Technology, Engineering, or Math (STEM) OPT extension program, individuals requesting additional time to complete their program of study, and individuals changing from one educational level to another, among others, were included. Individuals changing majors, transferring schools, enrolling in pre-completion OPT, or making other changes to their course of study that would not affect their program end date were not considered to require an EOS in the year of analysis if they did not meet any other limiting criteria that would require them to extend.

6. E-Verify Enrollment. To estimate the number of students affected by this proposed provision, DHS needed to identify nonimmigrants that were enrolled at a post-secondary school not enrolled in E-Verify or not a participant in good standing in E-Verify, not in the last year of their program, in a year of their program that was a multiple of two (e.g., year 2, 4, 6), and had a program duration of greater than 2 years. DHS worked with both nonimmigrant data and

employer data, attempting to match E-Verify enrollment with students' schools. However, because the datasets did not have a common, unique key, DHS was unable to comprehensively merge the student-based data with the employer-based data. Therefore, DHS did not quantify the marginal effect of the E-Verify enrollment provision.<sup>154</sup> As a result, the estimated number of extensions shown in Table 3 does not include extensions that would have been filed by nonimmigrants meeting all other 4-year eligibility requirements, but attending institutions that do not participate in E-Verify. However, DHS conjectures that this bias is unlikely to be significant. Approximately 20% of the educational services industry establishments already participate in E-Verify program.<sup>155</sup> These establishments employ 80% this industry's workers nation-wide. Assuming that the number of F-1 nonimmigrants is proportional to the number of employees in the educational services establishments, we expect the share of F-1 nonimmigrants in schools already enrolled in E-Verify to be substantial. This observation is further corroborated by the fact that 61% of F-1 nonimmigrants in SEVIS data are in 14% of schools that DHS has been able to match to E-Verify enrollment data.<sup>156</sup>

DHS calculated the total number of expected EOS requests from these criteria for FY 2016, FY 2017, and FY 2018, and used these yearly estimates to calculate the annual average number of EOS requests for both F-1 and F-2 nonimmigrants.<sup>157</sup> Table 3 shows the EOS

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<sup>154</sup> See Section VI.A.4 for additional discussion of the impacts associated with the E-Verify provision.

<sup>155</sup> The nation-wide number of establishments and employment in the educational services industry (NAICS 61) comes from US Census Bureau 2018 County Business Patterns data. The current E-Verify enrollment by establishment size category in the educational services industry comes from DHS USCIS E-Verify data at <https://www.e-verify.gov/about-e-verify>.

<sup>156</sup> DHS used name- and location-based fuzzy matching procedure to establish approximate links between 7,689 active schools in SEVIS and 2,264 unique schools in E-Verify enrollment data. Only 1,100 schools have been able to be linked, and cursory review established that the pool of unmatched SEVIS schools does include other schools that may be matched manually. As such, DHS believes that 14% match rate for active schools in SEVIS underestimates the true E-Verify participation rate.

<sup>157</sup> These numbers were developed using data from SEVIS. The SEVIS database was queried to extract data from FY 2016-2018. DHS used R Statistical Software to develop logic allowing DHS to identify individuals meeting the

estimates for F nonimmigrants. DHS estimates that approximately 249,000 F-1 nonimmigrants would request an EOS per year, while approximately 31,000 F-2 nonimmigrants would be required to apply for an EOS per year.

**Table 3. Number of F Nonimmigrants Requiring an EOS Per Year**

<b>Nonimmigrant Category</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>Average</b>
F-1	246,613	236,746	263,692	249,017
F-2	33,314	29,846	30,067	31,076
<b>Total</b>	<b>279,927</b>	<b>266,592</b>	<b>293,759</b>	<b>280,093</b>
Estimates derived from SEVIS data.				

### Estimating EOS Requests for J Exchange Visitor Participants

J-1 exchange visitor participants are individuals approved to participate in work and study-based exchange visitor programs, and J-2 nonimmigrants are their dependents. For example, J exchange visitor participants include individuals enrolled in alien physician programs, camp counselors, and au pairs, among others.<sup>158</sup>

The proposed rule would impose a fixed period of admission of up to 2 or 4 years on J nonimmigrants, depending on limitations on the length of admission. In order to identify the potentially affected J nonimmigrants, DHS estimated the number of individuals in FY 2016, FY 2017, and FY 2018 meeting the following limitation criteria which would require an EOS under the NPRM:

- **Program Length.** The nonimmigrant’s program length exceeds 4 years;

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limitations specified in the proposed rule. DHS provides the SQL code used to query the SEVIS database and the R code used to develop the logic for this analysis on the proposed rule’s docket.

<sup>158</sup> J exchange visitor programs include: Professors and research scholars; short-term scholars; trainees and interns; college and university students; teachers; secondary school students; specialists; alien physicians; international visitors; government visitors; camp counselors; au pairs; and summer work travel. See INA 101(a)(15)(j), 8 U.S.C. 1101(a)(15)(j) and 22 CFR 62.20-62.32.



- Certain Countries. The nonimmigrant was born in or is a citizen of a country on the State Sponsors of Terrorism list or is a citizen of a country with a greater than 10 percent total overstay rate for students and exchange visitors according to the most recent DHS Entry/Exit Overstay report<sup>159</sup>;
- Other Factors of U.S. National Interest. The nonimmigrant is subject to other factors determined to be in the U.S. national interest, which may include but not be limited to circumstances where there may be national security concerns or risks of fraud and abuse. These factors may be incorporated into an FRN to limit a student's period of stay to a 2-year maximum;
- E-Verify Enrollment. The nonimmigrant's program sponsor is either not enrolled in E-Verify or, if enrolled, is not a participant in good standing in E-Verify as determined by USCIS.

In this analysis, DHS does not present the number of individuals meeting each limitation criterion, as some individuals may meet multiple criteria. The affected population estimates reflect the overall effect of all of the NPRM's limitations, rather than the marginal effects of each limitation. To estimate EOS requests, DHS analyzed nonimmigrant data to identify who would

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<sup>159</sup> A list of State Sponsors of Terrorism can be found at <https://www.state.gov/state-sponsors-of-terrorism/>. The overstay report for 2019 can be found at [https://www.dhs.gov/sites/default/files/publications/20\\_0513\\_fy19-entry-and-exit-overstay-report.pdf](https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf), see Table 4, Column 6. The overstay report for 2018 can be found at [https://www.dhs.gov/sites/default/files/publications/19\\_0417\\_fy18-entry-and-exit-overstay-report.pdf](https://www.dhs.gov/sites/default/files/publications/19_0417_fy18-entry-and-exit-overstay-report.pdf), see Table 4, Column 6. The 2017 Overstay Report can be found at [https://www.dhs.gov/sites/default/files/publications/18\\_1009\\_S1\\_Entry-Exit-Overstay\\_Report.pdf](https://www.dhs.gov/sites/default/files/publications/18_1009_S1_Entry-Exit-Overstay_Report.pdf), see Table 4, Column 6. The 2016 Overstay Report can be found at <https://www.dhs.gov/sites/default/files/publications/Entry%20and%20Exit%20Overstay%20Report%2C%20Fiscal%20Year%202016.pdf>, see Table 4, Column 6. The analysis uses 87 countries with overstay rate greater than 10 percent in at least one of the analysis years (i.e., 2016, 2017, or 2018).

be subject to the limitation criteria in the year of analysis. DHS took the following steps to identify individuals who would be subject to these criteria in the year of analysis:

1. Program Length. For J nonimmigrants, DHS used the same approach described for F nonimmigrants in the Estimating EOS Requests for F Nonimmigrants section above to estimate individuals needing to file an EOS in the fourth year of their program;

2. Certain Countries. For J nonimmigrants, DHS used the same approach described for F nonimmigrants to estimate individuals needing to file an EOS due to meeting 2-year limitation criteria for their country of citizenship or country of birth;

3. Other Factors of U.S. National Interest. For J nonimmigrants, DHS applied the same approach described for F nonimmigrants, using participation in the field of nuclear physics or nuclear engineering as examples of programs that could pose a risk to U.S. national security, to estimate individuals needing to file an EOS due to meeting 2-year limitation criteria for factors that serve the U.S. national interest;

4. E-Verify Enrollment. DHS determined that any individual not employed by an employer enrolled in E-Verify<sup>160</sup> in a year of their program that is a multiple of two (e.g., 2, 4, 6), not in the final year of their program, and enrolled in a program lasting longer than 2 years would be required to file an EOS. In cases where DHS did not have information about an employer's E-Verify enrollment, DHS assumed those employers were not enrolled in E-Verify unless the employer was a governmental organization. DHS does not have data on which governmental organizations are enrolled in E-Verify, but assumes that governmental agencies will typically be

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<sup>160</sup> Participation data from E-Verify Program System of Records, retrieved February 5, 2020.

enrolled in E-Verify. In 2018,<sup>161</sup> 60 percent of non-governmental programs were not enrolled in E-Verify, 39 percent were enrolled in E-Verify, and 1 percent had no information on E-Verify enrollment status.<sup>162</sup> In addition, because of data limitations, DHS could not estimate impacts associated with participants not in good standing in E-Verify as determined by USCIS. The proposed rule may encourage employers to enroll in E-Verify. Employers enrolling in E-Verify would incur additional cost burdens when they enroll in and continue to use the E-Verify program. Employers would incur costs related to enrolling in the program, attending trainings, filling out associated forms, designating an E-Verify administrator within the company, and using E-Verify to confirm their newly hired employees are eligible to work in the United States.<sup>163</sup>

DHS calculated the total number of expected EOS requests from these criteria for FY 2016, FY 2017, and FY 2018, and used these yearly estimates to calculate the annual average number of EOS requests for both J-1 and J-2 nonimmigrants.<sup>164</sup> Table 4 shows the EOS estimates for J exchange visitors. DHS estimates that approximately 12,000 J-1 exchange visitors would request an EOS per year, while approximately 8,000 J-2 nonimmigrants would be required to apply for an EOS per year.

**Table 4. Number of J Exchange Visitors Requiring an EOS Per Year**

<b>Nonimmigrant Category</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>Average</b>
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<sup>161</sup> DHS used 2018 data because the percentage difference in E-Verify enrollment for non-governmental programs between years of analysis is minimal. Any variation between years is due to the number of programs active during each year.

<sup>162</sup> The percentages presented represent the percentage of exchange visitor programs that are enrolled in E-Verify. One employer may sponsor multiple programs. Therefore, this number does not reflect the percentage of employers that will be affected by this rule.

<sup>163</sup> For more information on E-Verify, go to [www.e-verify.gov](http://www.e-verify.gov).

<sup>164</sup> These numbers were developed using data from SEVIS. The SEVIS database was queried to extract data from FY 2016-2018. DHS used R Statistical Software to develop logic allowing DHS to identify individuals meeting the limitations specified in the proposed rule. DHS provides the SQL code used to query the SEVIS database and the R code used to develop the logic for this analysis on the proposed rule's docket.

J-1	10,711	10,992	12,993	11,565
J-2	7,641	7,872	8,784	8,099
<b>Total</b>	<b>18,352</b>	<b>18,864</b>	<b>21,777</b>	<b>19,664</b>

### Estimating EOS Requests for I Nonimmigrants

I nonimmigrants are bona fide representatives of foreign information media (such as press, radio, film, print) seeking to enter the United States to engage in such vocation, as well as the spouses and children of such aliens. *See* INA 101(a)(15)(I).

DHS proposes to give I nonimmigrants an admission period of up to 240 days, after which an EOS may be available for those who can meet EOS requirements. In order to estimate the number of EOS requests that would likely be filed by I nonimmigrants, DHS calculated the number of individuals in I status in FY 2016, FY 2017, and FY 2018 staying for greater than 240 days.<sup>165</sup> Any individual with a total in-country time of greater than 240 days was included in the analysis, as they would be required to get additional time from DHS, either by filing an EOS or departing the United States and applying for admission with CBP. Table 5 provides estimates for the number of I nonimmigrants that would apply for an EOS per year. Using this methodology, DHS estimates that approximately 1,200 I nonimmigrants would request an EOS each year.

These estimates do not include I nonimmigrants with an initial admission period shorter than 240 days because they departed the United States before their total in-country time during the initial admission exceeds 240 days. After a very short departure from the United States, these same individuals could have returned to the United States, and their cumulative total period of

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<sup>165</sup> DHS used data from ADIS to derive these estimates. Data were presented as the number I nonimmigrants whose duration of status fell into a given range of time. For this analysis, DHS summed the number of individuals staying for greater than or equal to 241 days but less than 366 days and those staying for greater than or equal to 366 days in a given year to estimate the number of EOS requests that would be filed by I nonimmigrants. During 2016-2018, approximately 3 percent of I nonimmigrants had an initial admission period longer than 240 days.

stay for both admissions could have been longer than 240 days. Therefore, more than 1,200 I nonimmigrants may request an EOS per year, as this number does not capture the number of I nonimmigrants requesting additional time, only those with a period of stay longer than 240 days. DHS seeks public comment on ways to improve the estimate of the affected I nonimmigrant population.

**Table 5. Number of I Foreign Information Media Representatives Requiring an EOS Per Year**

<b>Nonimmigrant Category</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>Average</b>
I	1,433	1,215	944	1,197
Estimates derived from SEVIS data.				

#### Transition Period

Proposed 8 CFR 214.1(m)(1) would establish a transition period for phasing in admissions for a fixed time period. Specifically, F and J nonimmigrants present in the United States on the final rule’s effective date who are in D/S may remain in the United States in F or J status, without filing an EOS request and would be provided an authorized period of admission up to the program end date reflected on their Form I-20 or DS-2019 that is valid on the Final Rule’s effective date, not to exceed 4 years from the effective date of the Final Rule, as long as they do not depart the United States. *See* proposed 8 CFR 214.1(m)(1). I nonimmigrants would be provided an extension of the length of time it takes the alien to complete his or her activity, for a period of up to 240 days. *See* proposed 8 CFR 214.1(m)(3).

To align with the proposed transition period, DHS adjusted the annual EOS estimates for F and J nonimmigrants over the 10-year period of analysis. The transition period for the I nonimmigrants did not require adjustments to the EOS estimates over the 10-year period of analysis as I nonimmigrants would not receive a period of admission over 240 days [going

forward]. DHS anticipates that the rule would become effective in 2020 and estimated the number of EOS requests in each year from 2020 through 2029 (the 10-year period of analysis).

F and J nonimmigrants would not automatically be required to file an EOS request when the rule goes into effect. Rather, F and J nonimmigrants would be required to request an additional period of admission by filing an EOS if they meet the criteria associated with the period of admission limitations discussed above or the transition period requirements or alternatively they could depart the United States and apply for readmission with CBP under the new rule. In order to estimate the number of EOS requests in each year, DHS segmented the period of analysis into three distinct phases: (1) the early transition period, (2) the end of transition period, and (3) the full implementation period. Figure 1 describes the F and J nonimmigrants affected in each of these phases.

**Figure 1. Estimated EOS Requests During the Transition Period for F and J**

**Nonimmigrants**

EOS Requests During the "Early Transition Period" 2020-2023	EOS Requests During the "End of Transition Period" 2024	EOS Requests During the "Full Implementation Period" 2025-2029
<p><b>Aliens extending their program end date:</b> EOS requests resulting from extended program end dates using the annual average number of individuals in 2016-2018 who seek a program end date extension.</p> <p><b>Aliens subject to a 2-year limitation:</b> EOS requests resulting from 2-year limited aliens using the annual average number of individuals in 2016-2018 who meet the 2-year limitation criteria. These individuals are added in 2022-2023.</p>	<p><b>Aliens extending their initial date certain:</b> EOS requests resulting from program end dates ending after 2024 based on the average number of individuals between 2016-2018 with greater than 4 years left to accomplish their program.</p> <p><b>Aliens requiring an EOS outside of transition limitations:</b> EOS requests resulting from extending the program end date and being subject to a 2-year limitation.</p>	<p><b>Aliens requiring an EOS after transition period ends:</b> the annual, ongoing average number of EOS requests expected each year.</p>

In the early transition period, DHS assumes that, from 2020-2021, only F and J nonimmigrants extending their program end date beyond the program end date noted on their Form I-20 or DS-2019 would be filing an EOS because no other period of stay limitation would be triggered within the first 2 years of the transition period. Using FY 2016, FY 2017, and FY 2018 data, DHS estimates that approximately 203,000 EOS requests would be filed annually in 2020 and 2021.<sup>166</sup> DHS expects only F and I nonimmigrants would be required to file EOS

<sup>166</sup> DHS developed these estimates by looking at the data cross-sectionally and estimating how many individuals in each year would meet the necessary criteria for each stage of the transition period. DHS provides the R code used to develop the logic for this analysis on the proposed rule’s docket. These numbers were developed using data from SEVIS. The SEVIS database was queried to extract data from FY 2016-2018. DHS used R Statistical Software to develop logic allowing DHS to identify individuals meeting the limitations specified in the proposed rule. DHS

requests in this period as the SEVIS data do not have records of J nonimmigrants extending their end date.

Beginning in 2022, DHS assumes that individuals subject to a 2-year limitation on the period of admission who were admitted after the effective date of the rule would begin filing EOS requests. Therefore, in 2022 and 2023, there would be two types of EOS requests filed: those from individuals requesting an EOS due to a 2-year period of admission, and those from individuals requesting extensions to continue their same program or degree. Using FY 2016, FY 2017, and FY 2018 data, DHS estimates that approximately 259,000 EOS requests will be filed annually in the years 2022-2023.<sup>167</sup>

DHS anticipates that there would not be any nonimmigrants currently in the country in F, J, or I status at the time that the rule becomes effective who would receive a fixed period of admission that extends past 2024 because the transition period has a 4-year limitation. DHS assumes that this provision could lead to a spike in EOS requests in 2024, at the end of the transition period. To estimate EOS requests at the end of the transition period, DHS calculated the average number of individuals in FY 2016, FY 2017, and FY 2018 with more than 4 years left to complete their program. This number acts as a proxy for the number of individuals who would receive a fixed period of admission ending in 2024 when the rule goes into effect but would still need to request additional time to finish their program. DHS added these additional

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provides the SQL code used to query the SEVIS database and the R code used to develop the logic for this analysis on the proposed rule's docket.

<sup>167</sup> These numbers were developed using data from SEVIS. The SEVIS database was queried to extract data from FY 2016-2018. DHS used R Statistical Software to develop logic allowing DHS to identify individuals meeting the limitations specified in the proposed rule. DHS provides the SQL code used to query the SEVIS database and the R code used to develop the logic for this analysis on the proposed rule's docket.



individuals to individuals extending their program, and those meeting the 2-year limitation in 2024. DHS estimates that approximately 364,000 nonimmigrants would file an EOS in 2024.

After the end of the transition period, DHS assumes that all F, J and I nonimmigrants would have a fixed date of admission. During this time, all nonimmigrants needing to file an EOS for any reason would need to request an additional period of admission from DHS, either by filing an EOS with USCIS or by applying for admission with CBP.

DHS estimates that between 2025-2029 approximately 301,000 EOS applications would be filed with USCIS annually. Table 6 provides the estimated number of EOS requests per year from each nonimmigrant category for the full 10-year period of analysis, showing the fluctuations across the early transition period, the end of the transition period, and the full implementation period.

**Table 6. Number of EOS Requests by Nonimmigrant Category and Year**

Nonimmigrant Category	Early Transition Period				End of Transition	Full Implementation Period				
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
<b>F-1</b>	180,787	180,787	218,459	218,459	309,379	249,017	249,017	249,017	249,017	249,017
<b>F-2</b>	21,118	21,118	25,976	25,976	36,087	31,076	31,076	31,076	31,076	31,076
<b>J-1</b>	-	-	7,838	7,838	10,138	11,565	11,565	11,565	11,565	11,565
<b>J-2</b>	-	-	5,790	5,790	7,259	8,099	8,099	8,099	8,099	8,099
<b>I</b>	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197
<b>Total</b>	<b>203,103</b>	<b>203,103</b>	<b>259,261</b>	<b>259,261</b>	<b>364,060</b>	<b>300,954</b>	<b>300,954</b>	<b>300,954</b>	<b>300,954</b>	<b>300,954</b>

Estimates derived from SEVIS and ADIS data.

#### 4. Costs and Benefits of the Proposed Rule

##### Costs

DHS proposes to admit nonimmigrants seeking entry under the F, J, and I nonimmigrant categories for the period required to complete their academic program, foreign information media employment, or exchange visitor program. For F and J nonimmigrants, the period of admission would not exceed 4 years, or 2 years for F and J nonimmigrants meeting certain

factors. For I nonimmigrants, the period of admission would not exceed 240 days. As these nonimmigrants would have a fixed time period of admission, this proposal includes provisions that would require nonimmigrants to apply for an EOS directly with USCIS or apply for admission with CBP and receive an admit until date on their Form I-94 if seeking to continue their studies, to participate in any type of post completion training related to their academic course of study, to continue working in their information medium, or to participate in an exchange visitor program beyond the initial admission period granted at entry.

DHS assessed the costs and benefits of the proposed rule relative to the existing baseline, that is, the current practice of admitting F, J, and I nonimmigrants for D/S, as well as monitoring and overseeing these categories of nonimmigrants. As summarized in RIA Section VI.A.1 Table 1, some impacts of the proposed requirements are discussed throughout this section qualitatively. In accordance with the regulatory analysis guidance articulated in OMB Circular A-4 and consistent with DHS's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the proposed rule (i.e., costs and benefits that accrue to affected entities). The analysis covers 10 years (2020 through 2029) to ensure it captures major costs and benefits that accrue over time. DHS expresses all quantifiable impacts in 2018 dollars and uses 7 percent and 3 percent discounting following OMB Circular A-4.

#### *DSO and RO Rule Familiarization and Adaptation Costs*

The proposed rule would impact DSOs and ROs from SEVP-certified schools and exchange visitor programs that run a SEVP or DOS approved program by requiring time for rule familiarization training, modification of training materials, and institutional awareness and response (during the first year only). I foreign information media representatives would not incur similar costs from the proposed rule as those incurred by DSOs and ROs because the burden for

filing an EOS request falls on the I nonimmigrant, who, DHS assumes that in the baseline familiarize themselves with the pertinent visa requirements at the time the visa is needed, not at the point in time that Federal regulations change. DHS expects this behavior would not change as a result of the rule and, as a result, there would be no incremental costs associated with rule familiarization and adaptation for I foreign information media representatives.

Based on best professional judgment, SEVP estimates that DSOs and ROs would require 8 hours to complete rule familiarization training, 16 hours to create and modify training materials, and 16 hours to adapt to the proposed rule through system wide briefings and systemic changes. DHS welcomes public comments on these estimates. To estimate these costs, DHS multiplied the total time requirement (40 hours) by the loaded wage rate for DSOs and ROs (\$28.93 wage rate \* a 1.46 loaded wage rate factor<sup>168</sup>) and by the number of DSOs and ROs (55,207; 49,089 DSOs + 6,118 ROs<sup>169</sup>). DHS estimates that DSO and RO rule familiarization and adaptation would cost \$93.3 million during the first year once the rule takes effect (\$28.93 x 1.46 loaded wage rate factor x 40 hours x 55,207 DSOs and ROs).

#### *Extension of Stay Filing Costs*

Under the proposed rule, nonimmigrants who would like to extend their stay beyond their fixed period of admission would need to apply for additional time directly with DHS. Under the proposed framework, nonimmigrants could choose to file an EOS using the appropriate form

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<sup>168</sup> Based on the Bureau of Labor Statistics (BLS) average hourly wage for SOC 21-1012 (Educational, Guidance, School, and Vocational Counselors), available at: <https://www.bls.gov/oes/2018/may/oes211012.htm>. The benefits-to-wage multiplier is calculated by the BLS as (Total Employee Compensation per hour) / (Wages and Salaries per hour) = \$36.32 / \$24.91 = 1.458 (1.46 rounded) based on the average national wage for all occupations (wages represent 68.6 percent of total compensation). See Economic News Release, Employer Cost for Employee Compensation (March 2019), U.S. Dept. of Labor, BLS, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (March 19, 2019), available at: [https://www.bls.gov/news.release/archives/ecec\\_03192019.pdf](https://www.bls.gov/news.release/archives/ecec_03192019.pdf).

<sup>169</sup> The number of DSOs and ROs were pulled from SEVIS and are current as of September 2019. More information on SEVIS can be found at <https://www.ice.gov/sevis/overview>.

from USCIS or apply for admission with CBP at a POE. DHS assumes nonimmigrants with existing international travel plans would prefer to request extensions with CBP at a POE rather than incurring the costs of filing an EOS. Because DHS is unable to estimate how many nonimmigrants would prefer to extend with CBP, DHS' best assessment of the cost of the proposed rule to the affected population is based on the assumption that each extension will require a Form I-539 filing. Actual costs to the affected population could be lower for those nonimmigrants able to extend while traveling through a POE.<sup>170</sup>

During the transition, F and J nonimmigrants who are properly maintaining their status, are present in the United States when the rule takes effect, and were admitted for D/S would be authorized to remain in the United States for a period of time up to the program end date noted on their Form I-20 or DS-2019, plus 30 days, not to exceed a period of 4 years. I nonimmigrants who are properly maintaining their status and are present in the United States when the rule takes effect would have their status, and employment authorization incident to such status, automatically extended for a period necessary to complete their activity, not to exceed 240 days

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<sup>170</sup> DHS is unable to estimate how many individuals would seek an extension to their period of stay while traveling through a POE instead of filing the I-539 or I-539A form. The analysis thus assumes that all F, J, and I nonimmigrants requiring an EOS would file using the I-539 or I-539A form. If DHS made the opposite assumption—that all F, J, and I nonimmigrants requiring an EOS would extend while traveling through a POE—the cost estimates would change in the following ways. First, F, J, and I nonimmigrants would not pay the I-539 or I-539A filing and biometric processing costs. However, the process of applying for readmission at a POE would require 8 minutes of time for each F, J, or I nonimmigrant requiring an EOS. The time estimate of 8 minutes is based on the time required for completing a paper I-94 form (Supporting Statement A for Form I-94, “Arrival and Departure Record”, OMB Control Number 1651-0111). The cost to F, J, and I nonimmigrants for applying for readmission at a POE translates to a total undiscounted cost of \$5.0 million over the 2020-2029 analysis period using the number of EOS requests presented in Table 6 and the nonimmigrant wage rates described in Table 7. F, J, and I nonimmigrants would also incur costs to travel to a POE. Second, CBP officers would also spend 8 minutes of time per F, J, or I nonimmigrant applying for readmission at a POE. Using a loaded wage rate of \$87.94 (salary and benefit information was provided by CBP Office of Finance to ICE on April 9, 2020) and the number of EOS requests presented in Table 6, the cost to CBP officers for completing readmission at a POE for F, J, and I nonimmigrants requiring an EOS translates to \$32.8 million over the 2020-2029 analysis period. DHS anticipates that the CBP labor burden required to process readmissions at a POE can be incorporated in existing procedures without requiring additional staff.

after the rule takes effect. Any F academic students, J exchange visitors, and I representatives of foreign information media who are present when the rule takes effect would need to apply for an EOS if they require additional time required beyond the maximum specified transition time period.

EOS applicants would need to file Form I-539 (F-1, J-1, and I nonimmigrants) or Form I-539A (F-2, J-2 nonimmigrants, and I dependents), depending on the nonimmigrant category, in order to extend their period of stay. DHS assumes that all F-2 nonimmigrants, J-2 nonimmigrants, and I dependents would complete the I-539A instead of completing a separate Form I-539 because the I-539A is less burdensome to complete and does not require a separate application fee.<sup>171</sup> However, I nonimmigrant data contained the representatives of foreign information media and their dependents, without differentiating between the two. As a result, this analysis overestimates EOS filing costs for I nonimmigrants by assigning the primary I nonimmigrant costs to both the representatives of foreign information media and their dependents.

The most recently approved Paperwork Reduction Act (PRA) Information Collection Package Supporting Statement for Form I-539 at the time of this analysis, which provides the average applicant burden estimates for completing and submitting the form, states that F-1, J-1, and I nonimmigrants require 2.0 hours to complete a paper version of the Form I-539 (70 percent of applicants) or 1.08 hours to complete an electronic version (30 percent of applicants), and F-2 and J-2 nonimmigrants require 0.5 hours to complete the I-539A form.<sup>172</sup> USCIS's

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<sup>171</sup> Form I-539 instructions ask applicants to list all family members in Form I-539A. Therefore, it is reasonable to assume that the co-applicants (F-2, J-2 nonimmigrants and I dependents) will use Form I-539A.

<sup>172</sup> Time estimates are taken from the Supporting Statement A for Form I-539, "Application to Extend/Change Nonimmigrant Status", found at: [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201907-1615-012](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201907-1615-012).

Inadmissibility on Public Charge Grounds Rule, published August 14, 2019, increased burden for the paper version of the Form I-539 to 2.38 hours due to the collection of additional information related to public benefits.<sup>173</sup> 84 FR 157 (Aug. 14, 2019). In addition to the labor burden of completing the Form I-539, DHS estimates in the Supporting Statement for Form I-539 that 35 percent of F-1, J-1, and I applicants may incur additional expenses for third party assistance to prepare responses, legal services, translators, and document search and generation. For those applicants who seek additional assistance, the average cost for these activities is approximately \$490. DHS assumes that F-2 and J-2 applicants would not incur additional expenses for outside assistance and would instead work with the F-1 and J-1 applicants to complete the I-539A form.

In addition to completing the Form I-539/I-539A, all F, J, and I applicants would be required submit biometrics. The submission of biometrics requires travel to an application support center (ASC) for the biometric services appointment,<sup>174</sup> with an average round-trip travel time of 2.5 hours.<sup>175</sup> The Supporting Statement for Form I-539 estimates that each would spend 1 hour and 10 minutes (1.17 hours) at an ASC to submit biometrics. Summing the ASC time and travel time yields 3.67 hours for each applicant to submit biometrics.

F, J, and I nonimmigrants would pay fees to USCIS to file the Form I-539 and complete biometric processing, as described in the Supporting Statement for Form I-539. F-1, J-1, and I

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<sup>173</sup> Instructions for Application to Extend/Change Nonimmigrant Status, available at [https://www.uscis.gov/system/files\\_force/files/form/i-539instr-pc.pdf](https://www.uscis.gov/system/files_force/files/form/i-539instr-pc.pdf) (last visited Apr. 14, 2020).

<sup>174</sup> DHS expects the majority of biometrics appointments to occur in the United States at an ASC. However, in certain instances nonimmigrants may submit biometrics at an overseas USCIS office or DOS Embassy or consulate. However, because DHS does not currently have data tracking the specific number of biometric appointments that occur overseas, it uses the cost and travel time estimates for submitting biometrics at an ASC as an approximate estimate for all populations submitting biometrics in support of an EOS request.

<sup>175</sup> See DHS Final Rule, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 FR 535 (Jan. 3, 2013).

nonimmigrants would pay a \$370 fee when submitting the Form I-539 (F-2 and J-2 nonimmigrants would not be required to pay a fee when submitting the I-539A form).<sup>176</sup> All F, J, and I nonimmigrants who file an EOS would be required to pay an \$85 fee for biometric processing. Lastly, the EOS filing cost estimates account for travel costs to an ASC to submit biometrics. In past rulemakings, DHS estimated that the average round-trip distance to an ASC is 50 miles.<sup>177</sup> Using the 2020 General Services Administration (GSA) rate of \$0.58 per mile,<sup>178</sup> the travel costs are \$29. DHS assumes that F-2 and J-2 applicants would not incur these travel costs since they would likely travel to an ASC with the F-1 and J-1 applicants.

Table 7 provides the unit cost and references for the costs for completing and submitting the Form I-539/I-539A and biometrics for each nonimmigrant category.

**Table 7. Applicant Unit Costs for Filing an Extension of Stay with USCIS (2018\$)**

	F-1	F-2	J-1	J-2	I
[a] Average applicant burden for paper applications (in hours) <sup>1</sup>	2.38	0.50	2.38	0.50	2.38
[b] Average applicant burden for electronic applications (in hours) <sup>2</sup>	1.08	0.5	1.08	0.5	1.08
[c] Average biometric processing burden (in hours) <sup>3</sup>	3.67	3.67	3.67	3.67	3.67
[d] Total labor burden for paper applications (in hours) [a] + [c]	6.05	4.17	6.05	4.17	6.05

<sup>176</sup> Effective October 2, 2020, DHS raises the I-539 fee to \$400 for paper filing, \$390 for online filing and lowers the Biometrics fee from \$85 to \$30. See DHS Final Rule, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 FR 46788 (August 3, 2020). At the time of this analysis, the fees had not been finalized, so the fee of \$370 and biometric fee of \$85 was used in the analysis.

<sup>177</sup> See DHS Final Rule, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 FR 535 (Jan. 3, 2013).

<sup>178</sup> <https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates>

	F-1	F-2	J-1	J-2	I
[e] Total labor burden for electronic applications (in hours) [b] + [c]	4.75	4.17	4.75	4.17	4.75
[f] Average hourly wage rate	\$12.05 <sup>11</sup>	\$12.05 <sup>11</sup>	\$36.47 <sup>12</sup>	36.47 <sup>12</sup>	\$36.81 <sup>13</sup>
[g] Filing fee <sup>4</sup>	\$370	N/A	\$370	N/A	\$370
[h] Biometrics fee <sup>4</sup>	\$85	\$85	\$85	\$85	\$85
[i] Travel costs to ASC to submit biometrics <sup>5</sup>	\$29	N/A	\$29	N/A	\$29
<b>[j] Burden costs for paper applications not requiring outside help<sup>6</sup></b> <b>[(d)*[f])+[g]+[h]+[i]]</b>	<b>\$557</b>	<b>\$135</b>	<b>\$705</b>	<b>\$237</b>	<b>\$707</b>
<b>[k] Burden costs for electronic applications not requiring outside help<sup>7</sup></b> <b>[(e)*[f])+[g]+[h]+[i]]</b>	<b>\$541</b>	<b>\$135</b>	<b>\$657</b>	<b>\$237</b>	<b>\$659</b>
[l] Additional expenses for outside help with form <sup>8</sup>	\$490	N/A	\$490	N/A	\$490
<b>[m] Burden costs for paper applications requiring outside help<sup>9</sup></b> <b>[j] + [l]</b>	<b>\$1,047</b>	<b>N/A</b>	<b>\$1,195</b>	<b>N/A</b>	<b>\$1,197</b>
<b>[n] Burden costs for electronic applications requiring outside help<sup>10</sup></b> <b>[k] + [l]</b>	<b>\$1,031</b>	<b>N/A</b>	<b>\$1,147</b>	<b>N/A</b>	<b>\$1,149</b>



	F-1	F-2	J-1	J-2	I
[1]	Supporting Statement for Form I-539 states that 70 percent of applicants will file by paper.				
[2]	Supporting Statement for Form I-539 states that 30 percent of applicants will file electronically.				
[3]	1.17 hours at an ASC (Supporting Statement for Form I-539) + 2.5 hours of travel time to an ASC (78 FR 535) = 3.67 hours per applicant.				
[4]	Filing and biometrics fees described in the Supporting Statement for Form I-539.				
[5]	50 miles (78 FR 535) * \$0.58/mile (2020 GSA rate) = \$29.00				
[6]	Supporting Statement for Form I-539 states that 65 percent of applicants will not need outside help for completing the form. DHS assumed that all F-2 and J-2 nonimmigrants would not need outside help. Thus, 45.5 percent of F-1, J-1, and I applicants (70% paper applicants * 65% not requiring outside assistance = 45.5%) and 70 percent of F-2 and J-2 applicants would incur these costs.				
[7]	Based on Supporting Statement for Form I-539 values, 19.5 percent of F-1, J-1, and I applicants (30% electronic applicants * 65% not requiring outside assistance = 19.5%) and 30 percent of F-2 and J-2 applicants would incur these costs.				
[8]	Supporting Statement for Form I-539 states that 35 percent of applicants will need outside help for completing the form. DHS assumed that no F-2 or J-2 nonimmigrants would require outside help.				
[9]	Based on Supporting Statement for Form I-539 values, 24.5 percent of F-1, J-1, and I applicants (70% paper applicants * 35% requiring outside assistance = 24.5%) would incur these costs.				
[10]	Based on Supporting Statement for Form I-539 values, 10.5 percent of F-1, J-1, and I applicants (30% electronic applicants * 35% requiring outside assistance = 10.5%) would incur these costs.				
[11]	The average hourly loaded wage rate for F nonimmigrants is based on the “prevailing” minimum wage of \$8.25 (used in the analysis for the recent USCIS 30-Day Application for Employment Authorization Removal proposed rule) and accounting for benefits. \$12.05 = \$8.25 x 1.46 benefits-to-wage multiplier. DHS used the “prevailing” minimum wage to account for the type of service-based labor that students typically fill. As is reported by the Economic Policy Institute (EPI, 2016; <a href="https://www.epi.org/publication/when-it-comes-to-the-minimum-wage-we-cannot-just-leave-it-to-the-states-effective-state-minimum-wages-today-and-projected-for-2020/">https://www.epi.org/publication/when-it-comes-to-the-minimum-wage-we-cannot-just-leave-it-to-the-states-effective-state-minimum-wages-today-and-projected-for-2020/</a> ) Many states have their own minimum wage, and, even within states, there are multiple tiers. <i>See</i> U.S. Department of Labor, Wage and Hour Division, State Minimum Wage Laws, available at <a href="https://www.dol.gov/agencies/whd/minimum-wage/state">https://www.dol.gov/agencies/whd/minimum-wage/state</a> . Although the minimum wage could be considered a lower-end bound on true earnings, the prevailing minimum wage is fully loaded, at \$12.05, which is 13.8 percent higher than the federal minimum wage. 84 FR 174 (Sept. 9, 2019). DHS requests public comment on other sources for the effective minimum wage in the United States.				
[12]	The average hourly loaded wage rate for J nonimmigrants is based on the May 2018 BLS wage rate of \$24.98 for “All Occupations” (00-0000)), found at <a href="https://www.bls.gov/oes/2018/may/oes_nat.htm">https://www.bls.gov/oes/2018/may/oes_nat.htm</a> , and accounting for benefits. \$36.47 = \$24.98 x 1.46 benefits-to-wage multiplier. DHS used the “All Occupations” wage rate for J exchange visitors because of the diverse types of occupations that J exchange visitors can hold.				
[13]	The average hourly loaded wage rate for I nonimmigrants is based on the May 2018 BLS wage rate of \$25.21 for “Media and Communication Workers, All Other” (27-3099)), found at <a href="https://www.bls.gov/oes/2018/may/oes273099.htm">https://www.bls.gov/oes/2018/may/oes273099.htm</a> , and accounting for benefits. \$36.81 = \$25.21 x 1.46 benefits-to-wage multiplier.				

DHS multiplied the expected number of EOS requests for F, J, and I nonimmigrants (Table 6) by the appropriate applicant unit costs (Table 7) to estimate EOS filing costs. As shown in Table 7, DHS assumed that 45.5 percent of F-1, J-1, and I nonimmigrants would incur

burden costs for paper applications without outside help, 19.5 percent would incur burden costs for electronic applications without outside help, 24.5 percent would incur burden costs for paper applications with outside help, and 10.5 percent would incur burden costs for electronic applications with outside help. Burden costs for F-2 and J-2 nonimmigrants remain constant because their labor burden does not vary depending on paper versus electronic filing, and DHS assumes that F-2 and J-2 nonimmigrants would not pay for outside assistance with the I-539A form.

Table 8 presents undiscounted EOS filing costs by nonimmigrant category and year, along with a breakdown of costs based on filing type (paper or electronic) and the need for outside help to complete the form. EOS filing costs are lowest during the early transition period (2020-2023) and highest at the end of the transition period (2024) because of the variation in the estimated number of EOS requests (Table 6).

**Table 8. EOS Filing Costs by Nonimmigrant Category and Year (Millions 2018\$, Undiscounted)**

	Early Transition Period				End of Transition	Full Implementation Period				
Number of EOS / Cost	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
<b>F-1</b>										
F-1 EOS Requests	180,787	180,787	218,459	218,459	309,379	249,017	249,017	249,017	249,017	249,017
Paper filing cost, no help <sup>1</sup>	\$45.8	\$45.8	\$55.4	\$55.4	\$78.4	\$63.1	\$63.1	\$63.1	\$63.1	\$63.1
E-filing cost, no help <sup>2</sup>	\$19.1	\$19.1	\$23.1	\$23.1	\$32.7	\$26.3	\$26.3	\$26.3	\$26.3	\$26.3
Paper filing cost, with help <sup>3</sup>	\$46.4	\$46.4	\$56.0	\$56.0	\$79.4	\$63.9	\$63.9	\$63.9	\$63.9	\$63.9
E-filing cost, with help <sup>4</sup>	\$19.6	\$19.6	\$23.7	\$23.7	\$33.5	\$27.0	\$27.0	\$27.0	\$27.0	\$27.0
<b>F-1 Total</b>	<b>\$130.8</b>	<b>\$130.8</b>	<b>\$158.1</b>	<b>\$158.1</b>	<b>\$223.9</b>	<b>\$180.2</b>	<b>\$180.2</b>	<b>\$180.2</b>	<b>\$180.2</b>	<b>\$180.2</b>
<b>F-2</b>										
F-2 EOS Requests	21,118	21,118	25,976	25,976	36,087	31,256	31,256	31,256	31,256	31,256
Paper filing cost, no help <sup>5</sup>	\$2.0	\$2.0	\$2.5	\$2.5	\$3.4	\$3.0	\$3.0	\$3.0	\$3.0	\$3.0

	Early Transition Period				End of Transition	Full Implementation Period				
Number of EOS / Cost	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
E-filing cost, no help <sup>6</sup>	\$0.9	\$0.9	\$1.1	\$1.1	\$1.5	\$1.3	\$1.3	\$1.3	\$1.3	\$1.3
<b>F-2 Total</b>	<b>\$2.9</b>	<b>\$2.9</b>	<b>\$3.5</b>	<b>\$3.5</b>	<b>\$4.9</b>	<b>\$4.2</b>	<b>\$4.2</b>	<b>\$4.2</b>	<b>\$4.2</b>	<b>\$4.2</b>
<b>J-1</b>										
J-1 EOS Requests	0	0	7,838	7,838	10,138	11,565	11,565	11,565	11,565	11,565
Paper filing cost, no help <sup>1</sup>	\$0.0	\$0.0	\$2.5	\$2.5	\$3.3	\$3.7	\$3.7	\$3.7	\$3.7	\$3.7
E-filing cost, no help <sup>2</sup>	\$0.0	\$0.0	\$1.0	\$1.0	\$1.3	\$1.5	\$1.5	\$1.5	\$1.5	\$1.5
Paper filing cost, with help <sup>3</sup>	\$0.0	\$0.0	\$2.3	\$2.3	\$3.0	\$3.4	\$3.4	\$3.4	\$3.4	\$3.4
E-filing cost, with help <sup>4</sup>	\$0.0	\$0.0	\$0.9	\$0.9	\$1.2	\$1.4	\$1.4	\$1.4	\$1.4	\$1.4
<b>J-1 Total</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$6.8</b>	<b>\$6.8</b>	<b>\$8.7</b>	<b>\$10.0</b>	<b>\$10.0</b>	<b>\$10.0</b>	<b>\$10.0</b>	<b>\$10.0</b>
<b>J-2</b>										
J-2 EOS Requests	0	0	5,790	5,790	7,259	8,099	8,099	8,099	8,099	8,099
Paper filing cost, no help <sup>5</sup>	\$0.0	\$0.0	\$1.0	\$1.0	\$1.2	\$1.3	\$1.3	\$1.3	\$1.3	\$1.3
E-filing cost, no help <sup>6</sup>	\$0.0	\$0.0	\$0.4	\$0.4	\$0.5	\$0.6	\$0.6	\$0.6	\$0.6	\$0.6
<b>J-2 Total</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$1.4</b>	<b>\$1.4</b>	<b>\$1.7</b>	<b>\$1.9</b>	<b>\$1.9</b>	<b>\$1.9</b>	<b>\$1.9</b>	<b>\$1.9</b>
<b>I</b>										
I EOS Requests	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197
Paper filing cost, no help <sup>1</sup>	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4
E-filing cost, no help <sup>2</sup>	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2
Paper filing cost, with help <sup>3</sup>	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4
E-filing cost, with help <sup>4</sup>	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1
<b>I Total</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>
<b>Total, All Visas</b>	<b>\$134.7</b>	<b>\$134.7</b>	<b>\$170.8</b>	<b>\$170.8</b>	<b>\$240.3</b>	<b>\$197.3</b>	<b>\$197.3</b>	<b>\$197.3</b>	<b>\$197.3</b>	<b>\$197.3</b>

Number of EOS / Cost	Early Transition Period				End of Transition	Full Implementation Period				
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
*Totals may not sum due to rounding to the nearest 100,000.										
[1] (EOS request estimate) x (unit cost for paper applicants not requiring outside help) x (0.455)										
[2] (EOS request estimate) x (unit cost for electronic applicants not requiring outside help) x (0.195)										
[3] (EOS request estimate) x (unit cost for paper applicants requiring outside help) x (0.245)										
[4] (EOS request estimate) x (unit cost for electronic applicants requiring outside help) x (0.105)										
[5] (EOS request estimate) x (unit cost for paper applicants not requiring outside help) x (0.7)										
[6] (EOS request estimate) x (unit cost for electronic applicants requiring outside help) x (0.3)										

The total estimated cost for EOS filing in 2018 dollars would be \$1.8 billion undiscounted,<sup>179</sup> or \$1.6 billion and \$1.3 billion at discount rates of 3 and 7 percent, respectively. The annualized cost of extension of stay filing over the 10-year period would be \$187.4 million and \$192.2 million at discount rates of 3 and 7 percent, respectively.

*DSO/RO Costs for Processing Program Extension Requests and Updating SEVIS*

SEVIS is a web-based system that DHS and DOS use to maintain information regarding: SEVP-certified schools; F-1 and M-1 students studying in the United States (and their F-2 and M-2 dependents); DOS-designated Exchange Visitor Program sponsors; and J-1 Exchange Visitor Program participants (and their J-2 dependents). Under the proposed rule, DSOs and ROs would need to process program extension requests, update SEVIS entries, and provide counseling for any students requesting a program extension. Based on best professional judgment, SEVP estimates that DSOs/ROs would require 3 hours per EOS request for reviewing the program extension requests by the student (1 hour), updating the SEVIS record and tracking program extension requests (1 hour), and advising the student or exchange visitor about the extension process and the requirements to file an EOS with USCIS (1 hour).

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<sup>179</sup> The undiscounted total differs slightly from the sum of the years provided in Table 8 because of rounding in the table values.

To estimate DSO/RO costs for processing program extension requests and updating SEVIS, DHS multiplied the estimated number of EOS requests for F-1 and J-1 nonimmigrants (Table 6) by the expected DSO/RO time requirement per EOS request (3 hours) and the DSO/RO loaded wage rate (\$28.93 x 1.46 loaded wage rate factor). DHS assumed that, on average, the 3-hour time estimate accounted for time required to update SEVIS entries for F-2 and J-2 dependents. The per- program extension DSO/RO costs would be \$126.72 (3 hours x \$28.93 x 1.46 loaded wage rate factor).

Table 9 presents undiscounted DSO/RO costs for processing program extension requests and updating SEVIS throughout the 2020-2029 study period. Similar to EOS filing costs, DSO/RO costs for processing program extension requests and updating SEVIS are lowest during the early transition period (2020-2023) and highest at the end of the transition period (2024) because of the variation in the estimated number of EOS requests (Table 6).

**Table 9. DSO/RO Costs for Processing Program Extension Requests Based on EOS Requests and Updating SEVIS, by Year (Millions 2018\$, Undiscounted)**

	Early Transition Period				End of Transition	Full Implementation Period				
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Number of EOS Requests <sup>1</sup>	180,787	180,787	226,297	226,297	260,582	260,582	260,582	260,582	260,582	260,582
Costs <sup>2</sup>	\$22.91	\$22.91	\$28.67	\$28.67	\$33.02	\$33.02	\$33.02	\$33.02	\$33.02	\$33.02
[1] Sum of EOS request estimates for F-1 students and J-1 exchange visitors.										
[2] (Number of EOS requests) x (3 hours) x (DSO/RO wage rate of \$28.93) x (loaded wage rate factor of 1.46).										

The total cost estimate for DSO/RO program extension requests processing and SEVIS updates would be \$308.7 million undiscounted,<sup>180</sup> or \$268.7 million and \$226.9 million at discount rates of 3 and 7 percent, respectively. The annualized cost of EOS filings over the 10-

<sup>180</sup> The undiscounted total differs slightly from the sum of the years provided in Table 9 because of rounding in the table values.

year period would be \$31.5 million and \$32.3 million at discount rates of 3 and 7 percent, respectively.

DHS acknowledges that there may be additional costs to the government to upgrade SEVIS and provide additional support services to implement the proposed rule. DHS anticipates there may be costs for SEVIS development, supplemental Federal staff to assist in the development, increased call center volume, and operation and maintenance of SEVIS databases and other DHS IT systems. The costs for the SEVIS upgrade and support services would depend on the timeline for completion of the initial upgrade. DHS preliminary estimates show that under a 6-month timeline for upgrades, the costs in FY 2020 would be \$22.5 million. This estimate includes costs for 55 additional Federal employees to handle the SEVIS development, additional call center volume, and operation and maintenance. Of the 55 additional positions, 23 of the positions would be temporary one-year positions to develop SEVIS and 32 of the positions would be permanent positions to handle the ongoing operation and maintenance and the additional call center volume. In FY 2021- FY 2029, there would be an annual cost of \$16 million for the 32 additional Federal employees to handle the ongoing operation and maintenance of SEVIS databases and other DHS IT systems and to account for the additional call center volume.

The timeline for completion would impact the total SEVIS upgrade cost estimate. If DHS lengthens the timeline for implementing the provisions of this rule, DHS may be able to use existing resources to complete the necessary upgrades.

In addition to the changes due to this proposed rule, DHS is updating SEVIS due to other SEVP programmatic goals. The cost estimates of \$22.5 million in FY 2020 and \$16 million in FY 2021- FY 2029 include costs that are necessary to implement the provisions of this proposed

rule but may have been implemented without this proposed rule. Therefore, these costs are not accounted for in the total cost of this proposed rule.

#### *Requests for Additional Information or In-Person Interviews*

For a subset of EOS request cases, USCIS may request additional information or conduct an in-person interview if the applicant has raised concerns of a risk to national security or public safety, possible criminal activity, or status violation. These requests would result in costs for both USCIS and the nonimmigrant EOS applicant. The additional burden on USCIS would depend on the time required to obtain and review the additional information or conduct the in-person interview. DHS anticipates that the additional burden on applicants, on average, would be equivalent to the added expense of seeking third party assistance for completing the Form I-539, or \$490. Because the percentage of nonimmigrants that USCIS would ask to provide additional information or participate in an in-person interview is uncertain, this analysis does not quantify the costs of such requests on either nonimmigrants or USCIS.

#### *Potential Reduction in Enrollment*

While the intent of the proposed rule is to enhance national security, the elimination of duration of status has the potential to reduce the nonimmigrant student enrollment and exchange visitor participation. This regulatory impact analysis considers these potential impacts for each category of nonimmigrant affected by the proposed rule.

##### *F and J nonimmigrants affiliated with SEVP-certified schools*

The proposed rule may adversely affect U.S. competitiveness in the international market for nonimmigrant student enrollment and exchange visitor participation. Specifically, the proposed changes could decrease nonimmigrant student enrollments in the United States with corresponding increased enrollments in other English-speaking countries, notably in Canada,

Australia, and the United Kingdom. Student visas and resulting nonimmigrant status in other English-speaking countries are typically valid for the duration of the student's course enrollment, so students are not generally required to file an EOS application. For example, Australia's most common student visa (Subclass 500) provides for an admission for a length of stay that corresponds to the student's enrollment, which may be more than 4 years.<sup>181</sup> Similarly, a Canadian study permit is typically valid for the length of the study program, plus an extra 90 days to let the student prepare to leave Canada or apply to extend their stay.<sup>182</sup> The admission period for a nonimmigrant with a Tier 4 (General) student visa in the United Kingdom depends on the length of the course as stated in the student's Confirmation of Acceptance for Studies. International students in the UK are granted a certain number of additional months at the end of the course to prepare for departure, apply to extend their stay or change their status, depending on the original course length.<sup>183</sup> In each case, some nonimmigrant students may consider other countries' visa programs to be less restrictive relative to the proposed rule, as they would not be required to file an application to extend their stay and incur this additional expense. Although it affects only those F-1 nonimmigrants who are applying for an extension of stay for additional time to complete their program who cannot establish that the reason for requesting an extension is due to compelling academic reasons, a documented illness or medical condition, or circumstances beyond the student's control, or have otherwise failed to maintain status, the possibility of an extension being denied and the student thus not being able to complete the

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<sup>181</sup> Australian Government, Department of Home Affairs: Immigration and Citizenship, Subclass 500 (Student Visa). Retrieved from: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/student-500#Overview><https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/student-500#Overview>

<sup>182</sup> Government of Canada, Immigration and Citizenship, Study Permit: About the Process. Retrieved from: <https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/study-permit.html><https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/study-permit.html>

<sup>183</sup> Gov.uk, General Student Visa (Tier 4). Retrieved from: <https://www.gov.uk/tier-4-general-visa>



degree in the U.S. might affect the student's choice of country in which to study. As a result, nonimmigrant students and exchange visitors may be incentivized to consider other English-speaking countries for their studies.

Nonimmigrant student enrollment and exchange visitor participation contributes to the U.S. economy. The Institute of International Education estimates that during the 2018 academic year, international students alone had an economic impact of \$44.7 billion from tuition and fees, food, clothing, travel, textbooks, and other spending.<sup>184</sup> If these students and exchange visitors choose another country over the United States because of this proposed rule, then the reduced demand could result in a decrease in enrollment, therefore, impacting school programs in terms of forgone tuition and other fees, jobs in communities surrounding schools, and the U.S. economy. DHS conducted a literature search to find research estimating impacts associated with actions like the proposed requirements and found related research like the Institute of International Education's Open Doors®, as cited above, and NAFSA's Economic Value Tool<sup>185</sup> that provide annual estimates of the economic contribution of international students to the U.S. economy. While DHS acknowledges that the rule may decrease nonimmigrant student enrollments, there are many factors that make the United States attractive to nonimmigrant students and exchange visitors beyond the allowable admission period. For example, Daily, Farewell, and Guarav (2010) found that international students pursuing a business degree in the United States rate opportunities for post-graduation employment, availability of financial aid,

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<sup>184</sup> Institute of International Education, 2019 Open Doors® Report on International Educational Exchange, Retrieved from: <https://www.iie.org/Why-IIE/Announcements/2019/11/Number-of-International-Students-in-the-United-States-Hits-All-Time-High>.

<sup>185</sup> NAFSA: Association of International Educators , Economic Value Statistics, Retrieved from: <https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2/#main-content> (last visited Apr. 14, 2020).

and reputation of the school as the most important factors in selecting a university.<sup>186</sup> These factors may outweigh the perceived impacts from the proposed admission for a fixed period.

#### *Other J exchange visitors*

For other J exchange visitors, such as government visitors and alien physicians, DHS does not believe there would be a significant impact in participation. Alternatives to U.S.-based exchange visitor programs (outside of academia) may be more difficult to find in other countries, providing less of an incentive for nonimmigrants to choose an alternative. S.

#### *I foreign information media representatives*

Similar to J exchange visitors not affiliated with SEVP-certified schools, DHS does not believe the proposed rule would have a significant impact on I nonimmigrants. Using ADIS data from 2016-2018, DHS found that on average, 97 percent of I nonimmigrants have a period of stay shorter than 240 days, and there are fewer proposed changes to the I category relative to other nonimmigrants, such as F nonimmigrants. Therefore, DHS does not expect a reduction in admissions of I nonimmigrants.

DHS appreciates the importance of nonimmigrant student enrollment and exchange visitor participation to the U.S. culture and economy, but acknowledges the potential for the proposed rule to affect future nonimmigrant student enrollment and exchange visitor participation and associated revenue. DHS requests comment on this potential impact, including literature, data, and research estimating nonimmigrant student enrollment and exchange visitor participation impacts and the potential effect of the requirements on schools or sponsors and the larger economy.

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<sup>186</sup> Daily, C., Farewell, S., & Guarav, K., (2010). *Factors Influencing the University Selection of International Students*, Academy of Educational Leadership Journal, 14(3), 59-75, Retrieved from: <https://www.abacademies.org/articles/aeljvol14no32010.pdf> (last visited Apr. 14, 2020).

### *Implementation and Operations Costs Incurred by CBP*

DHS acknowledges there would be implementation and operational costs to the U.S. Government associated with assessing aliens at the POE for purposes of authorizing an admission period of 2 or 4 years. CBP officers would need training on new systems and procedures for conducting inspections at the POE. Once the rule is effective, CBP officers would need readily accessible information on the applicant to assist in (1) assessing the appropriate length of stay for admission; and (2) making an admissibility assessment in cases of re-admission. DHS may require modification to the Primary Processing System to deliver this information to CBP officers. DHS continues to explore the necessary upgrades to systems and procedures that would allow CBP officers to perform their duties in accordance with this proposed rule. Therefore, this analysis does not quantify the costs associated with training CBP officers or the operational costs associated with new systems and procedures.

### *E-Verify*

DHS is proposing a 2-year limitation on F nonimmigrants accepted to and attending schools not enrolled in E-Verify, or if enrolled, not a participant in good standing in E-Verify as determined by USCIS. DHS also is proposing a 2-year limitation on J nonimmigrants participating in an exchange visitor program whose sponsor is not enrolled in E-Verify, or if enrolled, not a participant in good standing in E-Verify as determined by USCIS. The proposed rule would require these nonimmigrants to file an EOS request every 2 years to extend their stay.

The EOS estimates and quantitative cost impacts incorporate E-Verify enrollment for J exchange visitor program sponsors. This was done by matching the employer identification number for J exchange visitor program sponsors with the employer identification number for employers enrolled in E-Verify. However, DHS was not able to control for E-Verify enrollment

for schools attended by F nonimmigrants because the student data did not contain the employer identification number for schools attended by F nonimmigrants. DHS attempted to manually identify schools enrolled in E-Verify using fields such as school name and employer name, but was unsuccessful. For this reason, DHS did not quantify the impact of the E-Verify provision on F nonimmigrants in this analysis.<sup>187</sup>

### *Batch Processing*

Batch processing is a data-based transaction between a school and the SEVIS information database maintained by DHS. Batch processing is intended to help DSOs and ROs update and report their nonimmigrant student and exchange visitor information to SEVIS in a timely manner by automating the exchange of data. Rather than updating individual nonimmigrant student and exchange visitor information manually through SEVIS, batch processing allows schools and program sponsors to pool together and automatically process updates at the same time. The intended benefit of using batch processing is to streamline the SEVIS updating process. Instead of updating individual record information one-by-one through the SEVIS Portal, DSOs can update multiple records at once, automatically.

DSOs are required to submit changes or updates to the nonimmigrant student and exchange visitor information to the SEVIS database system. When using batch processing to submit information to SEVIS, DSOs are required to comply with the proper documentation by submitting their updates as Extensible Markup Language (“XML”) documents. Using the XML format allows the SEVIS batch system to recognize the new or updated student data automatically. The changes are stored in the SEVIS batch system and an updated report is

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<sup>187</sup> See the section titled, “Estimating EOS Requests for F Nonimmigrants” for a discussion regarding the E-Verify data limitations.

returned to the school for record keeping and verification. Schools can develop their own software or use third-party software suppliers to organize, update, and store their student data according to the SEVIS XML requirements.<sup>188</sup>

If finalized, the rule could lead to system upgrades by schools and program sponsors that currently use batch processing to interface with SEVIS. DHS acknowledges that there are many factors that affect the magnitude of system upgrade costs incurred by schools. For example, there may be one-time software development costs to implement an updated system capable of storing and converting a higher volume of nonimmigrant student and exchange visitor records. There also may be differences in the burden of the proposed rule according to the size of the nonimmigrant student and exchange visitor population at the school, the willingness of the school to maintain up-to-date system-wide software and hardware, and other factors. DHS requests comment on this potential impact, including the potential effect of the requirements on schools or sponsors and any data associated with the impact, such as the typical expenses for third-party software licenses or the potential impact of system-wide hardware or software updates.

Preparing the SEVIS batch system to accept novel categories of information from schools and program sponsors could require new database management procedures. DHS acknowledges that accepting the updated XML files sent from DSOs has the potential to impact the functionality of its internal system. The SEVIS batch system may require system updates to maintain proper operations and system execution during the exchange between the user-system

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<sup>188</sup>Immigration and Customs Enforcement SEVIS document, *Application Program Interface Document for the Student and Exchange Visitor Information System Batch Interface Release 6.35*, p. 1-5 (July 31, 2017), Retrieved from: [https://www.ice.gov/doclib/sevis/pdf/batch\\_api\\_6.35\\_073117\\_main.pdf](https://www.ice.gov/doclib/sevis/pdf/batch_api_6.35_073117_main.pdf).

(the DSO's system) and the SEVIS batch system. Because of the uncertainty of the scope and scale of the system upgrades needed as a result of this proposed rule, DHS has not monetized the cost of these potential, future information technology investments.

### *English Language Training*

DHS is proposing a limitation of an aggregate 24-month period of stay, including breaks and an annual vacation, for language training students. Unlike degree programs, there are no nationally-recognized, standard completion requirements for language training programs, allowing students to exploit the current system and stay for an excessive period of time. The proposed 24-month period of stay would allow students a reasonable period of time to attain proficiency in the English language while mitigating the Department's concerns of fraud with the program. DHS estimates that an average of 136,000 students participate in English language training programs annually.<sup>189</sup> This analysis does not estimate a cost for this proposed provision as students enrolled in English language training would not be able to extend their fixed period of stay beyond two years and would therefore not incur the costs associated with applying for an extension to their period of admission. However, it is possible language training programs would experience reduced enrollment due to the proposed rule. Additionally, some schools may choose to change their curriculum to be covered in a 2-year time period, representing an additional burden on language training program providers. However, DHS expects this to affect relatively few programs. For all years of analysis, the majority of English language training students were enrolled in programs shorter than two years. Table 10 shows the percentage of students enrolled

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<sup>189</sup> This estimate was developed using data from SEVIS. The SEVIS database was queried to extract data from FY 2016-2018. DHS used R Statistical Software to develop logic allowing DHS to identify individuals enrolled in language training programs. DHS provides the SQL code used to query the SEVIS database and the R code used to develop the logic for this analysis on the proposed rule's docket.

in English language training programs by program duration for FY 2016-2018. DHS seeks public comment on potential reduced enrollment, and associated impacts, resulting from the proposed limitations on language training.

**Table 10. Percent of Students Enrolled in English Language Training Programs by Length of Program**

	FY 2016		FY 2017	FY 2018
Percent of English Language Training Students with a Program Duration Less Than or Equal to 1 Year	58.4		58.9	58.0
Percent of English Language Training Students with a Program Duration Greater Than 1 year and Less Than or Equal to 2 years	27.7		25.8	26.3
Percent of English Language Training Students with a Program Duration Greater Than 2 Years	13.8		15.3	15.7
Estimates derived from SEVIS data.				

*Limitations on Changes in Educational Levels*

DHS is proposing a limitation on the number of program changes at the same or lower educational levels that students would be permitted to further strengthen the integrity of the F visa category. Specifically, DHS proposes to restrict the number of program changes between educational levels after completion of their first program by limiting F-1 students to two additional changes in programs at the same level and one additional transfer to a lower level. See proposed 8 CFR 214.2(f)(8)(ii)(B). This limitation may cause minor nonimmigrant enrollment reductions at schools, especially where F-1 nonimmigrants have changed between programs to remain in the United States for lengthy periods, and may also reduce options to change programs

available to nonimmigrant students, including those who are properly maintaining their status. Limiting the number of changes between education levels could potentially result in a corresponding reduction in tuition revenue for the universities and a reduction in extension of stay filing fees for the Federal government from students that are otherwise in compliance with their status, fulfilling their academic requirements, but are interested in additional programs beyond the proposed limitation. Based on an analysis of three fiscal years of SEVIS data between FY 2016 and FY 2018, DHS is unable to quantify the impact on nonimmigrant student program changes between educational levels due to the lack of reliable transfer data. DHS seeks public comment on this potential impact.

#### *Pending EOS Applications for F Nonimmigrants*

The proposed rule also would establish certain adjustments for F nonimmigrants with pending EOS applications. Specifically, F nonimmigrants with a timely filed EOS application and whose EOS application is still pending after their admission period indicated on Form I-94 has expired would:

- receive an automatic extension of their F nonimmigrant status and, as applicable, of their on-campus employment authorization, off-campus employment authorization due to severe economic hardship, or STEM OPT employment authorization, as well as evidence of employment authorization, for up to 180 days or until the applicable applications are approved, whichever is earlier;
- receive an automatic extension of their current authorization for on-campus and off-campus employment based on severe economic hardship resulting from emergent circumstances under 8 CFR 214.2(f)(5)(v), for up to 180 days or the end date of the



Federal Register notice (FRN) announcing the suspension of certain requirements, whichever is earlier;

- be prohibited from engaging in employment until their EOS applications and applications for employment authorization based on either an internship with an international organization, CPT, pre-completion OPT, or post-completion OPT are approved.

DHS acknowledges that these requirements would affect a cohort of F nonimmigrants.

The total impact would depend on the number of F nonimmigrants with a timely filed EOS application and whose EOS application is still pending after their admission period indicated on Form I-94 has expired. DHS does not have data to estimate this sub-population. DHS believes that the incremental impact from these proposed requirements would not have a material impact on the results of this analysis, but requests public comment on these impacts.

*Total Cost Estimates*

Table 12 summarizes the impacts of the proposed rule. Total monetized costs of the proposed rule include DSO and RO rule familiarization and adaptation costs, EOS filing costs, and DSO/RO program extension request processing and SEVIS update costs. The 10-year discounted costs of the proposed rule in 2018 dollars would range from \$1.7 billion to \$2.0 billion (with 7 and 3 percent discount rates, respectively). The annualized costs of the proposed rule would range from \$229.9 million to \$237.7 million (with 3 and 7 percent discount rates, respectively).

**Table 12. Costs of the Proposed Rule (2018\$ millions)**

<b>Fiscal Year</b>	<b>DSO/RO Rule Familiarization</b>	<b>EOS Filing</b>	<b>DSO/RO EOS Processing</b>	<b>Total Costs</b>
2020	\$93.3	\$134.7	\$22.9	\$250.9
2021	\$0.0	\$134.7	\$22.9	\$157.6

2022	\$0.0	\$170.8	\$28.7	\$199.4
2023	\$0.0	\$170.8	\$28.7	\$199.4
2024	\$0.0	\$240.3	\$40.5	\$280.7
2025	\$0.0	\$197.3	\$33.0	\$230.3
2026	\$0.0	\$197.3	\$33.0	\$230.3
2027	\$0.0	\$197.3	\$33.0	\$230.3
2028	\$0.0	\$197.3	\$33.0	\$230.3
2029	\$0.0	\$197.3	\$33.0	\$230.3
<b>Undiscounted Total</b>	<b>\$93.3</b>	<b>\$1,837.7</b>	<b>\$308.7</b>	<b>\$2,239.6</b>
<b>Total with 3% discounting</b>	<b>\$93.3</b>	<b>\$1,599.0</b>	<b>\$268.7</b>	<b>\$1,961.0</b>
<b>Total with 7% discounting</b>	<b>\$93.3</b>	<b>\$1,349.6</b>	<b>\$226.9</b>	<b>\$1,669.8</b>
<b>Annualized, 3% discount rate, 10 years</b>	<b>\$10.9</b>	<b>\$187.4</b>	<b>\$31.5</b>	<b>\$229.9</b>
<b>Annualized, 7% discount rate, 10 years</b>	<b>\$13.3</b>	<b>\$192.2</b>	<b>\$32.3</b>	<b>\$237.8</b>

Transfers

Should there be a reduction in the number of nonimmigrant students and exchange visitors applying for visas or for F or J status in the United States, then there would be an impact on the amount of fees collected by SEVP and DOS from nonimmigrant students and exchange visitors through visa applications and SEVIS fees. These fees are used to cover the operational costs associated with processing the applications and adjudications. Nonetheless, DHS anticipates that any impacts resulting from potential decreased nonimmigrant student enrollment and exchange visitor participation would be outweighed by the national security benefits anticipated as a result of the proposed requirements.

Benefits

Among the unquantified benefits of the proposed rule is the opportunity for DHS to have additional opportunities to evaluate whether F, J, and I nonimmigrants are complying with their

status requirements. Currently, the D/S framework does not require immigration officers to assess whether these nonimmigrants are complying with the terms and conditions of their stay, or whether they present a national security concern, unless some triggering event (such as an encounter in an enforcement setting, or a request for a benefit from USCIS) leads to a review of the nonimmigrant's compliance. By implementing fixed periods of admission for these nonimmigrants, they will be required to submit an application for EOS or travel and apply for admission, which they are not currently required to do, in order to stay beyond their period of admission. This gives DHS additional opportunities to evaluate whether they are complying with the requirements of their status, or if they present a national security concern. Requiring nonimmigrant academic students, exchange visitors, and representatives of foreign information media to request an additional period of admission directly with the Department would improve consistency of admissions between nonimmigrant categories, enable stronger oversight by immigration officers who would review the nonimmigrant's request and assess whether the nonimmigrant had been complying with the terms and conditions of his or her status, enhance DHS's ability to effectively enforce the statutory inadmissibility grounds related to unlawful presence, and deter aliens and entities from engaging in fraud and abuse within these nonimmigrant programs. Accordingly, these proposed changes would provide the Department with additional protections and mechanisms to exercise the oversight necessary to vigorously enforce our nation's immigration laws, protect the integrity of these categories, and promptly detect national security concerns.

DHS believes this proposed rule could result in reduced fraud, abuse, and national security risks for these nonimmigrant programs, but whether the rule will in fact result in a reduction will be borne out when the final rule is implemented. Compared to the current D/S

framework in which a nonimmigrant's substantive compliance might never be reviewed by DHS, DHS believes that the rule would be likely to result in more prompt detection of national security concerns or abuse by F, J and I nonimmigrants and could serve as a deterrent to those who would otherwise plan to engage in fraud or otherwise abuse these nonimmigrant classifications. The rule proposes additional oversight of these individuals. Without this oversight, there is no data on prevalence of fraud and abuse by F, J, and I nonimmigrants and only limited data on these individuals' impact on national security.

## **5. Alternatives**

Before arriving at a fixed admission period of up to either 2 or 4-years, DHS considered various options, including no action, a 1- and 3-year fixed admission period alternative, and a standard 1-year fixed admission period for all F and J nonimmigrants.

### **No Action Alternative**

DHS first considered a "no action" alternative, under which F, J, and I nonimmigrants would continue being admitted for D/S. DHS determined that this alternative would not address the lack of pre-determined points for immigration officers to directly evaluate whether F, J and I nonimmigrants are maintaining their status, currently lacking because of the D/S framework. Additionally, DSOs and ROs would continue extending the program and therefore the nonimmigrant status of F and J aliens, instead of having immigration officers, who are government officials, make this assessment. As a result, there would continue to be challenges to the Department's ability to effectively monitor and oversee these categories of nonimmigrants. With this option, the Department would continue to be concerned about the integrity of the programs and the potential for increased risk to national security.

### **Alternative 1: 1- and 3-year Fixed Admission Period**

An alternative that DHS considered was to admit F and J nonimmigrants to their program end date, not to exceed 3 years, or 1 year for nonimmigrants meeting certain conditions. While such an option would provide the Department with more frequent direct check in points with these nonimmigrants than provided by a 4-year maximum period of admission, or 2 years for nonimmigrants meeting certain conditions, DHS was concerned it would be unduly burdensome on many F and J nonimmigrants. Under the alternative, DHS estimates that, on average, 494,000 nonimmigrants would file an EOS each year. By comparison, DHS estimates that under the proposed rule, on average, 301,000 nonimmigrants would file an EOS each year. By selecting the 2- and 4- year option in the proposed rule over the 1- and 3-year alternative, DHS expects to receive 193,000 fewer EOS requests on average each year. DHS believes that a 4-year period best aligns with the normal progress for most programs, and a 3-year maximum period of stay would require almost every nonimmigrant enrolled in a 4-year program to apply for an EOS. A 3-year maximum also would result in greater administrative burdens on USCIS and CBP compared to the proposed 4-year maximum period of admission. USCIS would have to adjudicate extension of stay applications with more frequency if a 3-year maximum period of stay is chosen over a 4-year period. Similarly, CBP would have to process applications for admission at POEs more frequently under the 3-year maximum period of stay alternative. Therefore, DHS believes an admission for the program end date, not to exceed 4 years (except for limited exceptions that would limit admissions to 2 years) is the best option and welcomes comments on this proposal.

DHS calculated the costs for this alternative. DSO and RO rule familiarization and adaptation costs would remain the same under this alternative (\$93.3 million during the first year after the rule takes effect). To calculate EOS filing costs, DHS multiplied the expected number



Number of EOS / Cost	Early Transition Period			End of Transition	Full Implementation Period					
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
<b>F-2</b>										
F-2 EOS Requests	21,118	35,376	35,376	56,917	44,094	44,094	44,094	44,094	44,094	44,094
Paper filing cost, no help <sup>5</sup>	\$2.0	\$3.3	\$3.3	\$5.4	\$4.2	\$4.2	\$4.2	\$4.2	\$4.2	\$4.2
E-filing cost, no help <sup>6</sup>	\$0.9	\$1.4	\$1.4	\$2.3	\$1.8	\$1.8	\$1.8	\$1.8	\$1.8	\$1.8
<b>F-2 Total</b>	<b>\$2.9</b>	<b>\$4.8</b>	<b>\$4.8</b>	<b>\$7.7</b>	<b>\$6.0</b>	<b>\$6.0</b>	<b>\$6.0</b>	<b>\$6.0</b>	<b>\$6.0</b>	<b>\$6.0</b>
<b>J-1</b>										
J-1 EOS Requests	0	40,776	40,776	50,418	45,526	45,526	45,526	45,526	45,526	45,526
Paper filing cost, no help <sup>1</sup>	\$0.0	\$13.1	\$13.1	\$16.2	\$14.6	\$14.6	\$14.6	\$14.6	\$14.6	\$14.6
E-filing cost, no help <sup>2</sup>	\$0.0	\$5.2	\$5.2	\$6.5	\$5.8	\$5.8	\$5.8	\$5.8	\$5.8	\$5.8
Paper filing cost, with help <sup>3</sup>	\$0.0	\$11.9	\$11.9	\$14.8	\$13.3	\$13.3	\$13.3	\$13.3	\$13.3	\$13.3
E-filing cost, with help <sup>4</sup>	\$0.0	\$4.9	\$4.9	\$6.1	\$5.5	\$5.5	\$5.5	\$5.5	\$5.5	\$5.5
<b>J-1 Total</b>	<b>\$0.0</b>	<b>\$35.1</b>	<b>\$35.1</b>	<b>\$43.5</b>	<b>\$39.2</b>	<b>\$39.2</b>	<b>\$39.2</b>	<b>\$39.2</b>	<b>\$39.2</b>	<b>\$39.2</b>
<b>J-2</b>										
J-2 EOS Requests	0	18,896	18,896	25,004	21,978	21,978	21,978	21,978	21,978	21,978
Paper filing cost, no help <sup>5</sup>	\$0.0	\$3.1	\$3.1	\$4.1	\$3.6	\$3.6	\$3.6	\$3.6	\$3.6	\$3.6
E-filing cost, no help <sup>6</sup>	\$0.0	\$1.3	\$1.3	\$1.8	\$1.6	\$1.6	\$1.6	\$1.6	\$1.6	\$1.6
<b>J-2 Total</b>	<b>\$0.0</b>	<b>\$4.5</b>	<b>\$4.5</b>	<b>\$5.9</b>	<b>\$5.2</b>	<b>\$5.2</b>	<b>\$5.2</b>	<b>\$5.2</b>	<b>\$5.2</b>	<b>\$5.2</b>
<b>I</b>										
I EOS Requests	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197
Paper filing cost, no help <sup>1</sup>	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4
E-filing cost, no help <sup>2</sup>	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2
Paper filing cost, with help <sup>3</sup>	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4
E-filing cost, with help <sup>4</sup>	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1
<b>I Total</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>	<b>\$1.0</b>
<b>Total, All Nonimmigrant Categories</b>	<b>\$134.7</b>	<b>\$261.7</b>	<b>\$261.7</b>	<b>\$446.9</b>	<b>\$327.6</b>	<b>\$327.6</b>	<b>\$327.6</b>	<b>\$327.6</b>	<b>\$327.6</b>	<b>\$327.6</b>

\*Totals may not sum due to rounding.

- [1] (EOS request estimate) x (unit cost for paper applicants not requiring outside help) x (0.455)
- [2] (EOS request estimate) x (unit cost for electronic applicants not requiring outside help) x (0.195)
- [3] (EOS request estimate) x (unit cost for paper applicants requiring outside help) x (0.245)
- [4] (EOS request estimate) x (unit cost for electronic applicants requiring outside help) x (0.105)
- [5] (EOS request estimate) x (unit cost for paper applicants not requiring outside help) x (0.7)
- [6] (EOS request estimate) x (unit cost for electronic applicants requiring outside help) x (0.3)

The total costs for EOS request filing under the 3-year and 1-year fixed period of admission alternative would be \$3.1 billion undiscounted,<sup>190</sup> or \$2.7 billion and \$2.2 billion at discount rates of 3 and 7 percent, respectively. The annualized cost of EOS request filing over the 10-year period would be \$312.8 million and \$320.0 million at discount rates of 3 and 7 percent, respectively.

To estimate costs for DSOs and ROs to process program extension requests and update SEVIS under the 3-year and 1-year fixed period of admission alternative, DHS multiplied the expected number of F-1 and J-1 EOS requests under the 3-year and 1-year fixed admission period alternative (Table 13) by the expected DSO and RO time requirement per EOS request (3 hours) and the DSO and RO loaded wage rate (\$28.93 x 1.46 loaded wage rate factor).

Table 15 presents undiscounted DSO/RO costs to process program extension requests and update SEVIS throughout the 2020-2029 study period under the 3-year and 1-year fixed admission period alternative. Similar to EOS filing costs, DSO/RO costs to process program extension requests and update SEVIS are lowest during the early transition period (2020-2022) and highest at the end of the transition period (2023) because of the variation in the estimated number of EOS requests (Table 13).

**Table 15. DSO/RO Costs for Processing Program Extension Requests Based on EOS Requests and Updating SEVIS under Alternative #1, by Year (Millions 2018\$, Undiscounted)**

	Early Transition Period			End of Transition	Full Implementation Period					
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Number of Extension Requests <sup>1</sup>	180,787	339,611	339,611	587,646	427,122	427,122	427,122	427,122	427,122	427,122
Costs <sup>2</sup>	\$22.91	\$43.03	\$43.03	\$74.46	\$54.12	\$54.12	\$54.12	\$54.12	\$54.12	\$54.12

<sup>190</sup> The undiscounted total differs slightly from the sum of the years provided in Table 14 because of rounding in the table values.



[1] Sum of extension request estimates for F-1 students and J-1 exchange visitors.

[2] (Number of extension requests) x (3 hours) x (DSO/RO wage rate of \$28.93) x (loaded wage rate factor of 1.46).

The total cost estimate for DSOs and ROs to process program extension requests and update SEVIS under the 3-year and 1-year fixed period of admission alternative would be \$508.2 million undiscounted,<sup>191</sup> or \$441.7 million and \$372.1 million at discount rates of 3 and 7 percent, respectively. The annualized cost of DSOs and ROs to update SEVIS over the 10-year period would be \$51.8 million and \$53.0 million at discount rates of 3 and 7 percent, respectively.

Total monetized costs of the 3-year and 1-year fixed period of admission alternative include DSO and RO rule familiarization and adaptation costs, EOS filing costs, and DSO/RO costs for processing program extension requests and updating SEVIS. The 10-year discounted total costs of the 3-year and 1-year fixed period of admission alternative would be \$3.2 billion with a 3 percent discount rate and \$2.7 billion with a 7 percent discount rate. The annualized total costs of the 3-year and 1-year fixed period of admission alternative would range from \$375.5 million to \$386.2 million (with 3 and 7 percent discount rates, respectively). The qualitative benefits of the 3-year and 1-year fixed period of admission alternative are same as the benefits of the 4-year and 2-year fixed period of admission alternative described in Section V.A.4.

#### Other Alternatives

DHS also considered a standard 1-year fixed admission period for all F and J nonimmigrants. This option would treat all F and J nonimmigrants equally and would likely

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<sup>191</sup> The undiscounted total differs slightly from the sum of the years provided in Table 15 because of rounding in the table values.

allow for easier implementation by USCIS and CBP by reducing the complexity of implementation and enforcement. Nevertheless, it could result in significant costs to nonimmigrants and the Department. There are more than 1 million F students who are enrolled in programs of study that last longer than 1 year. With a 1-year admission period, DHS expects that all of them would be required to apply for additional time. This would be a significant cost to students and exchange visitors, especially those who comply with the terms and conditions of their admission and those attending undergraduate programs that typically require 4 years to complete. Further, such a restrictive admission period could have unintended consequences. For example, if USCIS's EOS processing time is significantly lengthened due to a 1-year admission period, cases presenting national security or fraud concerns would not necessarily be prioritized, thereby allowing a mala fide student or exchange visitor to remain in the United States until USCIS adjudicated his or her petition.

DHS also considered whether the Department could utilize data from SEVIS to identify potentially problematic F and J nonimmigrants and require only this targeted subset of F and J nonimmigrants to complete an EOS. SEVIS information is used when aliens apply for a visa and admission to the U.S. as an F or J nonimmigrant, as well as to track and monitor their status. While this information is likely to be helpful in identifying aliens who should be subjected to further review, in some cases the information may not be sufficient for determining whether these nonimmigrants are engaging in fraudulent behavior or otherwise have fallen out of status. The data received when applying for an EOS provides additional information not contained in SEVIS that helps the Department effectively monitor and oversee F and J nonimmigrants. Further, an EOS provides a direct interaction with an immigration officer. As a potential remedy, the Department considered whether the SEVIS data could be used to classify a

subset of nonimmigrants as higher risk of being a national security threat or committing fraud. The identified subset would then be required to complete an EOS as described in the proposal. Depending on how the Department targeted higher risk aliens, a smaller number of EOS's would need to be completed as compared to the current proposal, thus lowering the burden on nonimmigrants, program sponsors, and the Department. The Department rejected this alternative in favor of moving all F and J nonimmigrants to a fixed period admission because SEVIS does not readily lend itself to this purpose, as it is used to gather information regarding technical compliance, and the data cannot replace the information that can be developed in the course of an adjudication, in which USCIS has the opportunity to ask questions via a request for evidence and, if necessary, conduct an interview. The Department also rejected this alternative due to the operational burden and challenges that would exist if some F and J nonimmigrants were admitted for D/S, but others for a fixed period of admission. In addition, by requiring all of the F and J nonimmigrants to be admitted for a fixed period, this allows for the opportunity for improved detection of fraud or abuse, as the Department has observed that abuse is not limited to one particular type of school or program. By fixing a date certain period of admission, all of these nonimmigrants are on notice as to the date their period of stay expires, and the Department will be in a position to provide greater oversight to help deter F and J nonimmigrants from engaging in fraud and abuse, including staying beyond that fixed date. All those who overstay would begin to accrue unlawful presence, generally the day after their period of stay expires, when admitted for a fixed period of admission. Lastly, the Department believes that a fixed period of admission for these populations may deter fraud, allow for earlier detection of national security concerns, and help reduce overstays which outweighs reducing the number of EOS requests that may be required.

## Comparison Table of Alternatives

Table 16 compares the quantitative costs and qualitative benefits of the various alternatives. The “no action” alternative has zero costs but does not address how the D/S framework challenges the Department’s ability to effectively implement the statutory inadmissibility grounds of unlawful presence, undermines the integrity of these programs, and presents a risk to national security. The alternative with a 3-year maximum period of admission (or 1-year for nonimmigrants meeting certain conditions) would provide the Department with more frequent direct check in points on the nonimmigrants than a 4-year maximum period of admission, but DHS determined that the expense and workload implications of this option would be too burdensome on all stakeholders. DHS thus selected the proposed rule, which would impose lower costs while providing the Department with an effective mechanism to exercise the oversight necessary to vigorously enforce our nation’s immigration laws, protect the integrity of these categories, and promptly detect national security concerns.

**Table 16. Summary of Alternatives**

<b>10-Year Discounted Totals (in \$2018 Million)</b>			
<i>3-Percent Discount</i>			
<b>Alternative</b>	<b>Annualized Costs</b>	<b>Total Costs</b>	<b>Qualitative Benefits</b>
No action	\$0.00	\$0.00	N/A
Proposed Rule (4-year max admission)	\$229.9	\$1,961.0	Evaluations at pre-determined intervals provide oversight necessary to enforce immigration laws; protect the integrity of F, J, and I nonimmigrant categories; and promptly detect national security concerns
Alternative 1 (3-year max admission)	\$375.5	\$3,203.5	More frequent evaluations of nonimmigrants (at least one check-in for every F, J, and I nonimmigrant)
<i>7-Percent Discount</i>			
<b>Alternative</b>	<b>Annualized Costs</b>	<b>Total Costs</b>	<b>Qualitative Benefits</b>
No action	\$0.00	\$0.00	N/A
Proposed Rule (4-year max admission)	\$237.8	\$1,669.8	Evaluations at pre-determined intervals provide oversight necessary to enforce immigration laws; protect the integrity of F, J, and I nonimmigrant categories; and promptly detect national security concerns
Alternative 1 (3-year max admission)	\$386.2	\$2,712.7	More frequent evaluations of nonimmigrants (at least one check-in for every F, J, and I nonimmigrant)

## **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. DHS requests information and data from the public that would assist in better understanding the impact of this proposed rule on small entities. DHS also seeks input from the public on alternatives that will accomplish the same objectives and minimize the proposed rule’s economic impact on small entities. An initial regulatory flexibility analysis (IRFA) follows.

### **1. A Description of the Reasons Why the Action by the Agency Is Being Considered**

DHS proposes to amend its regulations to eliminate the practice of admitting F academic students, I representatives of foreign information media, and J exchange visitors for the period of time that they are complying with the conditions of their nonimmigrant category (“duration of status”) and replace it with a fixed period of admission. The proposed rule would enable DHS to more effectively combat fraud and abuse, more accurately account for the accrual of unlawful presence grounds of inadmissibility, and better protect our nation’s immigration system. DHS’s objectives and legal authority for this proposed rule are further discussed throughout this NPRM.

### **2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule**

The objective of the proposed rule is to establish requirements that would help: (1) ensure that the Department has an effective mechanism to periodically and directly assess whether these nonimmigrants are complying with the conditions of their classifications and U.S. immigration laws; and (2), obtain timely and accurate information about the activities they engage in during

their temporary stay in the United States. If immigration officers discover a nonimmigrant in one of these categories has overstayed or otherwise violated his or her status, the proposed changes would ensure the Department is better able to carry out the unlawful presence provisions of the Immigration and Nationality Act (INA). DHS believes this greater oversight would deter F, J, or I nonimmigrants from engaging in fraud and abuse and strengthen the integrity of these nonimmigrant classifications.

The legal basis for this proposed rule is grounded in the Secretary of Homeland Security's broad authority to administer and enforce the nation's immigration laws. Under Section 102 of the Homeland Security Act of 2002 (HSA) (Pub. L. 107-296, 116 Stat. 2135), 6 U.S.C. 112 and section 103(a)(1) and (3) of the INA, 8 U.S.C. 1103 (a)(1),(3), charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. Section 402(4) of the HSA, 6 U.S.C. 202(4), expressly authorizes the Secretary, consistent with 6 U.S.C. 236 (the DOS's statutory authority concerning visa issuance and refusal), to establish and administer rules governing the granting of visas or other forms of permission to enter the United States to individuals who are not U.S. citizens or lawful permanent residents. See also 6 U.S.C. 271(a)(3), (b) (describing certain USCIS functions and authorities, including USCIS' authority to establish national immigration services policies and priorities and adjudicate applications) and 6 U.S.C. 252(a)(4) (describing ICE's authority to collect information relating to foreign students and program participants and to use such information to carry out its enforcement functions). Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), and Title IV of the Homeland Security Act of 2002, P.L. 107-296, the Secretary of Homeland Security has the authority to prescribe, by regulation, the time and conditions of admission of all nonimmigrants.

### **3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply**

The small entities to which the proposed rule would apply include all small SEVP-certified schools and J exchange visitor program sponsors. Employers of I foreign information media representatives would incur negligible costs from the proposed rule because the burden for filing an EOS request falls on the I nonimmigrant, not the employer. Employers of I foreign information media representatives are thus excluded from the small business impact analysis.

#### **SEVP-Certified Institutions Certified to Enroll Nonimmigrant Students**

As of 2018, there were a total of 6,754 SEVP-certified institutions (schools) authorized to enroll F nonimmigrant students that would be subject to the proposed rule because they are authorized to enroll F-1 nonimmigrants for a length of time greater than 1 year. Of these schools, 1,346 are public, 655 are for-profit, 4,183 are private nonprofit, and 570 are private without a for-profit/nonprofit specification.<sup>192</sup>

DHS estimated the percentage of public schools that are small entities using a random sample of the 1,346 SEVP-certified public schools. DHS does not keep data on the size of the jurisdiction where each SEVP-certified school is located and, therefore, needed to do additional research to determine which schools are small. Due to the large number of SEVP-certified public schools and the level of effort associated with additional data collection, DHS assessed the jurisdiction size for a sample of 299 public schools selected randomly from the 1,346 SEVP-certified public schools.<sup>193</sup> Of these sampled schools, none were affiliated with a governmental

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<sup>192</sup> The number and type of schools were extracted from SEVIS, retrieved on September 5, 2019. More information on SEVIS can be found at <https://www.ice.gov/sevis/overview>.

<sup>193</sup> In determining the sample size, DHS assumed a 95 percent confidence level (z-score of 1.96); 5 percent margin of error ( $e=0.05$ ); and a 50 percent population proportion of small schools ( $p=0.5$ ). DHS used the equation  $S = ((z^2 * p(1 - p))/e^2) / (1 + ((z^2 * p(1 - p))/(Ne^2)))$ , where S is sample size, N is population size, and



jurisdiction with a population of less than 50,000 because most schools had a statewide jurisdiction. Of the 299 sampled public schools, DHS found that none of the public schools were small entities because they are in a governmental jurisdiction with a population greater than 50,000.<sup>194</sup> Therefore, DHS estimates that all 1,346 public schools are not small entities.<sup>195</sup>

DHS conservatively assumes that all 4,183 private nonprofit schools are small entities because they are not dominant in their field.<sup>196</sup> DHS also assumes that all 570 schools that are private schools without a for-profit/nonprofit designation are small entities. DHS requests comments from the public regarding these assumptions.

To determine which of the remaining 655 private for-profit schools are considered a small entity, DHS sampled 243 for-profit schools.<sup>197</sup> DHS referenced the Small Business Administration (SBA) size standards represented by business average annual receipts. Receipts are generally defined as a firm's total income or gross income. SBA's Table of Small Business Size Standards provides business size standards for all sections of the North American Industry

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all other variables are as described in this footnote. The equation used to calculate the sample size can be found in Daniel WW (1999). *Biostatistics: A Foundation for Analysis in the Health Sciences*. 7th edition. New York: John Wiley & Sons.

<sup>194</sup> Section 601(5) of the Regulatory Flexibility Act defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

<sup>195</sup> DHS is aware that this conclusion differs from that of the findings in the 2019 SEVP Fee Rule FRFA (*See* 84 FR 23930 (May 29, 2019)). For the SEVP Fee Rule FRFA and the D/S NPRM IRFA, DHS used census data to search for the jurisdiction where the school was located. In the D/S NPRM IRFA, high schools were excluded from this search as they would not be subject to the rule limitations. Most public colleges and universities are run at the state level, and all states have a population greater than 50,000. In the SEVP Fee Rule FRFA, public elementary, secondary, and high schools are combined with public universities. There are necessarily more public elementary, secondary, and high schools than there are public universities. Therefore, DHS expects to see differences between the two rules.

<sup>196</sup> Section 601(4) of the Regulatory Flexibility Act defines the term "small organization" to mean any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

<sup>197</sup> In determining the sample size, DHS assumed a 95 percent confidence level (z-score of 1.96); 5 percent margin of error ( $e=0.05$ ); and a 50 percent population proportion of small schools ( $p=0.5$ ). DHS used the equation  $S = ((z^2 * p(1 - p))/e^2) / (1 + ((z^2 * p(1 - p))/(Ne^2)))$ , where S is sample size, N is population size, and all other variables are as described in this footnote. The equation used to calculate the sample size can be found in Daniel WW (1999). *Biostatistics: A Foundation for Analysis in the Health Sciences*. 7th edition. New York: John Wiley & Sons.

Classification System (NAICS) for industries.<sup>198</sup> DHS matched information provided by the schools in SEVIS regarding what programs of study it is engaged in with an appropriate six-digit NAICS industry description. NAICS is the standard classification used to categorize business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy.

DHS found that the revenue of 163 of the 243 sampled for-profit schools fell below the SBA size standard of a small business according to their industry. Therefore, DHS estimates that 67 percent of all for-profit schools authorized to enroll F nonimmigrants fall below the SBA size standard of a small business according to their industry. As a result, DHS estimates that 439 of the 655 for-profit schools fall below the SBA size standard of a small business according and are considered small entities ( $67\% \times 655 = 438.85$ , rounded to 439). Table 17 shows a breakdown of the number of small for-profit SEVP-certified schools by industry.

DHS estimated each private school's annual receipts by multiplying the approximate annual cost of room, board, and tuition by the average annual number of total students based on data provided by the schools to SEVP. DHS acknowledges that this method of estimating receipts may be an incomplete account of a school's income, which may also include contributions from private individuals or other endowments. Because these data reflect a snapshot of all SEVP-certified schools authorized to enroll F students in 2018, DHS acknowledges there may be changes in the school's enrollment numbers and that a school's estimated revenue may differ from actual revenue, which could include income generated from other sources.

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<sup>198</sup> U.S. Small Business Administration, Tables of Small Business Size Standards Matched to NAICS Codes (Aug. 19, 2019), available at <https://www.sba.gov/document/support--table-size-standards>

**Table17. For-profit SEVP-Certified Schools by Industry**

School industry	Size Standard	NAICS codes	Number of small schools	Number of non-small schools	Total SEVP-certified schools	Percent small schools
Elementary and Secondary Schools	\$12M	611110	44	19	63	70%
Junior Colleges	\$22M	611210	1	2	3	33%
Colleges, Universities and Professional Schools	\$30M	611310	46	24	70	66%
Flight Training	\$30M	611512	1	1	2	50%
Other Technical and Trade Schools	\$17M	611519	4	3	7	57%
Fine Arts Schools	\$8M	611610	2	2	4	50%
Language Schools	\$12M	611630	64	29	93	69%
All Other Miscellaneous Schools and Instruction	\$12M	611699	1	0	1	100%
<b>Total</b>			<b>163</b>	<b>80</b>	<b>243</b>	<b>67%</b>
[1] U.S. Small Business Administration, Tables of Small Business Size Standards Matched to NAICS Codes						
[2] Number of schools derived from SEVIS data.						

Table18 shows a summary by school type of the number of SEVP certified schools authorized to enroll F nonimmigrants and estimated small entities. DHS estimates that 5,192 schools meet the SBA definition of a small entity, or approximately 77 percent of the 6,754 schools included in this analysis.

**Table18. SEVP-Certified Schools Authorized to Enroll F Nonimmigrants by School Type**

Description	Total Number of Schools	Percent Small Schools	Percent Small Schools
Public schools	1,346	0	0%
Private, nonprofit schools	4,183	4,183	100%
Private, unspecified schools	570	570	100%
For profit schools	655	439	67%
<b>Total Number of SEVP-Certified Schools</b>	<b>6,754</b>	<b>5,192</b>	<b>77%</b>

#### J Exchange Visitor Program Sponsors

As of 2018, there were a total of 1,171 J exchange visitor program sponsors that would be subject to the proposed rule because they are authorized by DOS to sponsor J exchange visitor programs for a length of time greater than 1 year. Of these sponsors, 54 are government entities,

891 are schools, 23 are hospitals and related institutions, 141 are nonprofit institutions, and 62 are for-profit institutions. These sponsors issue DS-2019s according to certain designation codes that map to specific programs. Table 19 shows the type for each J exchange visitor program designation code.

**Table 19. Descriptions of J Exchange Visitor Program Sponsor Types by Designation Code**

<b>Designation Code</b>	<b>Program Type</b>
<b>G-1</b>	Programs sponsored by the Department of State
<b>G-2</b>	Programs sponsored by the Agency for International Development (USAID)
<b>G-3</b>	Other U.S. Federal agencies
<b>G-4</b>	International agencies or organizations in which the U.S. Government participates
<b>G-5</b>	Other national, State, or local government agencies
<b>G-7</b>	Federally funded national research and development center or a U.S. Federal laboratory
<b>P-1</b>	Educational institutions, e.g., schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research
<b>P-2</b>	Hospitals and related institutions
<b>P-3</b>	Nonprofit organizations, associations, foundations, and institutions (academic institutions conducting training programs can be classified as a P-3, as long as they are considered nonprofit)
<b>P-4</b>	For-profit organizations (business and industrial concerns)

### *Government Entities*

DHS determined that all 54 government entities (G-1, G-2, G-3, G-4, G-5, and G-7 program sponsors) are large entities because 30 are federal government entities and 24 are state or local government entities. Of the 24 state or local government entities, all represented

jurisdictions with populations greater than 50,000. Therefore, DHS classified all 54 government entities as large entities.

#### *Educational Institutions*

DHS identified 891 schools that are J exchange visitor program sponsors. To identify which J exchange visitor program sponsors were small entities, DHS compared the 891 schools sponsoring J exchange visitor programs to the schools authorized to enroll F nonimmigrants. Of the 891 schools sponsoring J exchange visitor programs, 713 (80 percent) also enrolled F nonimmigrants. Of the 713 schools sponsoring both F and J nonimmigrants, 357 (50 percent) of the schools are public schools and 357 (50 percent) are private, nonprofit schools. DHS assumes that the remaining 178 (20 percent) of schools sponsoring only J exchange visitors are also 50 percent public and 50 percent private, nonprofit schools. DHS thus estimates that there would be 446 public schools and 446 private, nonprofit schools (50 percent each of the 891 J-sponsor schools). Since all affected public schools have been found to be large entities and all affected private, nonprofit schools are assumed to be small entities, DHS estimates that 446 of the 891 J-sponsor schools are small entities.

#### *Hospitals and Related Institutions*

DHS identified 23 hospitals and related institutions sponsoring J exchange visitor programs. Of these 23 hospitals, 22 are nonprofit. DHS assumes that all 22 private nonprofit hospitals are small entities because they are not dominant in their fields. Only one hospital and related institution, a health maintenance organization medical health center with six-digit NAICS code 621491, sponsoring J exchange visitor programs is a for-profit institution that exceeded the threshold of \$32.5 million annually in receipts for being a large entity.

#### *Nonprofit Organizations*

DHS conservatively assumes that all 141 nonprofits sponsoring J exchange visitor programs are small entities because they are not dominant in their field. DHS requests comments on these assumptions.

#### *For-profit Organizations*

DHS identified a total of 62 potentially affected for-profit organizations sponsoring J exchange visitor programs. In order to determine which of these for-profit entities may be affected by the proposed rule, DHS identified sponsors eligible to sponsor J exchange visitor programs for longer than one year, as those would be the only sponsors potentially affected by the rule. Sponsors for exchange visitors enrolled in short-term scholar, intern, specialist, secondary school student, college and university student, summer work travel, camp counselor, and au pair programs would not be affected by the proposed rule as the programs they offer are too short to be affected. Using these guidelines, DHS identified 61 organizations sponsoring J exchange visitor participants with a potential stay of greater than one year. Of these 61 organizations, DHS identified 32 potentially affected small entities. To identify these small entities, DHS referenced the SBA size standards represented by business average annual receipts. Receipts are generally defined as a firm's total income or gross income. SBA's Table of Small Business Size Standards is matched to the NAICS for industries.<sup>199</sup> DHS matched information provided by the sponsors in SEVIS with an appropriate NAICS industry description.

#### *Total J Exchange Visitor Program Sponsors*

Overall, DHS identified 1,171 unique entities sponsoring J exchange visitor programs. Of these 1,171 entities, DHS identified 642 small entities that may be affected by the proposed rule.

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<sup>199</sup> U.S. Small Business Administration, Tables of Small Business Size Standards Matched to NAICS Codes (Aug. 19, 2019), available at [https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards\\_Effective%20Aug%202019%2C%202019\\_Rev.pdf](https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019%2C%202019_Rev.pdf).

Table 20 shows a summary by sponsor type of the number of J exchange visitor program sponsors and estimated small entities. DHS requests comments on these assumptions, particularly with regard to J exchange visitor program nonprofit sponsors.

**Table 20. J Exchange Visitor Program Sponsors by Type and Small Entity Status**

<b>Description</b>	<b>Total Number of Sponsors</b>	<b>Number of Affected Small Entities</b>
U.S. Department of State	1	0
U.S. Agency for International Development (USAID)	1	0
Other U.S. Federal agencies	26	0
International agencies or organizations <sup>1</sup>	1	0
Other national, state, or local government agencies	24	0
National research and development center or laboratory <sup>2</sup>	1	0
Educational institutions <sup>3</sup>	891	447
Hospitals and related institutions	23	22
Nonprofit organizations, associations, etc. <sup>4</sup>	141	141
For-profit organizations <sup>5</sup>	62	32
<b>Total</b>	<b>1,171</b>	<b>642</b>
[1] International agencies or organizations in which the U.S. Government participates [2] Federally funded national research and development center or a U.S. Federal laboratory [3] Educational institutions, e.g., schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research [4] Nonprofit organizations, associations, foundations, and institutions (academic institutions conducting training programs can be included here, as long as they are considered nonprofit) [5] For-profit organizations (business and industrial concerns)		

**4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record**

The proposed rule would increase costs for SEVP-certified schools and J exchange visitor program sponsors because DSOs and ROs would have to spend approximately 40 hours for rule familiarization and adaptation (in the first year only; 8 hours to complete rule familiarization training, 16 hours to create and modify training materials, and 16 hours to adapt

to the proposed rule through system wide briefings and systemic changes) and approximately 3 hours per F-1/J-1 program extension request to review the Form I-539 completed by the F-1/J-1 nonimmigrant (1 hour), update the SEVIS record and track program extension requests (1 hour), and advise the F-1/J-1 nonimmigrant about the extension process and the requirements to file an EOS with USCIS (1 hour annually). DHS estimates the annual impact to small SEVP-certified schools and J exchange visitor program sponsors based on the cost of compliance as represented as a percentage of their annual revenue. This analysis examines the impact that the proposed rule would have on small SEVP-certified schools and J exchange visitor program sponsors.

The IRFA evaluates the impacts that have been quantitatively estimated in the regulatory impact analysis. As discussed in the regulatory impact analysis, there are other proposed rule requirements that could impact small SEVP-certified schools and J exchange visitor program sponsors. The regulatory impact analysis qualitatively discusses proposed requirements affecting English language training programs; changes in educational levels; and extensions to employment authorizations. Therefore, the potential impacts of these requirements on small entities is not quantitatively evaluated in this IRFA.

#### SEVP-Certified Schools Authorized to Enroll F Nonimmigrants

As shown in Table 18, DHS estimates that 5,192 SEVP-certified schools that are authorized to enroll F nonimmigrants meet the SBA definition of a small entity, including 4,183 private, nonprofit schools; 570 private schools without a for-profit/nonprofit designation; and 439 for-profit schools. DHS determined a SEVP-certified school's annual revenue by multiplying the average cost per F student by average annual enrollment. DHS acknowledges that this method to estimate revenue may be an incomplete account of a SEVP-certified school's revenue, which may also include contributions from private individuals or other endowments.



DHS examined all 5,192 small SEVP-certified schools authorized to enroll F nonimmigrants to estimate the impact of estimated DSO rule familiarization and adaptation costs in the first year of the rule. For this analysis, DHS assumed that each small SEVP-certified school has three DSOs that will incur rule familiarization and adaptation costs.<sup>200</sup> For each DSO, rule familiarization will cost \$1,690 (40 hours x \$28.93 x 1.46 loaded wage rate factor). in the first year after the rule takes effect.<sup>201</sup> DHS calculated the impact of rule familiarization and adaptation on SEVP-certified schools by dividing the rule familiarization and adaptation costs for three DSOs (\$5,069) by each school's estimated annual revenue. For the private, for-profit schools, DHS assessed impacts of the rule familiarization and adaptation costs on the sample of for-profit schools and applied the percentage of schools falling within each impact category to the full universe of small for-profit schools.

Table 21 shows the number of small schools within the range of impact to each school's estimated annual revenue. Of the 5,192 small schools, 5,007, or 96.4 percent, would experience an impact less than or equal to 1 percent of their estimated annual revenue as a result of the rule familiarization and adaptation costs. DHS estimates 118 small schools (2.3 percent) would realize an impact between 1 percent and 2 percent of their estimated annual revenue, 29 small schools (0.6 percent) would realize an impact between 2 percent and 3 percent, and 38 small schools (0.7 percent) would realize an impact greater than or equal to 3 percent.

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<sup>200</sup> DHS estimated costs assuming that each small SEVP-certified school has one, three, and five DSOs. DHS presented the estimates for three DSOs as a midpoint value. The actual number of DSOs may vary by small SEVP-certified school. DHS welcomes public comment on the average number of DSOs at small SEVP-certified schools.

<sup>201</sup> See Section V.A of the NPRM for a detailed discussion of DSO and RO Rule Familiarization and Adaptation Costs.

**Table 21. Impact of Rule Familiarization and Adaptation Costs for SEVP-certified Schools Certified to Enroll F Nonimmigrant Students<sup>1</sup>**

Type of School	Rule Familiarization and Adaptation Costs as a Percent of Annual Revenue				Total
	< 1%	1% - 2%	2% - 3%	≥ 3%	
Private, nonprofit schools	4,048	81	21	33	4,183
Private, unspecified schools	541	21	3	5	570
For-profit schools <sup>2</sup>	418	16	5	0	439
<b>Total Small Schools</b>	<b>5,007</b>	<b>118</b>	<b>29</b>	<b>38</b>	<b>5,192</b>
<b>% of Small Schools</b>	<b>96.4%</b>	<b>2.3%</b>	<b>0.6%</b>	<b>0.7%</b>	<b>100.0%</b>
<p>[1] Values based on the assumption that small entities will have three DSOs that will incur rule familiarization and adaptation costs.</p> <p>[2] DHS assessed impacts of the rule familiarization and adaptation costs on the subsample of for-profit schools and applied the percentage of schools falling within each impact category to the full universe of small for-profit schools.</p>					

DHS also examined all 5,192 small SEVP-certified schools to estimate the impact of annual DSO costs for processing program extension requests and updating SEVIS. For this analysis, DHS estimated the number of program extension requests that each school is expected to process by dividing the estimated annual number of F-1 nonimmigrant EOS requests from the full implementation period (249,017; see Table 6) by the total number of SEVP-certified schools, small and large (6,754). This methodology produced an estimated average of 37 annual EOS requests for each school. The DSO cost per EOS request is \$127 (3 hours x \$28.93 x 1.46 loaded wage rate factor).<sup>202</sup> DHS calculates the impact by dividing the processing costs for 37 EOS requests (\$4,670) by each school's estimated annual revenue. For the for-profit schools, DHS assessed impacts of EOS costs on the sample of for-profit schools and applied the percentage of schools falling within each impact category to the full universe of small for-profit schools.

<sup>202</sup> See Section V.A of the NPRM for a detailed discussion of DSO and RO Rule Familiarization and Adaptation Costs.

Of the 5,192 small schools, 5,025, or 96.8 percent, would experience an impact less than or equal to 1 percent of their estimated annual revenue. DHS estimates 108 small schools (2.1 percent) would realize an impact between 1 percent and 2 percent of their estimated annual revenue, 27 small schools (0.5 percent) would realize an impact between 2 percent and 3 percent, and 32 small schools (0.6 percent) would realize an impact greater than or equal to 3 percent. Table 22 shows the number of small schools within the range of impact to each school's estimated annual revenue.

**Table 22. Impact of EOS Costs for SEVP-certified Schools<sup>1</sup>**

Type of School	EOS Costs as a Percent of Annual Revenue				Total
	< 1%	1% - 2%	2% - 3%	≥ 3%	
Private, nonprofit schools	4,062	75	17	29	4,183
Private, unspecified schools	545	17	5	3	570
Por-profit schools <sup>2</sup>	418	16	5	0	439
<b>Total Small Schools</b>	<b>5,025</b>	<b>108</b>	<b>27</b>	<b>32</b>	<b>5,192</b>
<b>% Small Schools</b>	<b>96.8%</b>	<b>2.1%</b>	<b>0.5%</b>	<b>0.6%</b>	<b>100.0%</b>
<p>[1] Values based on the assumption that each small entity will process 37 EOS requests annually.            [2] DHS assessed impacts of the EOS costs on the subsample of for-profit schools and applied the percentage of schools falling within each impact category to the full universe of small for-profit schools.</p>					

DHS recognizes that the 37 annual EOS requests assumption for each SEVP-certified school may overestimate the costs for schools with low average annual enrollment. As shown in Table 23, approximately 72 percent of the small schools identified as having EOS processing cost impacts greater than or equal to 3 percent of annual school revenue have 37 or fewer students enrolled on average, implying that the analysis may be overestimating the number of schools with impacts greater than 3 percent.<sup>203</sup>

<sup>203</sup> Schools with 37 or fewer students include religious institutions, Montessori schools, schools for students with disabilities, specialty graduate schools, and boarding schools.

**Table23. Small Entity SEVP-certified Schools Certified to Enroll F Nonimmigrants with EOS Impacts Greater Than or Equal to 3 Percent of School Earnings and Enrollment of 37 or Fewer Students<sup>1</sup>**

Type of School	Number of Schools with Enrollment at or Under 37 Students and Impacts $\geq$ 3%	Number of Schools with Impacts $\geq$ 3%	Percent of Schools with Impacts $\geq$ 3% and Enrollment at or Under 37 Students
Private, nonprofit schools	20	29	69.0%
Private, unspecified schools	3	3	100.0%
For profit schools <sup>2</sup>	0	0	-
<b>Total Small Schools</b>	23	32	71.9%
[1] Impact percentage based on the assumption that each small entity will process 37 EOS requests annually.			
[2] DHS assessed impacts of the EOS costs on the subsample of for-profit schools and applied the percentage of schools falling within each impact category to the full universe of small for-profit schools.			

### J Exchange Visitor Program Sponsors

As shown in Table20, 642 J exchange visitor program sponsors meet the SBA definition of a small entity. Because reliable financial information is not available for all J sponsors, DHS did not assess impacts of the proposed rule for each small J exchange visitor program sponsor. Instead, DHS determined the minimum earnings required for proposed rule costs to equal 1 percent, 2 percent, and 3 percent of J sponsor revenue. For this analysis, DHS assumed that each small J exchange visitor program sponsor will have three ROs that will incur rule familiarization and adaptation costs in the first year.<sup>204</sup> To assess the annual impacts of costs for processing program extension requests and updating SEVIS, DHS estimated the number of program extension requests that each J exchange visitor program sponsor is expected to process by dividing the estimated annual number of J-1 nonimmigrant EOS requests from the full implementation period (11,565; see Table 6) by the total number of J exchange visitor program

<sup>204</sup> DHS estimated costs assuming that each small J exchange visitor program sponsor has one, three, and five ROs. DHS presented the estimates for three ROs as a midpoint value. The actual number of ROs may vary by small J exchange visitor program sponsor. DHS welcomes public comment on the average number of ROs at small J exchange visitor program sponsors.

sponsors, small and large (1,171). This methodology produced an estimated average of 10 annual EOS requests for each J sponsor. DHS recognizes that small entities will likely process fewer EOS requests than the average but does not have more detailed data on the EOS requests by entity. DHS also recognizes potential non-quantifiable risks of reduced enrollment in J exchange visitor programs that can lead to revenue reductions.

Table 24 provides the minimum annual earnings required for proposed rule costs to equal 1 percent, 2 percent, and 3 percent of J exchange visitor program visitor sponsor revenue. The impact of the RO rule familiarization and adaptation costs of the proposed rule (\$5,069) will not exceed 1 percent of sponsor earnings if earnings are at least \$506,854. If J exchange visitor program sponsors earnings are at least \$168,951 or \$253,427, the rule familiarization and adaptation costs of the proposed rule will not exceed 3 percent or 2 percent, respectively, of sponsor earnings. DHS anticipates that the majority of small J sponsors will have earnings that exceed these thresholds. DHS requests comments on the availability of earnings data for J exchange visitor program sponsors in order to refine this analysis.

The impact of the costs for processing program extension requests and updating SEVIS (10 EOS requests; \$1,251) will not exceed 1 percent of sponsor earnings if earnings are at least \$125,144. If J exchange visitor program sponsor earnings are at least \$41,715 or \$62,572, the EOS request processing costs of the proposed rule will not exceed 3 percent or 2 percent, respectively, of sponsor earnings. DHS anticipates that the majority of small J sponsors will have earnings that exceed these thresholds. DHS requests comments on the availability of earnings data for J exchange visitor program sponsors in order to refine this analysis.

**Table 24. Minimum J Exchange Visitor Program Sponsor Earnings for Proposed Rule Costs to Equal 1 Percent, 2 Percent, or 3 Percent of Sponsor Revenue (2018\$)**

Minimum Annual Earnings	Percent of Annual Revenue		
	1%	2%	3%
Rule Familiarization and Adaptation Costs (first year only) <sup>1</sup>	\$506,854	\$253,427	\$168,951
EOS Costs (annual) <sup>2</sup>	\$125,144	\$62,572	\$41,715
[1] Values based on the assumption that small entities will have 3 ROs that will incur rule familiarization/adaptation costs. [2] Values based on the assumption that each small entity will process 10 EOS requests annually.			

**5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rule**

Department of State Exchange Visitor Program regulations would need to be updated to inform the sponsor community of this new EOS procedure. The regulations at 22 CFR Part 62.43 describe the procedures for J-1 program extensions. These regulations may need to be updated to reference the changes made in this proposed rule, whereby a J-1 must file for an extension of stay with USCIS in order to remain in the United States beyond the status expiration date on their I-94, or depart the United States and seek admission as a J-1 nonimmigrant at a port of entry, in addition to securing a program extension from the Responsible Officer or from the Department of State, as required by the current regulations.”

**6. A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities**

DHS first considered a “no action” alternative, under which DHS would continue admitting nonimmigrants with F, I, and J status without an end date for their authorized periods of stay. DHS determined that this alternative would not adequately provide immigration officers with an opportunity to evaluate an alien’s maintenance of status at pre-determined points, nor

would it enable immigration officers an opportunity to assess whether an alien is accruing unlawful presence, and the 'no action' alternative would do nothing to address the fraud and abuse currently present in these categories.

Another alternative DHS considered was to admit F and J nonimmigrants to their program end date, not to exceed 3 years (or 1 year for nonimmigrants meeting certain conditions). While such an option would provide the Department with more frequent direct evaluations of nonimmigrants than a 4-year maximum period of admission (or 2-year maximum for nonimmigrants meeting certain conditions), DHS was concerned it would be unduly burdensome on many F and J nonimmigrants. DHS believes that a period of admission for up to 4 years best aligns with the normal progress for most programs. A 3-year maximum period of stay would require almost every nonimmigrant enrolled in a 4-year program to apply for an EOS and would result in greater administrative burdens on USCIS and CBP compared to the proposed 4-year maximum period of admission. Specifically, USCIS would have to adjudicate extension of stay applications with more frequency if a 3-year maximum period of stay is chosen over a 4-year one. Similarly, CBP would have to process applications for admission at POEs more frequently under the 3-year maximum period of stay alternative. Therefore, DHS believes an admission for the program end date, not to exceed 4 years (except for limited exceptions that would limit admissions to 2 years) is the best option and welcomes comments on this proposal.

DHS also considered a standard 1-year fixed admission period for all F and J nonimmigrants. This option would treat all nonimmigrants with F and J status equally and would likely allow for easier implementation by CBP at the POEs. Nevertheless, it could result in significant costs to nonimmigrants and the Department. There are more than 1 million F students who are enrolled in programs of study that last longer than 1 year. With a 1-year admission

period, DHS expects that all of them would be required to apply for additional time. This could be a significant cost to students and exchange visitors, especially those who comply with the terms and conditions of their admission and those attending undergraduate programs that typically require 4 years to complete. Further, such a short admission period could have unintended consequences. If USCIS's EOS processing time is significantly lengthened due to a 1-year admission period, cases presenting national security or fraud concerns would not necessarily be prioritized, thereby allowing a mala fide student or exchange visitor to remain in the United States until USCIS adjudicated his or her petition.

DHS requests comment on the impacts on small entities. Members of the public should submit a comment, as described in this proposed rule under **Public Participation**, if they think that their business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it. It would be helpful if commenters provide DHS with as much information as possible as to why this proposed rule would create an impact on small businesses. Commenters should also describe any recommended alternative measures that would mitigate the impact on small businesses.

### **C. Small Business Regulatory Enforcement Fairness Act of 1996**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult ICE using the contact information provided in the **FOR FURTHER INFORMATION CONTACT** section above.



#### **D. Congressional Review Act**

This proposed rule is a major rule as defined by 5 U.S.C. 804, also known as the “Congressional Review Act,” as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, 110 Stat. 847, 868 *et seq.* Accordingly, this rule, if enacted as a final rule, would be effective at least 60 days after the date on which Congress receives a report submitted by DHS under the Congressional Review Act, or 60 days after the final rule’s publication, whichever is later.

#### **E. Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any year. Though this proposed rule would not result in such an expenditure, DHS does discuss the effects of this rule elsewhere in this preamble.

#### **F. Paperwork Reduction Act – Collection of Information**

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. DHS, USCIS and ICE are revising one information collection and proposing non-substantive edits to one information collection in association with this rulemaking action:

##### **I-539 and I-539A**

DHS, USCIS and ICE invite the general public and other federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the

information collection notice is published in the *Federal Register* to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0003 in the body of the letter and the agency name. To avoid duplicate submissions, please use only one of the methods under the **ADDRESSES** and **Public Participation** section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

- (1) Type of Information Collection: Revision of a Currently Approved Collection.
- (2) Title of the Form/Collection: Application to Extend/Change Nonimmigrant Status.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-539 and I-539A; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant classification.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I-539 (paper) is 318,421 and the estimated hour burden per response is 2.38 hours; the estimated total number of respondents for the information collection Form I-539 (e-file) is 136,466 and the estimated hour burden per response is 1.083 hours; the estimated total number of respondents for the information collection Supplement A is 83,712 and the estimated hour burden per response is .50 hours; the estimated total number of respondents for biometrics processing is 538,599 and the estimated hour burden per response is 1.17 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection of information in hours is 1,577,242.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$105,461,002.

#### **USCIS Form I-765 and I-756 WS**

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule unless they are exempt. Although this rule does not impose any new reporting or recordkeeping requirements

under the PRA for this information collection, this rule will require non-substantive edits to USCIS Form I-765, Application for Employment Authorization. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83-C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

#### **G. Executive Order 13132: Federalism**

This proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect that this proposed rule would impose substantial direct compliance costs on State and local governments, or preempt State law even though schools, colleges, and universities may choose to enroll in E-Verify to permit their students a longer initial period of admission. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### **H. Executive Order 12988: Civil Justice Reform**

This proposed rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform*, to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

#### **I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use**

DHS has analyzed this proposed rule under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. DHS has determined that it is not a “significant energy action” under that order because it is a “significant regulatory

action” under Executive Order 12866 but is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **J. National Environmental Policy Act (NEPA)**

DHS Management Directive (MD) 023-01 Rev. 01 and Instruction Manual (IM) 023-01-001-01 Rev. 01 establish the policy and procedures that DHS and its Components use to implement the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR Parts 1500 through 1508.

The CEQ regulations enable federal agencies to establish categories of actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. DHS’s Categorical Exclusions are listed in IM 023-01-001-01 Rev. 01, Appendix A, Table 1.

For an action to be categorically excluded, the action must satisfy each of the following three conditions:

1. The entire action clearly fits within one or more of the Categorical Exclusions;
2. The action is not a piece of a larger action; and
3. No extraordinary circumstances exist that create the potential for a significant environmental effect. IM 023-01-001-01 Rev. 01 sec. V(B)(2)(a)-(c).

If the proposed action does not clearly meet all three conditions, DHS or the Component prepares an Environmental Assessment or Environmental Impact Statement, according to CEQ requirements and MD 023-01 Rev. 01 and IM 023-01-001-01 Rev. 01.

DHS proposes to amend its regulations to eliminate the practice of admitting F-1 nonimmigrant students, I nonimmigrant representatives of information media, and J-1 exchange visitors (and F-2/J-2 family members) for D/S. The proposed rule would provide for nonimmigrants seeking entry under F, I, or J visas to be admitted for the period required to complete their academic program, foreign information media employment, or exchange visitor program, not to exceed the periods of time defined in this proposed rule. The proposed rule would also require nonimmigrants seeking to continue their studies, foreign information media employment, or exchange visitor program beyond the admission period granted at entry to apply for extension. 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.” This proposed rule is not part of a larger action. This proposed rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

DHS seeks any comments or information that may lead to the discovery of any significant environmental effects from this proposed rule.

#### **K. Executive Order 13175: Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**L. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights**

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*.

**M. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks**

Executive Order 13045 requires agencies to consider the impacts of environmental health risk or safety risk that may disproportionately affect children. DHS has reviewed this proposed rule and determined that this rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children. Therefore, DHS has not prepared a statement under this executive order.

**N. National Technology Transfer and Advancement Act**

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards

bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### **O. Family Assessment**

DHS has determined that this proposed action will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

#### **P. Signature**

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the Federal Register.

#### **List of Subjects**

##### *8 CFR Part 214*

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students

##### *8 CFR Part 248*

Administrative practice and procedure, Aliens, Reporting and recordkeeping requirements

##### *8 CFR Part 274a*

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements



## **Regulatory Amendments**

Accordingly, DHS proposes to amend parts 214, 248, and 274a of chapter I, subchapter B, of title 8 of the Code of Federal Regulations as follows:

### **PART 214 — NONIMMIGRANT CLASSES**

1. The authority citation for part 214 continues to read as follows:

**Authority:** 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305, 1356, and 1372; section 643, Pub. L. 104-208, 110 Stat. 3009-708; Pub. L. 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115-218.

2. Section 214.1 is amended by:

- a. Adding paragraph (a)(4);
- b. Revising paragraphs (b) introductory text, (b)(1) introductory text, (b)(2) introductory text, and (b)(3) introductory text;
- c. Removing paragraph (b)(4);
- d. Revising paragraphs (c)(2), (c)(3)(v), and (c)(5); and
- e. Adding paragraphs (c)(6) and (m).

The additions and revisions read as follows:

#### **§ 214.1 Requirements for admission, extension, and maintenance of status.**

(a) \* \* \*

(4) *Requirements for admission of aliens under section 101(a)(15)(F) and (J).* Aliens applying for admission as F or J nonimmigrants after [EFFECTIVE DATE OF FINAL RULE] will be inspected and may be admitted into the United States, if in possession of a valid Form I-20 or Form DS-2019, or successor form, and otherwise eligible, and subject to the following:

(i) *Aliens applying for admission as F nonimmigrants.* (A) Aliens seeking admission to the United States, including those seeking admission with a properly filed, pending application for an extension of stay as an F nonimmigrant after a previously authorized period of admission as an F nonimmigrant expired, may be admitted for the period specified in 8 CFR 214.2(f)(5);

(B) Aliens seeking admission to the United States as an F nonimmigrant with a properly filed pending application for extension of stay as an F nonimmigrant may, if they have time remaining on the period of stay authorized prior to departure, be admitted for a period up to the unexpired period of stay authorized prior to the alien's departure, plus an additional 30 days as provided in 8 CFR 214.2(f)(5)(iv), subject to the requirements in paragraph (c)(6) of this section, or if the alien seeks admission with a Form I-20 for a program end date beyond their previously authorized period of admission, the alien may be admitted for the period specified in 8 CFR 214.2(f)(5), subject to the requirements in paragraph (c)(6) of this section;

(C) Aliens seeking admission to the United States as an F nonimmigrant with an approved extension of stay for F nonimmigrant status may be admitted until the expiration of the approved extension of stay, plus an additional 30 days, as provided in 8 CFR 214.2(f)(5)(iv);

(D) Post-completion Optional Practical Training (OPT) and Science Technology Engineering and Mathematics OPT extension (STEM OPT extension). Aliens seeking admission to the United States as an F nonimmigrant to pursue post-completion OPT or a STEM OPT extension may be admitted until the end date of the approved employment authorization for post-

completion OPT or STEM OPT, or if the Application for Employment Authorization, Form I-765 or successor form for post-completion or STEM OPT is still pending with USCIS, as evidenced by a notice issued by USCIS indicating receipt of such application, until the Designated School Official's recommended employment end date for post-completion or STEM OPT specified on the Form I-20, subject to the requirements in paragraphs (c)(6) of this section and 8 CFR 274a.12(b)(6)(iv), plus a 30-day period as provided in 8 CFR 214.2(f)(5)(iv).

(ii) *Aliens applying for admission as J nonimmigrants.* (A) Aliens seeking admission to the United States, including those seeking admission with a properly filed, pending application for an extension of stay as a J nonimmigrant after a previously authorized period of admission as a J nonimmigrant expired, may be admitted for the period specified in 8 CFR 214.2(j)(1);

(B) Aliens seeking admission to the United States as a J nonimmigrant with a properly filed pending extension of stay as a J nonimmigrant may, if they have time remaining on the period of stay authorized prior to departure, be admitted for a period up to the unexpired period of stay authorized prior to the alien's departure, plus an additional 30 days as provided in 8 CFR 214.2(j)(1)(ii)(C), subject to the requirements in paragraph (c)(6) of this section, provided that if the alien seeks admission with a Form DS-2019 for a program end date beyond his or her previously authorized period of admission, the alien may be admitted for the period specified in 8 CFR 214.2(j)(1), subject to the requirements in paragraph (c)(6) of this section;

(C) Aliens seeking admission to the United States as a J nonimmigrant with an approved extension of stay in J nonimmigrant status may be admitted up to the expiration of the approved extension of stay, plus an additional 30 days as provided in 8 CFR 214.2(j)(1)(ii)(C).

(b) Readmission of nonimmigrants under section 101(a)(15) (F), (J), or (M) whose visa validity is considered automatically extended] to complete unexpired periods of previous admission or extension of stay—

(1) *Section 101(a)(15)(F)*. The inspecting immigration officer may readmit up to the unexpired period of stay authorized prior to the alien’s departure, any nonimmigrant alien whose nonimmigrant visa validity is considered automatically extended pursuant to 22 CFR 41.112(d) and who is applying for admission under section 101(a)(15)(F) of the Act, if the alien:

\* \* \* \* \*

(2) *Section 101(a)(15)(J)*. The inspecting immigration officer may readmit up to the unexpired period of stay authorized prior to the alien’s departure, any nonimmigrant alien whose nonimmigrant visa validity is considered automatically extended pursuant to 22 CFR 41.112(d) and who is applying for admission under section 101(a)(15)(J) of the Act, if the alien:

\* \* \* \* \*

(3) *Section 101(a)(15)(M)*. The inspecting immigration officer may readmit for the unexpired period of stay authorized prior to the alien’s departure, any nonimmigrant alien whose nonimmigrant visa validity is considered automatically extended pursuant to 22 CFR 41.112(d) and who is applying for admission under section 101(a)(15)(M) of the Act, if the alien:

\* \* \* \* \*

(c) \* \* \*

(2) *Filing for an extension of stay*. Any other nonimmigrant who seeks to extend his or her stay beyond the currently authorized period of admission, must apply for an extension of stay by filing an extension request in the manner and on the form prescribed by USCIS, together with the required fees and all initial evidence specified in the applicable provisions of 8 CFR 214.2,

and in the form instructions, including the submission of any biometrics required by 8 CFR 103.16. More than one person may be included in an application if the co-applicants are all members of a single-family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the other co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on his or her status. Extensions granted to members of a family group must be for the same period of time. The shortest period granted to any member of the family will be granted to all members of the family. In order to be eligible for an extension of stay, nonimmigrant aliens in K-3/K-4 status must do so in accordance with 8 CFR 214.2(k)(10).

(3) \* \* \*

(v) Any nonimmigrant admitted for duration of status.

\* \* \* \* \*

(5) *Decisions for extension of stay applications.* Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at USCIS's discretion. The denial of an application for extension of stay may not be appealed.

(6) *Abandonment of extension of stay and pending employment authorization applications for F, I, and J nonimmigrant aliens.* (i) If an alien in F, I, or J nonimmigrant status timely files an application for an extension of stay, USCIS will not consider the application abandoned if the alien departs the United States while the application is pending, provided that when the alien seeks admission, the previously authorized period of admission has not expired and the alien seeks admission for the balance of the previously authorized admission period.

(ii) An application for extension of stay in F, I, or J nonimmigrant status is abandoned if an alien departs the United States while the application is pending and seeks admission with a Form I-20 or DS-2019 for a program end date beyond their previously authorized period of

admission. USCIS will not consider as abandoned any corresponding applications for employment authorization.

\* \* \* \* \*

(m) *Transition period from duration of status to a fixed admission date*—(1) *Transition from D/S admission to a fixed admission period for aliens properly maintaining F and J status on [EFFECTIVE DATE OF FINAL RULE].* Aliens with F or J status who are properly maintaining their status on [EFFECTIVE DATE OF FINAL RULE] with admission for duration of status are authorized to remain in the United States in F or J nonimmigrant status until the later date of either the expiration date on an Employment Authorization Document (Form I-766, or successor form), or the program end date noted on their Form I-20 or Form DS-2019, as applicable, not to exceed a period of 4 years from [EFFECTIVE DATE OF FINAL RULE], plus the departure period of 60 days for F nonimmigrants and 30 days for J nonimmigrants. Any authorized employment or training continues until the program end date on such F or J nonimmigrant's Form I-20 or DS-2019, as applicable and as endorsed by the DSO or RO for employment or training, or expiration date on Employment Authorization Document (Form I-766, or successor form). Aliens who need additional time to complete their current course of study, including 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 extension of stay with USCIS in accordance with paragraph (c)(2) of this section for an admission period to a fixed date.

(2) *Pending employment authorization applications with USCIS on [EFFECTIVE DATE OF FINAL RULE] filed by aliens with F-1 status.* F-1 aliens described in paragraph (m)(1) of this section who have timely and properly filed applications for employment authorization

pending with USCIS on [EFFECTIVE DATE OF FINAL RULE] do not have to file for an extension or re-file such applications for employment authorization, unless otherwise requested by USCIS.

(i) If the F-1's application for post-completion OPT or STEM-OPT employment authorization is approved, the F-1 will be authorized to remain in the United States in F status until the expiration date of the employment authorization document, plus 60-days. If the employment authorization application is denied, the F-1 would continue to be authorized to remain in the United States until the program end date listed on their Form I-20, plus 60 days, as long as he or she continues to pursue a full course of study and otherwise meets the requirements for F-1 status.

(ii) Aliens in F-1 status with pending employment authorization applications, other than post-completion OPT and STEM-OPT, who continue to pursue a full course of study and otherwise meet the requirements for F-1 status, continue to be authorized to remain in the United States until the program end date listed on the Form I-20, plus 60 days, regardless of whether the employment authorization application is approved or denied.

(3) *Transition from D/S admission to a fixed admission period for aliens with I status present in the U.S. on [EFFECTIVE DATE OF FINAL RULE].* Except for those aliens described in 8 CFR 214.2(i)(3)(ii), aliens in I nonimmigrant status who are properly maintaining their status on [EFFECTIVE DATE OF FINAL RULE] with admission for duration of status are authorized to remain in the United States in I nonimmigrant status for a period necessary to complete their activity, not to exceed [DATE 240 DAYS AFTER EFFECTIVE DATE OF FINAL RULE] with the exception of aliens in I nonimmigrant status presenting passports issued by the Hong Kong Special Administrative Region, who are authorized to remain in the United

States in I nonimmigrant status for a period necessary to complete their activity, not to exceed [DATE 90 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. Aliens who need additional time to complete their employment must apply for an extension of stay with USCIS in accordance with paragraph (c)(2) of this section for an admission period to a fixed date.

(4) *Severability.* The provisions in 8 CFR 214.1(m) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

3. Section § 214.2 is amended by:

- a. Revising the paragraph (f)(5) subject heading and paragraphs (f)(5)(i), (ii), (iv), and (vi);
- b. Adding paragraph (f)(5)(vii);
- c. Revising the paragraph (f)(7) subject heading and paragraphs (f)(7)(i), (iii), and (iv);
- d. Adding paragraphs (f)(7)(v) through (viii);
- e. Revising paragraph (f)(8);
- f. Revising paragraphs (f)(9)(i), (f)(10)(i), (f)(10)(ii)(D), and (f)(11)(i);
- g. Removing and reserving paragraph (f)(13);
- h. Revising paragraph (f)(18)(iii);
- i. Adding paragraphs (f)(20) and (21);
- j. Revising paragraph (i), the paragraph (j) subject heading, and paragraphs (j)(1)(ii), (iv), (v), (vi), (vii), and (viii); and
- k. Adding paragraphs (j)(1)(ix) and (j)(6) and (7).

The revisions and additions read as follows:

**§ 214.2 Special requirements for admission, extension, and maintenance of status.**



\* \* \* \* \*

(f) \* \* \*

(5) *Authorized admission periods*—(i) *General*. If eligible for admission as described in paragraph (f)(1)(i) of this section, aliens seeking F-1 status may be granted such nonimmigrant status for up to the length of their program (including any period of authorized practical training time following the completion of studies to engage in post-completion optional practical training (OPT) and Science Technology Engineering and Mathematics Optional Practical Training (STEM OPT) extensions) listed on the Form I-20, not to exceed a period of 4 years, plus a period up to 30 days before the indicated report date or program start date listed on Form I-20 and an additional 30 days at the end of the program, as provided in paragraph (f)(5)(iv) of this section, subject to the following exceptions:

(A) Aliens subject to the limitations described in paragraph (f)(20) of this section may be admitted for the applicable period under that paragraph.

(B) Aliens whose course of study is in a language training program are restricted to an aggregate total of 24 months of language study, including any school breaks and annual vacations.

(C) Aliens who are granted F-1 status as border commuter students under the provisions in paragraph (f)(18) of this section may be admitted for the applicable period described under that paragraph.

(D) Aliens who are granted F-1 status to attend a public high school are restricted to an aggregate of no more than 12 months to complete their course of study, including any school breaks and annual vacations.

(E) Aliens with pending employment authorization applications who are admitted based on the DSO's recommended employment end date for post-completion OPT or STEM OPT specified on their Form I-20, with a notice issued by USCIS indicating receipt of the Application for Employment Authorization, Form I-765 or successor form for post-completion or STEM OPT, who cease employment pursuant to an employment authorization document (EAD) that expires before the alien's fixed date of admission as noted on their I-94, will be considered to be in the United States in a period of authorized stay from the date of the expiration noted on their EAD until the fixed date of admission as noted on their I-94.

(F) The authorized period of stay for F-2 dependents may not exceed the authorized period of stay of the principal F-1 alien.

(ii) *Change of educational levels while in F-1 status.* (A) An alien in F-1 status who has completed a program in the United States at one educational level and begins a new program at the next highest educational level is considered to be maintaining F-1 status if otherwise complying with requirements under this paragraph (f).

(B) An alien in F-1 status who has completed a program in the United States at one educational level and begins a new program at the same educational level, up to, but not more than two additional times, is considered to be maintaining F-1 status if otherwise complying with requirements under this paragraph (f). This two-time limit on beginning additional programs after completion of a program in the United States at the same educational level is a lifetime limit and does not reset with a new admission as an F-1.

(C) An alien in F-1 status who has completed a program in the United States at one educational level and begins a new program at a lower educational level is considered to be maintaining F-1 status only in the first instance of such a change, and if the alien is otherwise

complying with the requirements under this paragraph (f). The one-time limit on changing to a lower educational level following completion of a program at a higher level is a lifetime restriction and does not reset with a new admission as an F-1.

(D) When seeking a change in educational levels, aliens in F-1 status referenced in paragraphs (f)(5)(ii)(A) through (C) of this section must, if seeking an extension of stay, apply for an extension of stay on the form designated by USCIS, with the required fee and in accordance with the form instructions, including any biometrics required by 8 CFR 103.16.

(E) DHS may delay or suspend the implementation of paragraphs (f)(5)(ii)(A) through (C) of this section, in its discretion, if it determines that implementation is infeasible for any reason. If DHS delays or suspends any provisions in paragraphs (f)(5)(ii)(A) through (C) governing the change in degree level, DHS will make an announcement of the delay or suspension on SEVP's website at <https://www.studyinthestates.dhs.gov> (or successor uniform resource locator). DHS thereafter will announce the implementation dates of change in degree level provision on the SEVP website at <https://www.studyinthestates.dhs.gov> (or successor uniform resource locator), at least 30 calendar days in advance.

\* \* \* \* \*

(iv) *Period of preparation for departure or to otherwise maintain status.* An alien in F-1 status who has completed a course of study or any authorized practical training following completion of studies will be allowed a 30-day period from the Form I-94 (or successor form) end date or the expiration date noted on the Employment Authorization Document (Form I-766 or successor form), as applicable, to prepare for departure from the United States, or to otherwise maintain status, including timely filing an extension of stay application in accordance with paragraph (f)(7) of this section and § 214.1 or timely filing a change of status application in

accordance with 8 CFR 248.1(a). An alien authorized by the DSO to withdraw from classes will be allowed a 15-day period from the date of the withdrawal to depart the United States. An alien admitted in F-1 status who fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status is not eligible for any additional period of time for departure.

\* \* \* \* \*

(vi) *Extension of F-1 stay and grant of employment authorization for aliens who are the beneficiaries of an H-1B petition.* (A) The lawful nonimmigrant status and any employment authorization granted under 8 CFR 274a.12(c)(3)(i)(B) or (C) of an alien in F-1 status who is the beneficiary of an H-1B petition, subject to section 214(g)(1)(A) of the Act, as well as those eligible for exemption under section 214(g)(5)(C) of the Act, will be extended automatically until April 1 of the fiscal year for which the H-1B status is requested, where such petition:

(1) Has been timely filed;

(2) Requests a change of status; and

(3) Requests an H-1B employment start date of October 1 of the fiscal year for which the H-1B status is requested.

(B) The automatic extension of the alien's F-1 nonimmigrant status and employment authorization under paragraph (f)(5)(vi)(A) of this section will automatically terminate upon the rejection, denial, revocation, or withdrawal of the H-1B petition filed on such alien's behalf; upon the withdrawal or denial of the request for change of nonimmigrant status, even if the H-1B petition filed on the alien's behalf is approved for consular processing; or, if USCIS approves the H-1B petition and associated change of status request, and the change of status will take effect prior to April 1 of the fiscal year for which H-1B status was requested, upon the date that the change of status takes effect.

(C) In order to obtain the automatic extension of stay and employment authorization under this paragraph, the alien, consistent with 8 CFR 248, must not have violated the terms or conditions of his or her F-1 status.

(D) The automatic extension of F-1 status under this paragraph (f)(5)(vi) also applies to an F-2 dependent spouse and child(ren) who timely files a change of status application from an F-2 to an H-4 nonimmigrant. The automatic extension for these dependents ends upon termination of the F-1 nonimmigrant's automatic extension. The timely filing of such change of status application does not authorize employment for the F-2 dependents.

(vii) *F status and employment authorization while extension of stay and employment authorization applications are pending.* An F alien whose status as indicated on the Arrival-Departure Record (Form I-94 or successor form) has expired will be considered to be in a period of authorized stay if he or she has timely filed an extension of stay application pursuant to paragraph (f)(7) of this section until USCIS issues a decision on the extension of stay application. Subject to paragraphs (f)(9)(i) and (ii) of this section and 8 CFR 274a.12(b)(6)(i) and 8 CFR 274a.12(c)(3)(iii), any F-1 alien's current on-campus and severe economic hardship employment authorization is automatically extended during the pendency of the extension of stay application, but such automatic extension may not exceed 180 days beginning from the end date of his or her period of admission as indicated on the alien's Arrival-Departure Record (Form I-94 or successor form). However, severe economic hardship employment authorization resulting from emergent circumstances under paragraph (f)(5)(v) of this section is automatically extended for up to 180 days or until the end date stated in the Federal Register notice announcing the suspension of certain requirements, whichever is earlier. If an F-1 alien files an extension of stay application during the 30-day period provided in paragraph (f)(5)(iv) of this section, he or she

does not receive an automatic extension of employment authorization, including on-campus and severe economic hardship, and must wait for approval of the extension of stay application (and employment authorization application, if required) before engaging in employment. For purposes of employment eligibility verification (Form I-9) under 8 CFR 274a.2(b)(1)(v), for on-campus employment and severe economic hardship employment authorization resulting from emergent circumstances under paragraph (f)(5)(v) of this section, the alien's Form I-94 (or successor form) or Employment Authorization Document (Form I-766, or successor form) based on severe economic hardship, when combined with a notice issued by USCIS indicating receipt of a timely filed extension of stay application, is considered unexpired for 180 days or until USCIS issues a decision on the extension of stay application, or for severe economic hardship employment based on emergent circumstances, the end date stated in the Federal Register notice announcing suspension of certain requirements, whichever is less.

\* \* \* \* \*

(7) *Extension of stay applications*—(i) *General*. A program end date as indicated on Form I-20, or successor form, standing alone, does not allow aliens with F status to remain in the United States in lawful status. Aliens in F-1 status must apply for an extension of stay to receive an additional admission period as stated on Form I-94, or successor form, if needed to complete the course of study, engage in optional practical training pursuant to paragraph (f)(10)(ii) of this section, or to start a new program through the new program end date indicated on Form I-20, or successor form. If a DSO extends an alien's program end date for any reason, the alien must apply to USCIS for an extension of stay.

\* \* \* \* \*

(iii) *Extension of current program and extension of F-1 status*—(A) *Failure to meet program end date.* USCIS may grant an extension of stay to an alien who has maintained his or her F-1 status, but who is unable to meet the program end date on the Form I-20. Such aliens may be eligible for an extension if the DSO issues a new Form I-20, indicating that the alien:

(1) Has continually maintained lawful status;

(2) Is currently pursuing a full course of study; and

(3) Maintains documentation that the request is based on one of the reasons described in paragraph (f)(7)(iii)(B) of this section;

(B) *Required evidence.* In such cases where the alien fails to meet the program end date on the Form I-20, he or she must establish to the satisfaction of USCIS that the delays in completing the program within the time noted on the previous Form I-20, or successor form, are caused by:

(1) Compelling academic reasons, such as inability to take the required classes in his or her major due to over-enrollment, changes of major or research topics, or unexpected research problems. Unexpected research problems are those caused by an unexpected change in faculty advisor, need to refine investigatory topic based on initial research, research funding delays, and similar issues. Delays including, but not limited to those caused by academic probation or suspension, or where a student whose pattern of behavior demonstrates a repeated inability or unwillingness to complete his or her course of study, such as failing classes, are not acceptable reasons for extensions of a current program and corresponding extension of stay;

(2) A documented illness or medical condition. A documented illness or medical condition is a compelling medical reason, such as a serious injury, that is supported by medical

documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist; or

(3) Circumstances beyond the student's control, including a natural disaster, national health crisis, or the closure of an institution.

*(C) Timely requested extension of current program end date and extension of F-1 status.*

To obtain a new program end date reflected on an updated Form I-20, or successor form, aliens must request their DSO to make such a recommendation through SEVIS. The DSO may recommend an extension of the program end date in SEVIS only if the alien requested the recommendation before the program end date noted on the most recent Form I-20, or successor form. If the DSO recommends an extension of the program end date, then the applicant must timely file for an extension of stay on the form and in the manner designated by USCIS, with the required fees and in accordance with the filing instructions, including any biometrics required by 8 CFR 103.16 and a valid, properly endorsed Form I-20 or successor form, showing the new program end date. If seeking an extension of stay to engage in any type of practical training, the alien in F-1 status also must have a valid, properly endorsed Form I-20 and be eligible to receive the specific type of practical training requested. The alien in F-1 status must be maintaining his or her status and must not have engaged in any unauthorized employment.

*(D) Late requests of extension of current program end date.* If the DSO enters an extension of the program end date in SEVIS after the end date noted on the most recent Form I-20 or successor form, the alien must file a request for reinstatement of F-1 status in the manner and on the form designated by USCIS, with the required fee, including any biometrics required by 8 CFR 103.16. F-2 dependents seeking to accompany the F-1 principal student must file applications for an extension of stay or reinstatement, as applicable.



(iv) *Form.* To request an extension of stay, applicants must file an extension of stay application on the form and in the manner designated by USCIS, including submitting the updated, properly endorsed Form I-20 or successor form, submitting evidence of sufficient funds to cover expenses, appearing for any biometrics collection required by 8 CFR 103.16, and remitting the appropriate fee.

(v) *Timely filing.* An extension of stay application is considered timely filed if the receipt date, pursuant to 8 CFR 103.2(a)(7), is on or before the date the authorized period of admission expires, which includes the 30-day period provided in paragraph (f)(5)(iv) of this section. USCIS must receive the extension application before the expiration of the authorized period of admission, including the 30-day period provided in paragraph (f)(5)(iv) of this section allowed after the completion of studies or any authorized practical training. If the extension of stay application is received during the 30-day period provided in paragraph (f)(5)(iv) of this section, the alien in F-1 status is authorized to continue a full course of study but may not continue or begin engaging in practical training or other employment.

(vi) *Length of extensions.* Extensions of stay may be granted for up to the period of time needed to complete the program or requested practical training, not to exceed 4 years, unless the alien is a border commuter, enrolled in language training or a public high school, or paragraph (f)(20) of this section applies, in which case the restrictions of paragraphs (f)(5)(i) and (f)(18) and (20) of this section will govern the new admission period and attendant employment authorization.

(vii) *Dependents.* Dependent F-2 spouses and children seeking to accompany the principal F-1 student during the additional period of admission must either be included on the primary applicant's request for extension of stay or file their own extension of stay applications

on the form designated by USCIS, including any biometrics required by 8 CFR 103.16. USCIS must receive the extension of stay applications before the expiration of the previously authorized period of admission, including the 30-day period following the completion of the course of study, as indicated on the F-2 dependent's Form I-94, or successor form. The F-2 dependent must demonstrate the qualifying relationship with the principal F-1 student, be maintaining his or her status, and must not have engaged in any unauthorized employment. Extensions of stay for F-2 dependents may not exceed the authorized admission period of the principal F-1 student.

(viii) *Denials.* If an alien's extension of stay application is denied and the alien's authorized admission period has expired, the alien and his or her dependents must immediately depart the United States.

(8) *School transfer and change in educational level.* (i) An alien in F-1 status may change educational levels or transfer to SEVP-certified schools if he or she is maintaining status as described in paragraphs (f)(5)(ii)(A) through (C) of this section. An alien seeking a transfer to another SEVP-certified school, or to a different campus at the same school, must follow the notification procedure prescribed in paragraph (f)(8)(iii) of this section. Aliens in F-1 status changing educational levels or transferring to an SEVP-certified school also must meet the following requirements:

(A) The alien will begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I-20, or successor form, whichever is earlier.

(B) If the alien is authorized to engage in post-completion optional practical training (OPT), he or she must be able to resume classes within 5 months of transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is earlier.

(ii) An alien who is not maintaining F-1 status, including because he or she failed to pursue a full course of study at the school that he or she was last authorized to attend, is ineligible to change educational levels or transfer and must either depart immediately, or apply for reinstatement under the provisions of paragraph (f)(16) of this section, if eligible. Academic probation, suspension, or a pattern of student behavior demonstrating a repeated inability or unwillingness toward completing his or her course of study, such as failing grades, resulting in the student failing to carry a full course of study, are not acceptable reasons for failing to pursue a full course of study, unless the student was previously authorized for a reduced course load pursuant to paragraph (f)(6)(iii) of this section.

(iii) To transfer schools, the alien must first notify the school he or she is attending (“transfer out school”) of the intent to transfer, then obtain a valid Form I-20, or successor form, from the school to which he or she intends to transfer (“transfer in school”). Upon notification by the student, the transfer out school will update the student's record in SEVIS as a “transfer out” and indicate the transfer in school and a release date. The release date will be the current semester or session completion date, or the date of expected transfer if earlier than the established academic cycle. The transfer out school will retain control over the student’s record in SEVIS until the student completes the current term or reaches the release date, whichever is earlier. At the request of the student, the DSO of the current school may cancel the transfer request at any time prior to the release date. As of the release date specified by the current DSO, the transfer in school will be granted full access to the student’s SEVIS record and then becomes responsible for that student. The transfer out school conveys authority and responsibility over that student to the transfer in school and will no longer have full SEVIS access to that student’s record. As such, a transfer request may not be cancelled by the transfer out DSO after the release

date has been reached. After the release date, the transfer in DSO must complete the transfer of the student's record in SEVIS and may issue a Form I-20. The student is then required to contact the DSO at the transfer in school within 15 days of the program start date listed on the Form I-20. Upon notification that the student is enrolled in classes, the DSO of the transfer in school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process. In the remarks section of the student's Form I-20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. The transfer is effected when the transfer- in school notifies SEVIS that the student has enrolled in classes in accordance with the 30 days required by 8 CFR 214.3(g)(3)(iii).

(iv) F-1 transfer students must report to the transfer in DSO no later than 15 days after their Program Start Date. No later than 30 days after the Initial Session Start Date as listed in SEVIS, the transfer-in DSO must:

- (A) Register the student in SEVIS, if the student enrolls at the transfer in school; or
- (B) Terminate the student's record in SEVIS, if the student does not enroll.

(v) If the new program to which the student transferred will not be completed within the authorized admission period established in paragraph (f)(5)(i) or (f)(20) of this section, the F-1 student must apply to USCIS for an extension of stay in the manner and on the form designated by USCIS, with the required fee and in accordance with form instructions, including any biometrics required by 8 CFR 103.16, together with a valid, properly endorsed Form I-20 indicating the new program end date.

(9) \* \* \*

(i) *On-campus employment.* On-campus employment must either be performed on the school's premises, (including on-location commercial firms that provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location that is educationally affiliated with the school. Employment with on-site commercial firms, such as a construction company building a school building, which do not provide direct student services is not deemed on-campus employment for the purposes of this paragraph. In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum or related to contractually funded research projects at the post-graduate level. In any event, the employment must be an integral part of the student's educational program. Employment authorized under this paragraph must not exceed 20 hours a week while school is in session, unless DHS suspends the applicability of this limitation due to emergent circumstances by means of publication of a document in the Federal Register, the student demonstrates to the DSO that the employment is necessary to avoid severe economic hardship resulting from the emergent circumstances, and the DSO notates the Form I-20 in accordance with the Federal Register document. However, an alien in F-1 status or in a period of authorized stay during a pending F-1 extension of stay application may work on campus full-time when school is not in session or during the annual vacation. An alien in F-1 status or in a period of authorized stay during a pending F-1 extension of stay application who has been issued a Form I-20 to begin a new program in accordance with the provision of 8 CFR 214.3(k) and who intends to enroll for the next regular academic year, term, or session at the institution that issued the Form I-20 may continue on-campus employment incident to status but may not work beyond the fixed date of admission as noted on his or her Form I-94, or successor form. An alien in F-1 status or in a period of authorized stay during a pending F-1 extension of stay application may not engage in

on-campus employment after completing a course of study, except employment for practical training as authorized under paragraph (f)(10) of this section. An alien in F-1 status or in a period of authorized stay during a pending F-1 extension of stay application may engage in any on-campus employment authorized under this paragraph that will not displace United States workers. In the case of a transfer in SEVIS, the alien may only engage in on-campus employment at the school having jurisdiction over the student's SEVIS record. Upon initial entry to begin a new course of study, such aliens may not begin on-campus employment more than 30 days prior to the actual start of classes. If applicable, an alien described in paragraph (f)(5)(vii) of this section, whose timely filed applications for an extension of stay and employment authorization (if required) are pending may engage in on-campus employment for a period not to exceed 180 days, or until USCIS approves his or her applications, whichever is earlier.

\* \* \* \* \*

(10) \* \* \*

(i) *Curricular practical training.* An alien in F-1 status may be authorized by the DSO to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. Aliens in F-1 status who have received 1 year or more of full time curricular practical training are ineligible for post-completion academic training. Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. A request for authorization for curricular practical training must be made to the DSO. An alien may begin curricular practical training only after receiving his or her Form I-20 with the

DSO endorsement. Curricular practical training may not be granted for a period exceeding the alien's fixed date of admission as noted on his or her Form I-94, or successor form. If applicable, an alien described under paragraph (f)(5)(vii) of this section, must not engage in curricular practical training until USCIS approves his or her extension of stay application.

(A) [Reserved]

(B) *SEVIS process*. To grant authorization for a student to engage in curricular practical training, a DSO at a SEVIS school will update the student's record in SEVIS as being authorized for curricular practical training that is directly related to the student's major area of study. The DSO will indicate whether the training is full-time or part-time, the employer and location, and the employment start and end date. The DSO will then print a copy of the employment page of the SEVIS Form I-20 indicating that curricular practical training has been approved. The DSO must sign, date, and return the SEVIS Form I-20 to the student prior to the student's commencement of employment.

(ii) \* \* \*

(D) *Extension of stay for post-completion OPT*. An alien in F-1 status recommended for post-completion OPT must apply for an extension of stay and employment authorization and may not engage in post-completion OPT unless such employment authorization is granted. If the application for an extension of stay and post-completion OPT are granted, the alien will receive an additional 30-day period provided in paragraph (f)(5)(iv) of this section following the expiration of the status approved to complete post-completion OPT.

\* \* \* \* \*

(11) \* \* \*

(i) *Applicant responsibilities.* An alien in F-1 status must initiate the OPT application process by requesting a recommendation for OPT from his or her DSO. Upon making the recommendation, the DSO will provide the alien a signed Form I-20, or successor form, indicating that recommendation.

(A) *Applications for employment authorization.* An alien in F-1 status must properly file an application for employment authorization, on the form and in the manner designated by USCIS, with the required fee, as described in the form's instructions, including submitting a valid, properly endorsed Form I-20 for OPT and other supporting documents.

(B) *Filing deadlines for pre-completion OPT and post-completion OPT—(1) Pre-completion OPT.* For pre-completion OPT, the alien in F-1 status may properly file his or her application for employment authorization up to 120 days before being enrolled for one full academic year, provided that the period of employment will not start prior to the completion of the first full academic year.

(2) *Post-completion OPT.* For post-completion OPT, not including a 24-month OPT extension under paragraph (f)(10)(ii)(C)(2) of this section, the alien in F-1 status must file his or her extension of stay and employment authorization application with USCIS up to 120 days prior to his or her program end date and no later than 30 days after his or her program end date.

(C) *Applications and filing deadlines for 24-month OPT extension—(1) Application.* An alien in F-1 status meeting the eligibility requirements for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section to engage in STEM OPT must file an extension of stay application under paragraph (f)(7) of this section and an application for employment authorization on the form designated by USCIS with the required fees and in accordance with form instructions.



(2) *Filing deadline.* An alien in F-1 status may file the application for STEM OPT employment authorization up to 120 days prior to the expiration date of the alien's current OPT employment authorization and after the DSO enters the STEM OPT recommendation into the student's SEVIS record.

(3) *Extension of OPT.* If an alien timely and properly files an application for STEM OPT employment authorization and timely and properly requests a DSO recommendation, including by submitting the fully executed Form I-983, Training Plan for STEM OPT Students, or successor form, to his or her DSO, but the Form I-766, Employment Authorization Document or successor form, currently in the alien's possession expires before USCIS issues a decision on the alien's STEM OPT employment application, the alien's Form I-766, or successor form, is extended automatically pursuant to the terms and conditions specified in 8 CFR 274a.12(b)(6)(iv).

\* \* \* \* \*

(18)\* \* \*

(iii) *Period of admission.* An alien with F-1 nonimmigrant status who is admitted as a border commuter student under this paragraph (f)(18) will be admitted until a date certain. The DSO is required to specify a completion date on the Form I-20 that reflects the actual semester or term dates for the commuter student's current term of study. A new Form I-20 will be required for each new semester or term that the alien attends at the school.

\* \* \* \* \*

(20) *Limitations on period of admission.* Subject to the discretion of the Secretary of Homeland Security, aliens with F-1 status in the following categories may only be admitted for up to 2 years, or the program end date as stated on the Form I-20, whichever is shorter, and may

be eligible for extensions of stay for additional periods of up to 2 years each, or until the program end date, whichever is shorter. These categories of 2-year maximum period of admission are:

(i) *Certain countries and U.S. national interest.* Aliens who were born in or are citizens of countries listed on the State Sponsor of Terrorism List, or who are citizens of countries with a student and exchange visitor total overstay rate greater than ten percent according to the most recent DHS Entry/Exit Overstay report. DHS will publish a document in the Federal Register listing the countries or circumstances which fall into the categories in this paragraph making aliens in F-1 status subject to the 2 year maximum period of admission, and any other such circumstances that may serve the U.S. national interest. Changes to the list will be made by the publication of a new Federal Register document;

(ii) *Unaccredited institutions.* The alien has been accepted to and attends a post-secondary educational institution not accredited by an accrediting agency recognized by the Secretary of Education;

(iii) *E-Verify participation.* The alien has been accepted to and attends an educational institution that is not enrolled in E-Verify, or if enrolled, is not a participant in good standing in E-Verify as determined by USCIS. Educational institutions that are participants in good standing in the E-Verify program are: enrolled in E-Verify with respect to all hiring sites in the United States at the time of the alien's admission in F-1 status or at the time the alien files an application for an extension of or change to F-1 status with USCIS; are in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and continue to be participants in good standing in E-Verify at any time during which the alien is pursuing a full-course of study at the educational institution; or

(iv) *Language training programs.* The student is attending an English language training program, which does not lead to a degree.

(v) *Alien with a 4-year period of admission who becomes subject to a 2-year maximum period of admission.* If an alien was admitted in F status for a 4-year period of admission, but a new Federal Register Notice is subsequently published according to paragraph (f)(20)(i) of this section that would subject the alien to the 2-year maximum period of admission, then the alien may remain in the United States for the remainder of the 4-year period. However, if the alien departs the United States or otherwise must apply for admission or extension of stay, that alien will become subject to the 2-year limitation.

(21) *Severability.* The provisions in 8 CFR 214.2(f) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

\* \* \* \* \*

(i) *Representatives of information media—(1) Foreign Media Organization.* A foreign information media organization is 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.

(2) *Evidence.* Aliens applying for I nonimmigrant status must:

(i) Demonstrate that the foreign media organization that the alien represents has a home office in a foreign country, and that the home office will continue to operate in the foreign country while they are in the United States; and

(ii) Provide a letter from the employing foreign media organization or, if self-employed or freelancing, an attestation from the alien, that verifies the employment, establishes that they

are representatives of that media organization, and describes the remuneration and work to be performed.

(3) *Admission.* (i) Generally, aliens seeking admission in I status may be admitted for a period of time necessary to complete the planned activities or assignments consistent with the I classification, not to exceed 240 days unless paragraph (i)(3)(ii) of this section applies.

(ii) Foreign nationals travelling on a passport issued by the People's Republic of China (with the exception of Macau Special Administrative Region passport holders) or Hong Kong Special Administrative Region passport holders: an alien who presents a passport from the People's Republic of China (with the exception of Macau Special Administrative Region passport holders) or an alien who is a Hong Kong Special Administrative Region passport holder, may be admitted until the activities or assignments consistent with the I classification are completed, not to exceed 90 days.

(4) *Change in activity.* Aliens admitted pursuant to section 101(a)(15)(I) of the Act may not change the information medium or employer until they obtain permission from USCIS. Aliens must request permission by submitting the form designated by USCIS, in accordance with that form's instructions, and with the required fee, including any biometrics required by 8 CFR 103.16, as appropriate.

(5) *Extensions of stay.* (i) Aliens in I status may be eligible for an extension of stay of up to 240 days (90 days for aliens who present a passport issued by the People's Republic of China or Hong Kong Special Administrative Region passport holders, with the exception of Macau Special Administrative Region passport holders) or until the activities or assignments consistent with the I classification are completed; whichever date is earlier. To request an extension of stay, aliens in I status must file an application to extend their stay by submitting the form designated

by USCIS, in accordance with that form's instructions, and with the required fee, including any biometrics required by 8 CFR 103.16, as appropriate. An alien whose I status, as indicated on Form I-94, has expired but who has timely filed an extension of stay application is authorized to continue engaging in activities consistent with the I classification on the day after the Form I-94 expired, for a period of up to 240 days, as provided in 8 CFR 274a.12(b)(20). Such authorization may be subject to any conditions and limitations of the initial authorization.

(ii) Notwithstanding paragraph (i)(5)(i) of this section and 8 CFR 274a.12(b)(20), an alien in I status who is described in paragraph (i)(3)(ii) of this section whose status, as indicated on Form I-94, has expired but who has timely filed an extension of stay application is authorized to continue engaging in activities consistent with the I classification on the day after the Form I-94 expired, for a period of up to 90 days. Such authorization may be subject to any conditions and limitations of the initial authorization.

(6) *Denials*. If an alien's extension of stay application is denied and the alien's authorized admission period has expired, the alien and his or her dependents must immediately depart the United States.

(7) *Severability*. The provisions in this paragraph (i) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

(j) *Exchange visitors*

(1) \* \* \*

(ii) *Admission period and period of stay—(A) J-1 exchange visitor*. A J-1 exchange visitor may be admitted for the duration of the exchange visitor program, as stated by the program end date noted on Form DS-2019, or successor form, not to exceed a period of 4 years,

unless subject to paragraph (j)(6) of this section. If paragraph (j)(6) of this section applies, the admission period will be governed by the limitations of paragraph (j)(6) of this section.

(B) *J-2 accompanying spouse and dependent.* The authorized period of initial admission for J-2 dependents is subject to the same requirements as the J-1 exchange visitor and may not exceed the period of authorized admission of the principal J-1 exchange visitor.

(C) *Period of stay.* A J-1 exchange visitor and J-2 spouse and children may be admitted for a period up to 30 days before the report date or start of the approved program listed on Form DS-2019, or successor form, plus a period of 30 days at the end of the program for the purposes of departure, as provided by this paragraph (j)(1)(ii)(C), or to otherwise maintain status.

\* \* \* \* \*

(iv) *Extension of stay.* A future program end date as indicated on the Form DS-2019, or successor form, standing alone, does not allow aliens with J status to remain in the United States in lawful status. If a sponsor issues a Form DS-2019 or successor form extending an alien's program end date for any reason, or the alien requires an additional admission period to complete his or her program, the alien must apply to USCIS for an extension of stay.

(A) *Form.* To request an extension of stay, an alien in J status must file an extension of stay application on the form and in the manner designated by USCIS, including submitting the valid Form DS-2019 or successor form, appearing for any biometrics collection required by 8 CFR 103.16, and remitting the appropriate fee.

(B) *Timely filing.* An application is considered timely filed if the receipt date is on or before the date the authorized admission period expires. USCIS must receive the extension of stay application before the expiration of the authorized period of admission, including the 30-day period of preparation for departure allowed after the completion of the program. If the extension

application is received during the 30-day period provided in paragraph (j)(1)(ii)(C) of this section following the completion of the exchange visitor program, the alien in J-1 status may continue to participate in his or her exchange visitor program.

(C) *Length of extensions.* Extensions of stay may be granted for a period up to the length of the program, not to exceed 4 years, unless the J-1 exchange visitor is subject to paragraph (j)(6) of this section or otherwise restricted by regulations at 22 CFR part 62.

(D) *Dependents.* Dependent J-2 spouses and children seeking to accompany the J-1 exchange visitor during the additional period of admission must either be included on the primary applicant's request for extension or file their own extension of stay applications on the form designated by USCIS, including any biometrics required by 8 CFR 103.16. USCIS must receive the extension of stay applications before the expiration of the previously authorized period of admission, including the 30-day period following the completion of the program provided in paragraph (j)(1)(ii)(C) of this section, as indicated on the J-2 dependent's Form I-94, or successor form. J-2 dependents must demonstrate the qualifying relationship with the principal J-1 exchange visitor, be maintaining status, and not have engaged in any unauthorized employment. Extensions of stay for J-2 dependents may not exceed the authorized admission period of the principal J-1 exchange visitor.

(E) *Denials.* If an alien's extension of stay application is denied, and the alien's authorized admission period has expired, he or she and his or her dependents must immediately depart the United States.

(v) *Employment of J-2 dependents.* The spouse or minor children of a J-1 exchange visitor may only engage in employment if authorized by USCIS. The employment authorization is valid only if the J-1 is maintaining status. An application for employment authorization must

be filed in the manner prescribed by USCIS, together with the required fee and any additional evidence required in the filing instructions. Income from the J-2 dependent's employment may be used to support the family's customary recreational and cultural activities and related travel, among other things. Employment will not be authorized if this income is needed to support the J-1 principal exchange visitor. If the requested period of employment authorization exceeds the current admission period, the J-2 dependent must file an extension of stay application, in addition to the application for employment authorization, in the manner designated by USCIS, with the required fee and in accordance with form instructions.

(vi) *Extension of J-1 stay and grant of employment authorization for aliens who are the beneficiaries of a cap-subject H-1B petition.* USCIS may, by notice in the Federal Register, at any time it determines that the H-1B numerical limitation as described in section 214(g)(1)(A) of the Act will likely be reached prior to the end of a current fiscal year, extend for such a period of time as deemed necessary to complete the adjudication of the H-1B application, the status of any J-1 alien on behalf of whom an employer has timely filed an application for change of status to H-1B. The alien, in accordance with 8 CFR part 248, must not have violated the terms of his or her nonimmigrant stay and not be subject to the 2-year foreign residence requirement at 212(e) of the Act. Any J-1 student whose status has been extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her J nonimmigrant stay. An extension made under this paragraph also applies to the J-2 dependent alien.

(vii) *Pending extension of stay applications and employment authorization.* (A) An alien whose J-1 status, as indicated on Form I-94, has expired but who has timely filed an extension of stay application is authorized to continue engaging in activities consistent with pursuing the



terms and conditions of the alien's program objectives and including authorized training beginning on the day after the admission period expires, for a period of up to 240 days as provided in 8 CFR 274a.12(b)(20). Such authorization may be subject to any conditions and limitations of the initial authorization.

(B) An Arrival-Departure Record (Form I-94 or successor form) is considered unexpired when combined with a USCIS receipt notice indicating receipt of a timely filed extension of stay application and a valid Form DS-2019, or successor form, indicating the duration of the program. An application is considered timely filed if the receipt notice for the application is on or before the date the admission period expires. Such extension may not exceed the earlier of 240 days, as provided in 8 CFR 274a.12(b)(20), or the date of denial of the alien's application for an extension of stay.

(C) An alien in J-2 status whose admission period has expired (as indicated on his or her Form I-94) may not engage in employment until USCIS approves his or her application for employment authorization.

(viii) *Use of SEVIS.* The use of the Student and Exchange Visitor Information System (SEVIS) is mandatory for designated program sponsors. All designated program sponsors must issue a SEVIS Form DS-2019 to any exchange visitor requiring a reportable action (e.g., program extensions and requests for employment authorization), or for any aliens who must obtain a new nonimmigrant J visa. As of 2003, the records of all current or continuing exchange visitors must be entered in SEVIS.

(ix) *Current name and address.* A J-1 exchange visitor must inform USCIS and the responsible officer of the exchange visitor program of any legal changes to his or her name or of any change of address, within 10 calendar days of the change, in a manner prescribed by the

program sponsor. A J-1 exchange visitor enrolled in a SEVIS program can satisfy the requirement in 8 CFR 265.1 of notifying USCIS by providing a notice of a change of address within 10 calendar days to the responsible officer, who in turn shall enter the information in SEVIS within 10 business days of notification by the exchange visitor. In cases where an exchange visitor provides the sponsor a mailing address that is different than his or her actual physical address, he or she is responsible to provide the sponsor his or her actual physical location of residence. The exchange visitor program sponsor is responsible for maintaining a record of, and must provide upon request from USCIS, the actual physical location where the exchange visitor resides.

\* \* \* \* \*

(6) *Limitations on length of admission.* Subject to the discretion of the Secretary of Homeland Security, in consultation with the Secretary of State, a J-1 exchange visitor in the following categories may be admitted for a period of up to the length of the exchange visitor program as stated on the Form DS-2019 or up to 2 years, whichever is shorter, and may be eligible to apply for extensions of stay for additional periods of up to 2 years each, until the end date of the exchange visitor program. These categories of 2-year periods of admission are:

(i) *Certain countries and U.S. national interest.* Exchange visitors who were born in or are citizens of countries listed in the State Sponsor of Terrorism List or who are citizens of countries with a student and exchange visitor total overstay rate greater than ten percent according to the most recent DHS Entry/Exit Overstay report. DHS will publish a document in the Federal Register listing the countries or circumstances making aliens in J-1 status subject to the factors listed in this paragraph and such other factors that may serve the U.S. national interest. Changes to the list will be made by a new Federal Register document; or

(ii) *E-Verify participation.* The J exchange visitor is participating in an exchange visitor program whose sponsor is not enrolled in E-Verify, or if enrolled, is not a participant in good standing in E-Verify as determined by USCIS. A sponsor is a participant in good standing in the E-Verify program if it has enrolled in E-Verify with respect to all hiring sites in the United States at the time of the exchange visitor's admission in J-1 status or filing of an application for extension of or change to J-1 status with USCIS, is in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and continues to be a participant in good standing in E-Verify at any time during which the J-1 exchange visitor is participating in an exchange visitor program at the organization.

(iii) *Alien with a 4-year period of admission who becomes subject to a 2-year maximum period of admission.* If an alien in J status was originally admitted for a 4-year period of admission, but a new Federal Register document is subsequently published according to paragraph (j)(6)(i) of this section that would subject the alien to the 2-year maximum period of admission, then the alien may remain in the United States for the remainder of the 4-year period. However, if the J-1 exchange visitor departs the United States or otherwise must apply for admission or extension of stay, that alien will become subject to the 2-year limitation.

(7) *Severability.* The provisions in this paragraph (j) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

\* \* \* \* \*

## **PART 248 – CHANGE OF NONIMMIGRANT CLASSIFICATION**

4. The authority citation for part 248 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2. –[0

5. Section 248.1 is amended:

a. By redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively, and adding new paragraphs (e) and (f);

b. In newly redesignated paragraph (g) by removing the words “A district director shall” and adding in their place “USCIS will”; and

c. In the first and second sentences of newly redesignated paragraph (h) by removing the word “shall” and adding in its place “will”.

The additions read as follows:

**§ 248.1 Eligibility**

\* \* \* \* \*

(e) *Admission of aliens under section 101(a)(15)(F) and (J) previously granted duration of status*— Aliens who were granted a change to F or J status prior to [EFFECTIVE DATE OF FINAL RULE] and who departed the United States and are applying for admission on or after [EFFECTIVE DATE OF FINAL RULE] will be inspected and may be admitted into the United States up to the program end date as noted on the Form I-20 or DS-2019 that accompanied the change of status application that was approved prior to the alien’s departure, not to exceed a period of 4 years, unless subject to 8 CFR 214.2(f)(20) or (j)(6). To be admitted into the United States, all aliens must be eligible for the requested status and possess the proper documentation including a valid passport, valid nonimmigrant visa, if required, and valid Form I-20 or Form DS-2019, or successor form.

(f) *Abandonment of change of status application.* If an alien timely files an application to change to another nonimmigrant status but departs the United States while the application is pending, USCIS will consider the change of status application abandoned.

\* \* \* \* \*

## **PART 274a – CONTROL OF EMPLOYMENT OF ALIENS**

6. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 114-74, 129 Stat. 599.

7. Section 274a.12 is amended by revising paragraphs (b)(6)(i), (iii), and (v), (b)(10), and (c)(3)(iii) to read as follows:

### **§ 274a.12 Classes of aliens authorized to accept employment.**

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(i) On-campus employment for not more than 20 hours per week when school is in session or full-time employment when school is not in session if the student intends and is eligible to register for the next term or semester. Part-time on-campus employment is authorized by the school. On-campus employment terminates on the alien's fixed date of admission as noted on his or her Form I-94. If applicable, the employment authorization of an alien described in 8 CFR 214.2(f)(5)(vii) may be automatically extended for up to 180 days, or until authorized by USCIS, whichever is earlier. In cases where the employment is authorized pursuant to 8 CFR 214.2(f)(5)(v), the validity of the employment authorization is provided by notice in the Federal Register and indicated by a Certificate of Eligibility for Nonimmigrant (F-1/M-1) Students, Form

I-20 or successor form, endorsed by the Designated School Official recommending such an extension.

\* \* \* \* \*

(iii) Curricular practical training (internships, cooperative training programs, or work-study programs that are part of an established curriculum) after having been enrolled full-time in a SEVP-certified institution for one full academic year. Curricular practical training (part-time or full-time) is authorized by the Designated School Official on the student's Form I-20, or successor form. Curricular practical training terminates on the earlier of the employment end date indicated on Form I-20, or successor form, or on the alien's fixed date of admission as noted on his or her Form I-94. If applicable, an alien described in 8 CFR 214.2(f)(5)(vii) must not engage in curricular practical training until USCIS approves an alien's extension of stay request.

\* \* \* \* \*

(v) The beneficiary of an H-1B petition and change of status request as described in 8 CFR 214.2(f)(5)(vi)(A) and whose status and employment authorization have been extended pursuant to 8 CFR 214.2(f)(5)(vi). These aliens are authorized to continue employment with the same employer beginning on the date of the expiration of the authorized period of admission until April 1 of the fiscal year for which H-1B status is requested. Such authorization will be subject to any conditions and limitations noted on the initial authorization. Such authorization, however, will automatically terminate upon the notification date in the denial decision if USCIS denies the H-1B petition or request for change of status. If USCIS approves the H-1B petition and associated change of status request, and the change of status will take effect prior to April 1 of the fiscal year for which H-1B status was requested, such authorization will automatically terminate on the date that the change of status takes effect.

\* \* \* \* \*

(10) *A foreign information media representative (I), pursuant to 8 CFR 214.2(i).* An alien in this status may be employed pursuant to the requirements of 8 CFR 214.2(i). Employment authorization does not extend to the dependents of a foreign information media representative.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iii) Is seeking employment because of severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and has an Employment Authorization Document, Form I-766 or successor form, based on severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C), and whose timely filed Application for Employment Authorization, Form I-765 or successor form, and Application to Extend/Change Nonimmigrant Status, Form I-539 or successor form, are pending, is authorized to engage in employment beginning on the expiration date of the Employment Authorization Document issued under paragraph (c)(3)(i)(B) of this section and ending on the date of USCIS' written decision on the current Application for Employment Authorization, Form I-765 or successor form, but not to exceed 180 days. For this same period, such Employment Authorization Document, Form I-766 or successor form, is automatically extended and is considered unexpired when combined with a Certificate of Eligibility for Nonimmigrant (F-1/M-1) Students, Form I-20 or successor form, endorsed by the Designated School Official recommending such an extension.

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Chad R. Mizelle,

Senior Official Performing the Duties of the  
General Counsel,  
U.S. Department of Homeland Security.

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