
Please understand that these are proposed regulations. They are not final. After receiving comments through October 26, DHS must review and analyze substantive comments and respond. Then DHS would submit a final rule for OMB (Office of Management and Budget) review. If satisfactory, OMB would allow DHS to publish the final rule and the effective date.

Read the full proposal HERE.

Summary of Proposed Changes

End of D/S: Your I-94 currently shows admission to the U.S. for D/S (duration of status) rather than to a specific date. Currently, the CGE can extend your I-20 if you can’t complete your program by the program completion date on your I-20. You don’t need to apply for an extension when you apply for OPT. If you are already on OPT, your admission date is the expiration of your EAD.

If the proposed regulations are finalized as proposed, your change from D/S to an admission date is outlined in the transition plan (see below). The I-94 for new students coming to the U.S. (and their dependents) would reflect the I-20 program end date or a 4-year or 2-year maximum if the I-20 program completion date is longer.

Transition Provisions (copied directly from NAFSA:AIE):

- **In U.S. in D/S on final rule effective date.** F or J nonimmigrants previously admitted for D/S would be transitioned to a fixed date of admission, which would be:
  - the program end date of the Form I-20 (or OPT EAD) or DS-2019 that is valid on the final rule's effective date,
  - plus an additional period of 60 days for F nonimmigrants and 30 days for J nonimmigrants, but
  - not to exceed a period of 4 years from the final rule's effective date (even if in a “2-year” category)

- **Travel and reentry after the final rule effective date.**
  - An F or J nonimmigrant who departs the United States and seeks admission after the final rule's effective date becomes subject to the fixed date framework that would be imposed by this rule (e.g., admission for 2 year maximum if in a “2-year category”)

- **OPT and STEM OPT.**
  - F-1 applicants for OPT or STEM OPT whose I-765 is pending with USCIS on the final rule effective date could remain in the U.S. while the application is pending. They would not have to file an I-539 or re-file an I-765.
  - If USCIS approves the OPT, the F-1 could remain in F status until the expiration date of the OPT EAD, plus 60 days.
If USCIS denies the OPT: If the student’s program end date has not yet passed, could remain in the United States until the program end date listed on their Form I-20, plus 60 days. If the program end date and 60-day grace period has passed by the time USCIS denies the I-765, student must immediately depart the United States with no grace period.

F Grace Period: The F-1/F-2 grace period after completion of studies and any period of OPT would change to 30 days for new students and for you if you were to travel abroad and reenter.

OPT and STEM OPT: You would have to file the I-765 application for work authorization (currently $410) plus supporting documents, AND an I-539 plus biometrics (currently $370 plus $85 for applicant and each dependent) for an extension.

Transfer to a New School, Change to a New Degree Level at FSU: In many cases this would require an application for extension.

Extension of Stay Requirements:
- Submission of USCIS I-539 form (but perhaps new form), processing of biometrics, and fees ($370 plus $85 for each person on application)
- Proof of sufficient funding
- Documentation supporting reason for extension
- Approved for compelling academic reasons, documented illness or medical condition, exceptional circumstances beyond your control.
- Academic probation, suspension, failing classes, could lead to a denial of an extension request
- Exceptional circumstances could be national health crisis, natural disaster, etc.
- Must be filed before end of valid stay (reinstatement required if late)
- On-campus employment could continue for up to 180 days while application pending, CPT not an option during extension period
- USCIS could require an interview
- Not approved beyond program of study and only up to 4 years or 2 years, depending on situation

F-1 Cap Gap: This provision related to the transition from F-1 OPT to H-1B would change, allowing a cap-gap end date up to April 1.

Limit on F-1 programs at the same educational level: Lifetime limit of 3 programs at the same educational level.

Limit on moving to a “lower” educational level: An F-1 student would be allowed to move to a lower educational level one time after completing a program at a higher level.

English Language Study: Limited to a lifetime aggregate of 24 months, including breaks and an annual vacation.
2-Year Admission Limit: The 2-year admission limit would apply to:

- Individuals born in or citizens of countries designated as State Sponsors of Terrorism (currently North Korea, Iran, Sudan, Syria)
- Individuals from countries with an overstay rate >10%. This is based on a DHS Entry/Exit Overstay report (Table C-4 Column 6)
- Individuals coming for a course of study for which the Homeland Security Secretary deems it in the U.S. national interest to restrict admission to 2 years
- FSU F students wanting to transfer to an unaccredited school or a school or exchange program not fully participating in E-Verify. (FSU is fully enrolled in E-Verify.)

Links to Resources

From NAFSA: Association of International Educators

- NAFSA press release on the proposed rule (September 24, 2020)
- Read a NAFSA press release in response to when DHS first indicated it would seek to eliminate duration of status
- NAFSA one-page issue brief for Congress on duration of status
- Notes from a June 19, 2020 meeting on the proposed D/S rule with the Office of Management and Budget's (OMB) Office of Regulatory (OIRA)
- NAFSA backgrounder: APA public notice and comment procedures

Council of Graduate Schools (CGS)

- Article in Washington Insights & Highlights

Department of Homeland Security:

- DHS Press Release, DHS Proposes to Change Admission Period Structure for F, J and I Nonimmigrants (September 24, 2020)

How to Submit Comments

Read the proposed rule and you or an organization of which you are a member can submit comments by October 26, 2020. A Comment Now! button appears at the upper right corner of the proposed rule on Regulations.gov, at: https://www.regulations.gov/document?D=DHS_FRDOC_0001-1933. Follow the website instructions to submit comments. If that link takes you to an error page on the beta.regulations.gov site, go to https://beta.regulations.gov/document/ICEB-2019-0006-0001.

Talking Points Template for Commenting on the Proposed Rule to Eliminate D/S, prepared by the Presidents' Alliance on Higher Education and Immigration and NAFSA. (This is designed for institutions of higher education but it can be helpful to you if you choose to submit comments.)

NAFSA's Tips for Writing a Useful Government Comment Letter