October 23, 2020

Sharon Hageman  
Acting Regulatory Unit Chief Office of Policy and Planning  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
500 12th Street SW  
Washington, DC 20536


Dear Acting Regulatory Unit Chief Hageman:

On behalf of the New York University (NYU) community, I am writing in opposition to the Department of Homeland Security’s (DHS) Notice of Proposed Rulemaking (NPRM) on “Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media.” The proposal would eliminate the current policy that provides a period of admission without a specified end date to allow students to maintain a valid visa for the duration of their academic program(s), and instead implement a fixed period of time (four or potentially two years) for authorized admission.

Historically, the U.S. has generously opened the doors of its higher education system to people of talent from around the world. Those who came and stayed have contributed significantly to many sectors of American society, bringing us discoveries, innovation, artistic creativity, and economic vibrancy. By way of example, in 2016, all three winners of the Nobel in Physics were faculty members at U.S. universities—and all three were born outside the U.S. New York institutions can tell similar stories—of the five New York mathematicians who have won the Abel Prize, four were born elsewhere but pursued their very successful scientific careers here.

Moreover, in addition to immeasurable intellectual contributions made by the approximately 1 million international students that annually attend U.S. colleges and universities annually, they also yield an estimated economic impact of $41 billion and support more than 458,000 jobs across the U.S. At NYU alone we have over 20,000 international students who contribute immensely not only to the intellectual energy of our scholarly community but to the state and local economy, as well. During a time when our global competitors are actively expanding incentives for international students to study and work in their countries, now is not the time for the U.S. to introduce burdensome policies which will further threaten our competitive advantage.

The proposed rule creates undue, costly and burdensome restrictions for international students, makes their path to advanced degrees and subsequent learning opportunities more difficult, and
will further jeopardize our ability to attract and retain the most talented students in the future. The NPRM has far reaching economic and competitive impacts not only for current and prospective international students, but for university departments, the greater U.S. higher education system, as well as the broader fields of science, humanities, and medicine. We respectfully request that the proposed rule be withdrawn from consideration.

**Proposed New Fixed Timelines Do Not Match Time to Degree**
The proposed new fixed timelines for F international students and J exchange visitors fail to take into account the amount of time it actually takes to complete degrees under ordinary circumstances, and does not allow for the possibility of life events that impact the progress of all students, domestic and international. According to the National Center for Education Statistics (NCES), the average time to complete a B.A. for international students is 56.3 months (or 4.69 years), which is longer than the maximum time frame proposed under this rule. NCES data also shows that 56 percent of international students get their B.A. within 4 years, compared to only 44 percent of domestic students, so international students already appear to be moving to completion faster than their domestic peers.

In addition, the most talented Ph.D. seeking students, many in the more competitive science, technology, engineering and mathematics (STEM) fields, take an average of 5.3 years from entering a program to completion. And, those who complete the Masters/PhD sequence take an average of 7.5 years from entering graduate school to completion. The proposed rule would also have a disproportionately negative impact on international students seeking medical training, as well as foreign national physicians participating in U.S. medical residencies and fellowships as J-1 exchange visitors, whose programs can last from one to seven years (depending on the specific medical program). Lastly, this shortened visa time frame will be particularly harmful to students and exchange visitors who don’t have the means to travel back to their home country for a visa renewal or pay the additional government application fees.

**International Students Already Thoroughly Vetted by Immigration and Customs Enforcement (ICE)**

According to DHS, this new rule has been proposed to "encourage program compliance, reduce fraud, and enhance national security." This extra layer of regulation is unnecessary as international students and exchange visitors are thoroughly vetted by ICE. Unlike any other nonimmigrant group, international students and exchange visitors are constantly tracked in DHS’ Immigration and Customs Enforcement (ICE) database, the Student and Exchange Visitor Information System (SEVIS), from the moment of admission (for a student) or invitation (for an exchange visitor) until their program is complete. The proposed changes add an unnecessary burden for students, for hosting universities, and for USCIS, which is already struggling with its current workload. Importantly, there is no indication that this change would make the U.S. any safer.

**Creation of 2-year Maximum Admission Period for Students From Select Countries**
The proposed rule would impose a maximum two-year admission period for broad groups of international students from countries with purported higher rates of overstays and those on the State Sponsor of Terrorism List. As justification, DHS cites the agency’s 2019 overstay report, which has been shown to be based on flawed data. A 2018 article in Forbes by Stuart Anderson
found that the DHS overstay report (at the time, used to justify the proposed rule on the accrual of unlawful presence of F, J, and M visas) includes individuals DHS was unable to confirm had departed the U.S. Further analysis of that data found that in 2016, slightly more than half of the reported overstays actually left the country but their departures were not recorded. It has become apparent that the DHS “overstay” reports upon which the regulation relies are flawed and misleading for policymaking purposes and should not be the basis for rulemaking on international students.

In regards to the limitations regarding the State Sponsor of Terrorism List, we are concerned this is being broadly applied to students who may have been born in those countries, but are currently citizens of other countries. Many of these students and scholars do not have any existing or substantive ties to their countries of birth. This includes political refugees who may have escaped totalitarian regimes at a very young age. At NYU, this new rule would unfairly penalize 393 students, including 181 undergraduates, many of whom have almost no memories of their country of birth.

Extension of Stay (EOS) Process Concerns & Challenges
The extension of stay (EOS) process that DHS is proposing raises several concerns and potential challenges for international students and university administrators. The NPRM would limit a university’s Designated School Official’s (DSO) existing authority to extend a student’s status for valid reasons and instead enables USCIS to set criteria and determine whether or not a student is making sufficient academic progress. We believe that this is an inappropriate role for USCIS. The definitive determination of an international student’s academic progress should remain with university officials who are trained and equipped to evaluate such progress and surrounding circumstances in relation to an international student’s academic progress. In addition, we are very concerned that the NPRM complicates the calculation of a student’s status in regard to accrual of unlawful presence and leaves open the potential for inclusion of erroneous clerical errors or discrepancies in SEVIS. Without the changes proposed by this rule, NYU processed over 300 extensions over the past year. If the proposal were to take effect, this number would rise dramatically, to over 1,500 students annually.

Processing Capacity and Current Backlog at United States Customs and Immigration Service (USCIS)
With a set status visa expiration date, every international student or exchange visitor whose study or research is extended would have to file a request for extension of status with USCIS. As current ongoing USCIS processing delays illustrate, the agency does not have the staff necessary to deal with these requests. Overall USCIS average processing times have increased by 46% over the past two fiscal years and 91% since fiscal year 2014. Ending the “duration of status” policy would exacerbate an existing problem by adding an enormous number of new extensions of status filings to existing backlog. With SEVIS tracking in place, this is only creating extra, unnecessary work for USCIS. And, this proposed change will surely result in increased processing delays limiting the ability of students to complete their degree in the U.S.

Impact on Students Seeking to Complete Optional Practical Training (OPT)
We are concerned about the impact on students wishing to complete OPT, as well as how this would impact students and scholars transitioning to H-1B and other work authorizations. The
OPT program, which offers talented international students who complete a U.S. degree the opportunity to remain in the country for a period of time to enhance their educational experience, is an integral component to the U.S. being able to attract top international talent. The proposed rule would require students wishing to participate in OPT to apply for an Extension of Stay (EOS), as well as an OPT work authorization from USCIS. Both would need to be granted in order for the student to start an OPT program. For a student participating in a Science, Technology, Engineering, and Mathematics (STEM) OPT, which allows an additional 2 years of OPT, this would mean at least one additional extension, which will be expensive and burdensome for these students. At NYU, we have over 1,700 students currently on post-completion OPT in STEM-eligible majors who would be potentially subject to not one but two extension applications with USCIS.

The proposed rule notes that “international students pursuing a business degree in the U.S. rate opportunities for post-graduation employment, availability of financial aid, and reputation of the school as the most important factors in selecting a university. These factors may outweigh the perceived impacts from the proposed admission for a fixed period.” Because OPT is a critical tool for recruiting students in the STEM fields, we strongly disagree with the above statement. The result of the proposed rule will be to severely limit the OPT program, lessening the desirability of coming to the US—especially for the most talented students who have competitive opportunities in other countries which have recently created similar programs to attract top international talent.

In short, we believe that the additional restrictions and burdens included in this proposal will make it harder for foreign students to study and work in the U.S., resulting in many international students choosing to study in other countries, which not only weakens America’s higher education system, but our overall global competitiveness. American universities have historically been the envy of the world, enabling them to recruit and retain the most talented students from around the globe. This, in turn, has been a leading driver of American innovation, economic strength, and robust job creation. Therefore, for the reasons outlined in this letter – and given the lack of compelling reasons for instituting these additional burdens and restrictions – we respectfully request that the proposed rule be withdrawn from consideration.

Sincerely,

Katherine E. Fleming
Provost, New York University