

CompeteAmerica

The Alliance for a Competitive Workforce

October 26, 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

Re: DHS Docket No. ICEB-2019-0006

Dear Acting Regulatory Unit Chief Hageman,

The Compete America coalition advocates for ensuring that the United States has the capacity to educate domestic sources of professional talent and to obtain and retain the talent necessary for American employers to continue to innovate and create jobs in the United States. Our [coalition members](#) include higher education associations, industry associations, the nation's largest business and trade associations, and individual employers that work together concerning issues pertaining to the high-skilled immigration system of the United States. For more than twenty years, Compete America has worked with successive administrations and Congress on issues critical to the global mobility of talent and compliance, functionality, and integrity in the employment-based immigration system of the United States.

Members of our coalition are among the nation's foremost creators of jobs for U.S. workers. Our members contribute immensely to the nation's economic strength and global competitiveness. In addition to the U.S. workers who make up the vast preponderance of their workforce, our members also rely on the talents of well-educated and highly skilled professionals from abroad. Many of these highly sought-after professionals have been drawn to this country not only by the vast opportunities for innovation and growth offered by America's employers, but also by America's unmatched higher education system.

Compete America thus has a keen interest in helping to ensure that the U.S. immigration process effectively promotes – with appropriate integrity and security safeguards – the international attractiveness of our higher education system and the ability of top students from abroad to study in this country, to gain a period of experiential education after completing their studies, and to enter the U.S. workforce for the longer term. For that reason, we have reviewed the proposed regulation entitled “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” (“Notice of

Proposed Rule Making” or “NPRM”) and are writing to share our views concerning the changes proposed therein.

The United States still enjoys a strong competitive advantage over the rest of the world, in large part through the desirability of our higher education system and by attracting the best minds from around the world to study and develop skills in our country. Our nation’s competitive advantage in educational choices generates major benefits to U.S. educational institutions, to their students, and to our economy. It is an important reason why the United States has achieved and maintained, for the time being, the leading competitive edge globally in technology and innovation. This NPRM is counterproductive to those national interests, obstructing the process for accepting foreign students into our higher education system and integrating them productively into our economy, without generating articulable benefits to the integrity of the immigration system.

It is important to emphasize at the outset that DHS is proposing these changes despite its specific awareness that the changes proposed in the NPRM will bring harm to national academic, job creation, and economic interests. The NPRM is plain about this: *“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.”* The flaws in the proposed changes, described below, stand in stark relief to these acknowledged harms.

First, the NPRM’s proposed change from the current “duration of status” framework for the admission of international students and exchange visitors, in favor of a fixed period of admission of two or four years maximum – with extensions available only at the case-by-case discretion of the Department of Homeland Security (“DHS”) – is unworkable and out of step with typical degree timelines. According to the National Center for Education Statistics (NCES), the average time for international students to complete a Bachelor of Arts degree is 56.3 months, or 4.69 years. Note that this timeline does not reflect a comparatively slower pace of degree completion among international students; to the contrary, NCES data also shows that 56 percent of international students get their B.A. within four years, compared with 44 percent of domestic students. Rather these timelines tend to reflect the realities, often quite positive, of college-level study in this country: double majors, changes in majors, additional coursework in other disciplines, and the like.

The mismatch between the NPRM’s rigid timelines and the realities of the academic schedule extend into advanced degree levels as well. Those who extend their undergraduate studies to the master’s level will by definition cross the four-year maximum. And the [2018 Survey of Earned Doctorates](#) reports the median time to degree for doctoral students across all fields is 5.8 years. This means that, for essentially all international doctoral students and for most international undergraduate students, relying on an approved extension of stay will be essential to the completion of their degree. There can be no doubt that the new uncertainty surrounding the ability to complete a degree will contribute to the possibility forecasted by DHS in the NPRM: that some “students and exchange visitors choose another country over the United States because of this proposed rule.”

Second, the students who this NPRM will dissuade are people whose study, presence, and work here serves the national interest in critical ways. As just one example, international students have proven to be an essential component of one of America's most critical technological developments, Artificial intelligence (AI). Georgetown University's Center for Security and Emerging Technology (CSET) reports that the United States faces a significant skills deficit in AI and "heavily relies on foreign-born talent. For example, more than 50 percent of computer scientists with graduate degrees employed in the country today were born abroad, as were nearly 70 percent of enrolled computer science graduate students. The vast majority of foreign-born talent wants to stay in the United States. Among U.S.-trained PhD graduates in AI-related fields, around 80 percent have remained in the country."¹

Here again, DHS clearly recognizes the losses the NPRM would cause in this respect. The NPRM spells out that the proposed changes *"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 Canada, Australia, and the United Kingdom."* The proposed rule undermines national competitiveness goals by discouraging international students who can help to fill such skills deficits in AI and other so-called "industries of the future" from choosing to study here or to enter our workforce after completing their studies.

Moreover, when international students choose to study in the United States, they bring immense economic benefits, even beyond their own academic and workforce contributions. The National Association of Foreign Student Advisors ("NAFSA") estimated the economic impact of international students in 2019 at \$41 billion, supporting over 458,000 jobs across U.S. economic sectors, as they rent or buy homes; buy groceries and dine out; purchase health insurance; buy cell phone and internet service; and generate all the other economic activity of life in this country.² This helps to illustrate the scale of the negative impact that DHS itself foresaw in the NPRM: "forgone tuition and other fees, jobs in communities surrounding schools, and the U.S. economy."

Third, the NPRM threatens the extreme disruption of one of the most well-conceived aspects of the U.S. immigration framework to attract top talent in the national interest: the ability of international students to gain experiential learning through Optional Practical Training ("OPT") after completion of their studies. This further learning option has been an indispensable draw to top foreign students into U.S. schools; a key pipeline of talent into the long-term U.S. workforce; and a massive economic boon to this country. A 2018 analysis by the Business Roundtable of American CEOs (BRT) and the Interindustry Forecasting Project of the University of Maryland (Inforum), to assess the impact of curtailing the OPT program, predicted a loss of 443,000 jobs over a decade, including 225,000 jobs held by native-born workers.³ A 2019 study of unemployment of STEM workers in over one hundred metropolitan areas found unemployment rates to be lower in areas with larger numbers of students working through OPT

¹ ["Strengthening the U.S. AI Workforce,"](#) Georgetown University Center for Security and Emerging Technology, September 2019

² [NAFSA International Student Economic Value Tool](#), NAFSA: Association of International Educators.

³ [The Economic Impact of Curbing the Optional Practical Training Program](#) (BRT-Inforum, December 2018).

as a share of workers in STEM occupations.⁴ And students on that path have a track record of thriving, to the nation's immense advantage: 22% of America's billion-dollar start-ups had at least one immigrant founder that first came to the U.S. as an international student.⁵

Yet the NPRM would restrict rather than facilitate access to OPT. Students hoping to gain experiential learning through OPT would have to be on USCIS's approval of an extension of stay, in addition to the current requirement – which already provides DHS with the ability to evaluate the substance of the proposed employment – to request OPT-based employment authorization from USCIS. The NPRM would place additional hurdles and levels of uncertainty in the way, without any commensurate benefit to the integrity of the system. For example, students will have to complete an Extension of Stay (“EOS”) when requesting a 12-month, post-completion period of OPT and a separate EOS for a 24-month STEM OPT extension, with processing delays and a separate fee each time. While that EOS is pending before USCIS for many months, the applicant's nonimmigrant status is not extended, and that applicant is merely “considered to be in a period of authorized stay,” a far less stable immigration circumstance. These are only some examples of the new procedural hurdles and uncertainty that the NPRM would establish to the detriment of U.S. academic and economic interests and with no clear benefit to the integrity of the system. Meanwhile, competitor countries that recognize the value of attracting these highly sought-after students are strengthening their analogous programs to gain the advantages that the U.S. via this proposed rule would surrender.⁶

Fourth, DHS is setting up a burden that USCIS will be challenged to manage. USCIS is already facing serious resource and processing time challenges. As DHS is aware, USCIS spent the greater part of this year facing a resource threat that it expected would require the furlough of about two thirds of its employees, a threat it avoided only narrowly at the end of the fiscal year.⁷ According to the NPRM, “DHS estimates that between 2025-2029 approximately 301,000 EOS application would be filed with USCIS annually.” According to recent processing time reports from USCIS, the agency already requires an estimated six to eight months to adjudicate extension of stay requests at some Service Centers.⁸ Adding over 300,000 new such applications will sharpen the difficulties and uncertainties described above and increase USCIS's already strained adjudicatory capacity.

Fifth, the NPRM not only makes major changes without adequately articulating or justifying an important basis for changes on this scale, in key respects, the agency's justifications are simply not supported by the data advanced. A major focus of this NPRM is, in principle, to address overstay problems. Yet the overstay data advanced to support the rule does not link to the supposed solution. The NPRM would limit the admission period of international students not to four years, but to a maximum of only two years for those from countries with historic overstay rates over 10 percent. But

⁴ [International Students, STEM OPT and the U.S. STEM Workforce](#), Madeline Zavodny (National Foundation for American Policy, March 2019).

⁵ [Immigrants and Billion-Dollar Companies](#). Stuart Anderson (National Foundation for American Policy, October 2018).

⁶ See, for example, September 11, 2019 Inside Higher Ed, “U.K. Policy Expands Work Rights for Foreign Students” <https://www.insidehighered.com/quicktakes/2019/09/11/new-uk-policy-expands-work-rights-foreign-students>

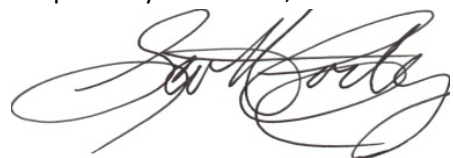
⁸ <https://egov.uscis.gov/processing-times/>.

this calculation is based on data provided in the annual DHS Entry and Exit Overstay Report,⁹ which suffers from fundamental flaws that eliminate its value to support the proposed changes. In September 2020 the National Foundation for American Policy (NFAP) Report on International Students and DHS Data¹⁰ highlighted that “the overstay rate for F-1 international students is not an actual overstay rate but only an upper-bound estimate of individuals who DHS could not positively identify as leaving the United States.” This study showed that these reports relied in very large part, not on actual overstay data, but merely on cases in which DHS could not confirm (and often later did confirm, when its own data caught up with its reporting) that the person had departed on time or had not otherwise changed to a different lawful status. The reliance by DHS on this flawed measurement leaves unknown the actual overstay rates and would restrict the admission period for students and scholars from nearly 60 countries.

Finally, it is particularly difficult to understand why DHS would consider it wise to initiate these changes in the extraordinary circumstances of the pandemic. The pandemic has caused harms to the U.S. economy, the recovery from which depends in part upon the success of American employers that rely on the ability of the United States to attract the best foreign students and to incorporate them into the U.S. workforce in occupations with historically low unemployment rates and that reflect domestic skills shortages. In addition, the pandemic has significantly impacted current degree completion timelines, bringing international students – for entirely understandable reasons – well outside of the inflexible periods envisioned for degree completion proposed in the NPRM. Finally, the pandemic has impeded prompt completion of all kinds of processes throughout the nation’s educational, economic, and governmental systems. This has included USCIS processing times, which will generate additional problems in the ways enumerated above if the NPRM were to become law.

We value the opportunity to participate in the rulemaking and policy implementation process. The issues and concerns of our coalition set out in this comment letter are not meant to be exhaustive; the NPRM is deeply flawed beyond the points above. This comment reflects those flaws most central to the interests of our diverse coalition. For the reasons set out above, we urge DHS to withdraw the NPRM.

Respectfully submitted,



Scott Corley
Executive Director
Compete America Coalition

⁹ [Entry/Exit Overstay Report](#), US Department of Homeland Security, Updated May 13, 2020

¹⁰ [“International Students and DHS Data”](#), National Foundation for American Policy, September 2020