



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

Submitted via <http://www.regulations.gov>

Re: Department of Homeland Security, U.S. Immigration and Customs Enforcement, Notice of Proposed Rulemaking, *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* (DHS Docket No. ICEB-2019-0006, RIN 1653-AA78).

Dear Ms. Hageman,

The University of Colorado Boulder (“CU Boulder”) submits the following comments in opposition to the above-referenced Department of Homeland Security (“DHS”) and U.S. Immigration and Customs Enforcement (“ICE”) Notice of Proposed Rulemaking, *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* (DHS Docket No. ICEB-2019-0006, RIN 1653-AA78) (hereinafter “Proposed Rule”).

CU Boulder hosts hundreds of scholars¹ and thousands of students² from around the globe each year, the majority entering the U.S. on F or J visas. Our international students and scholars contribute greatly to CU Boulder’s campus, local community, and scholastic reputation. The federal government in the Notice of Proposed Rulemaking (NPRM) estimates that the Proposed Rule would generate annualized costs exceeding \$200 million and that the cost would be borne by already overburdened federal government agencies, institutions of higher education, and international students and scholars.

I. The University of Colorado Boulder strongly opposes the Proposed Rule.

CU Boulder strongly opposes the Proposed Rule because the unintended consequences would negatively impact its finances, the ability of institutions of higher education to recruit talented students and scholars, and the ability of U.S. Citizenship and Immigration Services (“USCIS”) to process immigration benefit applications. While CU Boulder recognizes the importance of verifying the status of international students, the system created by the Proposed Rule would be unnecessarily duplicative of the existing Student and Exchange Visitor Information System (“SEVIS”) database.

¹ *International Scholar Statistics: July 1, 2018 - June 30, 2019*. (2019). University of Colorado Boulder International Student & Scholar Services. https://www.colorado.edu/iiss/sites/default/files/attached-files/scholar_2018-2019_chart_compiled_0.pdf

² *Ibid*

Under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(a), reviewing courts shall set aside agency actions found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” In *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, the Supreme Court stated “[a]n agency rule is arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” 463 U.S. 29, 43 (1983).

The justifications offered by DHS in the Proposed Rule run counter to the evidence before the agency demonstrating the negative effects on institutions of higher education and fail to consider important aspects of the issue detailed below. Therefore, we urge DHS to withdraw the Proposed Rule.

II. DHS fails to consider the negative financial impact of the Proposed Rule on institutions of higher education.

The Proposed Rule acknowledges “public schools would incur incremental costs to comply with the proposed rule,” without providing any quantifiable benefits to DHS, institutions of higher education, scholars, or students. Beyond their invaluable cultural, academic, and technological contributions to U.S. classrooms, international students are also a vital financial component to the U.S. higher education model.

According to Business Insider,³ international students in the U.S. help to subsidize American universities with \$900 billion in annual contributions. Because international students usually pay a higher out-of-state or international tuition, universities are able to lower costs for domestic students who would not otherwise be able to afford a higher education. During the 2018-19 academic year, international students at CU Boulder alone contributed \$169.3 million and supported 2,321 jobs in the state of Colorado.⁴

In addition to the direct financial contributions that international students make to the education sector through tuition and fees, international students are also vital to the broader U.S. economy. According to Forbes, “areas with more foreign-born STEM workers have higher patenting rates, faster productivity growth, and higher earnings among U.S. natives.”⁵ A study by Business Roundtable found that immigration increases job opportunities for native-born workers.⁶ Our community and state rely on international students.

As DHS acknowledges, the Proposed Rule will result in reduced enrollment of international students in the U.S. In fact, the Proposed Rule threatens to further contribute to the trend of decreasing international student enrollment since 2016 that is correlated with a series of

³ Loudenback, T. (2016, September 16). *International students are now ‘subsidizing’ public American universities to the tune of \$9 billion a year.* Business Insider. <https://www.businessinsider.com/foreign-students-pay-up-to-three-times-as-much-for-tuition-at-us-public-colleges-2016-9>

⁴ *Colorado Benefits from International Students.* (2019). NAFSA. <https://www.nafsa.org/isev/reports/district?state=CO&district=02&year=2018>

⁵ Anderson, S. (2020, May 4). *Next Trump Immigration Target: OPT For International Students.* Forbes.

https://www.forbes.com/sites/stuartanderson/2020/05/04/next-trump-immigration-target-opt-for-international-students/?utm_source=AILA+Mailing&utm_campaign=feb9599445-AILA8-05-04-2020&utm_medium=email&utm_term=0_3c0e619096-feb9599445-291912705#55f02e6a45f9

⁶ *The Economic Impact of Curbing the Optional Practical Training Program.* (2018). Business Roundtable.

<https://www.businessroundtable.org/policy-perspectives/immigration/economic-impact-curbing-optional-practical-training-program>

increasingly unwelcoming immigration policies. This drop in enrollment has already cost the U.S. economy \$11.8 billion and more than 65,000 jobs according to Axios data.⁷ Conversely, Canada saw an increase in international student enrollment during the past few years. The number of international students from India studying at Canadian universities rose from 76,075 in 2016 to 172,625 in 2018, a 127% increase, according to the Canadian Bureau for International Education.⁸ The ongoing shift in the preference of international students away from U.S. institutions in favor of other English-speaking countries, and the associated financial impacts, would only be accelerated by the Proposed Rule. Jobs of U.S. workers are at stake.

III. DHS fails to consider the negative impact of the Proposed Rule on the recruitment of talented international students and scholars.

If implemented, the Proposed Rule will create a system where international students cannot be guaranteed more than two or four years of study in the U.S., depending on their country of citizenship. The risk of not receiving renewal of status, not to mention the added cost of extension applications, will deter many international students from choosing to study in our country, further diminishing our international student enrollment rates.

The Proposed Rule acknowledges the changes “may adversely affect U.S. competitiveness in the international market for nonimmigrant student enrollment and exchange visitor participation.” The Proposed Rule claims these negative effects will be mitigated by “opportunities for post-graduation employment, availability of financial aid, and reputation” associated with schools in the U.S. but cites only a single study from 2010 that explored the “factors that foreign students consider when choosing a business school in the U.S.”⁹

The Proposed Rule fails to properly consider the increasing international competition for students and scholars and the associated benefits those individuals bring to the institutions of higher education they select and the U.S. as a whole.

Students take an average of five years to complete a bachelor’s degree in the U.S., according to the National Student Clearinghouse Research Center.¹⁰ At CU Boulder, most bachelor’s degrees involve 120 credit hours. If international students enroll in 12 credits, CU Boulder’s and DHS’s definition of full-time enrollment, every fall and spring semester, they will require five years to complete a degree. Further, if undergraduate students transfer mid-degree, double major, add a minor, or change majors at all, they will almost certainly not be able to graduate in four years. At CU Boulder, from 2011 to 2019, the cumulative data reflect that 36% of international students have taken longer than four years to complete their bachelor’s degrees.

Doctoral degrees, particularly in STEM fields, are not designed to be completed in four years, and often take in excess of seven years based on unexpected research outcomes, weather (when connected to outdoor research), and other variable aspects of the experimental process. The

⁷ Fernandez, M. (2020, September 12). *College international student enrollments plunge*. Axios. <https://www.axios.com/international-student-enrollment-trump-covid19-5caad69c-f6d4-4b79-bfb4-7b6ed038bc5b.html>

⁸ Sood, J. (2020, May 13). *Canada leads the way in attracting and assimilating international students*. The American Bazaar. <https://www.americanbazaaronline.com/2020/05/13/canada-leads-the-way-in-attracting-and-assimilating-international-students/>

⁹ FACTORS INFLUENCING THE UNIVERSITY SELECTION OF INTERNATIONAL STUDENTS. (2010). *ACADEMY OF EDUCATIONAL LEADERSHIP JOURNAL*, 14(3), 59–75. <https://www.abacademies.org/articles/aeljvol14no32010.pdf>

¹⁰ *Time to Degree – 2016*. (2016, September 18). National Student Clearinghouse Research Center. <https://nscresearchcenter.org/signaturereport11/#:~:text=MAJOR%20FINDINGS-,Enrolled%20Time%20to%20Degree,5.1%20academic%20years%2C%20on%20average.>

COVID-19 pandemic and associated economic crises increased the severity of these complications and exemplify factors that are beyond the students' control. Over the past decade, the CU Boulder has annually awarded almost 400 doctorate degrees with international students earning over 19% of degrees awarded.

The Proposed Rule will also make it more difficult to attract students to the English Language Program at CU Boulder's International English Center. According to Open Doors Data on intensive English Programs released by the Institute for International Education in August 2020, 49% of IEP students intend to continue post-secondary education in the U.S. The Proposed Rule would put up artificial boundaries for these students to transition from one phase of their education to the next, adding yet another barrier to recruitment of international students at all degree levels.

International students who are not able to complete their degrees within four years (or even two years depending on country of birth or citizenship) based on standard academic reasons will deal with uncertainty about whether they can stay in the U.S. to finish based on an assessment by USCIS adjudicators who do not have expertise in academic studies and degree progression. Moreover, students will have to pay the extension application filing fee and associated biometrics processing fee with each extension request. When faced with all these bureaucratic and financial barriers coupled with unknown outcomes, international students will choose to attend universities outside of the U.S.

Take, for example, Wei Wu. Mr. Wu came to CU Boulder in 2008 on an F-1 visa as an English language student. He decided to stay to complete a music certificate program. After this, he did another change of level to get his master's degree in voice performance (opera), which he completed in 2013. He then went on to do a year of Optional Practical Training ("OPT"), finishing in 2014, for a total of six years in F-1 nonimmigrant status under CU Boulder's sponsorship alone. Mr. Wu has since joined the New York Metropolitan Opera and in 2019 *won a Grammy* in the Best Opera Recording category for his performance in *The (R)evolution of Steve Jobs*.¹¹ Mr. Wu has become an important and renowned artist of our time, and CU Boulder wants to continue being an attractive option as a university for such talent across the world, rather than diverting talent to other countries through unnecessarily burdensome rules.

Beyond reducing international student enrollment numbers, the Proposed Rule would hurt the U.S.'s ability to attract the most talented international researchers who contribute technological advancement and innovation. Research and innovation are vital to CU Boulder. In fiscal year 2019, CU Boulder received \$631 million in research grants. Among public universities, the CU Boulder receives the most NASA funding. In addition, CU Boulder has close research partnerships with federal labs across the state. Without a guarantee that graduate students in F-1 nonimmigrant status will have enough time to complete their degrees and therefore move into OPT to continue research, or a guarantee that Exchange Visitor scholars in J-1 nonimmigrant status will be able to extend their programs year by year as more grant funding is secured, CU Boulder will lose talented researchers from around the world. The Proposed Rule will diminish our ability to receive research grants and continue the high quality of research for which we are

¹¹ Garfinkel, T. (2020). *2020 Alumni Award Winners*. Forever Buffs. <https://www.colorado.edu/homecoming/2020alumniawardwinners#Wu>

known given that in the past five years approximately 360 of CU Boulder's postdoctoral scholars have been on F-1 or J-1 visas.

The Proposed Rule fails to address the major positive impact of international scholars on the U.S.'s academic vitality and prestige. Since 2000, immigrants to the U.S. have received 39% of all Nobel Prizes won by Americans in physics, chemistry, and medicine.¹² Additionally, nearly 25% of America's \$1 billion startups have founders who originally came to the U.S. as international students.¹³ Further, this regulation will hurt the trajectory of talented international scholars who transition to the H-1B visa for highly skilled workers. Partnership for a New American Economy found that each H-1B worker is associated with creating 1.83 jobs for Americans.¹⁴ At CU Boulder, in the past five years, approximately 243 international students and scholars in F-1 or J-1 nonimmigrant status have changed to H-1B nonimmigrant status.

The Proposed Rule would negatively impact the ability of institutions of higher education in the U.S., including CU Boulder, to attract preeminent scholars and students from around the world and maintain the prestigious level of research spanning from climate science and renewable energy to quantum information science and artificial intelligence that CU Boulder is known for. Losing these students and scholars to institutions of higher education in other countries will hinder the ability of the U.S. to influence world events.

Student exchange between the U.S. and the Soviet Union expanded in the late 1950s, leading to a proliferation of Western ideals that ultimately precipitated the collapse of the Soviet Union.¹⁵ Research based on data from 1955 to 2005 demonstrated a strong correlation between educational exchange and the spread of democracy.¹⁶ Recruiting from a global pool of students and scholars can allow the U.S. to continue competing with China in the race for global power, despite having only a fraction of the population.¹⁷ Immigrants and their families power the economy through their dedicated research and the many successful companies they build.¹⁸ The Proposed Rule fails to fully consider the negative impact the changes would have on the vitality of the United States.

IV. DHS fails to consider the negative impact of the Proposed Rule on an already overburdened immigration benefit adjudication infrastructure.

The onset of the COVID-19 pandemic forced DHS to severely limit operations to protect the health of officers and applicants. Receipts dropped drastically due to office closures and related uncertainties, resulting in a USCIS request to Congress of \$1.2 billion in emergency funding to

¹² *IMMIGRANTS AND NOBEL PRIZES : 1901 - 2017*. (2017, October). National Foundation for American Policy. <http://nfap.com/wp-content/uploads/2017/10/Immigrants-and-Nobel-Prizes-1901-to-2017.NFAP-Policy-Brief.October-20171.pdf>

¹³ *Ibid*

¹⁴ *The H-1B Employment Effect*. (2015). Partnership for a New American Economy. http://www.newamericaneconomy.org/wp-content/uploads/2015/04/H1B_Effect.pdf

¹⁵ Spillimbergo, A (2009, Mar.), *Democracy and Foreign Education*, *The American Economic Review*, <https://www-jstor-org.colorado.idm.oclc.org/stable/pdf/29730195.pdf?refreqid=excelsior%3A816bc1446dab0abce9ff7e676e1a267c>.

¹⁶ *Id.*

¹⁷ M. Peter McPherson, *How a Proposed Student Visa Rule Would Discourage Top Talent From Coming to the U.S.*, *Forbes* (Oct. 19, 2020), <https://www.forbes.com/sites/petermcpherson/2020/10/19/how-a-proposed-student-visa-rule-would-discourage-top-talent-from-coming-to-the-us/#63ce792a1047>.

¹⁸ Stef W. Kight, *Study: Immigrants and their kids founded 45% of U.S. Fortune 500 Companies*, *Axios* (Jul. 22, 2019), <https://www.axios.com/immigrants-founders-fortune-500-companies-7e883b5a-1b76-462c-83b5-be68e2e9cae4.html>.

cover the shortfall.¹⁹ USCIS ultimately announced it would “be able to maintain operations through the end of fiscal year 2020” thanks to the adoption of “[a]ggressive spending reduction measures.”²⁰

The anticipated operational impacts of these measures “include increased wait times for pending case inquiries with the USCIS Contact Center, longer case processing times, and increased adjudication time for aliens adjusting status or naturalizing.” These delays will inevitably be layered on top of existing backlogs that have plagued the USCIS adjudication system for decades.²¹ The backlog and budget shortfall persist despite increasing fees paid by applicants throughout the Trump and Obama administrations.²²

Through the Proposed Rule, DHS is continuing a practice of dedicating scarce financial resources to search for rare instances of fraud. The decision to prioritize fraud detection at the expense of efficiently processing applications cannot reasonably be ascribed to agency expertise where DHS fails to offer quantifiable benefits of the Proposed Rule and fails to provide evidence of F or J visa fraud occurring at major public institutions like CU Boulder. The fears of students and scholars facing uncertain renewal of status would be magnified by the uncertainty that USCIS could properly adjudicate their application in time.

Although DHS acknowledges SEVIS²³ requires extensive documentation with the goal of determining whether an individual’s record “should remain in active status or change to reflect a change in circumstances,” DHS “believes that the determinations of program extension and extension of stay should be separated.” This position will place additional burdens on USCIS officers already struggling to adjudicate various other immigration benefit applications in a timely fashion.

DHS claims the Proposed Rule is necessary to mitigate fraud risks because 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 U. S.s beyond a 2- or 4-year admission period) and determine whether they are complying with the conditions of their classification.” However, DHS fails to justify why the burdens imposed by the Proposed Rule are more effective or efficient at detecting fraud than (1) an approach involving information sharing between USCIS immigration officers and the SEVIS-system, as maintained by ICE or (2) by dedicating additional financial resources to ICE following up on termination of F and J records in SEVIS.

If DHS believes substantial fraud exists in the F and J visa programs, it does not provide any evidence of it occurring at major public institutions of higher education. The isolated incidents of fraud cited in the Proposed Rule do not provide sufficient justification for a change in the

¹⁹ AILA and the American Immigration Council Send Letter to Congressional Appropriators Regarding USCIS Emergency Funding Request. (2020, May 29). American Immigration Lawyers Association. <https://www.aila.org/advo-media/aila-correspondence/2020/aila-and-aic-letter-to-congressional-appropriators>

²⁰ USCIS Averts Furlough of Nearly 70% of Workforce. (2020, August 25). U.S. Citizenship and Immigration Services. <https://www.uscis.gov/news/news-releases/uscis-averts-furlough-of-nearly-70-of-workforce>

²¹ Colorado State Advisory Committee to the U.S. Commission on Civil Rights. (2020, September). United States Commission on Civil Rights. <https://www.usccr.gov/pubs/2019/09-12-Citizenship-Delayed-Colorado-Naturalization-Backlog.pdf>

²² Rand, D., & Milliken, L. (2020, June 15). *The Case of the Insolvent Federal Agency: A Forensic Analysis of Public Data on U.S. Citizenship & Immigration Services*. N.Y.U. Journal of Legislation & Public Policy. <https://nyujlpp.org/quorum/the-case-of-the-insolvent-federal-agency-a-forensic-analysis-of-public-data-on-u-s-citizenship-immigration-services/>

²³ Student and Exchange Visitor Program. (2020, July 15). U.S. Immigration and Customs Enforcement. <https://www.ice.gov/sevis>

existing system that would cost more than \$200 million annually and require a substantial increase in staffing at USCIS.

V. Conclusion

The University of Colorado Boulder opposes the Proposed Rule as it constitutes an arbitrary and capricious imposition on international students and scholars, as well as institutions of higher education, which is neither necessary nor proportionate to the stated objectives of DHS. We therefore respectfully urge DHS to rescind the Proposed Rule and withdraw it from consideration.

Sincerely,



Philip P. DiStefano

Chancellor

University of Colorado Boulder