



300 Main Building, Notre Dame, Indiana 46556-5602
tel (574) 631-3802 *fax* (574) 631-4782 *email* provost@nd.edu

October 21, 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, D.C. 20536

Re: DHS Docket No. ICEB-2019-0006-0001

On behalf of the University of Notre Dame du Lac, we submit this comment letter in response to the U.S. Department of Homeland Security's proposed rule, 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-2019-0006-0001), published September 25, 2020.

The University of Notre Dame ("University") is a private, non-profit, Catholic academic community of higher learning located near the city of South Bend, Indiana. Founded in 1842 by Rev. Edward F. Sorin, C.S.C., a member of the Congregation of Holy Cross, we are still governed by a two-tiered, mixed board of lay and religious trustees and fellows. Notre Dame's current president is Rev. John I. Jenkins, C.S.C. Today, Notre Dame is a leading American research university that offers its students a unique academic environment, enriched by Catholic intellectual and cultural traditions. Our more than 1,300 faculty teach and conduct research with over 3,800 graduate and professional students, as well as approximately 8,500 undergraduate students who call Notre Dame home. Our international community represents 145 countries and currently includes 1,319 F-1 international students and 30 J-1 international students, as well as approximately 101 J-1 Exchange Visitors in the Research Scholar, Short-term Scholar, and Professor categories every year.

In addition to the immeasurable academic and cultural value these students and scholars bring to our campuses and local communities, the economic contributions of international students are significant. According to the Association of International Educators' (NAFSA) International Student Economic Value Tool, Indiana hosted 29,083 international students, and this population contributed 985.4 million dollars and 11,324 jobs to the economy in 2018-2019. Of that statewide contribution, the University's student population is the third highest contributor, with financial contributions of 92.2 million dollars and support for 1,237 jobs.

Beyond these intrinsic benefits to the local, state, and federal economy, international students and exchange visitors enrich the University's community. The perspectives they bring and the scholarly contributions they make allow the University to fulfill its mission to be a force for good in the world. Our

commitment to a holistic education demands that we prepare all of our students, no matter where they are from, to be successful global citizens. We can only do that when immigration regulations allow our international students and visiting scholars to thrive and flourish on campus without fear of having their immigration status revoked in the middle of their education, after having been previously vetted and approved for entry. The presence of international students and scholars advances the intellectual, professional and personal goals of our entire community, enhancing the vibrant research and intellectual engagement of our institution. International has been in our DNA since the university's founding by an immigrant, Fr. Edward Sorin, C.S.C in 1842. Our first international student arrived from Mexico in 1850 and by the 1880s Mexican students from Chihuahua and American students from the Midwest were traveling together in chartered railway cars to begin their studies at the University. From the very outset, then, our students and faculty developed an appreciation for, and an expectation of, a robust and vibrant international student and scholar community.

We remain committed to those values still today as we continue to increase the number of international students and scholars, particularly in regions of the world where the Church is growing; specifically from many of the countries that have been targeted by the new regulations. These proposed regulations would have a detrimental effect that would discourage and dissuade these students from pursuing their studies in the United States. As a Catholic university, one of our distinctive goals is to "provide a forum where, through free inquiry and open discussion, the various lines of Catholic thought may intersect with all the forms of knowledge found in the arts, sciences, professions, and every other area of human scholarship and creativity. The intellectual interchange essential to a university requires, and is enriched by, the presence and voices of diverse scholars and students."

It is with these values and our mission in mind that we submit this Comment urging that the proposed rule be withdrawn in its entirety, and that F-1 and J-1 admission for the duration of status remain in effect.

- **The University has Serious Concerns About the Proposed Rule**

The proposed rule shifts the authority in determining a student's progress and participation from the institution to DHS, which is a significantly unnecessary and harmful intrusion into the University's authority to make decisions regarding the students' academic engagement and progress.

It is the institution's responsibility to determine whether a student is making good academic progress and when they will grant a student additional time to complete a degree, and the University works within accreditation requirements to ensure that the policies are fair, effectual, and followed.

When we consider the timelines of our students, particularly those in PhD programs who will be impacted by the requirement to file for an extension of stay every two years, we know that the two-year request requirement typically aligns with when students are also preparing to submit a thesis or complete their comprehensive examinations. Asking them to complete an unnecessary assessment at critical junctures in their education seems capricious and unwarranted. One of the reasons that international students are attracted to the United States to study is precisely because of the existing duration of stay practices which ensure that students will not face interruptions in their progress towards degree completion.

In fact, under the existing protocols, the University already has processes to ensure that students are meeting academic standards and making "normal progress," throughout their program and meet federal requirements with any requests for program extensions. At the University of Notre Dame, most of our program extension requests are submitted by graduate students. When they initiate the request, the process requires that in addition to a review of eligibility by the international office, both the student's

academic advisor and the Graduate School must approve the extension request and explain why the extension is necessary. Once the process is complete, the international office updates the student's SEVIS record accordingly ensuring compliance.

This rule makes US higher education less competitive internationally, and has a particularly deleterious effect on the University's strategic efforts to diversify our recruitment, enrollment, and research in Africa and Asia. Reducing access to and participation in these markets further erodes the joint research projects faculty do with international partner universities and their faculty and students as well. In no disciplines will this be more true than in the STEM fields. Critical failure in these areas as a result of the proposed rule change will lead to our University and the wider education sector in the United States to fall further behind in knowledge production and in solving the problems confronting our country and the world.

As noted in the proposed rule under "F and J Nonimmigrants Affiliated with SEVP-certified Schools," the U.S. main competitors for international students, including Canada, Australia, and the UK, provide for an admission of stay that aligns with the student's program, as defined by the educational institution. As these three countries have already been attracting a larger share of the international student population in the last decade, the negative impact of the move to a fixed period of stay, combined with the administration's changes to employment visa eligibility, cannot be underestimated.

The financial impact of this rule has been underestimated, as it disregards the likely drop in enrollment and tuition dollars, the decrease in investment in our local economy by these international students and scholars, and an increase in staffing needed to manage the increase in petitions that result from the increase in bureaucracy the rule change creates. The significant increase in expenses for our students and scholars to file for extensions of stay will be another deterrent for international students and scholars to choose to study in the United States.

Implementing the rule would have significantly greater economic effects than estimated by DHS on U.S. higher education institutions, including from the loss of the international student population resulting from the rule. While there would be significant economic costs to students and a negative economic impact on the economy, we are also troubled that the federal government would choose to commodify a student or scholar's visa status, making it increasingly accessible only to the very few. This seems to fly in the face of our desire to attract and allow in top talent from around the world, admitting students who merit admission rather than only those who can afford to pay for the additional visa fees. On average, this University's graduate students receive \$24,000 each year, so the financial impact of spending an additional \$800 in application fees every 2-4 years or when applying for the benefits of their F-1 status is more significant than the proposed rule suggests.

Every year, an average of 240 F-1 students graduate from the University and enter the U.S. workforce through Optional Practical Training, contributing to the vibrancy of our economy and innovation in substantial ways. The filing fee of \$455 (\$370 application fee plus \$85 biometrics fee) for the extension of stay application in conjunction with the \$410 employment authorization application fee, contributes an unnecessary burden to accessing the benefit. As F-1 students are limited in their ability to work while studying, the increase in fees complicates their efforts to access the OPT benefit. This is yet another example of the proposed rule's creation of burdensome regulations meant to discourage students, setting up barriers to participation.

The addition of the biometrics requirement also poses a challenge for students at this University, and others in our area, as the closest USCIS application support center is 40 minutes away from campus. While DHS has suggested \$29 based on mileage, many of our students would find transportation an additional

hurdle, as we have committed to campus-accessible housing that reduces the need for students to own a car. To access the limited public transportation available in our community, students would still need to prepare for an additional minimal transportation cost of \$86. We can only surmise what an additional challenge this will pose for international students and scholars studying in rural areas around the United States. These biometric requirements have no bearing on a student's compliance with existing protocols and thus function in the proposed rule change as yet another disincentive that is meant only to block access for these prospective and current students.

In addition to the increased financial costs associated with the proposed rule, including the noted increases in application fees, biometrics fees, and travel fees associated with obtaining the biometrics, this will also increase the need for additional staff within the international office due to increased processing and expertise required. This additional staffing cost diverts much-needed resources within our institution to comply with a rule that adds no demonstrable benefits, and DHS' estimates of the cost across institutions of 93.3 million for rule familiarization and adaptation and 31.5 million per year for supporting the EOS filing seem exorbitant when the rule has not demonstrated sufficient evidence that the rule is necessary.

The proposed rule unnecessarily duplicates DHS's current access to student and exchange visitor information and ignores the effectiveness of the SEVIS system, which provides detailed information regarding each student and exchange visitor's program participation to DHS.

As the SEVIS system already gives DHS immediate access to detailed information related to almost every student and exchange visitor event that could impact a student or exchange visitor's compliance with the regulations, we believe this rule is duplicative and unnecessary. The international office at the University remains committed to using the SEVIS system in the successful and responsible way that we have in order to maintain complete and accurate records for students and ensuring the university maintains compliance with current regulations.

We recognize that F and J nonimmigrants are admitted for duration of status, unlike "most other nonimmigrant categories," But this argument appears disingenuous, as none of those "other categories" are connected to a massive electronic reporting system like SEVIS. As required by current DHS regulations, the university requires students to confirm their enrollment every semester, and we report that information to the Department of Homeland Security via the SEVIS system. We have institutional processes that notify us when students may not be successfully maintaining their status, including those not enrolled in the appropriate number of classes to maintain their status, those who have decided to take a leave of absence, or those who have separated from the university. The Designated School Officials (DSOs) and Responsible Officers (ROs) are not only committed to, but are required to, maintain compliance with DHS in reporting these changes within 21 business days, and staff frequently reach out to the SEVP Resource Center and our SEVP Rep to confirm that we are operating within current regulations and student records are accurate. The current system, then, has multiple checks and balances that are already working effectively.

The proposed rule's suggestion in section B.ii that DSO's are not diligent in exercising their responsibilities, or the claim that it is necessary to upend a functional system because of the very few who may have abused the system is problematic and unsubstantiated. The proposed rule change gives no metrics by which to measure the number of irresponsible DSOs, nor does the proposed rule change provide evidence of a widespread pattern of prevalent and ongoing failures. The proposed rule changes, then, are an irresponsible use of resources and they fail to recognize the extraordinary contributions the university's staff are making to ensure DHS has access to accurate information related to every F-1 Student and J-1 Exchange Visitor on campus that could impact the students' compliance with existing regulations. For

information not directly submitted in SEVIS, DHS also has the authority to request, “on any individual student or class of students upon notice,” all information and documents that schools are obligated under 8 CFR 214.3 to retain throughout the student's enrollment and for a period of 3 years beyond that. In our experience, DHS has never done so, which implies there has never been a significant concern in the quality of student records.

If the rule is finalized as currently proposed (according to section v: New Process for EOS Applications, in the course of an extension of stay application, students would have to submit information that they would have to get from their schools or programs. This information or documentation is already provided directly to DHS via SEVIS, or the institution is required to retain such information pursuant to current regulations. Making a student submit to USCIS this same information that DHS already has access to is duplicative and wasteful, and does not appear to make improvements upon systems already in place to monitor student status and valid participation in their program.

- **The proposed rule does not conform to typical academic program lengths, impacting a significant number of the University’s students and their certainty that they will be able to finish the program once started.**

As the rule does not provide an admission period beyond 2- or 4-years up to the program end date, this definitively impacts the University’s current student population, including:

- 575 PhD students, who on average need 5.6 years to complete their program of study (on par with national statistics for all graduate students)
- 12 undergraduate architecture students, whose programs are set at 5 years
- 34 undergraduates who, based on their country of citizenship, would likely have to apply for an extension of stay within their four-year program of study
- 78 graduate and professional students from countries whose citizenship would make them ineligible for admission longer than two years
- Undergraduate students who move from an undergraduate program to a professional studies program

We expect this to negatively impact our enrolled students, as USCIS has already struggled to maintain consistent, timely processing of other nonimmigrant petitions, like change of status or employment authorization, for the last few years; timelines have ranged from 2 months to 8 months, making it difficult for students to plan prior to and after their program of study. To introduce the proposed rule changes means that there will be even lengthier processing times and levels of uncertainty injected into the middle of a student’s program of study, as well as minimizing their access to training opportunities through OPT and CPT. This does not benefit them, their research, their professors, their peers or the University’s fundamental mission. We want our students’ attention and focus to be on accomplishing the objectives of their program and fully participating in the life of the university, not concerned with an adjudication of their stay by a USCIS official that neither understands their program nor commits to a timely review of the petition.

In a typical academic year, this rule does not conform to the reality of varied academic program lengths, but the University is particularly concerned with the proposed rule arriving in the midst of the global pandemic, when a situation well outside of a student and institution’s control has impacted research, study, and employment timelines. USCIS’ repeated and ongoing silence in accommodating the crisis’ impact on 2020 student employment demonstrates a lack of basic and necessary academic expertise and has not created any confidence that they will be able to effectively evaluate the variety of factors that may interfere with a student’s ability to complete their degree within four years. The new proposed rule would

seemingly unnecessarily limit students' abilities to request time off unique to their research and academic curriculum. The proposed rule change says that students will only be able to request time off due to "compelling academic reasons," but how will DHS and USCIS be trained in providing academic reasons for students? Time to completion is rigorously monitored by a student's faculty advisor as well as the university in general and under the current system they have all the tools to adjudicate and relay that information promptly through SEVIS. Again, the proposed rule change is wasteful, ill conceived, and not necessary given the current system's processes and safeguards.

The University of Notre Dame is deeply committed to the engagement and growth of our international student and scholar community, and we are grateful for the opportunity to provide comment to the Department of Homeland Security's proposal of *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*.

Thank you for the invitation to submit comments, and we are hopeful that DHS' assessment and integration of comments recognizes that it is in the best interest of institutions of higher education, our communities, and our nation, to dismiss this proposed rule.

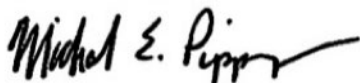
Sincerely,



Marie Lynn Miranda, PhD
Director, Children's Environmental Health Initiative
Professor of Applied and Computational Mathematics and Statistics
Charles and Jill Fischer Provost
University of Notre Dame



Laura Carlson, PhD
Vice President and Associate Provost
Dean of the Graduate School
Professor of Psychology
University of Notre Dame



Michael Pippenger, PhD
Vice President and Associate Provost for Internationalization
University of Notre Dame