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Ms. Sharon Hageman  
Acting Regulatory Unit Chief, Office of Policy and Planning  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
500 12<sup>th</sup> Street SW  
Washington, D.C. 20536

Re: **DHS Docket No. ICEB-2019-0006-0001**, Comments in Response to 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

Dear Ms. Hageman:

On behalf of the State University of New York's (SUNY) 64 campuses and more than 400,000 students, we submit the following comments in response to the U.S. Department of Homeland Security's (Department) 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.

SUNY opposes in the strongest possible terms the Department's arbitrary and capricious effort to disenfranchise international students and exchange visitors. At public and private institutions nationwide since the founding of this country, international students and exchange visitors have been central to our academic mission, cultural understanding, research enterprise, and widespread economic growth. Without question, the Department's proposed rule will negatively impact the academic and career standing of thousands of SUNY students and visiting scholars—likely hundreds of thousands at colleges and universities nationwide. It will destabilize local economies in the process.

Under this proposal, every single one of SUNY's 20,476 international students is at risk. Therefore, we urge that it be withdrawn in its entirety, and that admission for the Duration of Status remain in effect.

Further, the Department claims this proposal is necessary in order to safeguard national security. While national security is of the utmost concern, campuses across the SUNY system have already implemented and followed rigorous protocols in coordination with federal and state authorities, such as through the Department's very own robust Student and Exchange Visitor Information System ("SEVIS"); therefore, the Department fails to provide compelling

evidence explaining how the current system for international students and exchange visitors is flawed, or how these proposed changes will improve the process.

Quite the opposite: since 2017, there has been a pattern of actions taken by the federal government that has created a chilling effect on the United States' ability to attract and educate students and exchange visitors from abroad. Since Fall 2017, SUNY alone has seen international student applications and enrollment decline by more than 1,200 students. According to the Institute for International Education, these trends mirror what institutions across the country have experienced. A barrage of threats to nonimmigrant status is resulting in these students and exchange visitors electing to study instead in countries such as Canada, Australia, and Great Britain who are perceived as more welcoming and capable of providing a secure educational experience. Since 2017, Canada alone has increased study permits by approximately 250,000.

These rules continue that negative trend and set up duplicative bureaucratic processes that are harmful for students and scholars, damaging for higher education, and disastrous for the economy.

International students studying at SUNY schools are contributing **\$747,156,881 million** in economic activity and are supporting **7,685 jobs**. The Department's proposed imposition of timelines that (1) prevents students from completing their studies, (2) imposes unfair restrictions on students from designated countries of origin, (3) mandates restrictions on students and scholars who attend campuses that are not E-verified, and (4) undermines students' ability to seek gainful employment, all further jeopardize our economic standing, cultural well-being, and leadership on the global stage.

SUNY projects this proposal could lead to an annual loss of tuition and associated revenue totaling **\$422 million**—a severe financial blow when higher education is already struggling as a result of the COVID-19 pandemic.

International students and exchange visitors contribute immensely to our campuses, communities, and country. They provide domestic students with access to the understanding of other countries and cultures, which is so important to succeed in a global market for employment, ideas, and innovation. Also, international students make it possible for SUNY campuses to offer classes/majors to U.S. domestic students, whether it is through their presence in classrooms (if there is not enough domestic student demand to sustain them) or acting as teaching or research assistants. In addition, the contributions of our exchange visitor scholars allow for collaborative research and other endeavors that directly benefit the United States.

### **Duplicative and Redundant Bureaucratic Requirements**

The proposed rule is a significant unwarranted, unnecessary, and harmful intrusion into longstanding practices, which have successfully managed and facilitated the completion of academic programs for international students and exchange visitors. For instance, while every individual must meet already rigorous federal standards for entry into the United States,



discretion lies with institutions themselves to determine what timelines students need in order to meet all requirements associated with the completion of their program (standards established by the states). The proposed rule strips that authority and places it with a bureaucratic federal official who lacks knowledge about the individuals' program or field of expertise.

SUNY campuses already have processes in place to maintain compliance when the approval of additional semesters is necessary. And, SEVIS already accomplishes DHS's stated goals pertaining to the submission and collection of data for oversight purposes.

SEVIS has undergone significant changes since its July 1, 2002, start date, resulting in an endeavor that yields detailed data related to student and exchange visitors for DHS. Nonetheless, this rule creates redundancies and raises concerns about the Department's understanding of its own program and to what it already has access. For example, in the course of an Extension of Stay application, students would now have to submit the same information from their schools or programs that said schools or programs are already required to provide directly through SEVIS or are required to retain by regulation.

DHS can very effectively enforce the current immigration laws by wisely using its resources to engage in data-driven initiatives that focus on risk factors. These practices will not be furthered or improved by needlessly subjecting entire nonimmigrant categories to expensive, cumbersome, and time-consuming processes that duplicate existing obligations.

Regarding the many exchange visitor research scholars, professors and short-term scholars, our institutions, communities, states and our nation benefit immensely from their collaborations in science, research, health care and many other vital fields. On occasion, collaborative research have run longer than originally anticipated – the COVID-19 pandemic, for instance, caused a general pause in clinical research studies. Under such circumstances, the ability of University Immigration officials to provide selective extensions to the existing J-1 visas has been essential for our campuses in order to sustain the successful life-saving work in this area. Loss of these exchange visitors or our ability to extend selected visas when necessary would cripple efforts to the point that shared and beneficial research would probably not be able to be continued. The rule ignores the fact that USCIS processing times could force J-1s to stop working during the middle of their research programs.

### **Impacts of 4- and 2-Year Limitations**

The Department's proposal states they are targeting students who hail from countries with a historic overstay rate of 10+ percent, those countries designated as state sponsors of terrorism (currently North Korea, Iran, Sudan, and Syria), and those with broadly defined national security concerns. However, the approach the Department takes arbitrarily limits students' time of stay in an impractical manner and fosters uncertainty that will drive students to countries with more rational, stable, and consistent rules.



SUNY enrollment of undergraduate students with VISA Types F, J, and I from countries on the two-year limit lists account for about 7.7 percent of international undergraduates. This would have resulted in approximately 1,570 students potentially affected on average each of the last three (3) academic years.

The rule does not provide for an admission period beyond 2- or 4-years, which is extremely problematic for students pursuing multiple degrees (Associate to Bachelor, Bachelor to Master, Master to Doctorate) or pursuing a doctoral degree. It also affects PhDs, surgery residents, neuroscience postdocs, joint degree program participants, and those pursuing BS/MS programs, among others. Simply put, the Department fails to recognize the time needed for degree completion in many academic programs. This also adversely affects our exchange visitor research scholars and professors, who frequently come for up to five years for their programs.

While four (4) years is insufficient in its own right, a broad array of students will be subjected to a two-year period of admission through this proposed rule.

By subjecting students to an arbitrary two-year limit that forces them to apply for what could be multiple Extension of Stay (EOS) applications, the instability and exorbitant additional financial burden will remove the United States as an optional place of study for many.

For example, an undergraduate student arriving with a two-year admission window who requires English language instruction would need a minimum of two Extension of Stay (EOS) applications to ensure enough time to see his/her program through to completion. This excludes participation in post completion Optional Practical Training (OPT), which likely requires two EOS applications depending on the student's eligibility and desire to pursue STEM OPT, resulting in three EOS applications and upwards of five or more based on academic progression simply to complete his/her program.

Each EOS application at present costs \$455; that totals \$1,365 to \$2,275 or more in additional cost, not considering the time involved in completing forms, mailing them, and attending biometrics appointments. Additionally, biometrics appointments are another hurdle as many students do not have reliable transportation, and for some, the nearest USCIS Application Service Center (ASC) conducting biometrics can be hundreds of miles away. Nonetheless, many will have to undergo this process multiple times to complete their degree.

Further, students subjected to a two-year admission would be burdened by additional complexities with respect to driver's licenses. In most circumstances, local DMV offices only issue licenses for the period of stay specified on a nonimmigrant's I-94, meaning students will be forced to undergo the license application process with every EOS filing.

Troublingly, every student at any institution that does not utilize E-Verify will automatically be subject to the two-year process. Most SUNY campuses—and many institutions nationwide—do not participate in E-Verify, as historically there has not been a practical need to do so. Reporting platforms and regulatory obligations through the SEVP/DOS certification and designation process are already in place, providing DHS access to any needed information. Yet, the



Department has arbitrarily subjected every student at any institution not currently utilizing E-Verify to the two-year admission window.

### **Limits on English Language Programs**

Many international students and exchange visitors take language training programs, which can be time consuming, intensive, and crucial to the success of their ongoing academic work. By restricting international student enrollment in language training programs to a lifetime aggregate of 24 months (including breaks and an annual vacation) is baseless and arbitrary. The length of time students require in ESL programs varies—and in many scenarios must—extend beyond 24 months. It is not as though this learning will stop once the 24 month threshold is met, so instead they will be forced to expend additional resources on external supports (which will be cost prohibitive to many) or instead transfer to a more welcoming country.

### **DHS/USCIS Incapable of Workload Management**

Many SUNY campuses already alert SUNY System Administration of disruptive delays and backlogs caused by DHS/USCIS that adversely affect students and scholars. DHS/USCIS does not have the capacity to process extension applications in a timely manner to ensure institutions and students are able to efficiently move forward. The rule is logistically unworkable because of the uncertainty and length of processing times for extension of status applications. In an August 25, 2020 communication, for example, USCIS noted that “unprecedented spending cuts and a steady increase in daily” responsibilities had temporarily averted the expected furlough of 13,000 employees—a move that is still expected to happen as a result of revenue loss associated with the COVID-19 pandemic.

SUNY anticipates that the extensions and authorizations required by the student and exchange visitor rule, along with further loss or furlough of USCIS employees, will create additional backlogs within USCIS, which will in turn result in extended adjudication timelines, resulting in uncertainty, disruption, and potential harm on the student’s and SUNY’s behalf. Current processing times for standard applications are 3.5-5 months (I-765 for OPT) and 5-7 months (I-539 for Change of Status).

Increasing the applications submitted to USCIS at a time when the agency is handling a significant backlog and funding crisis would have an immediate detrimental impact not only to international students, but also to the entire legal immigration system as a whole. The increased volatility and uncertainty will drive students from the United States and encourage study elsewhere.

### **In Summary**

The Department’s proposed rule fundamentally alters the agreement between students and their SUNY institutions in unpredictable, damaging, and unnecessary ways. If this proposal is enacted, the academic and future careers for every single one of SUNY’s 20,476 international students will be destabilized. The institutions furthering the education of these students will



suffer financially. And, the infusion of financial resources these students bring—which communities, small businesses, and workers depend on—will be lost.

Nations across the globe see the value and benefits of international students. As such, they develop thoughtful and thorough policies to attract these students and retain them. Unfortunately, instead of building on the United States' own legacy and improving upon existing standards and processes, the Department has chosen to impose rules that demonstrate a fundamental lack of understanding.

It is a grave financial and pedagogical mistake to set up arbitrary hurdles for study in the United States that undermine our long-term safety and global standing. We urge the Department to rescind this plan; SUNY is committed to working with the Department and our partner institutions to develop an alternative proposal that accomplishes the stated goal of national security while bolstering our country's stature as the choice for international learning.

Sincerely,



Jim Malatras  
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