

## Proposed Rule Would Replace Duration of Status Policies for International Students

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Foreign students soon may find themselves subject to new policies and processes regarding their status in the United States.

U.S. Immigration and Customs Enforcement (ICE) has released for comment [its proposed rule \*Establishing a Fixed Time Period of Admission and an Extension of Stay Procedures for Individuals in F, J and I Status\*](#). The 31-day comment period will run until October 26, 2020. The primary purpose of the proposed rule is to replace the Duration of Status (D/S) entries with a regime under which students and others will be admitted for specific periods of time, will need to apply for extensions of stay, and may accrue unlawful presence if they overstay or fall out of status.

In 2018, the Administration issued a policy memorandum that would have accomplished the same goals as the proposal. Enjoined by Judge Loretta Biggs in *Guilford College v. Chad Wolf*, the government was stopped from enforcing its new policy. The court found the policy violated not only the Administrative Procedures Act (APA), but also the Immigration and Nationality Act (INA). The Administration appealed, but then unexpectedly withdrew its appeal. This led many to think the Administration was going to take a new approach and submit a new rule for notice and comment [to overcome at least some of the problems identified by Judge Biggs](#) – and that is what happened.

Under the proposed rule, D/S admissions will end for all those in F, J, and I status. Below are some of the highlights of the proposed rule for F-1 students:

- Students will no longer be admitted in D/S status. Instead they will be admitted until the end date of their programs – not to exceed 2 or 4 years.
- To promote E-Verify usage, students at schools that use E-Verify may be able to receive 4-year admissions while students at schools that do not will be subject to 2-year admissions.
- The 60-day grace period at the conclusion of status will be reduced to a 30-day grace period.
- To remain in the U.S. beyond their initial admission period, students will have to apply to USCIS for an extension of stay and biometrics will be required.
- Students will become subject to accruing unlawful presence.
- Students will not be able to change programs within the same educational level more than twice and will not be able to change programs to a lower educational level more than once.

More favorable for students, under the proposed rule, Cap-Gap work authorization will be extended until April 1 of the fiscal year in which a Cap H-1B change of status is filed.

The proposed rule also establishes a transition period. When the new rule goes into effect, students maintaining valid status will be able to remain in the U.S. until the end dates of their programs (per their I-20s), not to exceed four years plus 60 days from the effective date of the rule. This, however, will not apply to any students who travel outside of the U.S. during the four-year period. Such travel will subject a student to the new fixed term admission rules.

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