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October 26, 2020

**Submitted electronically via Federal eRulemaking Portal**

Sharon Hageman  
Acting Regulatory Unit Chief/Chief Economist  
Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
500 12th Street SW  
Washington, DC 20536

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

Dear Acting Regulatory Unit Chief Hageman:

On behalf of the University of Oregon (UO) and Oregon State University (OSU), we respectfully submit the following comments on the 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), published on September 25, 2020. We wish to state our opposition to this rulemaking and urge the Department of Homeland Security (DHS or Department) to withdraw this proposed rule in its entirety and to retain the current rules of admission for the duration of status for F and J visa classifications.

The University of Oregon and Oregon State University are the state of Oregon’s preeminent national public research universities. Both are among the 131 institutions that nationally hold a designation as a Research University (R1) in the Carnegie Classification of Institutions of Higher Education. The recognized strengths of our institutions are made possible because of our ability to attract and engage with world-class teaching and research faculty and students from across the state of Oregon and from around the globe. International engagement and academic exchange are essential to our missions to provide high quality education, to advance science and new knowledge, and to contribute to diverse and robust communities.

This proposed rule will unfortunately limit the ability of our institutions to recruit and retain F and J international students, as well as J-1 exchange visitors, such as researchers and scholars that contribute to our diverse university communities. Per our comments below, we urge the Department to withdraw this rulemaking and maintain rules for duration of status admission for F and J visa categories, as SEVIS remains an effective oversight tool that can support DHS monitoring and compliance responsibilities for these categories. The existing system operates more effectively without creating uncertainty in academic programs, without unreasonably interfering with students’ focus on their academic progress, and without unduly restricting exchange.

**International students and exchange visitors make substantial intellectual and cultural contributions to the UO and OSU campuses, our communities, and our country.**

The **University of Oregon** values diversity and inclusion, and international students are an essential part of UO. The University of Oregon was founded to “foster[] the next generation of transformational leaders and informed participants in the global community,” thereby “enhanc[ing] the social, cultural, physical, and economic wellbeing of [its] students, Oregon, the nation, and the world.”<sup>1</sup> The University of Oregon has 1,306 international students from nearly 100 countries who will be impacted by this rule. International students have made up 7% of

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<sup>1</sup> Mission Statement, <https://www.uoregon.edu/our-mission#:~:text=We%20are%20devoted%20to%20educating,the%20nation%2C%20and%20the%20world.>



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undergraduate students and 12.6% of graduate students at UO.<sup>2</sup> International students contribute to research, campus life, and act as teaching and research assistants. They provide domestic students with access to an understanding of other countries and cultures that is integral to their success in a global market. UO has a compelling interest in ensuring student diversity, and that diversity includes international students.

International students contribute significantly to our economy. The University of Oregon projected expenditure budget for fiscal year 2020 is \$1,132,345,000 and the University's economic footprint on the State of Oregon is approximately \$2.2 billion per year. Non-resident undergraduate tuition exceeds \$35,000 per student per year.<sup>3</sup> Graduate program tuition is approximately \$30,000 per student per year.<sup>4</sup> International students contributed \$119.9 million to UO and supported 1,477 jobs in the local area.<sup>5</sup>

**Oregon State University** is Oregon's largest university with over 30,000 students, including approximately 23,000 undergraduates, and offers over 200 academic degree programs. During the 2019-2020 school year, OSU educated over 3,913 international students from 114 countries<sup>6</sup> comprising over 10% of its total enrollment.<sup>7</sup> OSU also typically hosts over 300 exchange scholars from over 35 countries. The Covid-19 pandemic is already impacting international enrollment: In Fall Term of 2020, OSU is educating over 2,700 international students from over 100 countries, versus nearly 4,000 last year. Since 2014, international student enrollment has typically been at or above 11% of OSU's total student population.<sup>8</sup> OSU is the largest employer in Benton County, Oregon, where the Corvallis campus is located. OSU's annual budget is over \$1 billion. In 2017, OSU's economic impact in Oregon totaled \$2.334 billion and OSU was responsible for supporting up to 30,452 jobs.<sup>9</sup>

International students and scholars at OSU bring enormous value to the university's intellectual community in the form of diverse, global perspectives and varied research interests. Their impact is recognized in OSU's mission statement of "promot[ing] economic, social, cultural, and environmental progress for the people of Oregon, the nation, and the world."<sup>10</sup> International students and scholars are involved in cutting-edge research and contribute to the University's rich diversity through their participation in the collaborative learning and social environment and many also serve as teaching assistants for undergraduate students. Providing for international education and research enriches the state of Oregon and beyond, bringing a diversity of perspectives and mindsets, cultures, and political views to the OSU community including our research labs, classrooms, student activities, residential communities, and athletic fields.

In addition to losing the cultural benefits of a diverse, global university community, the financial impact of this rule to OSU and our communities would be substantial and cannot be overstated. Non-resident undergraduate tuition is approximately \$30,000 per student per year, not including dining and housing costs. Graduate program tuition is also approximately \$30,000 per student per year, depending on the field of study. International students not only enhance our university community through their academic and personal contributions, but also create jobs. According to a 2018 study by the Association of International Educators, international students contributed \$146.2

<sup>2</sup> UO Snapshot, <https://ir.uoregon.edu/>.

<sup>3</sup> [https://financialaid.uoregon.edu/cost\\_of\\_attendance\\_1920](https://financialaid.uoregon.edu/cost_of_attendance_1920).

<sup>4</sup> [https://financialaid.uoregon.edu/cost\\_of\\_attendance\\_graduate\\_1920](https://financialaid.uoregon.edu/cost_of_attendance_graduate_1920).

<sup>5</sup> <https://www.nafsa.org/isev/reports/district?year=2018&state=OR&district=04>; The Economic Impact of the University of Oregon, A Comprehensive Revision, Timothy Duy, Professor of Practice, Department of Economics University of Oregon, available at <https://gcr.uoregon.edu/resources>.

<sup>6</sup> OSU Office of Global Affairs 2019-2020 Fact Sheet:

[https://global.oregonstate.edu/sites/global.oregonstate.edu/files/oga\\_fact\\_sheet\\_2019-20\\_final.pdf](https://global.oregonstate.edu/sites/global.oregonstate.edu/files/oga_fact_sheet_2019-20_final.pdf).

<sup>7</sup> <https://institutionalresearch.oregonstate.edu/enrollment-and-demographic-reports#enroll-sum>.

<sup>8</sup> <https://institutionalresearch.oregonstate.edu/sites/institutionalresearch.oregonstate.edu/files/enroll-fall-2018.pdf> or <https://institutionalresearch.oregonstate.edu/enrollment-and-demographic-reports#enroll-sum> <https://institutionalresearch.oregonstate.edu/enrollment-and-demographic-reports#enroll-sum>

<sup>9</sup> As measured by ECONorthwest's analysis of OSU's 2016-17 operations and expenditure.

<sup>10</sup> <https://leadership.oregonstate.edu/strategic-plan>.



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million to OSU and supported 1,687 jobs in the local area.<sup>11</sup> The same source advises that “for every seven international students, three U.S. jobs are created and supported...” starting in the higher education sector.<sup>12</sup> Between 2008 and 2018, international students who started in Pathway programs through INTO OSU and progressed into degree-seeking students in OSU programs contributed more than \$81 million in net tuition to OSU colleges, academic units, and support units. This resulted in the creation of 100 new tenure track faculty positions.<sup>13</sup>

**The proposed date-specific admission does not reflect the reality of our academic programs.**

As four-year research universities with post-graduate programs, UO and OSU will be particularly burdened by provisions of the proposed rule that limit students and scholars to two-year periods of admission. Under the proposed rule, all nonimmigrant international students and scholars at UO or OSU, whether undergraduate students, master’s degree candidates, joint degree participants, or those pursuing a Ph.D. or postdoctoral research, would be limited to a two-year authorization.<sup>14</sup> The proposed time period does not reflect the typical time to complete a four-year undergraduate program of study or postdoctoral research. For many of our international students, a bachelor’s degree takes four-five years<sup>15</sup> and a Ph.D. takes five-seven years. The two-year time limit would directly impact UO and OSU or programs, including UO’s five-year Bachelor of Architecture or OSU’s five-year dual degree program in Forest Engineering and Civil Engineering. The two-year, and even the four-year limit in 8 CFR 248.1(e), do not track with the reality of our academic programs.

Many research projects utilize postdoctoral scholars using work authorization associated with their student or exchange visitor status. Loss of date flexibility, constraints on work authorization, and the uncertainty of pending extension of status applications may limit the viability of hiring international postdoctoral scholars.

Importantly, the basis for the two-year restriction, lack of full e-Verify participation, has no connection to student or scholar visa compliance. According to proposed 8 CFR 214.2(f)(20)(iii), absent full participation by the university<sup>16</sup> in e-Verify, our students and scholars will be limited to two-year periods of admission. The university’s decision to participate only partially in e-Verify for employees is not evidence of noncompliance in a visa program designed to promote educational and cultural exchanges. Institutions of higher education are large and complex, and the reasons and resources driving a university’s human resources department decision on e-Verify status are unrelated to designated school officers’ ability to effectively report changes in students’ and scholars’ status to the federal government. There is no evidence suggesting any relationship between UO or OSU immigration law compliance and the unlawful practices identified by the Department. The small, private, or religious institutions cited the Department for examples of fraudulent activity are significantly distinct from our large, public institutions operating in the State of Oregon. The Department provided no evidence linking student fraud to e-Verify. Nor is there evidence linking scholar fraud to e-Verify. Moreover, there is no evidence provided that full (rather than partial) participation in e-Verify results in any different or better training for the responsible officers and designated school officials who monitor and report compliance for F and J students and scholars. The proposed, severe limit on

<sup>11</sup> <https://www.nafsa.org/isev/reports/district?year=2018&state=OR&district=04>.

<sup>12</sup> *Id.*

<sup>13</sup> INTO OSU, OSU Provost’s Office and the Director of Budget and Fiscal Planning

<sup>14</sup> 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, 85 FR 60526, (proposed September 25, 2020) (to be codified at 8 CFR 214, 248, 274), <https://www.federalregister.gov/d/2020-20845/p-307>; Proposal to Replace Duration of Status, <https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status>.

<sup>15</sup> UO Office of Institutional Research, UO Snapshot, available at <https://ir.uoregon.edu/UO%20Snapshot>.

American English Institute participants who matriculate at UO take five-six years. At OSU, most undergraduates complete in four years, but the time frame depends on the choice of major course load.

<https://admissions.oregonstate.edu/faq>.

<sup>16</sup> OSU and UO are enrolled in E-Verify but are not considered “full” participants because it is used in more limited circumstances, such as when federal contracts require it.



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members of the UO or OSU campus community to two-year periods of admission to study should not be based on such an attenuated, unsupported link between e-Verify and our student and scholar visa compliance.

**The proposed rule fails to ensure a timely process for extension applications.**

The rule creates new uncertainty for visa holders by increasing the number of extension of stay (EOS) applications directed to USCIS, and by failing to specify the processing times for EOS applications, at a time when USCIS is already experiencing a significant backlog and funding crisis. The California USCIS service center is taking up to 11 months to process the same extension form that this new regulation would require become more heavily used.<sup>17</sup> This unnecessary uncertainty among visa holders will lead to disruption within university operations. For example, international students and scholars involved in ongoing research projects and teaching activities that rely on their expertise and participation may limit their commitments to two-year terms. At minimum, the rule should establish some certainty with a reasonable time limit for the denial of extensions. Absent a timely decision, it should include a presumption that extension requests will be approved.

Additionally, this proposed rule change means if a timely filed EOS is in pending status, F-1 students become ineligible to begin employment in pre- and post-completion Optional Practical (OPT) Training and Curricular Practical Training (CPT). *See proposed* 8 CFR 274a.12(b)(6)(iii). The uncertainty of OPT employment authorization combined with a pending extension application creates a hurdle that most employers may prefer to avoid. This delay will lead to disruption at minimum and loss of experiential training opportunities for hundreds of students per year at worst.<sup>18</sup> This further erodes the attractiveness and competitiveness of American higher education opportunities.

**If ensuring compliance with rules requiring academic progress is the goal, the proposed shift from duration of stay to fixed admission periods found in 8 CFR 214.2 and 8 CFR 248.1(e) is counterproductive.**

The proposed rule will interfere with the academic progress of international students and scholars at our institutions. At institutions that do not use e-Verify, the rule raises the stakes for all four-year students, in requiring international students to re-apply to DHS for the opportunity to complete their studies. Students and scholars will have to engage in the time-consuming and expensive process of applying for an extension every two years without knowing if it will be accepted. This uncertainty would make studying in the U.S. an expensive and uncertain proposition. A student may apply to extend their studies and be forced to leave the United States because of processing delays that are no fault of the student. The cost, time, and stress associated with the uncertainty of applying and waiting will detract from academic progress and hinder ongoing research projects. The conundrum also becomes one in which students and scholars who need more time to complete academic endeavors must instead focus on explaining to the federal government why they need more time. And the effort is redundant: students and scholars would have to submit information that universities already either provide directly through SEVIS or are required to retain and disclose.<sup>19</sup>

**The proposed rule encroaches on the role of academic institutions (8 CFR 214.2(f)).**

The proposed rule is vague in that “compelling academic reasons” are not defined. The removal of the “normal progress” reference from 8 CFR 214.2(f)(7)(iii) creates greater uncertainty by untethering the standard from typical progress appropriate for the academic field.

This vagueness and uncertainty will chill efforts to cultivate a diverse student body and nurture academic freedom and talent. It is a longstanding principle that a university may “determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”<sup>20</sup> As recognized by the Supreme Court, institutions of higher education have a compelling interest in student body diversity.<sup>21</sup> International

<sup>17</sup> <https://egov.uscis.gov/processing-times/>.

<sup>18</sup> For example, OSU currently is responsible for the immigration records for 509 OPT participants. UO is responsible for the immigration records for 198 OPT and STEM OPT students.

<sup>19</sup> 8 CFR 214.3(g).

<sup>20</sup> *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957).

<sup>21</sup> *Regents of the University of California v. Bakke*, 438 U.S. 265, 311 (1978).



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students and scholars contribute to campus diversity. By limiting admission to two-year terms with no certainty of renewal, the Department will deter risk-averse international students from pursuing a four-year degree in the U.S., and affect academic decisions by deterring students from choosing areas of study with longer programs. In effect, by creating, vague, hostile, and unnecessary barriers to the completion of international studies and scholarship, the rule will limit the diversity of the pool of student and scholar candidates, and the campus climate will suffer for it.

The proposed rule is a significant intrusion into academic decision-making, out of alignment with recent federal directives.<sup>22</sup> A university's admission and retention decisions are essential parts of the university's academic freedom. So is the discretion to decide whether students have demonstrated adequate academic progress to continue their course of study. Our universities are in a far better position to determine whether a student is making and should continue to have the opportunity to make "normal" and appropriate academic progress. The federal government should join institutions of higher education in taking steps to protect the independence necessary for academic freedom.

**The proposed rule eliminates flexibility needed for English learners. (8 CFR 214.2(f)(5)(B)).**

Restricting international student enrollment in language training programs to a lifetime aggregate of 24 months (including breaks and an annual vacation) does not reflect the reality of language learning. UO's American English Institute provides English language instruction and helps to integrate international students into the rest of campus. As of fall 2019, UO had 163 students enrolled in its Intensive English Program. This number has already drastically fallen to 33. In fall 2020, OSU has 315 students enrolled in its intensive English program, called the Pathway program which prepares foreign students to study at American universities. These individuals with various backgrounds are in the United States to study English for myriad academic reasons, and they learn at different rates. The lengths of time students need English learning programs vary, sometimes beyond 24 months in a lifetime, yet the proposed rule will eliminate the flexibility needed to allow all students to complete our English language programs.

**This rule makes higher education in the United States less globally competitive.**

Minimizing regulatory burdens would help universities increase competition and attract the best students globally. In contrast, the proposed rule tips the scales in students' and scholars' cost-benefit analysis away from U.S. institutions, and towards our competitors in educational and economic growth. Under this proposed rule, our institutions could no longer assure international students that compliance with immigration rules and normal academic progress will correlate with their ability to complete their entire academic program at one institution. Other destination countries such as the United Kingdom, Canada and Australia will be better positioned to recruit international students the more the U.S. pushes them away.<sup>23</sup> Especially because international students contribute significantly to the campus community and help create jobs in the U.S., it is a mistake to create yet another hurdle to study in the United States when other English-speaking competitor countries recognize the value of international students and implement policies to attract and retain them.

**Amending 8 CFR 214.1 is unnecessary because the existing system, SEVIS, provides less burdensome tools for monitoring compliance & risk management (8 CFR 214.1).**

Under current rules, the Department collects and maintains extensive and timely data on F and J visa holders that are admitted for duration of status. To monitor compliance of individuals admitted on F and J nonimmigrant visas, DHS connects these individuals to SEVIS, which is an expansive electronic reporting system. Under SEVIS, universities input data and retain documentation on an ongoing basis. DHS has the authority to request all information and

<sup>22</sup> March 21, 2019 Executive Order, available at <https://www.whitehouse.gov/presidential-actions/executive-order-improving-free-inquiry-transparency-accountability-colleges-universities/>. The March 21, 2019 Executive Order on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities says it is the policy of the federal government to "encourage institutions to foster environments that promote open, intellectually engaging, and diverse debate, including through compliance with the First Amendment for public institutions and compliance with stated institutional policies regarding freedom of speech for private institutions."

<sup>23</sup> <https://www.voanews.com/usa/immigration/proposed-us-visa-changes-explained>.



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documents on any individual student or class of students, throughout and beyond the student's enrollment.<sup>24</sup> The SEVIS system was structured this way to provide DHS with a data-driven approach to mitigate risks of noncompliance. Now, the Department estimates there is a 1.52% overstay rate for this population, yet proposes to require expending more than \$93.3 million, with no documented connection to the overstay rate. Given the complications the proposed regulation creates, as described in detail above, there is a better alternative: use a cost-effective, targeted approach to address the rate of non-compliance.

As the Department recognized in 1978, in choosing between duration of status or fixed-year admissions, duration of status would "facilitate the admission of nonimmigrant students, provide dollar and manpower savings to the Government, and permit more efficient use of resources."<sup>25</sup> As the number of F and J students and scholars has increased since that time, the rationale for the continued use of duration of status for admissions is even more compelling.

### Conclusion

The Department pursues a proposed rule with estimated costs to universities of \$93.3 million, that will increase the administrative burden and reduce the competitiveness of United States institutions of higher education, without a concomitant reduction in risk or noncompliance. We respectfully request DHS withdraw this rulemaking. In its place, we urge the Department to work with institutions of higher education to address concerns about fraud and abuse in a more targeted fashion, with a narrowly drawn rule, and to include strategies relying on data-driven risk management.

Sincerely,

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<sup>24</sup> 8 C.F.R. 214.3(g)(1)-(2), (h)(3) (2020).

<sup>25</sup> Federal Register 85, no. 187 (Sept. 25, 2020); 60531.