

Q&A

Related to Community Conversation on Proposed DHS Rule to Eliminate Duration of Status
Wednesday, October 7, 2020

1. If I'll need an extension, what would the new process look like under the proposed rule?

If the proposed rule passes, the new process would involve the filing of an I-539 application to request an extension of stay. Your advisor, DSO(F)/ARO (J), would make a recommendation in SEVIS for an extension of stay of your record. Afterward an I-539 application would need to be filed with the USCIS. The filing fee currently is \$370 plus \$85 biometric screening fee. If the new fee scheduled goes into effect, the fee will increase to \$400 and the biometric screening fee will be \$30. Attending a Biometric Screening appointment would be required as part of this process.

Within the I-539 application packet, the applicant would need to provide evidence justifying the need for an extension and proof of funding. Here is a list of what are considered to be acceptable reasons for seeking an extension of stay:

“(1) compelling academic reasons; (2) a documented illness or medical condition; and (3) exceptional circumstances beyond the control”ⁱ

2. What would the transition look like for current students if the rule goes into effect? Here is an excerpt that provides more details on what the transition would look like for current students:

“The status of F and J nonimmigrants who are in the United States for ‘duration of status’ on the future effective date of a final rule would expire on the program end date on the alien’s Form I-20 or DS-2019 that is valid on the final rule’s effective date, not to exceed a period of 4 years from the final rule’s effective date, plus an additional period of 60 days for F nonimmigrants and 30 days for J nonimmigrants.”ⁱⁱ

3. What happens to my status while my extension of stay is pending?

If you are passed your I-94 admit until date/I-20/DS-2019 end date and your extension of stay is pending, you are considered to be in “a period of authorized stay”. If the extension of stay is denied, at that point you start accruing unlawful presence.

A benefit of when you have a pending extension of status is that you can continue to take classes and if you have on-campus employment, you will be allowed to continue to work for up to 180 days beyond your duration of stay end date as long as the application is pending.

4. What if my filing for extension doesn't get accepted after my 4-year period while my Ph.D. is still not completed?

While it is unclear if there would be an appeal process, but if your extension of stay application is denied, then unfortunately, you would need to depart the United States as soon as possible. If the student is passed the duration of stay end date, it is more important to leave as quickly as possible as the student will start accruing unlawful presence.

5. How will this proposal affect my ability to apply for OPT?

The proposed rule does not eliminate OPT. Eligible students would still be able to apply for OPT.

6. I'm on OPT right now and I'm eligible for a STEM OPT extension, would I be able to still apply for STEM OPT?

The proposed rule does not eliminate STEM OPT; students would be able to apply as long as they are eligible for a STEM OPT extension.

7. Would I need to apply for an extension of stay along with my OPT application?

Yes, under the proposed rule, you will be required to apply for both OPT (I-765 application) and extension of stay (I-539 application).

8. How will international students from countries with 2-year limited stay join the Ph.D program?

According to the proposed rule, student from countries with 2-year limited stay would have to apply for an extension of stay. Students with the 2-year limitation would have to seek the extension more frequently.

9. We are employing several researchers on the J-1 visa, should we be trying to move them to an H-1B given the DHS proposal?

Switching visas may not be an immediate need or the immediate answer to the current situation; however, an H1B would be a potential option if there are limitations on the J-1. However, it can be complicated especially if the J-1 may need to get a waiver before being able to apply for a change of status.

10. What will happen to my employment authorization while an extension of stay of my J-1 is pending?

As long as the extension of stay application is timely filed, a J-1 may continue to work while it is pending. Here is an excerpt that provides more details about this allowance:

*"J-1 exchange visitors are authorized to engage in employment incident to status. This means that they are authorized to work per the terms of their program, and they do not have to apply to USCIS for authorization to engage in employment. Upon timely filing of an EOS application, DHS proposes to allow the alien to continue engaging in activities consistent with the terms and conditions of the alien's program, including any employment authorization, beginning on the day after the admission period expires, for up to 240 days."*ⁱⁱⁱ

11. How likely would my extension of stay application be approved?

It is always difficult to predict how the USCIS will decide cases or applications. However, it would be important to thoroughly prepare applications and ensure that it meets requirements and guidelines.

12. Would I have to file a separate extension of stay application for my dependents?

No, an extension of stay for the primary visa record holder and his/her dependents can be filed at the same time. This would include filing the I-539 and I-539A.

13. I am currently a resident on the J-1 physician visa. I have to extend my DS-2019 every year starting in February/March. How would the proposed rule impact me if it goes into effect?

As a resident on a J-1 physician visa, you would still follow the typical extension process with GME, your TPL, and the ECFMG. The ECFMG would make a recommendation for an extension of stay on your behalf. Once you receive your DS-2019, you would then need to apply for an extension of stay by filing an I-539 application. As long as your extension of stay application is timely with the USCIS, you would be eligible to continue with your activities on the J-1 or in this case provide care as a resident for a period of 240 days from the end date of your most recent duration of stay period.

ⁱ NAFSA. Proposal to Replace Duration of Status. October 7, 2020. <https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status>

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