

CompeteAmerica

The Alliance for a Competitive Workforce

July 13, 2020

The Honorable Chad Wolf
Acting Secretary of Homeland Security

The Honorable Russell Vought
Acting Director, Office of Management and Budget

The Honorable Matthew Albence
Acting Director, U.S. Immigration and Customs
Enforcement

The Honorable Paul Ray
Administrator, Office of Information and Regulatory
Affairs

Rachel Canty
Director, Student and Exchange Visitor Program,
Immigration and Customs Enforcement

Richard Theroux, PhD
Branch Chief, Transportation and Security, Office of
Information and Regulatory Affairs

Re: Upcoming Regulation Creating New Restrictions for Online Classes for F-1 Nonimmigrants Contrary to the March 13, 2020 Flexibility Guidance; July 6, 2020 Policy Announcement on Online Classes Requiring Response by July 15, 2020 from Schools Enrolling F-1 Nonimmigrants

Dear Sirs and Madam,

The Compete America Coalition is a group of companies and industry and higher-education associations that focuses on the need for the United States to obtain and retain high-skilled domestic and international talent in order for American employers to continue to innovate and create jobs in the United States. [Compete America members](#) have collaborated for over 20 years to work with successive administrations and Congress to promote the global mobility of talent, protect the integrity of the employment-based high-skilled immigration system, and enhance the education and training of domestic talent. Compete America is writing to express our concern regarding an [upcoming regulation announced on July 6, 2020](#) by U.S. Immigration and Customs Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) that would govern F-1 nonimmigrants for Fall 2020 and require the nation's colleges and universities to begin to notify ICE of their final decisions on how to respond to this new policy as soon as July 15, 2020. The July 6 broadcast message to the nation's colleges and universities announced the new policy to be codified in the upcoming regulation, contravening the [March 13, 2020 SEVP Guidance](#) higher-education institutions relied on in an exhaustive evaluation process for Fall 2020 (permitting online coursework "for the duration of the emergency" created by the COVID-19 global pandemic). If implemented as described by ICE, the new policy will fail to take into account a raft of important and interrelated economic, medical-risk, and education concerns of national significance.

Pursuant to an executive order governing the regulatory process at federal agencies, the public is invited to share its views concerning any item identified by the federal government for anticipated regulatory action. Specifically, Executive Order 12866 (September 30, 1993), published 58 FR 51735 (October 4, 1993), at Section 4, subsection (c)(7) encourages the public to share "any views on any aspect of any agency plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public" and to direct a summary of such views "to the issuing agency, with a copy to OIRA." Compete America is writing in this capacity to flag issues that seem to have not yet been considered, or sufficiently analyzed if considered, with regard to ICE's announced policy and upcoming rulemaking effort on the ability of F-1 nonimmigrants to complete online post-secondary classes while maintaining lawful status in the United States.

Letter from the Compete America Coalition re July 6 ICE SEVP announcement and submission to the administrative record on the upcoming Temporary Final Rule governing F-1 nonimmigrants for Fall 2020
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The policy, and upcoming Temporary Final Rule, described in ICE's July 6 announcement would eliminate the ability of many thousands of F-1 nonimmigrants to maintain status in the United States for Fall 2020. The [economic contributions of F-1 nonimmigrants in each and every congressional district](#) in the country will be in jeopardy as a result. Moreover, as evidenced by the varied voices that have articulated their understanding that international graduates of U.S. post-secondary institutions are crucial to our nation's economic vitality, innovative capability, and future strength, it seems the ICE approach ignores this well-accepted reality. [In response to ICE's announcement, the U.S. Chamber of Commerce](#) "urge(d) the administration to rethink this ill-conceived policy" and stated that "international graduates of U.S. universities are a critical source of talent for American businesses." Ray Marshall, former Secretary of Labor and an economist who co-founded the worker-focused Economic Policy Institute, wrote in his [Value-Added Immigration book](#) (at p. 187) that "international students studying in host country postsecondary institutions are particularly valued because they improve higher education, subsidize domestic students, contribute to national economies and, if they qualify, make valuable permanent residents because of their youth, occupational qualifications, language skills, and familiarity with host country customs and institutions." In assessing the immediate and long-term consequences of ICE's new directive, three economists [published a policy brief on July 13](#) concluding that it "will have disastrous consequences" and that the country's "most competitive sectors of higher education and technological and scientific innovation will suffer."

We have deep concerns that real-world economic questions and the considerations needed to protect the safety of students and faculty while delivering the highest level of education in the midst of continuing health and medical risks have *not* been carefully considered by ICE in developing the agency's approach to F-1 nonimmigrants for Fall 2020. The COVID-19 global pandemic requires ICE do so. Good government and the complexity of the situation – at the intersection of economic forces and educational policy that considers scientific study of medical realities – necessarily entails ICE doing so.

Attached is a small sampling of questions and publicly available materials that would permit ICE to start a data-driven analysis of both (1) the economic impact questions related to policies that will drastically and immediately reduce the number of F-1 nonimmigrants in the U.S. as well as (2) the higher-education questions that address delivery of quality curricula and evaluation of the medical risks of a global pandemic. As outlined in Executive Order 12866, we request that ICE consider the attached questions and documents *prior* to publication of the new regulation governing the extent to which international students may secure F-1 visas and maintain valid F-1 status while enrolled solely in online classes during the COVID-19 emergency. We urge ICE to consider the attached Appendices and conclude it should rescind its July 6 announcement and instead retain its March 13 SEVP Guidance, which established that a fully online curriculum would be acceptable for F-1 nonimmigrants to maintain status for the duration of the COVID-19 emergency.

Thank you for your attention to this matter.

Respectfully submitted,



Scott Corley
Executive Director, Compete America Coalition

APPENDICES

SAMPLING OF QUESTIONS AND PUBLICLY AVAILABLE DOCUMENTS RELEVANT TO CONSIDERING POLICIES PERMITTING FULLY ONLINE EDUCATION FOR THE DURATION OF THE COVID-19 EMERGENCY FOR F-1 NONIMMIGRANTS IN THE UNITED STATES

Selection of questions and documents that would allow ICE's Student and Exchange Visitor Program to conduct a data-driven analysis of the impact of rescinding temporary flexibility that permits solely online classwork for F-1 nonimmigrants in the United States, by evaluating the economics of international students in the United States and the complex considerations, including health concerns, that higher-education communities must evaluate in light of the global pandemic.

APPENDIX 1 – CONSIDERING IMPACT TO THE ECONOMY

ECONOMIC REALITIES ARE THAT INTERNATIONAL STUDENTS ARE INVALUABLE TO U.S. ECONOMY

Appendix 1 Questions:

1. Given that from school year 88-89 (the earliest year for which annual data are available) to school year 16-17 (the most recent year for which data are available) there has been a 315% increase in STEM degrees awarded in the U.S. to foreign students, most of which are at the graduate level, wouldn't a precipitous drop in foreign students in the U.S. have a dire and direct impact on the conduct of various R&D efforts in most labs in most research universities across the country?
2. Did ICE consider that when economists studied unemployment in 102 metro areas, they concluded that unemployment rates are lower in areas with larger numbers of F-1 nonimmigrants?
3. At 175 U.S. universities, a majority of graduate students in Electrical Engineering are international students as is the case for graduate programs in Computer Science at 237 universities. With a precipitous drop in F-1 visa holders for Fall 2020, are these graduate programs sustainable for the remaining American students and the ongoing research efforts, including those funded by government grants?
4. With such a high percentage of graduate students in computer-related fields in the U.S. being F-1 visa holders, how did ICE calculate the impact to local, state, and regional economies when the numbers of F-1 visa holders drop off in these graduate programs? Wouldn't there be significant negative consequences for filling computer-related professional jobs when unemployment in such jobs during the COVID-19 global pandemic was [last reported in May 2020 to be 2.8%](#)?
5. Did ICE evaluate the impact of a reduction in international students to state economies where [colleges and universities are the largest employers in the state](#), such as Nebraska, Wisconsin, Colorado, New Mexico, California, and New York?

[Appendix 1 Documents \(173 pages\)](#), which consists of:

1. [UC Davis Global Migration Center, July 2020, Giovanni Peri, Kevin Shih, Chad Sparber](#), "The Devastating Economic Consequences of Pushing Foreign Students out of the Country"
2. [NAFSA, November 2019](#), "The Economic Value of International Student Enrollment to the U.S. Economy – A Methodology" explaining the methodology underlying [Benefits from International Students](#) (\$41 billion annual contribution to the economy, 458,290 jobs created or supported)

3. [New American Economy, July 2020](#), “Not Coming to America: Falling Behind in the Race to Attract International Students”
4. [Forbes, Stuart Anderson, July 9, 2020](#), “Trump Move Against International Students May Have Backfired”
5. [Congressional Research Service, November 2019](#), “Foreign STEM Students in the United States”
6. [NAFSA, March 2020](#), “Losing Talent 2020”
7. [Business Roundtable, December 2018](#), “The Economic Impact of Curbing the Optional Practical Training Program” (the Business Roundtable of American CEOs (BRT) partnered with the Interindustry Forecasting Project of the University of Maryland (Inforum) to analyze various data on F-1 nonimmigrants)
8. [NFAP, March 2019, Madeline Zavodny](#), “International Students, STEM OPT and the U.S. STEM Workforce”
9. [National Bureau of Economic Research, September 2019, Michael Roach, Henry Sauermann, John Skrentny](#), “Are Foreign STEM PhDs More Entrepreneurial?”
10. [NFAP, October 2018, Stuart Anderson](#), “Immigrants and Billion-Dollar Companies” (22% of America’s billion-dollar start-ups had at least one immigrant founder that first came to the U.S. as an international student)
11. [Niskanen Center, March 2019](#), “International Students After Graduation – Human Capital, Innovation, and the Labor Market”

APPENDIX 2 – CONSIDERING OPTIONS TO REACH BOTH EDUCATIONAL AND SAFETY GOALS

HOW TO MANAGE COLLEGES AND UNIVERSITIES DURING THE CONTINUING COVID-19 EMERGENCY, CONSIDERING BOTH HEALTH ISSUES AND QUALITY OF EDUCATION ISSUES

Appendix 2 Questions:

1. Did ICE evaluate high quality educational options by which universities and colleges in the United States can deliver curricula to undergraduates through online classwork and consider metrics to measure such options, for higher-education communities impacted by the COVID-19 emergency?
2. Are there ways universities and colleges in the United States impacted by the COVID-19 emergency can repurpose on-campus facilities and restructure on-campus activities to reopen their institutions even with solely online classwork?
3. Are the health and safety of students, faculty, and staff the or a primary consideration in decision-making about when to reopen a campus? If so, did ICE evaluate these factors? If not, why not?
4. Do colleges and universities need to provide reasonable accommodations for members of the campus community who have underlying health conditions, including international students? If so, is guidance from the US Equal Employment Opportunity Commission binding with regard to COVID-19 and the Americans with Disabilities Act, the Rehabilitation Act, and other antidiscrimination laws?
5. Did ICE consider the feasibility of delivering quality curricula for international students continuing their education from their home countries, given that many international students do not have access to the internet from their home countries either due to bandwidth issues or censorship and that many students’ family homes are in time zones that would not allow synchronous digital learning?
6. Should decisions on how to reopen campuses safely consider guidance from the Centers for Disease Control and Prevention (CDC)? If so, did ICE evaluate whether its policies concerning

online classes were consistent with CDC guidance or which aspects of CDC guidance did not reflect updated analysis and thus did not merit compliance? If not, on what basis did ICE ignore the guidance altogether of the organization that facilitated the United States being ranked 1 out of 195 countries for public health preparedness in a [Global Health Security Index report issued October 2019?](#)

7. Were there ICE deliberations as to whether an agency position other than that announced in the March 13 SEVP Guidance would place higher education institutions in an “impossibility of performance” situation, with regard to either the July 15 notification deadline, the August 4 deadline to reissue I-20 Certificates of Eligibility for tens of thousands F-1 nonimmigrants, the anticipated attestations regarding in-person classwork, and/or variations by academic discipline and between introductory and advanced classes as to the viability of in-person or online curricula?

[Appendix 2 Documents \(240 pages\)](#), which consists of:

1. [Council for Higher Education Accreditation, Johns Hopkins Center for Health Security, Tuscany Strategy, June 12, 2020](#), “OpenSmartEdu: COVID-19 Planning Guide and Self-Assessment for Higher Education”
2. [Sociological Science, May 2020, Kim Weeden and Benjamin Cornwell](#), “The Small-World Network of College Classes: Implications for Epidemic Spread on a University Campus”
3. [American College Health Association, May 7, 2020](#), “Considerations for Reopening Institutions of Higher Education in the COVID-19 Era”
4. [Massachusetts Higher Education Working Group, May 22, 2020](#), “Safe on Campus: A Framework for Reopening Colleges and Universities”
5. [Annals of Internal Medicine, July 2, 2020, Mark Wrighton and Steven Lawrence](#), “Reopening Colleges and Universities During the COVID-19 Pandemic”
6. [Centers for Disease Control, May 30, 2020](#), “Considerations for Institutions of Higher Education”
7. [Compilation document](#) of 15 representative higher-education institution announcements for Fall 2020 (8 private, 7 public, 1 HBCU, 3 small colleges, locations dispersed across the South, New England, West, Midwest, Mid-Atlantic, and Southwest):
 - Agnes Scott College
 - Amherst College
 - Bennett College
 - California State University
 - Columbia University
 - Drexel University
 - Harvard University
 - Iowa State University
 - Massachusetts Institute of Technology
 - University of California - San Diego
 - University of Michigan
 - University of Pennsylvania
 - University of Southern California
 - University of Texas at Austin
 - Wichita State University