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New DHS rule may end flexible visa stays for students, trigger harsh 'unlawful presence' bars

A controversial rule that could significantly alter the lives of international students in the US is now under final review by the Office of Management and Budget (OMB), raising alarm among education experts. Proposed by the Department of Homeland Security (DHS), the regulation would scrap the current flexible "duration of status" policy and replace it with a fixed period of stay for F, J, and I visa holders—including students, exchange visitors, and foreign media representatives.

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This proposal marks a revival of a 2020 Trump-era move that was never finalised, as reported by the Times of India (TOI). It is now under OMB scrutiny, one of the final stages before publication in the Federal Register. While most federal rules invite public comments over 30 to 60 days before finalisation, education experts worry this one may be issued as an “interim final rule,” bypassing public input and taking immediate effect.

Rajiv S. Khanna, managing attorney at Immigration.com, told TOI, “Currently, international students can stay in the US as long as they are maintaining their full-time student status in approved programs. This is referred to as ‘duration of status’. The Trump administration wants to change this to a predefined period of stay. With a fixed expiration date on their visa, international students would have to periodically apply for extensions. This will create additional unnecessary delays, financial burden and uncertainty for students.”

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Khanna warned that visa extensions typically take months, further adding to student stress and unpredictability. The shift could disproportionately affect Indian students, who made up the largest cohort of international students in 2024, numbering 4.2 lakh.

A US university representative pointed out that the rule's specific time limits will become clear only after it's published in the Federal Register

Mitch Wexler, Senior Counsel at Fragomen, flagged a more serious consequence: the redefinition of "unlawful presence," he told TOI.

The proposed change would significantly impact how unlawful presence is determined for international students. At present, students only begin to accrue unlawful presence if USCIS issues a formal violation notice or if an immigration judge orders them removed, Wexler explained. Under the new rule, however, unlawful presence could start automatically once the student's fixed period of authorised stay ends, unless they fall under narrowly defined exceptions.

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Wexler noted that if a student accrues unlawful presence for over 180 or 365 days, it could trigger a three- or ten-year reentry ban under US law, making the stakes far higher than mere paperwork delays.

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