

ICE Reverses Course, Prohibits International Students from Attending Online-Only Institutions in the U.S. During the Fall 2020 Semester

As COVID-19 forced colleges and universities across the country to abruptly close their campuses and pivot to online-only instruction models for the remainder of the spring and the entire summer semesters, Immigration and Customs Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) instituted a welcome -- albeit temporary -- regulatory exemption permitting F and M students to take more online courses than allowed under the federal regulations in order to maintain a full course of study and their nonimmigrant status in the U.S. during the pandemic. As a result of this exemption, international students were able to take all their classes online during the spring and summer semesters whether they remained in the U.S. during the pandemic or returned to their home countries. This temporary measure was a tremendous accommodation given that the regulations governing international students prohibit M students from enrolling in online courses altogether and limit F students to take only one class or three credit hours online per semester. Unfortunately, it appears this generous exemption is about to come to a screeching halt in advance of the fall 2020 semester. On Monday, July 6, 2020, ICE made an unwelcome announcement that SEVP will again be modifying the temporary exemption for nonimmigrant students taking online courses during the pandemic even though COVID-19 continues to rage throughout the U.S.

Specifically, ICE announced the following modifications that will apply to international students for the fall 2020 semester:

- **Students attending schools operating normal, in-person classes are bound by existing federal regulations.** At these schools, M students may no longer enroll in online courses and F students may take a maximum of one class or three credit hours online per semester.
- **F-1 and M-1 nonimmigrant students attending schools operating entirely online may not take a full online course load and remain in the U.S.** The U.S. Department of State (DOS) will not issue visas to students enrolled in schools and/or programs that are fully online for the fall semester, nor will the U.S. Customs and Border Protection (CBP) allow these students to enter the U.S. Students in the U.S. currently enrolled in entirely online schools and/or programs must either depart the U.S. or transfer to another institution with in-person instruction to remain in valid student status. Unfortunately, this modification also applies: (i) where a school pivots from in-person or hybrid instruction to online-only instruction mid-semester (like what occurred during the spring 2020 semester); and/or (ii) where a nonimmigrant student changes their course selections from a combination of in-person and online courses to online-only courses.
- **F-1 students attending schools adopting a hybrid model of instruction (combination of online and in-person classes) will be permitted to take more than one class or three credit hours online.** In order for F-1 students to take advantage of this exemption, hybrid instruction schools must certify to SEVP on Form I-20, Certificate for Eligibility for Nonimmigrant Student Status, that the program is not entirely online, that the student is not taking an entirely online course load during the fall 2020 semester, and that the student is taking the minimum number of online classes required to make normal progress in their degree program.

- **Continuing F and M students outside the U.S. whose schools are offering online instruction only may remain active in the Student and Exchange Visitor Information System (SEVIS) if they are able to meet the full course of study requirements or the requirements for taking a reduced course load.** This exemption will greatly benefit those international students who have already completed a portion of an academic program but who are unable to continue studying in the U.S. due to their schools' decisions to adopt an online-only model during the fall 2020 semester. ICE advises Designated School Officials (DSO) to annotate students' SEVIS records to make it clear that the student is outside the U.S. and taking full time online courses since that is the only choice offered by the school.

In order to comply with these new modifications, institutions admitting international students have a lot of paperwork to prepare, but little time in which to do so. Those schools that offer entirely online classes or programs for the fall 2020 semester must complete an operational change plan and submit it to SEVP by July 15, 2020, which is next week. Schools that will not operate entirely online for the fall 2020 semester must update their operational plans by August 1, 2020 and indicate to SEVP whether they will hold in-person classes only, implement a hybrid plan of in-person and online classes or hold a delayed or shortened semester. In addition, by August 4, 2020, DSOs must update and issue or reissue Forms I-20 to their international students certifying that the school is not operating entirely online, that the student is not taking an entirely online course load for the fall 2020 semester and that the student is taking the minimum number of online classes required to make normal progress in their degree program. Due to the extremely small window of time before the start of the fall 2020 semester, ICE advises DSOs to prioritize those students who are outside the U.S. and who need new visa stamps when issuing new Forms I-20.

This latest development with respect to the enrollment of international students is the latest challenge for colleges and universities seeking to resume operations this fall in the middle of an ongoing global pandemic. On Wednesday, July 8, 2020, Harvard University and Massachusetts Institute of Technology filed a lawsuit in the U.S. District Court for the District of Massachusetts seeking to block ICE's implementation of these modifications. We will closely monitor this situation and provide updates accordingly.

Should you have additional questions, please contact [Joanna L. Silver](#), [Caroline M. Westover](#) or any of the [attorneys](#) in the [Immigration](#) practice, or the attorney in the firm with whom you are regularly in contact.



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