**International Students and Remote Learning in Fall 2020:**

**What You Need To Know**

*Updated July 7, 2020*

**Q1: What is the new policy?**

On July 6, 2020, the U.S. Immigration and Customs Enforcement (ICE)’s Student and Exchange Visitor Program (SEVP) announced that it would no longer provide exemptions for international students taking online classes due to the pandemic during the fall 2020 semester. ICE also issued a Broadcast Message with slightly more detail, and indicated the rule will be published in the Federal Register as a Temporary Final Rule.

**Q2: Can an international student take a full online course load?**

No. With regard to Fall 2020, the press release by SEVP states “Nonimmigrant F-1 and M-1 students attending schools operating entirely online may not take a full online course load and remain in the United States. The U.S. Department of State will not issue visas to students enrolled in schools and/or programs that are fully online for the fall semester nor will U.S. Customs and Border Protection permit these students to enter the United States. Active students currently in the United States enrolled in such programs must depart the country or take other measures, such as transferring to a school with in-person instruction to remain in lawful status. If not, they may face immigration consequences including, but not limited to, the initiation of removal proceedings.”

**Q3: I am an international student scheduled to start my studies at Penn State University in Fall 2020. Does this policy change affect me?**

It depends. One complication that goes beyond this policy is the fact that routine non-immigrant (including students) interviews at consulates have been suspended because of the global pandemic. With that said, if Penn State maintains a return to campus plan for Fall 2020, our reading is that international students who return to campus taking their courses in person will be fine and not affected by the new policy. On the other hand, if Penn State moves to a fully remote classroom for Fall 2020, the new policy will block the possibility for international students to obtain visas and enter the United States.

**Q4: I am international student scheduled or hoping to take my classes under a hybrid model. Does this new policy affect me?**

The announcement from SEVP defines “hybrid model” as a mixture of online and in person classes. We understand this to mean that a single course is taught with a mixture of online and in person teaching. According to the new guidance, “Students attending schools adopting a hybrid model—that is, a mixture of online and in person classes—will be allowed to take more than one class or three credit hours online. These schools must certify to SEVP, through the Form I-20, “Certificate of Eligibility for Nonimmigrant Student Status,” that the program is not 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.”
Q5: What if I start the Fall semester under an in-person or hybrid model but the class then moves to online in the middle of the semester?
We believe the student is still falls in the “hybrid model” because some classes were in person and other classes were online.

Q6: If the University is offering hybrid classes but all of my classes are online, will I have to leave the United States?
While this new guidance is a departure from the guidance issued in spring and summer to help mitigate the spread of coronavirus, the new rule indicates that students must have in-person classes or a combination of in-person classes and online classes and all of these classes must make normal progress in your degree program.

Q7: If I am in my home country and I take a full course load online, what happens to my SEVIS record?
Penn State is offering a mix of in person and online courses for Fall 2020. As such, in this case, your SEVIS record would be terminated. While all terminations are problematic, Penn State would terminate students in this situation as ‘authorized early withdrawal’ which means that the termination is made for procedural reasons and not due to a violation.

Q8: What immigration laws govern online and in person learning and how does it relate to the new policy?
One important regulation is 8 CFR 214.2 (f)(G) which states in part: “For F-1 students enrolled in classes for credit or classroom hours, no more than the equivalent of one class or three credits per session, term, semester, trimester, or quarter may be counted toward the full course of study requirement if the class is taken on-line or through distance education and does not require the student's physical attendance for classes, examination or other purposes integral to completion of the class. . . .” Importantly, the new policy does not “count” hybrid classes towards the one course/three credit requirement and therefore, we believe students taking a mix of in-person, and online classes are in compliance with the new policy.

Q9: What authority did the government have in March 2020 to relax the online requirements listed in the regulation and why cannot the government extend this now?
The government used its discretion to relax the regulation. Previously, the government allowed students to take online courses in excess of these regulatory requirements due to the pandemic. Discretion is a powerful tool in immigration law and one that has been used historically to protect people during emergencies.

Q10: I am an international student at Penn State already on campus. How does this new policy affect me?
If you take all of your courses in-person in Fall 2020, you are not affected by the rule. On the other hand, if Penn State moves to an entirely remote platform for Fall 2020, international students already on campus will have to leave the United States or take other measures that will aid in their maintenance of status. The policy suggests that students already who do not take these measures may face deportation.

The information contained in this FAQ is provided for educational purposes only and not as part of an attorney-client relationship. It is not a substitute for expert legal advice.
Q11: How can an international student face deportation in the above scenario?
The Immigration and Nationality Act (statute) provides a list of reasons a person may deported after they have been admitted into the United States. International students who are identified by ICE as violating this new policy could be charged under 237(a)(1)(C), a provision in the immigration statute (Immigration and Nationality Act) that makes a person deportable if they failed to maintain nonimmigrant status in the United States. ICE could initiate removal proceedings by filing a charging document known as the Notice to Appear with the immigration court.

Q12: What should I do if all classes are online but there are travel restriction to my home country?
You should consult with an immigration attorney and consider alternate options such as a B-2 visa.

Q13: What should I do if all class are online but I am afraid to return to my home country?
You should consult with an immigration attorney and consider alternate options such as asylum.

Q14: Will my visa be cancelled if I am studying from my home country?
If you have an F-1 visa, your visa would not be cancelled if you are studying from your home country even if your SEVIS record is terminated. The SEVIS termination would not affect your F-1 visa.

Q15: Do I need to get a new I-20 to show I will be taking a mix of online and in-person classes?
Yes, guidance from the Department of Homeland Security indicates we are required to issue you a new I-20 to verify that you are abiding by the ICE guidance. The I-20 must verify:
- Your program of study is not entirely online
- You are not taking only online courses
- You are taking the minimum number of online courses to make normal progress in the degree program

Q16: How does the new policy affect the spouses and minor children of international students?
Spouses and minor children are “derivatives” to a principal nonimmigrant applicant so once the principal is denied a visa or forced to leave the United States, this applies to their spouse and minor children.

Q17: Where can I find more resources?
Office of Global Programs, Penn State International Students- DISSA: 814-865-6348, Option 2

Shoba Sivaprasad Wadhia: Associate Dean for Diversity, Equity, and Inclusion and Director of the Center for Immigrants’ Rights Clinic at Penn State Law: ssw11@psu.edu
- Penn State Law Center for Immigrants’ Rights Clinic
- Immigration in the Time of Trump contains resources for immigrants and the broader community
- Penn State Office of Global Programs FAQ
- NAFSA
- Presidents Alliance on Higher Education
  Please consult with an immigration attorney if you need legal advice.

The information contained in this FAQ is provided for educational purposes only and not as part of an attorney-client relationship. It is not a substitute for expert legal advice.