

Insights, News & Events

# WHAT SCHOOLS NEED TO KNOW ABOUT ONLINE CLASS RESTRICTIONS FOR INTERNATIONAL STUDENTS (UPDATED)

Insights  
Jul 15, 2020

The White House recently announced that nonimmigrant visa holder students may not remain in the United States if they take full online course loads in the fall. Additionally, the Department of State announced it will not issue visas to students enrolled in schools and/or programs that are fully online for the fall semester. The directive stemming from the July 6 announcement, enforced by Immigration and Customs Enforcement (ICE), will impact foreign national students studying in the United States on an F-1 or M-1 visa. What do educational institutions need to know about this development, and what can they do to address the situation?

**[ED. NOTE: THE TRUMP ADMINISTRATION RESCINDED THE ORDER ON JULY 14, ALLOWING INTERNATIONAL STUDENTS ENROLLED IN ONLINE-ONLY CLASSES TO REMAIN IN THE COUNTRY FOR THE FALL SEMESTER. A FEDERAL DISTRICT JUDGE IN BOSTON, WHO WAS EXPECTED TO PRESIDE OVER ORAL ARGUMENTS ON A CASE BROUGHT AGAINST THE ADMINISTRATION BY SEVERAL INSTITUTES OF HIGHER LEARNING, ANNOUNCED THAT SHE HAD “BEEN INFORMED BY THE PARTIES THAT THEY HAVE COME TO A RESOLUTION.” SHE FURTHER STATED THAT “BOTH THE POLICY DIRECTIVE AND THE FREQUENTLY ASKED QUESTIONS WOULD NOT ENFORCED ANYPLACE.” THIS CHANGE APPLIES NATIONWIDE.]**

## WHAT HAS CHANGED?

This announcement marks a departure from the guidance that had been in place at the start of the COVID-19 epidemic.

## Related People



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Under existing regulations, international students had been able to take only a maximum of one class or three credit hours online. Due to COVID-19, however, the Student and Exchange Visitor Program (SEVP) instituted a temporary exemption regarding online courses for the spring and summer semesters. This exemption permitted nonimmigrant students to take more online courses than normally permitted.

However, with this week's announcement, SEVP has now revoked this exemption for the fall semester. This means that F-1 and M-1 students whose schools are fully online or intend to be fully online in the fall will either need to transfer to schools that have in-person courses or leave the country. If they do not, these students may face severe immigration consequences, including deportation proceedings.

## **IMPACT OF ANNOUNCEMENT**

Due to COVID-19, many colleges and universities have announced online-only classes for the fall semester. In addition, K-12 public and private schools are grappling with whether they can have students return to campus in the fall, and how they will handle closures if there are further government shutdowns. Coming on the heels of visa delays caused by the pandemic, this directive could result in a further dramatic reduction in the number of international students enrolling in the fall at both colleges and private K-12 schools.

Currently, there are over one million international students in the United States, who contributed \$45 billion to the United States economy in 2018, according to the U.S. Department of Commerce. Many K-12 private schools also supplement their enrollment by attracting students from foreign countries. The economic impact of this directive could be severe and will impact not only schools that are already financially suffering due to COVID-19, but the surrounding communities and businesses. Furthermore, discouraging international students from enrolling in U.S. universities could dry up a talent pipeline for future employers as well as redirect future talent other countries.

## **WHAT'S NEXT?**

Several higher education institutions quickly filed a lawsuit against the government requesting a temporary restraining

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order and preliminary injunction preventing the enforcement of these new ICE regulations. It is anticipated that several other universities will file similar suits.

Due to public pressure, ICE may retract this directive, or a court could block the government from enforcing it. However, if there is no reversal from the government or a court does not put a halt to the plan, schools may have to rethink their in-person class offerings in the fall while keeping in mind safety precautions necessitated by the pandemic.

## **WHAT SCHOOLS CAN DO NOW**

Schools hoping to protect their foreign students can consider adopting a hybrid model for the upcoming school year. According to the directive, nonimmigrant F-1 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.

As part of the process, schools adopting a hybrid approach must certify to SEVP, through the Form I-20, "Certificate of Eligibility for Nonimmigrant Student Status," that their program is not entirely online, that the student is not taking an entirely online course load, and that the student is taking the minimum number of online classes required to make normal progress in their degree program. Exceptions to this are F-1 students in English language training programs and M-1 students pursuing vocational degrees, who are not permitted to enroll in any online courses. By planning for and implementing a hybrid approach, whereby some in-person classes are included in the curriculum, schools will be likely to maintain the visa status of their foreign students.

Of course, even these plans could be for naught if the government closes schools due to further outbreaks. If schools begin the fall semester with in-person classes but are later required to switch to only online classes, they will need to update their information in the Student and Exchange Visitor Information System (SEVIS) within 10 days of the change. Unfortunately, students of those schools would then either need to leave the country or take alternative steps to maintain their nonimmigrant status, such as by moving to a school that is still open.

## **CONCLUSION**

The Fisher Phillips Global Immigration Practice Group and our Education Practice Group are continuing to monitor this development. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. If you have questions about how this directive impacts your school, please reach out to your Fisher Phillips attorney or any member of the [Global Immigration Practice Group](#) or [Education Practice Group](#).

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