October 26, 2020

Sharon Hageman
Acting Regulatory Chief
Office of Policy and Planning
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, DC 20536

Submitted via Federal eRulemaking Portal

Re: DHS Docket No. ICEB-2019-0006 – *Proposed Rule Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media*

Dear Ms. Hageman:

As leading organizations in academic medicine and health care, we welcome the opportunity to submit comments in response to the U.S. Department of Homeland Security's (DHS') proposed rule, *Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media* (DHS Docket No. ICEB-2019-006), published September 25, 2020. If applied to physicians in J-1 visa status, this rule, as proposed, will have a devastating impact on U.S. patient care. Therefore, we strongly urge the Department to exclude physicians from this rule and to allow them to continue to be extended under "duration of status."

ECFMG®|FAIMER® is a world leader in promoting quality health care—serving physicians, members of the medical education and regulatory communities, health care consumers, and those researching issues in medical education and health workforce planning. Among its many programs, ECFMG serves as the sole U.S. Department of State (DOS)-designated sponsor for foreign national physicians engaged in U.S. residency and fellowship training programs on J-1 visas. Currently, there are more than 12,000 J-1 physicians engaged in training at approximately 750 teaching hospitals. These hospitals are located in 51 U.S. states and provinces.

Established in 1933, the **American Board of Medical Specialties (ABMS)** is the leading not-for-profit organization overseeing physician certification in the United States. ABMS supports 24 Member Boards that develop educational and professional standards and programs of assessment to certify physician specialists, all dedicated to improving the quality of care to the patients, families and communities they serve. More than 920,000 physicians are certified in one or more of 40 specialties and 87 subspecialties offered by the ABMS Member Boards.

The **Accreditation Council for Graduate Medical Education (ACGME)** is an independent, not-for-profit, physician-led organization that sets and monitors the professional educational standards essential in preparing physicians to deliver safe, high-quality medical care to all Americans. The mission of the ACGME is to improve health care and population health by assessing and enhancing the quality of resident and fellow physicians' education through advancements in accreditation and education. In academic year 2019-2020, there were approximately 12,000 ACGME-accredited residency and fellowship programs in 157 specialties and subspecialties at approximately 865 Sponsoring Institutions.

The **American Hospital Association (AHA)** is the national organization that represents and serves all types of hospitals, health care networks, and their patients and communities. Nearly 5,000 hospitals, health care systems, networks, other providers of care and 43,000 individual members come together to form the AHA. Through representation and advocacy activities, AHA ensures that members' perspectives and needs are heard and addressed in national health policy development, legislative and regulatory debates, and judicial matters. Founded in 1898, the AHA provides education for health care leaders and is a source of information on health care issues and trends.

The **American Medical Association (AMA)** is the physicians' powerful ally in patient care. As the only medical association that convenes 190+ state and specialty medical societies and other critical stakeholders, the AMA represents physicians with a unified voice to all key players in health care. The AMA leverages its strength by removing the obstacles that interfere with patient care, leading the charge to prevent chronic disease and confront public health crises and, driving the future of medicine to tackle the biggest challenges in health care.

The **AAMC (Association of American Medical Colleges)** is a not-for-profit association dedicated to transforming health care through medical education, patient care, medical research, and community collaborations. Its members are all 155 accredited U.S. and 17 accredited Canadian medical schools; more than 400 teaching hospitals and health systems, including Department of Veterans Affairs medical centers; and more than 70 academic societies. Through these institutions and organizations, the AAMC leads and serves America's medical schools and teaching hospitals and their more than 179,000 full-time faculty members, 92,000 medical students, 140,000 resident physicians, and 60,000 graduate students and postdoctoral researchers in the biomedical sciences.

The **National Resident Matching Program (NRMP)** is a private, non-profit organization established in 1952 at the request of medical students to provide an orderly and fair mechanism for matching the preferences of applicants for U.S. residency positions with the preferences of residency program directors. In addition to the annual Main Residency Match® that encompasses more than 44,000 registrants and 37,000 positions, the NRMP conducts Fellowship Matches for more than 65 subspecialties through its Specialties Matching Service. NRMP is governed by a Board of Directors that includes representatives from national medical and medical education organizations as well as medical students, resident physicians, and graduate medical education program directors.

Summary

Currently, there are more than 12,000 physicians from 130 countries engaged in residency or fellowship training in J-1 status at approximately 750 teaching hospitals in 51 U.S. states and provinces. ECFMG|FAIMER serves as the sole DOS-designated visa sponsor for these visiting physicians. Designed as a public diplomacy initiative, the DOS' J-1 "Exchange Visitor Program" provides an avenue for robust educational and cultural exchange. J-1 physicians not only serve as vital members of health care teams at the institutions where they train, but also lend a diversity of thought and experience that is invaluable to U.S. health care. If duration of status is not preserved for physicians, many will be unable to move seamlessly between academic years and/or to continue in their training programs. This will have an incalculable negative effect on patient care and other learners in their training programs and create chaos at U.S. teaching hospitals.

J-1 physicians already are a carefully vetted and monitored cohort. Each J-1 physician enters a training program through a highly-competitive match and has their eligibility status verified by ECFMG|FAIMER prior to being selected. Once a J-1 physician joins a program, ECFMG|FAIMER coordinates closely with U.S. teaching hospitals and with DOS throughout each academic year to ensure that J-1 physicians comply with all federal requirements. Additionally, under the current process, J-1 physicians are required to apply annually to ECFMG|FAIMER to extend their visa sponsorship. This is in keeping with the J-1 regulations for physicians that stipulate that J-1 physician applicants, "submit an agreement or contract from a U.S. accredited medical school, an affiliated hospital, or a scientific institution to provide the accredited graduate medical education. The agreement or contract must be signed by both the alien physician and the official responsible for the training."[1]

While most U.S. residency programs last for three to seven years, and fellowships from one to three years, training contracts are renewed annually to ensure that competencies are met and that a physician is fit to advance in a training program. Annual application for an extension of J-1 sponsorship through ECFMG|FAIMER is required of every J-1 physician. This required annual renewal process is rigorous and provides assurance that J-1 physicians are compliant with J-1 visa requirements and progressing through their training programs as planned. Under duration of status, a physician's J-1 status is extended automatically each year when a J-1 sponsorship extension is approved by ECFMG|FAIMER.

Since 2003, all J-1 physicians have been tracked in the Student and Exchange Visitor Information System (SEVIS), a joint database of DOS and DHS. Training program participation dates and corresponding authorized periods of stay for every J-1 physician are visible easily to DOS and DHS through SEVIS. This is confirmed by ICE on its website where it states, "SEVIS tracks and monitors nonimmigrant students and exchange visitors. If accepted by an SEVP-certified school, foreign students may be admitted to the United States with the appropriate F or M nonimmigrant status. If accepted for participation in a Department of State-verified exchange visitor program, exchange visitors may be admitted to the United States with J nonimmigrant status. Records of these nonimmigrant admissions and continued

[1] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=1bc531bf257789e45b3049bff8b50d64&r=PART&n=22y1.0.1.7.35#se22.1.62_127; accessed 10/14/2020

participation in these educational programs are maintained in SEVIS. Further, SEVIS enables SEVP to assure proper reporting and record keeping by schools and exchange visitor programs, thereby ensuring data currency and integrity. SEVIS also provides a mechanism for student and exchange visitor status violators to be identified so that appropriate enforcement is taken (i.e., denial of admission, denial of benefits or removal from the United States)."[2] As a result of the detailed data already available in SEVIS, there is no ambiguity with respect to the last date of program participation and/or related authorized period of stay, which the proposed rule change aims to address.

SEVIS is just one mechanism through which J-1 physicians are monitored. The ACGME reviews all institutions that offer accredited residency and/or fellowship education and training programs, as well as the institution's individual training programs. The ACGME's institutional and specialty- and subspecialty-specific accreditation requirements require J-1 physicians to receive appropriate supervision and engage in quality educational experiences. In addition, each teaching hospital at which J-1 physicians are educated and train assigns at least one staff member to communicate directly with ECFMG|FAIMER to confirm ongoing participation throughout an academic year, among other reporting responsibilities. These frameworks provide important safeguards and ensure that J-1 physicians are monitored throughout an academic year.

The proposed rule change creates an impossible timeline for J-1 physicians and the institutions where they learn and train. If implemented, all J-1 physicians will be subject to a one-year period of authorized stay annually. As such, they will be required to apply each year for an extension of stay through a U.S. Citizenship and Immigration Services (USCIS) Service Center in the United States or through a consulate abroad each year. This is after and in addition to renewing their sponsorship with ECFMG|FAIMER. Teaching hospitals typically issue contracts each year in February or March in advance of a new academic year starting in July. With current published USCIS change/extension of status processing times lasting as long as 19.5 months[3], thousands of J-1 physicians will see their education and training interrupted and, as a result, patient care and resident/fellow education and training at hundreds of U.S. teaching hospitals will be compromised. Not only will patients lose access to care provided by these physicians but the burden of trying to provide that care will fall to the remaining residents/fellows, seriously compromising *their* educational and training experience. These multiple levels of disruption will affect the ability to deliver a high quality of care and will decrease the number of qualified physicians into the future. Travel abroad to extend visa status during residency and fellowship is not a viable option due to travel restrictions, expense, and time away from the training program that will be required. In short, elimination of duration of status will create an untenable situation for J-1 physicians, teaching hospitals, and the patients they serve.

We have focused our specific comments on the following issues:

I. This proposed change will disrupt the training of J-1 physicians and the patient care they provide, having an immediate and devastating effect on U.S. health care during one of the most severe

[2] https://www.ice.gov/sevis; accessed 10/6/2020
[3] https://egov.uscis.gov/processing-times/; accessed 10/15/2020

pandemics in our nation's history. The long-term effects will be equally impactful, as the U.S. physician shortage continues to grow.

- More than 200,000 Americans have died from COVID-19 and infections continue to rise and touch all parts of American life. Some of the states with the highest numbers of J-1 physicians are those hardest hit by COVID-19, including New York, Michigan, Texas, Pennsylvania, Massachusetts, and Florida. Ensuring an uninterrupted frontline health care workforce is critically important.

- The pandemic has resulted not only in a strain on health care systems, but also in disruptions to many facets of medical education, training, licensing, and credentialing. Adding additional uncertainty to an already overburdened system will have severe implications, both for teaching hospitals' ability to deliver safe and effective patient care and for the Americans who may be deprived of that care.

- The United States is suffering from a physician shortage with forecasts of a widening gap that will continue to grow over the next decade. The AAMC predicts that, by 2033, the United States will experience a shortage of between 54,100 and 139,000 physicians. This number includes a projected primary care physician shortage of between 21,400 and 55,200 as well as a shortage of non-primary care specialty physicians of between 33,700 and 86,700.[4] With more than 40 percent of international medical graduates working in primary care, our country cannot afford to adopt a policy that will deter foreign national physicians from coming to the United States for training and/or discourage U.S. teaching hospitals from selecting them to join their programs.

II. This proposal is a solution in search of a problem that does not exist in the context of J-1 physicians. SEVIS already is sufficient to accomplish DHS' goals; therefore, the proposed rule is duplicative and unnecessary.

- J exchange visitors already are connected to an electronic government reporting system, SEVIS. They are one of only three nonimmigrant categories subject to such scrutiny.

- Annual review by ECFMG|FAIMER, as well as ongoing reporting of events, already provides DHS and DOS with comprehensive information regarding all J-1 physicians. In its summary of the proposed rule, ICE states that it seeks to eliminate duration of status because it "generally lacks predetermined points in time for U.S. Citizenship and Immigration Services (USCIS) or U.S. Customs and Border Protection (CBP) immigration officers to directly evaluate whether F, J, and I nonimmigrants are maintaining their status and poses a challenge to the Departments ability to effectively monitor and oversee these categories of nonimmigrants." However, SEVIS

[4] AAMC. (2020, June). *The Complexities of Supply and Demand: Projections from 2018 to 2033*. Retrieved from AAMC: https://www.aamc.org/system/files/2020-06/stratcomm-aamc-physician-workforce-projections-june-2020.pdf

already provides both DOS and DHS with immediate access to detailed information related to any/all J-1 physician event(s) that could impact regulatory compliance, including program start and end dates and arrival and departure information.

- Under current requirements, J-1 physicians apply annually to extend their visa sponsorship with ECFMG|FAIMER. The process is rigorous and ensures that reporting to SEVIS is ongoing and information is up-to-date.

- If a physician's participation in a training program ends before the original program end date, ECFMG|FAIMER shortens the end date in SEVIS. The last date of valid status then becomes that new earlier date. This will hold true, even if status has a "fixed" end date as proposed. Ultimately, SEVIS provides the single source of truth regarding an individual participant's last date of program participation and corresponding status. This will not change.

- The IT Dashboard SEVIS Business Case (Section C1: Projects Table) shows that, for technology investment alone, the SEVIS Project from its July 1, 2002 start date through a projected project end date of September 30, 2021, $187.7 million dollars will have been spent.[5] This expensive database has yielded substantial and sufficient data for both DOS and DHS to monitor F, M, and J visa holders. ECFMG|FAIMER, as the J-1 sponsoring program for physicians, has partnered with DOS to ensure this database delivers DHS and DOS with real-time, accurate and robust data regarding the J-1 physician population.

- While ensuring our nation's homeland security is essential, this change, if applied to J-1 physicians, will not yield an added benefit. In fact, by further limiting access to health care, an essential component of national security, the proposed change puts U.S. patients and communities in jeopardy.

III. The proposed rule does not consider USCIS' inability to process extension applications in a timely fashion to ensure that physicians and teaching hospitals are able to address patient care needs efficiently.

- The rule is unworkable logistically because of the uncertainty and length of processing times for extension of status applications.

- Overall USCIS average processing times have increased by 46 percent over the past two fiscal years and 91 percent since fiscal year 2014.[6] Increasing the number of applications submitted to USCIS at a time when the agency is handling a significant backlog and funding crisis will have an immediate, detrimental impact not only on teaching hospitals and patient care and safety, but also on the entire immigration system. The ensuing instability likely will drive foreign national physicians to seek training opportunities in other countries. Thus, the quality

[5] https://itdashboard.gov/drupal/summary/024/024-000005363#; accessed 10/12/2020
[6] AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration, January 30, 2019, https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays

of those engaged in U.S. residency and fellowship training will be diminished and, ultimately, the U.S. physician shortage, particularly in underserved communities, will be acerbated.

IV. There is no evidence that duration of status increases visa overstays, and current DHS overstay data is unreliable.

- DHS indicates that it seeks to end duration of status to reduce the number of visa overstays. According to DHS' own *Exit/Entry Overstay Report* for fiscal year 2019, the "suspected" in-country overstay rate across all 15 categories of the J visa was 1.79 percent.[7] There is no evidence that physicians overstay their permissible period of authorized stay as recorded in SEVIS.

- According to the *Exit/Entry Overstay Report*, "the collection of departure information in the land environment is more difficult than in the air and sea environments due to the major physical, logistical, and operational obstacles involved with electronically collecting an individual's biographic and biometric data. Additionally, in the land environment, it is not feasible to obtain advance reporting of arrivals and departures, as the majority of travelers cross the borders using their own vehicle or as a pedestrian." In 2019, 22 percent of all physicians sponsored by ECFMG|FAIMER were citizens or landed immigrants of Canada, the majority of whom crossed the border by land. This reinforces further that the proposed rule change will not yield better information for DHS.

- In fiscal year 2016, DHS reported that it had not been able to verify the departures of 628,799 foreign visitors; however, separate research by the Center for Migration Studies found nearly one-half likely had left the United States but their departures went unnoticed and unrecorded. According to Robert Warren[8], a senior visiting fellow with the Center, "The DHS figures represent actual overstays plus arrivals whose departure could not be verified. That is, they include both actual overstays and unrecorded departures."[9] The inability of DHS to record departure (exit) data accurately creates inflated and unreliable overstay data.

- Many J-1 physicians who complete their training programs remain lawfully in the United States under the Conrad 30 program to work in medically underserved or health professions shortage areas of the country. These individuals must seek an alternate visa classification and, as such, are already known to USCIS.

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[7] https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf; accessed 10/15/2020

[8] Robert Warren served as a demographer for 34 years with the United States Census Bureau and the former Immigration and Naturalization Service (INS). He was the Director of the INS's Statistics Division from 1986 to 1995. Warren currently serves as a senior visiting fellow for the Center for Migration Studies.

[9] Anderson, S. (2019, May 1). *Questionable DHS Visa Overstay Reports Used For Immigration Crackdown*. Retrieved from Forbes: https://www.forbes.com/sites/stuartanderson/2019/05/01/questionable-dhs-visa-overstay-reports-used-for-immigration-crackdown/#663bdefb4932

V. This proposed rule does not support the careful and structured monitoring frameworks of either U.S. residency and fellowship training programs and/or the J-1 regulations and corresponding ECFMG|FAIMER sponsorship. As a result, it will create immediate chaos for teaching hospitals hosting thousands of J-1 physicians—physicians who already are in training and caring for American patients.

- Teaching hospitals will face a sustained and rolling state of uncertainty when the processing of extensions of authorized stay fail to keep pace with training program start dates—a problem that will get bigger over time.

- Although the proposed rule will allow J-1 physicians to stay in their training programs for 240 days while waiting for their extension of status applications to be processed through USCIS, this will create great uncertainty for J-1 physicians and the teaching hospitals that rely on their services for up to two-thirds of each academic year. J-1 physicians whose applications are not adjudicated will be forced to cease training on day 240. This period of uncertainty also will be an obstacle to the movement of physicians between programs, for example from residency to fellowship, which is a routine part of the progressive training of physicians.

- J-2 physicians participating in residency training with Employment Authorization Documents (EADs) will not be afforded the 240 days of extended work authorization while an extension of status application is pending. Therefore, this entire cohort likely will be unable to advance in their training programs each July as planned. The loss of these J-2 physicians will have the same kinds of impacts on teaching hospitals and patient care as those described for J-1 physicians.

- Each year, 400-500 physicians in the United States in J-1 status as research scholars apply for a change of J-1 category through DOS to engage in U.S. residency training. These requests, when approved, result in sponsorship by ECFMG|FAIMER. However, sponsorship and issuance of the corresponding immigration document, Form DS-2019, cannot be dispensed until the first day of proposed clinical training. Form DS-2019 is a requirement to apply for an extension of status. Therefore, roughly 400-500 J-1 physicians will be unable to begin their training programs on time as they wait for USCIS adjudication.

- While the rule provides an admission period of two to four years, this timeframe will not be applicable to J-1 physicians due to the required annual application process. The annual application process provides assurance to DOS that J-1 physicians are progressing in their training programs as expected and meeting appropriate milestones.

- Another requirement for ECFMG|FAIMER sponsorship is the Statement of Need[10] from the home country government. The Ministry of Health in the country of citizenship or most recent

[10] U.S. Public Law 94-484, effective January 10, 1978, requires that J-1 physician applicants provide a letter of need from the Ministry of Health of the country of his/her nationality or most recent legal permanent residence.

legal permanent residence issues the letter, many of which are date-restricted and must be renewed annually. The date-restricted Statement of Need is yet another reason some physicians are limited to a one-year period of sponsorship; therefore, they represent another cohort for which duration of status is essential.

VI. DHS indicates that it "does not believe such a requirement would place an undue burden on F, J, and I nonimmigrants." However, the educational, emotional, and financial ramifications will be significant.

- The ability of J-1 physicians to engage and advance in their training programs will be compromised significantly with the elimination of duration of status. Their educational experiences will be impoverished, and, ultimately, teaching institutions will face untenable interruptions in their ability to deliver safe and effective patient care. Other physicians in U.S. training programs also will be negatively impacted since residency and fellowship programs depend on a full cohort of trainees.

- The proposed rule will present an annual financial burden to J-1 physicians. They will be required to apply annually for an extension of status through USCIS, a costly process that involves both filing and biometric fees.[11]

- J-1 physicians were surveyed by ECFMG|FAIMER in late 2019 and asked to describe challenges to their well-being. Responses were received from 7,817 physicians and showed that fluctuating immigration laws contribute to a unique set of stressors for this cohort. Further, 63 percent of male respondents reported that visa and immigration concerns were among the top issues impacting their wellness.

Conclusion

Implementation of the proposed rule will not provide DHS with better information about J-1 physicians and will have a negative impact on patient care and safety at U.S. teaching hospitals at a time when the nation's health care system already is overburdened. Unlike many other nonimmigrants, J-1 physicians already are carefully monitored through an annual application process, participation in ACGME-accredited training programs, and via SEVIS. Annual application through ECFMG|FAIMER currently creates an annual "fixed" end date in SEVIS while duration of status allows for continuous, uninterrupted training.

With the number of J-1 physicians participating in U.S. training programs having grown 62 percent over the past decade, they have become an essential part of the U.S. health care system. They hail from 130 different countries and 1,200 different medical schools and are selected through a competitive process

[11] New fees were to be implemented by DHS on October 2, 2020. On September 29, 2020, the U.S. District Court for the Northern District of California issued a nationwide preliminary injunction and stay on implementation of the 2020 final USCIS fee rule in its entirety**.** New fees and form versions associated with that rule that were to be are now on hold while the injunction is in place.

to join U.S. residency and fellowship programs through NRMP. J-1 physicians bring valuable cultural and intellectual diversity to their U.S. training programs. However, residency training requires a minimum of three years of training and as many as seven years for surgical specialties. If programs cannot count on J-1 physicians for uninterrupted training and patient care, they may choose to invest in other, less qualified candidates. This will prove to be a dangerous trend that ultimately will diminish the overall quality of the U.S. physician workforce. The negative impacts on U.S. health care will be great, particularly in rural and urban medically underserved areas of the country where J-1 physicians represent a much higher percentage of the trainee and practicing physician workforce. As a country, we must prioritize policies that maximize quality education and access to physician care. It is imperative that we protect duration of status for J-1 physicians. Now, more than ever, all physicians, regardless of their nationality, are vital to our national response and ability to provide quality patient care.

Our organizations welcome the opportunity to work with DHS and provide additional information on the role of J-1 physicians, the nature of U.S. residency or fellowship training, and any of the other issues raised in this letter. If you have questions regarding our comments, please feel free to contact Dr. William Pinsky, President and CEO, ECFMG|FAIMER at president@ecfmg.org or Tracy Wallowicz, Assistant Vice President, U.S. Graduate Medical Education Services, ECFMG|FAIMER at twallowicz@ecfmg.org or 215-823-2120.

Sincerely,

ECFMG|FAIMER
The American Board of Medical Specialties
The Accreditation Council for Graduate Medical Education
The American Hospital Association
The American Medical Association
The Association of American Medical Colleges
The National Resident Matching Program