



Labor & Employment ADVISORY ■

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Online-Only Classes Make Staying in the U.S. Virtually Impossible for Foreign Students

by [Eileen Scofield](#) and [Keri-Ann Griggs](#)

Yesterday, the Trump Administration's Immigration and Customs Enforcement (ICE) [announced](#) its proposed modification to the Student and Exchange Visitor Program (SEVP) that will negatively impact some foreign national students, including potentially those who may be working with a U.S. employer pursuant to an F-1 curricular practical training work authorization.

The announcement, which ICE intends to soon convert into a temporary final rule and post in the *Federal Register*, prohibits foreign national students from attending (or continuing their education at) an educational institution that will be operating entirely online in the fall of 2020. Foreign national students are prohibited from taking a full online course load, and those enrolled in such programs for the fall semester cannot remain in the U.S. In brief, this means that foreign national students already physically present in the U.S. in F-1 student status whose schools have resorted to exclusively online courses for the fall semester in light of the COVID-19 pandemic will be prohibited from continuing their education from the U.S. and will be required to depart the U.S.

Although this proposed modification today has legal authority, the Administration has already directed the U.S. Department of State to refrain from issuing student visas to new or returning students enrolled in programs that will have online-only virtual learning in the fall of 2020. Additionally, U.S. Customs and Border Protection officers (the gatekeepers at the border and at airports who check the documents of foreign nationals upon their arrival) have been instructed to prohibit entry into the U.S. of foreign national students enrolled in programs that have resorted to online learning for the fall.

The new rules allow F-1 student enrollment in programs that have adopted a hybrid model of in-person classes and online learning. However, the rules require the schools' certification to SEVP that the program is not exclusively online, that the student will not be taking a fully online course load, and that the student will be taking no more than the minimum number of online courses acceptable to progress in their degree program.

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Many institutions, including Ivy League schools, have resorted to online learning curricula for the fall. [Harvard University](#), for example, will only allow up to 40% of its student population back on campus. Foreign national students attending such institutions will have to ensure that they are in the cohort of students (the 40%, in Harvard's case) allowed to return. Otherwise, their F-1 visas will be in jeopardy and they may be faced with the prospect of having to depart the U.S. promptly.

The rules should not impact students in F-1 status with student-based work authorization pursuant to optional practical training. However, students with work authorization based on curricular practical training may be impacted, depending on their schools' programs. If their schools have resorted to an exclusively online curriculum, these students may be required to depart the U.S. and lose their U.S. employment authorization.

We will continue to monitor further developments. Please contact our team with any questions or concerns.

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