November 9, 2026

Submitted via Regulations.gov

US Immigration and Customs Enforcement
US Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: **Optional Practical Training Fees**
DHS Docket No. ICEB-2026-0100
RIN 1653-AB01

Dear Acting Director Venturella,

We appreciate the opportunity to comment on your agency's proposed rule implementing new fees in the Optional Practical Training (OPT) program. This comment is filed on behalf of the Institute for Progress. As a science and innovation think tank, we believe that the international student pipeline is critical to advancing American scientific, technological, and industrial progress and that the proposal will compromise such progress.

We agree that DHS should have the resources it needs to ensure the integrity of the Optional Practical Training program and the entire student visa system. Unfortunately, the agency's proposal to bolster program integrity and combat fraud with fees on universities of $70,000 per student for first-time OPT recommendations and $30,000 for subsequent recommendations is fatally flawed. Such fees will impose massive, unaccounted-for costs to the American economy and our leadership in critical and emerging technology fields, including harm to American students — and will not benefit American workers. The agency has made no effort to explain why it could not accomplish its stated goals of combating fraud and protecting American workers with less burdensome alternatives.

Further, the agency's notice of proposed rulemaking (NPRM) does not adequately explain why the agency has the legal authority to impose massive fees on the OPT program disconnected from cost recovery to run all aspects of the program including fraud prevention. The agency's reasoning directly conflicts with decades of precedent governing federal agencies' fee-setting powers. DHS's NPRM also effectively ignores the fee-setting authority which Congress previously delegated to it for the Student and Exchange Visitor Program, which allows the agency to set fees to counter and combat fraud in the OPT program, provided that it justifies such fee levels on a cost-recovery basis.

The letter below describes, in detail, many of the flaws with the proposed rule that the agency must address in its final rule with new and more complete legal justification and new analysis. These issues include:

- **The fee would sharply reduce STEM OPT and international student enrollment, which DHS assumes will not change despite evidence to the contrary.**
    - A recent economics research paper estimates the proposed fee would reduce OPT (and STEM OPT) participation by 23-99%.
    - In a recent survey of current and recently graduated F-1 students conducted by IFP, STEM students said they would be less likely to stay in the US as a result of fees like the one proposed. According to the survey, students are 40–80% less likely to try to stay under the proposed fees. Among graduates in STEM OPT-eligible fields only, the reduction is nearly identical, at 40–82%.
- **The cost-benefit analysis fails to account for the reality of lost STEM talent, which will cost about $362 billion in annual GDP after ten years.** That is the average estimate of a number of scenarios calculated using survey data and estimates from leading immigration economist Michael Clemens. After a decade, the high-skill STEM workforce will shrink by 6.3% and GDP will be 1.2% smaller. This would cost American households at least $2,680 each year, on average.
- **The fee will hurt the American students and workers DHS says it is protecting.** International students' tuition helps fund seats for domestic students. IFP estimates the fee would mean about 46,000 fewer Americans enrolling in bachelor's and master's programs each year.
- **The fee is well outside the agency's fee authority provided by Congress. The agency has not attempted to justify why it is not proposing new OPT fees under its explicit fee-setting authority that permits all fees necessary to carry out the Student and Exchange Visitor Program.**

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I. Introduction

Since September 2025, the US government has attempted three times to institute $100,000 fees on the H-1B program.[1] Now, the push for $100,000 fees on high-skilled immigrants comes to OPT, threatening the on-ramp for a talent pool critical to American economic leadership.[2]

DHS suggests that OPT cannot matter much to students because "only about 20 percent of F-1 nonimmigrants participated in OPT in 2024." That figure is the result of dividing one year's OPT participants by every international student enrolled, including those who are years from graduating and are not eligible for OPT. Many, if not most, of these students will go on to use OPT after they graduate. Inflating the denominator conceals the agency’s own statistics — according to SEVIS data, of F-1 *graduates*, 54% use OPT, including 64% of STEM graduates and 67% of PhD graduates, showing that OPT is a central facet of international education in America.

DHS claims that the OPT fees will "combat fraud, strengthen the integrity of the immigration system, and protect US workers," citing an investigation that found more than 10,000 OPT

[1] Preceding this October 2026 proposed regulation claiming authority to impose OPT fees totaling $100,000, there have been two presidential proclamations claiming authority to impose a $100,000 fee on certain H-1B petitions, in September 2025 and September 2026 (invalidated in federal court decisions issued in June 2026 and September 2026), and a proposed regulation claiming authority to impose a $103,265 fee on certain H-1B petitions, for which the comment period closed September 2026.

[2] In its regulatory agenda, the Trump administration has included a priority to “amend existing regulations to address fraud and national security concerns, protect US workers from being displaced by foreign nationals, and enhance the Student and Exchange Visitor Program’s capacity to oversee the program,” and apparently landed on the idea of the $100,000 fee as the means to do so. See, Unified Agenda.

participants working for "highly suspect employers," including recently formed companies and employers listing residential addresses as worksites for hundreds of students.[3] While DHS has not concluded that these cases are all actual instances of fraud, there is nothing to suggest this 3% of OPT participants couldn't simply be barred from OPT by new regulatory text restricting suspect employers.

DHS's analysis does not demonstrate that deterring fraud requires fees totaling $100,000. Instead, DHS says it chose the amount because it is "comparable to the fee for H-1B visas," and that the magnitude will "closely align with the H-1B fees to reduce students and employers from using OPT to circumvent the H-1B visa program fees." Even this comparison is grossly inaccurate, as the per-year cost of three years on OPT under the proposed rule ($100,000 spread over three years) is at least twice the cost of DHS's proposed H-1B fee (an initial $103,265 fee spread over at least six years of H-1B status, since that proposed fee does not apply to H-1B renewals).

DHS acknowledges another goal for the fee: reducing participation in the OPT program. The agency's expectation is that, if subject to large fees, schools would "only recommend the most promising students," leaving "a smaller pool of participants." As DHS states in its press release and social media postings, the OPT tax is needed because "Optional Practical Training was never meant to be a back door into the American workforce."[4]

In fact, OPT is not a back door into the American workforce, but the front door. DHS is treating OPT and the H-1B as substitutes, when in reality, they work in sequence. As the US District Court for the District of Columbia recognized, "F-1 and H-1B are integrally related...perform[ing] the interlocking task of recruiting students to pursue a course of study in the United States and retaining at least a portion of those individuals to work in the American economy."[5] Eighty-two percent of international STEM graduates who stay to work in the United States secure OPT before getting an H-1B.[6]

In misconstruing the programs as substitutes, DHS suggests students "pursue appropriate channels to obtain employment in the United States other than the OPT, such as through the H-1B visa following graduation." This is unworkable, since it ignores the H-1B calendar and how retention works in practice. The H-1B lottery is conducted in March, and new H-1B workers

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[3] Optional Practical Training Fees, 91 Fed. Reg. 64,566, 64,566, 64,571 (proposed Oct. 8, 2026) (to be codified at 8 C.F.R. pt. 214) and U.S. Immigration and Customs Enforcement, "HSI Data Shows Rampant Foreign Student Fraud—ICE Director Says This Is Only the Beginning," May 12, 2026.

[4] U.S. Department of Homeland Security, "DHS Proposes Fees for Foreign Student Work Program to Protect American Jobs," press release, October 7, 2026; Homeland Security (@DHSgov), "The era of Americans being undercut by cheap foreign labor is over . . .," X, October 8, 2026, 11:41 a.m. ET.

[5] Washington Alliance of Technology Workers v. U.S. Department of Homeland Security, No. 14-529 (D.C. Cir. 2018).

[6] Michael A. Clemens, Jeremy Neufeld, and Amy M. Nice, "Brain Freeze: How International Student Exclusion Will Shape the STEM Workforce and Economic Growth in the United States," IZA Discussion Paper No. 18548 (IZA Institute of Labor Economics, April 2026), originally published by the National Academies of Sciences, Engineering, and Medicine as a commissioned paper for the "Reimagining STEMM Graduate Education and Postdoctoral Career Development" Summit, October 2025.

cannot start until October 1. To start work in October, a May graduate must have been registered by an employer that March and selected in the lottery. Otherwise, the student must wait for the following year's lottery and start work the following October, 17 months after graduation. Even a student who lands an offer early, is registered, wins the lottery, and has an approved H-1B petition cannot work between graduation and October without OPT. For students graduating in the fall rather than the spring, the interruption in status would be even longer, and graduates may be less likely to consider returning to the United States. To prevent an interruption in status requiring leaving the country, a graduate would need to get OPT before their H-1B, increasing the total cost far above the proposed fee for either OPT or H-1B on its own.

If both this and DHS's proposed H-1B fee go into effect, the cumulative fees will amount to $173,265 for 12-month OPT followed by an H-1B, or $203,265 for STEM OPT followed by an H-1B (the typical OPT path under DHS's assumptions).

Elsewhere, DHS claims that the fees are "on par with the educational costs that foreign students incur for one or two years of education." DHS offers no data to justify this comparison, and publicly available administrative data from the US government's Integrated Postsecondary Education Data System (IPEDS) suggests DHS overestimates the tuition paid by international students who go on to use OPT.[7]

All of the outcomes DHS is hoping to achieve through this rule, including reducing the number of participants requiring monitoring and creating "job opportunities to U.S. workers who would have lost job opportunities to OPT students" depend on the rule reducing the number of OPT participants. In contradiction, DHS's economic analysis assumes that schools will not stop or reduce recommending OPT and STEM OPT for graduates eligible for the STEM extension. Therefore, DHS's own analysis suggests that the proposed fee won't make the STEM population any easier to monitor, and will neither deter fraud among STEM graduates, nor help US STEM workers by reducing the number of international STEM graduates competing for jobs. Since DHS's analysis assumes that STEM graduate participation will not be affected by the new fee, the fee's success depends only on the effect on the non-STEM population. But DHS never considers the obvious implication of their logic: there is simply no need to charge the fee for individuals eligible for the STEM extension.

In any case, our analysis finds that both enrollment and OPT participation, STEM and otherwise, would fall under this rule. After explaining why the proposed fee is not legal, the following sections explain why DHS is wrong to assume there will be no change in STEM participation and demonstrate the implications for the American economy: hundreds of billions in lost GDP annually within a decade, and fewer American students able to afford a college education each year.

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[7] U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System.

II. DHS's analysis is deeply flawed

DHS's proposed fee would substantially reduce OPT participation in two ways. First, fewer international students would get OPT because schools, students, and employers would not be willing and able to pay the fee.[8] Second, given less opportunity to enter the US workforce, fewer international students would enroll in US schools in the first place.[9] DHS fails to model the latter at all and fails to model the former for STEM graduates, asserting that any decline in OPT participation would be limited to non-STEM graduates. The best available evidence suggests participation would be reduced across the board.

DHS concedes it "cannot confidently predict the extent of any reduction in participation," but its analysis assumes a 0% reduction among STEM graduates even in the scenario where non-STEM participation is maximally reduced. In this "low participation scenario," schools stop recommending OPT for non-STEM graduates altogether but keep paying $100,000 for every student eligible for the STEM extension. In its "high scenario," nothing changes from the status quo and OPT participation is unchanged. In the primary scenario, DHS simply takes the average of both scenarios. The only thing that changes across these scenarios is the number of non-STEM graduates participating in OPT; across all scenarios, DHS assumes the fee will cause no change to STEM graduates. DHS acknowledges that schools "could also experience declines in F-1 nonimmigrant student enrollment," but does not account for it in its model of OPT participation.

DHS does report a lower number of STEM OPT participants in its low scenario than in its high scenario, but crucially, this reflects a different baseline (2024 participation levels vs. a three-year average with a fixed rate of extensions) and is unrelated to the effect of the fee, which it assumes will not affect STEM participation. DHS says it offers these two scenarios because the program has generally seen "fluctuations" in size. In other words, the lower STEM OPT number in the low scenario reflects a more conservative projection about the future of OPT, with or without a fee. In no scenario does DHS think that the fee will *cause* any decline in OPT participation by STEM graduates.

The argument DHS supplies is simply that $100,000 for three years is better value per year at roughly $33,000 per year than $70,000 for one year, so schools "may be more willing to pay" for STEM students. Immigration economist Michael Clemens estimates that universities profit about $13,700 per year on each international master's student, and about $23,000 on each bachelor's student.[10] An international student pursuing a two-year STEM master's degree therefore earns a school roughly $27,000. In Clemens's words, $100,000 is "several times the margin a typical

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[8] Michael A. Clemens, "Taxes on International Students: Demand and Supply Response for Post-Graduation Foreign Workers on Optional Practical Training," IZA Discussion Paper No. 18933 (Luxembourg Institute of Socio-Economic Research, September 2026); Institute for Progress, "International Student Survey on OPT and Experiential Learning," October 6, 2026.
[9] Ibid.
[10] Clemens, "Taxes on International Students."

master's program earns on an international student."[11] DHS assumes schools will pay nearly four times what each student they enroll brings.

DHS notes that schools may pass the fee "onto F-1 nonimmigrant students, all students, or employers." We already have evidence for how employers respond to a $100,000 fee — after the September 2025 proclamation imposed $100,000 on new H-1B petitions for workers abroad, initial consular H-1B petitions fell 91%, by DHS's own count.[12] And that was to secure a visa that could be renewed for at least six years, twice OPT's maximum of three, providing a longer period over which to recoup the cost.

The best estimates of what this proposed fee would actually do come from a paper by Clemens, "Taxes on International Students: Demand and Supply Response for Post-Graduation Foreign Workers on Optional Practical Training."[13] Clemens investigates how much OPT participation and international enrollment would decline depending on how much schools can pass on the costs to students and/or their employers. His elasticities are estimated across all fields and apply to STEM students.[14] If students bear the cost, the share of new international graduates going onto OPT (i.e., the OPT participation rate) falls by 23% for bachelor's graduates and 42% for master's graduates, the lower bound of his analysis. If universities bear it, OPT participation declines by 46% for bachelor's graduates and 99% for master's graduates; if employers bear it, both bachelor's and master's graduate participation in OPT falls by 84%.

Survey data also projects fee-driven reductions in STEM OPT participation, and explicitly tests for any difference between STEM and non-STEM reductions. Between August 14 and October 5, 2026, IFP surveyed 734 current and former international students. Among STEM OPT extension-eligible students, the share who report they would be likely to try to stay in the United States after graduation falls from 80% to 15% when there are no restrictions on who can pay the fee. The size of that effect depends on how the question is asked but is robustly large. When we asked a differently worded question that also stated only schools can pay large OPT fees, the share reporting they would likely try to stay in the US falls to 48% instead. Respondents may have assumed that schools would be obligated to pay the fee or that if only one party is allowed to pay the fee, there would not be free riding. In short, this data suggests a 40–82% decline in the share of STEM students who predict they would try to stay in the US after graduating.

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[11] Ibid.

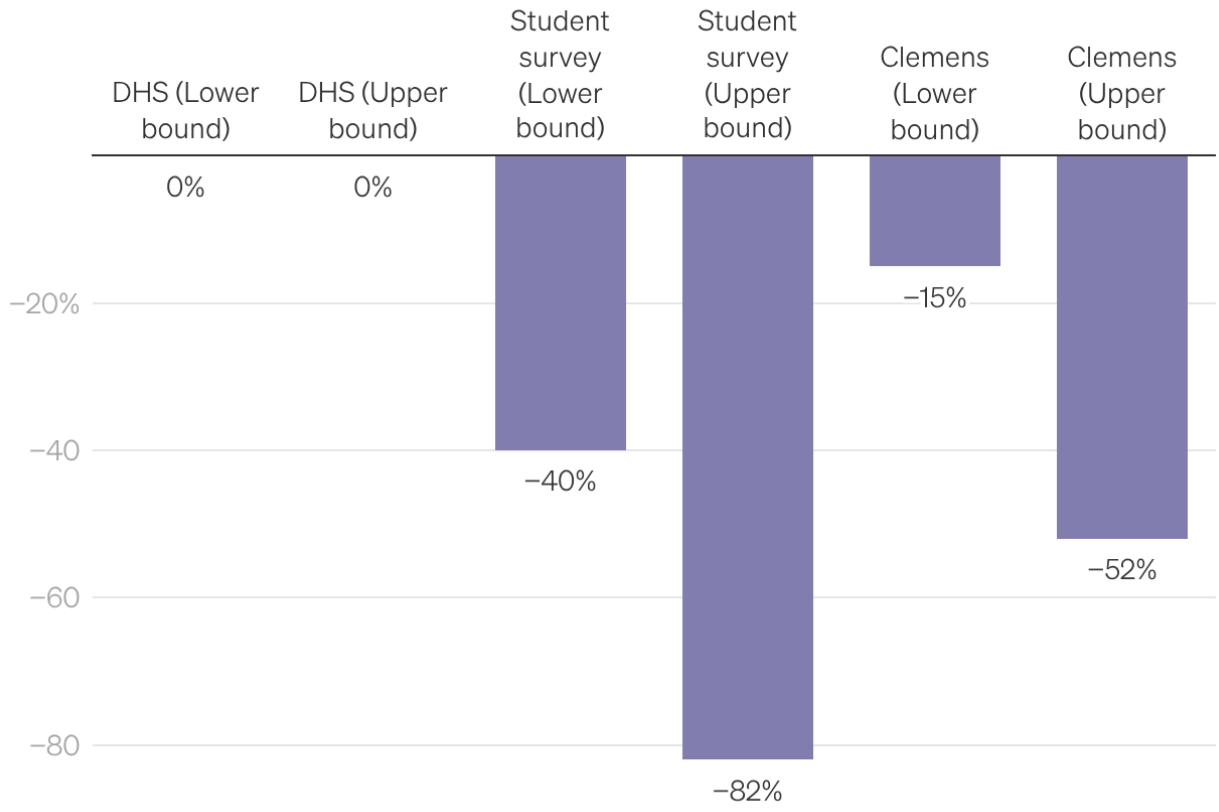
[12] Proclamation No. 10973, Restriction on Entry of Certain Nonimmigrant Workers, 90 Fed. Reg. 46,027 (Sept. 24, 2025); U.S. Citizenship and Immigration Services, "Fee Elasticity Analysis for the U.S. Citizenship and Immigration Services Fee for Certain H-1B Petitions Notice of Proposed Rulemaking," technical appendix to Fee for Certain H-1B Petitions, 91 Fed. Reg. 54,817 (proposed Aug. 25, 2026), Docket No. USCIS-2026-0298-0003, table A.7.

[13] Clemens, "Taxes on International Students."

[14] If anything, Clemens's results are conservative and look closer to STEM-eligible effects only than the full population of OPT since his employer scenario assumes OPT participants resemble H-1B winners (where STEM OPT participants are overrepresented) and that employers can get three years of benefit from OPT (which is only true of STEM OPT participants).

DHS's STEM OPT participation assumptions are baseless

Projected change from proposed fees in STEM-OPT eligible foreign graduates entering the US labor force



Note: DHS scenarios and student survey results specifically estimate the change in STEM OPT enrollment, while the Clemens paper measures the change in foreign STEM graduates of American universities entering the US labor market through OPT. DHS assumes that fees will be paid on behalf of 100% of STEM OPT-eligible students.

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In addition to failing to consider an effect of fees on STEM OPT participation, DHS fails to consider an effect of fees on STEM enrollment. While it acknowledges schools “could also experience declines in F-1 nonimmigrant student enrollment,” DHS does not quantify this effect and only considers the decline in OPT participation of non-STEM students. But in addition to that decline, a fee that shrinks OPT would also be likely to reduce international student enrollment in the first place. Clemens estimates that fewer OPT opportunities would cut international enrollment by 3–31% at the bachelor's level and 5–58% at the master's level, depending on who bears the fee, on top of declines to participation from the enrolled population. Students in our survey suggested sharper declines: 70% of STEM-eligible respondents reported

that they would not have enrolled in a US program had the proposed fees been in place. This reduced enrollment in American universities would further shrink the STEM workforce.

In any final rule, the agency needs to explain why its estimates of future STEM OPT participation and its assumptions on future international enrollment are so out of step with available evidence.

III. The proposed fee would compromise American innovation and economic growth

DHS knows declines in US university enrollment by international students would be costly. Finalizing its duration-of-status rule in July, DHS wrote that it "acknowledges the economic contribution of nonimmigrant students and exchange visitors through tuition and regional spending, as well as contributions to research, innovation, and teaching," adding that, "any reduction in enrollment has the potential to reduce the economic benefits that nonimmigrant students and exchange visitors offer."[15] In that rule, DHS argued that enrollment would not fall significantly. In this rule, DHS explicitly aims to achieve "a smaller pool of participants." Yet its analysis fails to quantify the fee's cost to innovation and the economy.

Those costs could be substantial. CSET studied the 550 recipients of four leading STEM awards: the Nobel Prizes in physics, chemistry, and medicine, the Lasker Award, the Turing Award, and MIT Technology Review's Innovators Under 35 from 2014 to 2024. Of those who lived, worked, or studied in the United States, 47% were foreign-born. CSET traced how 184 of the foreign-born awardees first arrived in the US, finding that two-thirds entered as students. Based on this data, CSET warns that restricting OPT "could weaken the pathway through which most foreign-born U.S. awardees arrived."[16]

OPT supplies much of the STEM workforce. One paper published by the National Academies of Sciences, Engineering, and Medicine (and co-written by two co-authors of this letter) using OPT administrative data estimates that foreign-born workers with US degrees make up 19% of America's high-skill STEM workforce, 28% of those with master's degrees, and 35% of those with doctorates and that OPT is a major contributor to that workforce.[17] The paper models how changes in OPT or other policies affecting international students would affect the US STEM workforce, productivity growth, and therefore economic growth and provides quantitative estimates for the economic effects of declines in OPT.

Applying the model from that paper, we find that the magnitude of decline in STEM OPT participation described above, if sustained, would cost at least $110 billion and as much as $1.18 trillion to GDP each year after 10 years, or about $820 to $8,730 per household per

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[15] 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, 91 Fed. Reg. 44,976, 45,088 (July 17, 2026).
[16] Adrian Thinnyun, Kelly Beavan, and Zachary Arnold, "How Global Talent Pathways Shape U.S. STEM Award Achievement," data brief (Center for Security and Emerging Technology, September 2026), 1.
[17] Clemens, Neufeld, and Nice, "Brain Freeze," sec. V, table 3.

year.[18] This is a large range, but demonstrates substantial consequences to the American economy even on the conservative end, and reflects uncertainty in the precise scale of enrollment and participation effects. We consider four scenarios: the high and low end of Clemens's paper on the elasticity of OPT and enrollment to new taxes and the high and low end of the survey results on OPT participation. Using Clemens's estimates, we combine his findings on the drop in enrollment with his findings on the drop in OPT. It relies on the conservative assumption of the National Academies paper that half of those who no longer participate in OPT due to the fee will still find another route to a work visa. We also draw two scenarios from our survey data on the decline in STEM students who report they would stay. To be conservative, we do not consider the enrollment effect suggested by the survey at all. Within each of these four scenarios, we get a range of GDP effects from the range of TFP estimates that come from the National Academies paper. Across all these scenarios, the proposed fee would mean that annual GDP would be .36%-3.87% smaller after 10 years. If that occurred today, that would be a cost of $110 billion to $1.18 trillion, or about $820 to $8,730 per household per year. Clemens's elasticity estimates, which we assume to be more reliable than the survey, suggest a GDP reduction of at least $110 billion to $744 billion per year, for a central estimate of $362 billion per year — $2,680 per household.

Effects of proposed fees on US economy under four scenarios, drawn from economic evidence and survey evidence

	Survey low	**Survey high**	**Clemens low**	**Clemens high**
Foreign-born STEM graduates entering the US workforce annually	-40%	-82%	-15%	-52%
Stock of US workers with STEM degrees, long-run	−7.5%	−15.3%	−2.9%	−9.6%
Effect on annual TFP growth, long-run	-0.096 pp to -0.191 pp	-0.194 pp to -0.387 pp	-0.036 pp to -0.072 pp	-0.122 pp to -0.245 pp

[18] All of the estimates in this section use the economic model from Clemens, Neufeld, and Nice, "Brain Freeze," and additional details about the methodology can be found there.

Effect on annual GDP, long-run	-0.96% to -1.91%	-1.94% to -3.87%	-0.36% to -0.72%	-1.22% to -2.45%
Effect on annual GDP, long-run (2025 dollars)	-$291B to -$582B	-$589B to -$1.18T	-$110B to -$220B	-$372B to -$744B

IV. The proposed fee would harm US students and workers

Beyond its effects on the US economy in aggregate, the fee would also impose more direct costs on American workers and students, failing to protect domestic workers and students as DHS intends. Evidence suggests that contrary to DHS's assumptions:

1. The fee would not increase wages or employment for American STEM workers.
2. The fee would reduce the number of Americans able to enroll at colleges or universities.
3. The fee on OPT would make the H-1B program more likely to undercut US workers.

The fee would not increase wages or employment for American STEM workers

DHS's proposed rule would not even benefit native-born US STEM workers on average, let alone native-born US workers writ large. Studies have explored how the increase in OPT participation following the creation of STEM OPT in 2008, and its expansion in 2016, have affected US workers. Intuitively, one might expect that even if these expansions of OPT would help Americans on average, they could harm American STEM workers who compete most closely with OPT participants. Instead, the best available evidence suggests that increased OPT participation spurs firm creation, which raises demand for native-born workers with similar skillsets, and raises wages for native-born STEM workers. That means that even US workers with similar skills to foreign talent that would otherwise receive OPT would lose opportunities under the proposal.

Specifically, a recent study by Kwon, Lee, and Monras investigated the 2016 STEM OPT extension that increased the supply of OPT participants and found that demand for American workers with similar skills to OPT participants increased in the places where those OPT participants settled.[19] The increased supply of high-skilled immigrants caused demand for native-born workers with similar skills to increase as the result of increased firm creation.

[19] Seoyoung Kwon, Jongkwan Lee, and Joan Monras, "The Effect of Retaining High-Skilled International Graduates: Evidence from the STEM OPT Extension," CEPR Discussion Paper No. 21224 (Centre for Economic Policy Research, February 2026).

An older study by Demirci looking at the 2008 extension found that a larger number of international graduates raises wages for native-born STEM workers on average, despite reducing employment among recent native-born master's graduates in the same field as the OPT participants.[20] This suggests the best possible outcome of the DHS rule could be for one small subset of native-born workers most similar to OPT participants to benefit at the expense of most American workers, including most American STEM workers.

More likely, the Kwon, Lee, and Monras result suggests that the proposal by DHS to place large fees on OPT with the intent to reduce participation in the program will reduce firm creation, decrease demand for native-born workers with skillsets similar to those of OPT participants, and not even help the American workers most similar to OPT participants on net.

The fee will reduce the number of Americans able to enroll at colleges or universities

The proposal stands to reduce, not expand, opportunities for Americans to get a college education. International students pay higher net tuition, and that revenue helps fund seats for domestic students. One analysis shows that at the graduate level, every 10 additional international students bring 8 more American students.[21] DHS allows schools to pass the cost of the fee on to "all students," which would exacerbate the effect.

To estimate how much the rule would reduce opportunities for American students, we developed a model that treats the fee as a wedge between what international students pay for a degree with OPT and what schools keep. How much the burden of the fee is split between the students and the school depends on how sensitive students and schools are to price. Either way, Americans lose. If schools pass the fee on to students, fewer international students enroll, leaving less tuition to subsidize seats for domestic students. If schools pay the fee, they collect less from each international student who still comes, shrinking that subsidy. Under the best available estimates of the elasticities, schools absorb a little over one-quarter of the fee and pass the rest on.[22] This translates into approximately 46,000 fewer American students enrolling in bachelor's and master's programs each year under DHS's proposal. Appendix A describes the model in more detail.

The fee will make the H-1B program more likely to undercut US workers

The fee would make the H-1B program more likely to undercut US workers, advantage IT outsourcing companies at the expense of employers key to critical fields, and allow an increased share of H-1Bs to go to workers sponsored directly from abroad and who are paid notably less than Americans with similar levels of experience and education.

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[20] Murat Demirci, "International Students and Labour Market Outcomes of US-Born Workers," *Canadian Journal of Economics* 53, no. 4 (2020): 1495–1522.
[21] Kevin Shih, "Do International Students Crowd-Out or Cross-Subsidize Americans in Higher Education?" *Journal of Public Economics* 156 (2017): 170–84.
[22] The elasticities come from Clemens, "Taxes on International Students." See appendix for how these are used.

A $70,000-100,000 fee on graduates of US schools would shift H-1B demand toward employers not recruiting from US schools. Those employers tend to hire lower-paid workers, who are more likely to displace Americans. In fiscal year 2024, workers on F-1 student status received 45% of new cap-subject H-1Bs, and another 43% went to people living abroad with no US status.[23] The former earned 10% more than the latter.[24]

Immigration economist Chad Sparber estimates that if the OPT pipeline into H-1B were restricted so H-1B visas that go to F-1 students instead went proportionally to other applicants, total H-1B wages would fall 1.8-4.5%.[25] He warns that "efforts to curtail the F-1 OPT pipeline into the H-1B would reduce employment of some lower wage workers, but they would also increase the share of H-1Bs going to very low wage Indian employees."[26] The Economic Innovation Group finds a similar pattern, concluding that "the OPT fee further rigs the H-1B lottery to favor outsourcers."[27] This tilt toward companies bringing in workers from abroad is particularly concerning given that H-1B workers at IT outsourcing firms earn $9,000 less a year than H-1Bs who entered the US as international students, despite the outsourced workers being six years older on average.[28] Moreover, those workers are far more likely to undercut the wages of similar Americans.[29]

In short, raising the cost of OPT would shift H-1Bs toward the lower-paid hiring the administration says it wants to curb.

V. The agency has not rationally explained how its proposed OPT fees are consistent with existing law

The agency must explain why it believes it cannot properly administer the OPT program with its fee authorities provided by Congress

Congress has given the agency the authority to set fees in accordance with its estimated costs of administering the Student and Exchange Visitor Program (SEVP) through 8 U.S.C. 1372 and under 8 U.S.C. 1356(m). The agency has used this authority before to raise SEVP fees, in part for the purpose of funding Optional Practical Training oversight and combatting fraud.

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[23] Chad Sparber, "Which H-1B Workers Earn the Highest Wages? Distinctions by Visa Status at the Time of Petition," IZA Discussion Paper No. 18940 (Luxembourg Institute of Socio-Economic Research, September 2026).
[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] Sam Peak and Jiaxin (Jason) He, "A $100,000 Tax on Foreign Students Means Fewer Opportunities for American Workers," *Agglomerations* (Economic Innovation Group), September 17, 2026.
[28] Ibid.
[29] Connor O'Brien, Jeremy Neufeld, and Amy Nice, "A Prescription for Fixing the Prevailing Wage System: Replacing Blind Benchmarking with Experience Benchmarking," Institute for Progress, March 27, 2026.

In 2019, ICE raised I-901 fees for F and M students from $200 to $350; I-901 fees for certain J-1 exchange visitors from $180 to $220; and initial school certification fees from $1,700 to $3,000. The agency imposed new fees for schools applying for recertification ($1,250), submitting I-290B appeals or motions ($675), and expanded the scope of its site visit fee ($655). These fees were justified on the grounds that the costs to the agency of administering SEVP had grown. Specifically, the agency cited detecting and countering fraud as a basis for such increases:

> "This increase in fees will allow SEVP to not only maintain its current level of service but also enhance SEVP's capability to support national security and counter immigration fraud through the continued development and implementation of critical system and programmatic enhancements."[30]

If the agency believes the existing schedule of fees is not sufficient to raise revenue required to detect and counter fraud in the OPT program, it has ample authority to alter that schedule through 1356(m) and 1372(e), as it has done before. Doing so requires the agency to justify these fee levels on a cost recovery basis. It has chosen to not even attempt to do so.

The agency has failed to explain why its statutory fee authorities under 1356(m) and 1372 are not the controlling statute for its OPT fee-setting. In fact, the agency does not mention its 1356(m) fee authority even a single time in its NPRM. The agency only mentions 1372 in the context of Congress authorizing SEVP; it does not discuss 1372(e), which sets the terms for fee-setting in the program and establishes broad authority to charge any fees necessary to carry out the program.

The agency does not explain why its "time-and-conditions" authority provided by 214(a) of the Immigration and Nationality Act (INA) includes the power to impose fees on OPT

The agency has not attempted to justify its proposed OPT fees using the explicit fee authorities given to it by Congress. Instead, the agency argues that its so-called "time-and-conditions" authority under section 214(a) of the INA gives it the power to impose massive fees on universities recommending F-1 students for participation in OPT. The general fee-setting statute for federal agencies was enacted through the Independent Offices Appropriations Act of 1952.[31] DHS does not explain why "time and conditions" can properly include OPT fees, given the extensive history over at least the last 75 years of Congress delineating when and to what extent federal agencies, including but not limited to those with immigration-related authorities, may charge fees.

Section 214(a) specifies only one mechanism by which the agency can set a financial exchange as a condition of admission:

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[30] 84 Fed. Reg. 23930 at 23933 (May 23, 2019).
[31] Pub. L. No. 82-137 (August 31, 1951), codified at 31 U.S.C. 9701

> "the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States."

The bond as described in the statute does not resemble the fee schedule proposed by the agency in this rule. If 214(a) also gives the agency a broad fee authority, as the agency argues, that effectively neuters the limits Congress placed on the refundable bonds as described in this section. Congress explicitly authorizes fees elsewhere in section 214, including in section 214(c)(12) for fraud prevention and detection fees on H-1B and L-1 employers and in 214(c)(9) for fees on H-1B employers set aside for US worker training.

DHS's effort to rely on 214(a) time-and-conditions authority seems to fly in the face of the well-understood doctrine that when a federal agency wants to decide a significant issue it must point to explicit congressional authorization. As Justice Scalia explained, Congress "does not, one might say, hide elephants in mouseholes" (Whitman v American Trucking Associations, 531 U.S. 457, 468 (2001)), which would seemingly apply here to negate the idea that a specific, narrow statutory provision gives DHS massive hidden authority. DHS must provide a more fulsome explanation as to how its newly discovered broad justification for fees, a justification inconsistent with all other fee-setting authorities, is somehow permitted under 214(a) text that has been on the books in its current form since the 1952 enactment of the INA and never contemplated, much less used, in the way the agency now proposes.

The agency has not explained how fees disconnected from the agency's costs, and set for the sole purpose of deterring OPT participation and fraudulent behavior, are anything other than a tax that can only be imposed by Congress

The agency's main justifications for its proposed fees are fraud prevention and "protect[ing] American workers." Case law on the general law governing agency fee authority (31 U.S.C. 9701) cuts against these justifications. The fees would "deter the participation by adverse actors," "deter schools from recommending students with questionable qualifications for OPT," and "stabiliz[e] the number of OPT participants." In other words, the agency's stated goal of the fee is to deter participation in the OPT program.

The one thing a federal agency cannot do is adjust fees (assessments) for the sole purpose of encouraging or discouraging a particular activity. That infringes on Congress's exclusive power to levy taxes.

Indeed, the Supreme Court, in *National Cable Television Ass'n v. United States* (415 U.S. 336, 340–41 (1974)), rejected fee setting on the basis of general policy purposes:

> "The addition of 'public policy or interest served, and other pertinent facts,' if read literally, carries an agency far from its customary orbit and puts it in search of revenue in the manner of an Appropriations Committee of the House…
>
> The lawmaker may ... make the assessment heavy if the lawmaker wants to discourage the activity… Such assessments are in the nature of 'taxes' which under our constitutional regime are traditionally levied by Congress."

Thus, the Supreme Court rejected the notion that general grants of authority to agencies include broad powers to tax. Instead, in *National Cable Television Ass'n* the Court distinguished between a fee, which "bestows a benefit on the applicant, not shared by other members of society," and a tax (415 U.S. 336, 340–41).

Similarly, in *Learning Resources, Inc. v. Trump*, 607 U.S. 229 (2026), the Supreme Court held that the power to "regulate importation" granted by Congress to the President does not include the lesser power to impose tariffs. Likewise, in *California v. Mullin* (D. Mass., No. 1:25-cv-13829), a federal court vacated the administration's $100,000 H-1B entry payment as an unauthorized tax on these grounds. Nothing in DHS's NPRM explains why this same reasoning does not apply to its proposed OPT fees.

The Supreme Court has explained in *Skinner v. Mid-America Pipeline Co.*, 490 U.S. 212 (1989), that *National Cable Television Ass'n v. United States* and *Federal Power Commission v. New England Power Co.*, 415 U.S. 345 (1974), stand for the proposition that "Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties by imposing additional financial burdens, whether characterized as "fees" or "taxes," on those parties." Congress has certainly not done so through section 214(a) of the INA, the only authority DHS relies on for its proposed OPT fees. While section 286(m) of the INA and section 1372(e) of Title 8 of the US Code do allow broad cost recovery, DHS has explicitly rejected the idea that OPT fees should be connected to the costs the agency incurs to engage in fraud prevention activities, like developing and administering a regulatory scheme that directly targets enhancing integrity.

The proposed fees on OPT recover no costs at all. Instead, DHS has stated that the fees would go into the general Treasury, an outcome dictated by one of the oldest fiscal laws on the books, applicable when a federal agency is collecting a fee not authorized by Congress for use by the agency (Miscellaneous Receipts Act, Pub. L. No. 30-41, March 3, 1849, now codified at 31 U.S.C. 3302). DHS would provide no service to paying universities in exchange for the fees, other than allowing the university to authorize OPT through the Student and Exchange Visitor Information System (SEVIS). The level of the proposed fees is not set in reference to any costs of administering the SEVP program or SEVIS, or any other costs incurred by the agency. A charge designed to discourage an activity, unrelated to the cost of any service, and paid into the general Treasury is a tax.

The Constitution vests the power to tax solely with Congress. An agency may charge the public only as Congress authorizes. Together, the controlling court decisions support the proposition

that agencies may charge for activities designed to detect violations or ensure compliance with statutory requirements, but that there is a material difference between charging for the cost of conducting that activity and imposing a significantly higher fee in order to deter misconduct. The agency's proposed fees fall into the latter category absent new legal justification and explanation from DHS in the final rule.

VI. DHS does not adequately consider whether less burdensome alternatives could accomplish the agency's anti-fraud goals

DHS is required to consider less burdensome alternatives when engaging in notice-and-comment rulemaking and explain why it decided against adopting them. The agency made no effort in the NPRM to define "adverse actors" employing OPT participants or "questionable qualifications" of OPT participants, which could have allowed DHS to identify proposed regulations to improve the integrity of the OPT program. The agency's proposal did not seriously engage with potential alternatives that would be less burdensome to the American economy, employers, universities, or workers while still accomplishing the proposal's goals of rooting out fraud in the OPT program and deterring employers from substituting lower-paid foreign workers for native workers.

Alternative fee structures

The agency could have proposed a number of alternative fee structures that would impose fewer costs on OPT participation while still effectively targeting suspect employers and incentivizing greater vigilance by universities recommending students for OPT.

The agency failed to consider using its statutory fee-setting authority

ICE regularly engages in rulemaking to set fees in accordance with its authorities as granted by Congress through both 8 U.S.C. 1372 for fees charged per student and exchange visitor and 8 U.S.C. 1356(m) for fees charged per school. The former, enacted in 1996, required the creation of the Student and Exchange Visitor Program (SEVP) and the latter, enacted in 1988, required adjudication fees to be paid into a self-sustaining Immigration Examinations Fee Account funded by user fees, including fees to cover certification processes for higher education institutions seeking authority to enroll international students. These statutes enable DHS to revise fees in two ways to fully recover the costs of administering SEVP. The agency can revise fees charged per student and exchange visitor for what is now an I-901 filing (1372(g)(2)) and fees paid by SEVP-certified higher education institutions for I-17 filings and related site visits (1356(m)). DHS (and the legacy Immigration and Naturalization Service (INS)) finalized such fee rules in 2001, 2002, 2004, 2008, and 2019 to adjust fees in accordance with the costs of running the program. Nothing is stopping the agency from doing the same through this rule, yet it has inexplicably chosen not to. The agency has historically used Activity-Based Costing (ABC) to calculate the funding needs of the SEVP program, setting fees accordingly to recover those costs, another practice it abandons in this proposal.

In 2019, during the first Trump administration, DHS finalized an SEVP fee rule that increased or established eight fees to fund the program's growing administrative costs. DHS explicitly cited growing funding needs to combat fraud and ensure program integrity as the basis for its rule:

> "… the new fees are based on estimates of funding needed to maintain and enhance SEVP's capability to achieve programmatic goals associated with its statutory mandate, including supporting national security and countering immigration fraud through the continued development and implementation of critical system and programmatic enhancements."[32]

If the agency believes that the resources needed to prevent fraud and abuse of the OPT program have grown non-linearly with the program's size, it should again be able to show its work through its ABC methodology. By statute, the agency can raise as much revenue as it needs to faithfully and effectively administer the program through fees if it can document those costs. It has not attempted to provide that documentation in the proposed rule.

The agency failed to identify even obvious alternatives to its preferred $100,000 total in fees, suggesting the rulemaking might have been undertaken with a foregone conclusion

The justification DHS provides for the specific level of its proposed fees is extraordinarily thin. While the agency notes that it considered *higher* fees (such as also applying the $70,000 fee requirement to students participating in OPT a second time after completing an additional degree), it does not document considering any other fee structures, which would likely yield lower fee levels. There are two alternative, less burdensome fee structures in particular that, while they would still impose unacceptably high costs on the American economy and the country's ability to attract and retain international talent, DHS failed to consider, despite these alternatives appearing to align with the agency's stated goals and reasoning.

The first alternative would be a fee equal to the value of the so-called "FICA exemption." DHS's proposal noted that many OPT participants are not subject to Federal Insurance Contributions Act (FICA) taxes, a longstanding problem in the OPT program.[33] DHS argues that the discount provided to employers of OPT workers by the FICA exemption creates a financial incentive to hire international students over native graduates. Along with fraud and abuse, the alleged negative labor market effects of OPT, in part due to the FICA exemption, were one of DHS's primary justifications for the rule (even though many OPT participants are not eligible for the FICA exemption in the first instance).[34]

Yet the administration failed to consider a less burdensome alternative: an OPT fee equal to the average forgone tax revenue from the FICA exemption. The agency could set an OPT fee equal

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[32] 84 Fed. Reg. 23930 at 23933 (May 23, 2019).
[33] https://ifp.org/opt-fica-exemption/
[34] This is because the FICA exemption only applies during the first five calendar years an individual holds F-1 status. See Internal Revenue Code at Sections 3121(b)(9), 7701(b)(1)(A)(ii), 7701(b)(3)(A).

to 15.3% of the typical participant's earnings, equivalent to what the employee and employer would owe in FICA taxes if the exemption did not exist. If the agency believes that its proposed fees create an incentive for universities to be more scrupulous in recommending students for participation in OPT, the same should be true of a fee equivalent to the FICA exemption. Setting fees this way would require some exemptions since not all F-1 students on OPT and a STEM OPT extension are eligible for the exemption from FICA payments.[35] Such a fee, where it applies, would be substantially lower than what DHS has proposed, putting less of a financial burden on program participants and the broader economy.

Second, the agency failed to consider a fee in line with the actual per-year cost of its proposed H-1B fee. The agency claims that its proposed OPT fees "closely align with the H-1B fees" from last year's presidential proclamation that created a $100,000 charge on H-1B petitions on behalf of beneficiaries abroad. However, this comparison is illogical and the agency's chosen OPT fee levels are, in fact, arbitrary and baseless. The presidential proclamation fee, as well as DHS's proposed $103,265 fee on cap-subject H-1B petitions, apply only to initial petitions, not renewals. Under the statute, H-1B status lasts up to three years and can be renewed for a total of six, and only more after that if the beneficiary has an approved green card petition. Students can participate in the OPT program for a maximum of three years. This makes the per-year cost of the proposed OPT fee twice the per-year cost incurred by students sponsored for an H-1B. Halving the proposed OPT fees to actually be in line with the per-year cost of DHS's proposed H-1B fee is clearly a less burdensome (though still quite costly and harmful) alternative, but one that the agency did not consider.

Other less burdensome restrictions besides fee structures

In lieu of massive fee increases, DHS could have considered changes to OPT eligibility to exclude employer types or employment arrangements the agency believes are historically associated with fraud or the undercutting of American workers. For example, DHS did not consider restrictions on OPT participation for employment at IT outsourcing or staffing firms, H-1B-dependent employers, or employers who place program participants at third-party worksites to work side-by-side with employees of client firms. Further, using the agency's internal data on fraud cases, DHS could have developed fraud pattern indicators and proposed barring employers from participation if they meet such criteria. The agency considered none of these alternatives, each of which would have better targeted the abuse motivating the rulemaking effort without imposing massive costs on rule-following participants. Transparent eligibility criteria would minimize the enforcement burden on the agency and immediately make it clear to universities, employers, and students who is eligible to participate in OPT and who is not.

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[35] This fee would seemingly not be due and outstanding from OPT participants who are ineligible for the FICA exemption because they have already held F-1 status for parts of five calendar years. These individuals' employers must pay into FICA and make FICA withholdings from pay. Thus, no fee under this approach would likely attach to virtually all F-1 students participating in a STEM OPT extension after earning a Bachelor's degree and virtually all F-1 students participating in either 12-month OPT or a STEM OPT extension after earning a Doctoral degree.

Further, to the extent relevant to what DHS has discovered in its internal abuse analysis, DHS could consider making changes to OPT eligibility to bar graduates of unaccredited schools. Under current regulations, STEM OPT extensions can only be granted if the issuing school is accredited[36] but no such requirement attaches to either CPT, pre-completion OPT, or 12-month OPT.

Moreover, both the One Big Beautiful Bill Act (2025) and the Secure America Act (2026) appropriated tens of billions of dollars to ICE that could be used to scale up staffing levels in the SEVP program or bolster anti-fraud and national security efforts by the agency. Between the two bills, Congress appropriated roughly $60 billion to ICE, including for staffing expansion and infrastructure upgrades. The agency has not explained why such resources could not be used for fraud detection and deterrence in the SEVP program, or why such appropriations are not sufficient to perform these functions.

Furthermore, DHS could address fraud concerns within the OPT program by applying the safeguards that already govern the STEM OPT extension process to all OPT employment.[37] STEM extension employers are currently required to:

- Be enrolled in E-Verify and possess a valid Employer Identification Number (EIN) to help screen out illegitimate employers; and
- Provide detailed and regularly updated employment and training information via the submission of Form I-983 Training Plans to the sponsoring university's DSO. This includes detailed information concerning (but not limited to) physical working location, salary, employment duties/responsibilities, employer oversight, and performance evaluation process.

In the NPRM, DHS concludes that applying the STEM OPT requirements to all OPT "would [not] be sufficient as an initial response to the overarching OPT program integrity concerns," given their position that such procedural and documentation requirements "do not eliminate the risk of fraud, abuse, or noncompliance and may require substantial time and resources to implement, monitor, and enforce effectively."

Elsewhere in the NPRM, DHS assesses existing STEM OPT safeguards as insufficient because "the employers for STEM OPT are not required to submit any business documents or supporting documents to DHS, such as tax records or proof of business. Furthermore, DHS does not generally verify the employer attestations unless and until there is a site visit."

It may be that, standing alone, imposing the STEM OPT requirements on all of OPT is not sufficient. However, it does not follow that the available regulatory safeguards should be

[36] 8 CFR 214.2(f)(10)(ii)(C)(1).
[37] Under current regulations, there are binding employer qualification and training plan requirements for STEM OPT, at 8 CFR 214.2(f)(10)(ii)(C)(5) and (7), but not for pre-completion OPT or 12-month OPT (or CPT), for which obligations are codified at 8 CFR 214.2(f)(10)(i) and (ii)(A).

ignored, especially if they are accompanied by new requirements. DHS could propose binding regulatory text that provides *affirmative* obligations and restrictions on employers hiring OPT participants. By way of example, the following types of revisions could be considered as new proactive guardrails for integrity in OPT and STEM OPT, none of which create new bureaucracy or operational concerns and instead unequivocally communicate new, easy-to-understand standards to the regulated community:

- Create an employer qualification regulation that applies equally to OPT and STEM OPT extensions.
- Establish in regulation that all OPT and STEM OPT employers must also have a DUNS number from Dun & Bradstreet. Using this universal numbering system would facilitate both SEVP and USCIS (through the agency's existing Validation Instrument for Business Enterprises (VIBE) program) engagement in quality assurance, with the understanding that if problems occur, individual employers will be given an opportunity to provide further information.
- Establish in regulation that sole-proprietor self-employment is not permitted, while allowing entrepreneurial activities through recognized accelerators and incubators that are themselves well-established employers.
- Establish in regulation that no employer founded less than one year prior to signing the Form I-983 may hire an OPT participant, while allowing entrepreneurial activities through recognized accelerators and incubators.
- Establish in regulation that no employer whose place of business is a private residence may hire an OPT participant.

By not actively considering such measures, ICE either completely misunderstands or ignores the role of agency rulemaking in enforcement and compliance, perhaps in part because the Student and Exchange Visitor Program resides in an agency whose primary mission is law enforcement and not policymaking. One of the key purposes of rulemaking in federal agencies is to adopt general principles that can be applied without reexamination and are binding and enforceable on the regulated community.[38] Applying the concept of universal employer qualifications for both the STEM extension and OPT generally can proactively enhance standards and mandate compliant behaviors, such as with the type of exemplars provided above – and those integrity improvements avoid steps that cannot be operationalized to scale, like submission and review of tax records and proof of business documents or comprehensive site visits.

VII. Other ways that the proposed rule is "arbitrary and capricious"

The agency's reasoning on STEM OPT is inconsistent and arbitrary.

[38] See, e.g., the seminal article by leading administrative procedure scholar Richard Berg, Re-examining Policy Procedures, 38 Admin. L. Rev. 149 at 163 (1986).

The agency writes that imposing fees on both 12-month OPT and the STEM OPT extension is necessary to combat fraud in each of those programs. However, as documented above, the agency does not believe that its massive fees will affect STEM OPT participation at all. In the high, low, and central scenarios, the agency projects that 100 percent of STEM OPT-eligible students will participate in both 12-month OPT and STEM OPT. If the agency believes that a significant share of STEM OPT participants are engaged in fraudulent activities or employment arrangements that constitute abuse of the program, its own projections imply the proposed fees will do nothing to combat fraud because they will not affect program participation among this population.

If the agency believes there is little to no fraud in the STEM OPT program, its justification for the fee is just as fatally flawed. Students engaging in STEM OPT will incur $100,000 in fees across 12-month OPT and the STEM extension, while those just participating in 12-month OPT — presumably where the agency believes fraud is concentrated — would incur only $70,000 in fees. Yet the preamble of the agency's proposed rule includes alleged signs of fraud in the OPT program.

The agency needs to explain this glaring inconsistency.

The agency has not adequately explained why its proposed fees would incentivize universities to more rigorously vet students or their employment plans.

The agency writes that its proposed fees would "increase the level of oversight and scrutiny by schools when endorsing OPT for its students" and "deter schools from recommending students with questionable qualifications for OPT." The latter is true only insofar as employers may be less willing to pay massive fees to hire less qualified graduates. However, the agency has not explained how the fees create any new incentive for universities themselves to provide greater oversight or scrutiny of their graduates or employers. Students working on OPT can change employers as they see fit, so long as such arrangements comply with the parameters of OPT and STEM OPT. The fee creates no additional incentive for universities to vet such arrangements, as the agency states. Conditional on an employer or student being willing and able to provide sufficient funds to the graduate's university to pay the fees, the university has no additional reason to care about the student's qualifications than under the status quo. The agency needs to further explain this view.

The agency has not adequately documented the scale of fraud in the OPT program.

The agency writes that in a recently announced investigation, it had uncovered "more than 10,000 F-1 nonimmigrant students who were engaged in OPT and were working for highly suspect employers." While the agency writes that this group includes "nationwide fraud," it

provides no data on the scale of estimated fraud in the OPT or STEM OPT programs. The agency gives no methodology for arriving at these numbers nor information for how many of the identified OPT participants working for “highly suspect employers” were actually engaging in fraud. We have no doubt that the agency could more effectively target and fight fraud in the OPT program. But the agency needs to provide detailed, transparent data on the prevalence of fraud for the public to comment on efforts to combat it. It has thus far not done so.

The agency claims its rule will impose no direct costs on states but its own small business analysis treats 1,044 of the affected institutions as state-run.

In the proposed rule’s federalism section, the agency states that the proposed fees “would not have substantial direct effects on the States.” This is untrue, as hundreds of state-run colleges and universities recommend international students for OPT participation each year. The agency’s assertion is also plainly contradicted by its own small entity analysis, in which it identifies 1,044 public sector institutions affected by the rule. The agency’s own data finds that between 2017 and 2022, more than 169,000 graduates of public colleges and universities were working on OPT or STEM OPT annually.

Conclusion

The best available evidence suggests that the proposed fee would cut both OPT and enrollment, cost hundreds of billions of dollars a year, and leave tens of thousands of American students with less access to quality higher education. DHS must evaluate all of these costs against the benefits it claims, and establish why it can’t accomplish its goals in a less destructive way.

Sincerely,

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Appendix

This appendix sets up a simple model in which prospective international students demand a bundle composed of a US degree and a period of OPT. The OPT fee is treated as a tax wedge between what students pay and what universities effectively retain, with the burden split between the demand and supply sides according to their elasticities. Since international students subsidize domestic students, domestic enrollment is affected in two ways. First, a higher wedge reduces the number of international students who enroll, which directly lowers the revenue that can be used to support domestic students. Second, among the students who still enroll, universities absorb part of the wedge, which indirectly reduces the revenue available to cross-subsidize American students. In that sense, the fee crowds out Americans by reducing universities' revenue from international students along both the extensive and intensive margins.

Model

This section provides an overview of the toy model used to highlight the dynamics created by the fee. While the model is simple, it makes clear how equilibrium quantities and prices depend on elasticities. Because Americans are crowded out through both extensive and intensive margins, the number of domestic students falls meaningfully under a wide range of elasticity assumptions. The model uses a constant-elasticity approach rather than a local linear approximation because the change being studied is large relative to the baseline yearly tuition levels faced by many programs.

Let Q_0 denote baseline enrollment, P_0 the baseline price of the degree–OPT bundle, P_1^c the post-policy price paid by students, and P_1^u the post-policy net price retained by universities. The policy wedge is τ, so

$$P_1^c - P_1^u = \tau.$$

Demand and supply are written in calibrated constant-elasticity form:

$$Q^D = Q_0 \left(\frac{P^c}{P_0} \right)^{-\eta_D}, \qquad Q^S = Q_0 \left(\frac{P^u}{P_0} \right)^{\epsilon_S},$$

where $\eta_D > 0$ is the absolute value of the demand elasticity and $\epsilon_S > 0$ is the supply elasticity. If we define the normalized equilibrium quantity $q \equiv Q_1/Q_0$, then the exact post-policy equilibrium must satisfy

$$q^{-1/\eta_D} - q^{1/\epsilon_S} = \frac{\tau}{P_0}.$$

That equation is the core of the exercise. Once q is known, the equilibrium quantity and both prices follow immediately. “Derivation of the Equilibrium Condition” below shows where this condition comes from, and “Numerical Solution and Degree-Level Aggregation” explains how it is solved numerically in the degree-level exercise. The resulting decline in equilibrium international enrollment can then be translated into the number of American students crowded out using the estimated revenue loss faced by universities.

Results

Table A1 reports the degree-level outcomes under the demand and supply elasticities estimated by Clemens (2026) and the fee schedule in the NPRM. Baseline quantity is the annualized pre-policy OPT count in that degree group, which can be read as average yearly entry. Baseline price is the average yearly tuition in that group. Yearly wedge is the annualized fee used in the calculation. Equilibrium quantity and quantity change show how enrollment by international students responds after the fee is imposed. Equilibrium price is the new international student-facing price, while *paid by university*, P^u, is the amount of the wedge absorbed by the institution rather than passed through to the student.

The demand elasticities are Clemens’s size-weighted instrumental-variables estimates of how the nationwide count of international students responds to the price of the degree: −0.60 for master’s and −0.49 for bachelor’s (Clemens 2026, Table 1, column 3). The supply elasticities are his estimates of how universities’ supply of seats for OPT graduates responds to the price they receive: 0.56 for master’s and 0.63 for bachelor’s (Table 5, panel b). The NPRM charges $70,000 for initial OPT and $30,000 for any subsequent OPT, including the 24-month STEM extension, so the total wedge is $100,000 for STEM programs and $70,000 for all others.

The crowd-out rows split the effect on Americans into two pieces. Ext. captures the extensive margin: the number of American students crowded out due to the revenue lost from lower international student enrollment. Int. captures the intensive margin, meaning the number of American students crowded out due to the revenue lost when universities absorb part of the wedge for international students who still enroll. Total adds those two margins for that degree column, and the Total column sums the degree columns. The intersection of the Total row and the Total column gives the number of American students estimated to be crowded out due to the wedge.

Table A1: Degree-level outcomes under Clemens (2026) elasticities and the NPRM fee schedule

	Master’s	**Bachelor’s**	**Total**
Demand elasticity	−0.60	−0.49	
Supply elasticity	0.56	0.63	
Baseline Q	73,095.6	35,027.8	108,123.4
Baseline P	32,166	31,451	
Yr. wedge	45,710	21,308	

Eq. Q	46,569.4	28,509.4	75,078.9
ΔQ	26,526.2	6,518.4	33,044.5
Eq. P	65,347	46,436	
Paid by univ.	12,530	6,323	
Ext.	21,220.9	5,214.7	26,435.6
Int.	14,512.1	4,585.2	19,097.3
Total	35,733.0	9,799.9	45,532.9

Note: Yr. wedge averages the annualized $100,000 STEM and $70,000 non-STEM fees, weighted by equilibrium quantity. Totals may not sum because of rounding.

One useful column for intuition is the master's column. Baseline annual quantity of international students is about 73,096, the baseline yearly tuition is about $32,166, and the annualized wedge averages $45,710 across STEM and non-STEM programs. After the fee, equilibrium quantity of international students falls to about 46,569 and the student-facing price rises to roughly $65,347. Universities still absorb about $12,530 of the wedge per remaining student. In that column, the extensive-margin crowd-out effect is about 21,221, while the intensive-margin effect is about 14,512. The two channels are of comparable size: fewer students arrive, and the students who remain generate less net revenue for the university.

Summed across the two degrees, about 45,500 fewer American students enroll each year. Universities absorb about 28 percent of the wedge and pass the rest through to students. Table A2 reports the same total for other elasticity pairs.

Table A2: Total Americans crowded out across bachelor's and master's programs, by elasticity pair

Demand elasticity	**Supply 0.50**	**Supply 0.80**	**Supply 0.99**	**Clemens supply**
−0.30	34,007.3	28,972.4	27,066.9	32,391.2
Clemens	47,004.7	42,328.1	40,431.7	45,532.9

Note: Clemens's demand elasticities are −0.60 for master's and −0.49 for bachelor's; his supply elasticities are 0.56 and 0.63.

Across the table, the number of Americans crowded out varies materially with the elasticity assumptions: it rises as demand becomes more elastic and falls as supply becomes more elastic. University revenue is hit on two fronts at once. When supply is very inelastic, universities absorb a large share of the wedge on the students who remain. When supply is more elastic, the burden shifts more toward students and the quantity response grows. Those two adjustments move in opposite directions, and over this range the intensive margin shrinks faster than the extensive margin grows.

Table A2 does not include supply elasticities below 0.5. At 0.10 and 0.01, universities would absorb about $24,000 and $28,000 a year on each remaining master's student, well above the $13,735 a year that Clemens (2026, footnote 23) estimates universities net on an international master's student, and Clemens argues that a university would not pay a fee larger than that margin. Across the remaining pairs, the total ranges from about 27,000 to 47,000.
Doctoral students are treated differently in the crowd-out accounting. Following Clemens (2026), they are excluded, because international doctoral education is financed more by universities and research grants than by tuition and so provides little cross-subsidy to domestic students.

Derivation of the equilibrium condition

The derivation is short. Start from

$$Q^D = Q_0 \left(\frac{P^c}{P_0} \right)^{-\eta_D}, \qquad Q^S = Q_0 \left(\frac{P^u}{P_0} \right)^{\epsilon_S}, \qquad P^c - P^u = \tau.$$

At equilibrium, $Q^D = Q^S = Q_1$. Define $q \equiv Q_1/Q_0$. The demand equation implies

$$P_1^c = P_0 q^{-1/\eta_D},$$

and the supply equation implies

$$P_1^u = P_0 q^{1/\epsilon_S}.$$

Substituting both expressions into the wedge condition gives

$$P_0 q^{-1/\eta_D} - P_0 q^{1/\epsilon_S} = \tau.$$

Dividing through by P_0 yields

$$q^{-1/\eta_D} - q^{1/\epsilon_S} = \frac{\tau}{P_0}.$$

That expression shows directly why the wedge can be split between students and universities. If demand is very inelastic, the student-facing price rises sharply. If supply is very inelastic, the university absorbs more of the wedge through a lower retained net price.

Numerical solution and degree-level aggregation

The numerical exercise applies the model within degree-specific tuition bins rather than to one pooled market. The program-level data are SEVIS records of OPT participants in fiscal years 2018 through 2022, aggregated by school, degree level, and STEM designation, with each cell's count of OPT records and average annual tuition and fees.[39] The steps are as follows.
First, tuition is binned in $5,000 increments separately for master's and bachelor's programs, and separately for STEM and non-STEM programs because the fee differs by STEM status. Within each bin, tuition is averaged using the observed program counts as weights. The observed counts are pooled over multiple fiscal years, so the bin-level totals are divided by five before solving the equilibrium in order to convert them into annualized baseline quantities. The wedge is annualized as well: the calculation divides the total wedge, $100,000 for STEM programs and $70,000 for others, by two for master's programs and by four for bachelor's programs.

Second, for each degree–tuition bin and each elasticity pair, the model solves for the normalized equilibrium quantity q. Because the wedge is large relative to many baseline tuition values, the calculation uses the exact nonlinear condition rather than a first-order pass-through

[39] Data available through: Violet Buxton-Walsh and Jeremy Neufeld, OPT Observatory (Institute for Progress, October 2025).

approximation. Numerically, the solution is found on the interval bounded above by $q = 1$ and below by the full-pass-through quantity ratio.

Third, the bin-level solutions are aggregated back to the degree level. Equilibrium quantities are summed across bins. Equilibrium prices are averaged across bins using equilibrium quantities as weights. The resulting degree columns therefore combine within-bin price heterogeneity with a common elasticity pair.

Finally, the crowd-out metrics are built from the degree-level outputs. The extensive-margin component scales the drop in equilibrium quantity. The intensive-margin component scales the revenue loss on the students who still enroll when universities absorb part of the wedge. Both are scaled by 0.8 American students per international student, the ratio Shih (2017) finds at the graduate level, with the revenue loss converted to international-student equivalents at baseline tuition:

$$\text{Ext.} = 0.8\,(Q_0 - Q_1), \qquad \text{Int.} = 0.8\,Q_1\,\frac{P_0 - P_1^u}{P_0}.$$