



### ICE: International Students Prohibited from Online-Only Instruction

Syracuse ♦ Ithaca ♦ New York City

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The new guidance of the U.S. Immigration and Customs Enforcement (“ICE”) issued on July 6, 2020, bans foreign students enrolled in U.S. colleges from returning to or remaining in the United States if their colleges adopt a remote-only instruction model for the fall 2020 semester. The U.S. Department of Homeland Security plans to publish the procedures and responsibilities in the Federal Register as a Temporary Final Rule.

An increasing number of U.S. universities have announced that they will reopen their campuses in the fall but will be conducting online classes. Even with campuses open, international students will be prohibited from studying in the United States under the new guidance. This is a move away from the exceptions introduced during the spring and summer semesters which permitted foreign students studying in the U.S. to take a full online course load as universities moved to online classes, in reaction to the COVID-19 pandemic.

Below is the summary of the guidance applicable to the fall 2020 semester.

Online-Only Instruction. Foreign students whose schools switched to an online-only instruction model may not remain in the United States to take a full online course load. Additionally, the U.S. Department of State will deny visas to students enrolled in schools and/or programs that provide 100% remote instruction in the fall semester. The U.S. Customs and Border Protection will not permit these students to enter the United States. Furthermore, foreign students currently in the United States enrolled in remote-only programs must depart the country or transfer to a school with in-person instruction to remain in lawful status. Students who do not comply with these requirements may potentially face immigration consequences including, but not limited to, deportation.

In-Person Instruction. Eligible foreign students attending universities offering in-person instruction may take a maximum of one class or three credit hours online to remain in lawful status.

Hybrid Classes. Students attending schools offering a combination of online and in-person classes will be permitted to take more than one class or three credit hours online. These schools must certify to SEVP, through the Form I-20, “Certificate of Eligibility for Nonimmigrant Student Status” that the program is not entirely online, that the student is not taking an entirely remote course load for the fall 2020 semester, and that the student is taking the minimum number of online classes required to make normal progress in their degree program. Note that the above exemptions do not apply to F-1 students in English language training programs or M-1 students who may not enroll in any online courses.

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Form I-20 Requirements. Schools are required to update and re-issue I-20 Forms to reflect the changes introduced by the new guidance by August 4, 2020. In addition, schools should update their information in SEVIS within 10 days of the change if they begin the fall semester with in-person classes but are later required to switch to fully remote instruction, or a foreign student changes their course selections and ends up taking an entirely online course load.

Students Engaged in Practical Training. For the fall 2020 semester, continuing F-1 and M-1 students currently in the United States may remain in Active status in SEVIS if they are engaged in approved practical training either as part of a program of study or following completion of a program of study.

Remote Learning from Outside of the United States. For the fall 2020 semester, continuing F-1 and M-1 students outside of the United States, whose schools are only offering remote classes, may remain in Active status in SEVIS if they meet the relevant course of study requirements. Only those students who are enrolled at a school that is offering only remote coursework can engage in remote learning from their home country.

School Reporting Requirements. ICE guidance requires universities that will offer entirely online classes or programs or will not reopen for the fall 2020 semester to complete an operational change plan by July 15, 2020. Certified schools that will not be entirely online but will reopen in the fall must update their operational plans by August 1, 2020 and include whether they will be fully open, operate on a hybrid model or offer online-only classes.

The new guidance has fueled resentment, frustration and uncertainty among students, higher education institutions, business associations and immigration advocates around the United States. American Council on Education issued a statement urging the administration “to rethink its position and offer international students and institutions the flexibility needed to put a new normal into effect and take into account the health and safety of our students in the upcoming academic year.”



Bousquet Holstein immigration group is closely monitoring the developments regarding the new guidance. For questions and/or additional information, please contact:

**Anna Putintseva** · [aputintseva@bhlawpllc.com](mailto:aputintseva@bhlawpllc.com) · **315.701.6372**