



October 8, 2020

Office of General Counsel

International Programs Update and Student Data Reminders

Daniel McCabe

Assistant General Counsel

Part I: Federal Department of Homeland Security (“DHS”) Proposal to Eliminate “Duration of Status”

DHS Proposed Rule

- On September 25, 2020, DHS proposed eliminating “duration of status” for F and J student visa holders.
- DHS would start issuing “2 year” and “4 year” visas instead of duration of status visas.
- Students would need to extend their visas to stay longer, regardless of the length of their course of study.

Restrictions on Four Year Visas

Four year visas would not be available to:

- Students from North Korea, Iran, Sudan, or Syria;
- Students from countries with a “10% overstay rate;”
- Students from countries “at the discretion of DHS;”
- Students participating in a course of study at a school that does not use e-verify. The State of Minnesota does not use e-verify.

Additional Changes

- Reducing F-1 “grace period” from 60 days to 30 days;
- Automatic extension of F-1 status and post-completion OPT, as applicable, until April 1 of the fiscal year for which an H1-B petition is filed;
- Visas of current students in “duration of status” on the future effective date of the future rule would continue, not to exceed four years.

Additional Changes (continued)

- New limits of 24 months of ESL student, 3 programs per student, reverse matriculation to one time;
- Stricter “extension of stay” standards, replacing “normal progress” with three more specific reasons for extensions;
- There are other proposed changes. NAFSA has a good summary at:
<https://www.nafsa.org/professional-resources/browse-by-interest/proposal-replace-duration-status>.

Comment Period

- We may submit a comment coming out against these rules;
- The comment deadline is October 26th;
- Paul Shepherd at the system office has sent out a survey to the International Advisors MS Teams Group on how these new regulations will affect you. Please return responses ASAP.

Part II: Current COVID-19 Guidance

Current Guidance on International Student Visas

- No new guidance for Spring 2021 yet;
- Under the current guidance, current visa holders can continue to stay in status if a school changes from hybrid to online-only;
- Look for updates for Spring 2021 guidance in the coming weeks and months.

Current Guidance on Study Abroad

- Study abroad programs are canceled through Spring 2021;
- You should not make any firm commitments for Summer 2021 or the 2021/2022 school year until you receive guidance from the system office.

Part III: Student Data and COVID-19

First - Resources

- The Office of General Counsel has developed an FAQ regarding recorded lectures in Distance Learning
 - <https://mnsu.sharepoint.com/:b:/s/SO-UG-Educational-Innovations/facdev/ER9H8heSTLtGro9zQsPT37YBzRydgjGxFiF1RdEdtn8V6Q?e=1oM82K>
- The Department of Education has an on-demand webinar on FERPA and Virtual Learning During COVID-19
 - <https://studentprivacy.ed.gov/training/ferpa-and-virtual-learning-during-covid-19-webinar-recording>

Public Data

- The classifications of public and private data DO NOT change when working remotely
- Default rule under MGDPA – Government Data is Public
- Available to inspect upon request
- Examples include contracts, invoices, policies, and most business correspondence
- Data Classification: Low
- It becomes more important than ever to store and maintain public data in an easily accessible, well organized fashion.

Private Data

- Certain data sets are private under the MGDPA/FERPA
- Data Classification: Restricted or Highly Restricted
- Private means accessible only:
 - to data subject
 - for work related purposes
 - to third parties (who are not the data requestor themselves) if:
 - Subject gives consent or;
 - Appropriate legal authority, such as a court order

Identifying Educational/FERPA Data

- "Educational Data" means (almost) all data relating to a student.
- Educational Data is generally private data. This means that it cannot be disclosed without the student's written consent unless an exception applies.
- Educational Data remains private after a student is no longer enrolled due to graduation, transfer, etc.
- Educational Data does not include data collected after a student leaves the college (e.g. alumni data).
- "Directory Data" is public, unless a student asks that it remain private.

Zoom and FERPA

- FERPA does not allow a student to remain anonymous in the classroom.
- The System's contract with Zoom limits what Zoom can do with the recordings to remain FERPA complaint.
- No system employee (faculty, staff) should share the videos outside the class itself.
- If an individual faculty member wants to privatize student identities, Zoom allows them to do so. This is optional.

Directory Data

- Public data under the MGDPA.
- Each campus has their own definition for Directory Data and Limited Directory Data.
- Learn your campus' definition.

Exceptions to Private Data Rules

- “School Officials” (including designated contractors)
- Transfer exception
- Certain Federal or State programs
- Financial aid exception
- Accreditation
- Health or safety emergency
- Solomon Amendment
- Certain disciplinary proceeding purposes
- Records with no personally identifiable data
- Research exception
- There are other exceptions. If you are not sure if an exception applies, ask the Data Practices Compliance Officer.
- “Test” exception
- Student resident information to local elections boards

Non-FERPA Student Records

- “Sole-Possession” records, which are faculty’s instructional notes, not shared with anyone except substitutes, destroyed at the end of the semester;
- Records created and maintained by the school’s law enforcement division, if there is one;
- Employment records for non-Federal Work Study student employees;
- Alumni records created after graduation.

Internal Data Use – Work Purposes

- You can only utilize non-public data for legitimate work purposes.
- Legitimate Educational Purposes is not all encompassing. For example, the Financial Aid Office may have a legitimate interest in student financial records, but a student's academic advisor may not. This is situation specific.
- Be extra careful with your home space. For example, do not let family members view private data, including student data.

Record Retention and Storage

- Government data must be kept in a manner that is readily accessible for convenient use.
- Files should be well organized with easily understood labels.
- Follow record retention policies. HR, Finance, and Facilities records fall under Statewide General Schedules, and campuses typically have their own retention schedules for other documents.
- In addition there is a requirement to maintain a “data inventory.” This is separate from System Office IT’s data classification project.

Data Breaches

- The MGDPA requires notice to affected individuals of a breach of security (unauthorized access) for
 - any private or confidential data (not just SSN or financial information)
 - in any medium (not just computerized).

E.g., lost or stolen laptop containing student program data.

- **Contact your supervisor or campus DPCO if you believe you have a possible security breach situation.**
 - OGC will assist in determining whether notice is required, how it must be done and other details.

THE FEDERAL DEPARTMENT OF EDUCATION NOW REQUIRES SAME-DAY NOTIFICATION OF DATA BREACHES.

Consequences of Violations

- A violation of the Data Practices Act could result in:
 - Court order for corrective action
 - Damages to data subject
 - A violation of Section 13.32 (FERPA) could result in sanctions by the Department of Education

Questions & Answers

- Please Chat in your questions to the host or the panelists.

Contact Information

Daniel G. McCabe

Assistant General Counsel

Office of the General Counsel

Minnesota State

30 East 7th Street, St. Paul, MN 55101

o: 651-201-1833 | f: 651-296-6580 | www.minnstate.edu

Please take a few minutes to take our survey!