

GMS Flash Alert

Immigration Edition

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United States - Trump Administration Rescinds Latest F-1 & M-1 Student Directive

On July 15, 2020, U.S. Immigration and Customs Enforcement (ICE) rescinded its July 6, 2020 directive, prohibiting F-1 and M-1 international students from remaining in the United States if their full course load will be conducted online for the Fall 2020 semester.¹ As a result of the rescission of the July 6 directive, ICE will continue to apply the temporary measures it adopted in March 2020 in response to the COVID-19 pandemic, which allows F-1 and M-1 students to take more online courses than normally permitted while continuing to maintain their nonimmigrant status.²

WHY THIS MATTERS

As the July 6 ICE directive restricts F-1 and M-1 students from taking their full course-load online, a large number of international students would have had to make arrangements to enroll in in-person classes for the Fall 2020 semester before the August 4 deadline, or plan to depart the United States.

The rescission of the ICE directive means that U.S. universities and international students may continue to benefit from the March 2020 guidance, which implemented a temporary exemption permitting students currently in the U.S. to take more online courses than normally allowed for the purposes of maintaining their F-1 and M-1 nonimmigrant status. At this time, it is unclear whether international students who are overseas and who have made plans to study in the United States for the Fall semester would be granted entry visas to take online course-work.

Background

Under current regulations, international students on F-1 and M-1 visas enrolled in academic programs are not allowed to take more than one class or three credit hours online per semester. Due to the COVID-19 pandemic, ICE's Student and Exchange Visitor Program (SEVP) instituted a temporary exemption in March 2020, permitting international students to take more online courses than normally allowed, while still maintaining a full course-load. International students must maintain a full course-load in order to remain compliant with the conditions of their F-1 and M-1 nonimmigrant status.

On July 6, 2020, ICE announced that foreign students on F-1 and M-1 visas attending schools operating entirely online will not be permitted to remain in the United States for the Fall 2020 semester. The ICE announcement directed

international students who are currently in the United States and who will be enrolled in online programs for the Fall 2020 semester to either depart the country or transfer to an educational institution operating with in-person instruction.

In response to the ICE directive, Harvard University and the Massachusetts Institute of Technology (MIT) filed a lawsuit against the Department of Homeland Security (DHS) and ICE in federal court, citing the directive would prevent many of their international students from remaining in the country while studying online.³ The Harvard/ MIT suit seeks a temporary restraining order and permanent injunctive relief to prevent the government from enforcing the July 6 directive. A coalition of U.S. states have filed a lawsuit challenging the ICE directive as well.⁴

Latest Update

During a July 14 hearing for the Harvard/MIT suit in Federal District Court, ICE announced its intention to withdraw its July 6 directive and a return to the March 2020 policy which permitted students to take more online courses than normally allowed for the purposes of maintaining F-1 and M-1 nonimmigrant status in the United States.

KPMG NOTE

While ICE's July 14 announcement comes as a relief to many F-1 and M-1 students currently studying the U.S., future immigration restrictions on F-1 and M-1 students cannot be ruled out at this time.

KPMG LLP Law in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

1 For prior coverage on U.S. Immigration and Customs Enforcement's (ICE) directive, read our [July 10, 2020](#) issue of *GMS Flash Alert*. To read the ICE announcement of the July 6th directive, [click here](#).

2 To review ICE's guidance on temporary measures in effect for F-1 and M-1 foreign students due to the COVID-19 pandemic, [click here](#).

3 The complaint filed by Harvard University and the Massachusetts Institute of Technology can be found [here](#). *(Note that this is a 3rd party (non-governmental, non-KPMG) website. Providing this link does not represent an endorsement of this website by KPMG.)*

4 D. Arkin, "17 States Sue Trump Administration Over Rule That Takes Visas From International Students," NBC News, published online on July 13, 2020, is available [here](#). *(Note that this is a 3rd party (non-governmental, non-KPMG) website. Providing this link does not represent an endorsement of this website by KPMG.)*

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