Niskanen Center

David J. Venturella
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street SW
Washington, DC 20536-5901

RE: DHS Docket No. ICEB-2026-0100, Optional Practical Training Fees

Dear Acting Director Venturella:

I write on behalf of the Niskanen Center to provide comments on the U.S. Immigration and Customs Enforcement ("ICE") and Department of Homeland Security ("DHS") Notice of Proposed Rulemaking (NPRM), Optional Practical Training Fees, 91 Fed. Reg. 64466 (proposed Oct. 8, 2026) (to be codified at 8 C.F.R. pt. 214) (the "Proposed Rule").

The Niskanen Center is a nonprofit public policy organization that advances a vision of American governance informed by ideas from across the ideological spectrum. We advocate for a government that provides social insurance and essential public goods, fosters market competition and innovation, invests in state capacity, and does not impede productive enterprise. We are committed to the principles of liberal democracy and an open society.

We also recognize that immigration is central to the United States' economic, civic, and cultural strength. Immigration has helped the country attract hardworking and talented individuals from around the world, driven unprecedented American innovation and dynamism, and filled critical gaps in the domestic workforce.

Our legal immigration system, however, is in need of reform. While we continue to encourage bipartisan legislation to modernize the entire American immigration system, we welcome the opportunity to comment on the proposed fees related to Optional Practical Training.

I. Shortcomings of the Proposed Rule

The Proposed Rule would establish a $70,000 fee per international student for an initial Optional Practical Training (OPT) recommendation and a $30,000 fee per international student for a subsequent OPT recommendation, including STEM OPT

recommendations. The NPRM states that these fees would "combat fraud, strengthen the integrity of the immigration system, and protect U.S. workers."[1] Yet, it merely establishes a fee system and does not include any improvements to the administration of or substantive eligibility requirements for OPT. Additionally, because ICE lacks the authority to retain the funds collected, the fees cannot be used to expand or bolster the OPT program's existing oversight mechanisms unless Congress intervenes.

Without substantive program improvements or investments in oversight, the Proposed Rule is unlikely to be effective at reaching any of its stated goals and is likely to have unintended consequences for the Americans it claims to protect.

The Proposed Rule does diagnose a real problem though. While the U.S. has benefited tremendously from the current international student program,[2] targeted reform could improve the program. Like other work authorization programs, OPT faces increased pressure as decades of Congressional inaction have left our legal immigration system frozen in time and inadequate for current labor market needs.

The shortcomings of the OPT program exacerbate larger pressures on the legal immigration system and are, to some extent, correctly identified in the Proposed Rule. For example, the Proposed Rule highlights that many OPT participants are exempt from Federal Insurance Contributions Act (FICA) taxes.[3] Initial program decisions are largely outsourced to school officials, and STEM OPT employer attestations do not require documentation or verification unless and until there is a site visit or other investigative action taken by DHS.[4]

Despite the accurate identification of these weaknesses, the Proposed Rule would do nothing to change them. Under the Proposed Rule, the same participants would be exempt from FICA taxes, school officials would retain their broad authority as the program's initial gatekeepers, and STEM OPT employers would still be able to make attestations without providing evidence.

While the Proposed Rule says that DHS may address other programmatic issues later, it also says, multiple times, that without the fees, DHS may have to shut down the program entirely. This is rather illogical since even if implemented, the fees will not help fund the oversight by which the agency claims to be overburdened since ICE cannot retain the funds.

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[1] Proposed Rule at 64566.
[2] Mirka Martel and Jonah Kokodyniak, "Outlook 2030 Brief: Expanding International Study to the U.S.," Institute of International Education (May 2025), page 1, https://iie.widen.net/s/mftxs8tqqc/outlook-2030_expanding-intl-study_2025.
[3] Proposed Rule at 64573-74.
[4] *Id.* at 64573-74.

Furthermore, the Proposed Rule does not aim to deter bad actors from exploiting program weaknesses by increasing penalties or even increasing the likelihood of detection. Instead, the Proposed Rule relies entirely on deterring participation by raising the direct costs of the program alone—impacting good faith actors and bad ones alike.

The NPRM also claims that the fee is necessary to prevent OPT from being used to circumvent the H-1B, thereby justifying the proposed fees' similarity to the previously proposed H-1B fee (*see* Fee for Certain H-1B Petitions, 91 Fed. Reg. 54817, proposed Aug. 25, 2026).[5] However, this justification fails on its own rationale because the similarity of the fees will likely make the OPT program even more attractive as an H-1B workaround, not less.

This is because although it is in need of reform, the H-1B program has specific requirements for employee wages and requires multiple agencies to review the position and employer for program eligibility. If an employer is acting in bad faith, the OPT program would still be an attractive alternative, especially if the Proposed Rule is enacted as written. The amount they pay would be nearly identical, yet using OPT would circumvent the lottery and prevailing wage requirements and have fewer, if any, evidentiary requirements. In that instance, the fee may not even have the deterrent effect that the proposal relies on.

II. Practical Effects of the Proposed Rule

The Proposed Rule states that it has considered the potential negative impacts on universities, employers, and international students and still considers the necessity of the Proposed Rule great enough to overcome these consequences.[6] The Proposed Rule underestimates the impacts on those populations though.

For example, the Proposed Rule states that "only about 20 percent of F-1 nonimmigrants" participated in OPT in 2024, downplaying the importance of OPT availability in attracting the best talent to American universities.[7] Measuring OPT participation by looking at a single year of OPT authorizations as a proportion of the whole F-1 international student population, including students just starting their studies, misinterprets the data.

[5] *Id.* at 64573.
[6] *Id.* at 64577-78.
[7] *Id.* at 64578.

Because most individuals on an F-1 international student visa are actively enrolled in programs of study, a more relevant metric is the share of graduates who participate in OPT. That figure is distinct from the one relied on in the NPRM.

According to the Institute for Progress's analysis of OPT and STEM OPT data, "56% of all international graduates from 2006-2022 used OPT."[8] Some populations had even higher participation rates. In 2022, a whopping 76 percent of international graduates of STEM PhD programs participated in OPT.[9]

An even greater shortcoming in the Proposed Rule's analysis is its failure to consider the implications of the Proposed Rule on American students and workers. Barriers to OPT participation will have downstream effects on international student enrollment, and Americans will likely end up paying the price.

As international students are ineligible for most types of financial aid, their presence, and payment of full tuition, in the American higher education system actually increases domestic enrollment.[10] When they do not attend U.S. schools, there are fewer seats available for Americans. At the University of North Texas, where international students make up less than 20 percent of the overall student population, a drop in international student enrollment led to a 44 percent increase in its projected budget deficit for FY 2026 and resulted in the closure of 74 academic programs.[11] The closure of these programs affects not only foreign students but also any American who may have wanted to enroll. Northwestern University implemented a hiring freeze and eliminated 425 staff positions, in part due to international student enrollment declines.[12] CollegeCuts tracks program cuts, closures, and layoffs at U.S. colleges and universities across the country; it recorded 148 actions in 2026 alone.[13] The downstream effects of these changes on American students and their educational opportunities are not adequately accounted for in the Proposed Rule.

III. Alternative Recommendations

DHS should withdraw the Proposed Rule and instead consider targeted reforms that can deter bad actors from abusing the system without jeopardizing the valuable

[8] "OPT Observatory," Institute for Progress, https://optobservatory.org/.
[9] *Id*.
[10] Kevin Shih, "Do international students crowd-out or cross-subsidize Americans in higher education?," *Journal of Public Economics* (December 2017) Volume 156, pages 170-184, https://www.sciencedirect.com/science/article/abs/pii/S0047272717301676.
[11] "We Are Big and Bold," University of North Texas, https://www.unt.edu/allabout/big-bold.html.; "Aligning Our Budget," University of North Texas, https://www.unt.edu/budget-updates/index.html.; "Academic Programs Update," University of North Texas, https://www.unt.edu/budget-updates/academic-programs-update.html.
[12] "Reduction in Northwestern's Workforce," Northwestern University (July 29, 2025), https://www.northwestern.edu/leadership-notes/2025/reduction-in-northwesterns-workforce.html.
[13] "All Actions Database," CollegeCuts,https://college-cuts.com/cuts, accessed November 9, 2026.

educational opportunities and talent pipelines of Americans and rule-following international students alike.

Though there are some fixes that can be implemented through regulation or agency policy, Congressional action will ultimately be necessary to address the shortcomings highlighted in the NPRM. DHS should encourage Congress to take action on these issues.

The U.S. will eventually need broader legal immigration reform to clarify how and when we retain certain valuable international graduates. But, in the meantime, Congress can and should rectify the shortcomings of the OPT program as it exists today.

Earlier this year, the Niskanen Center published four key recommendations to improve international student work authorization programs, including OPT, STEM OPT, and Curricular Practical Training (CPT).[14] Niskanen argues that Congress should rectify the FICA tax loophole, limit CPT eligibility, require participating employers or universities to file the I-983 STEM OPT Training Plan along with a reasonable fee for agency review, and implement annual F-1 maintenance fees to fund scholarships for American students.[15]

Each of these proposals is targeted, aims to make real improvements to the programs' integrity and credibility, and limits the compliance costs on those who use the system in good faith. The Proposed Rule lacks the same precision and should be withdrawn in favor of proposals like Niskanen's.

IV. Conclusion

The Proposed Rule identifies genuine weaknesses in the OPT program's current design. But its approach is both overbroad by raising costs across-the-board and insufficient by not creating substantive improvements to the program, relying instead on outsourced program vetting by assuming, without justification, that universities will increase scrutiny on their own. The Proposed Rule also assumes, without justification, that the deterrent effect of the fee will be sufficient to reduce administrative strain on DHS despite insufficient evidence that the fee will actually reduce the prevalence of bad actors in the program.

Rather than enacting this exorbitant fee and risking harm to American students by decreasing their opportunities at colleges and universities, DHS should withdraw the

[14] Cecilia Esterline, "Reforming the international student work authorization programs," Niskanen Center (February 4, 2026), https://www.niskanencenter.org/reforming-the-international-student-work-authorization-programs/.
[15] *Id*.

Proposed Rule and work with Congress to create and implement structural fixes to the international student work authorization programs.

Thank you for your consideration and the opportunity to provide feedback on the Proposed Rule. If you have any questions or need additional information, please do not hesitate to contact me at cesterline@niskanencenter.org.

Sincerely,
Cecilia Esterline
Senior Immigration Policy Analyst