U.S. Chamber of Commerce

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Regulatory Affairs Unit
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street SW
Washington, DC 20536-5901

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

Dear Officer:

The U.S. Chamber of Commerce ("the Chamber") submits the following comments in response to the Notice of Proposed Rulemaking issued by the Department of Homeland Security ("DHS" or "the Department"), U.S. Immigration and Customs Enforcement ("ICE"), that would impose a fee of $70,000 for initial Optional Practical Training ("OPT") and $30,000 for each subsequent OPT extension (the "Proposed Rule").[1]

As a threshold matter, the Chamber shares DHS's objective to eliminate fraud and abuse in OPT and does not minimize the seriousness of the misconduct the Department has documented.[2] However, a flat fee of $100,000 or more on the starting point of America's talent pipeline is not a fraud-prevention measure. It is a prohibitive tax that will fall almost entirely on the overwhelming majority of students, schools, and employers who are not engaged in fraud. Moreover, the revenue through this tax is not directed to the program-integrity activities DHS invokes to justify it.

As explained below, the Proposed Rule rests on an internally inconsistent economic analysis, is untethered from the actual cost of administering OPT, exceeds DHS's statutory fee authority, ignores obvious and far less burdensome alternatives, and would inflict substantial and lasting harm

[1] Optional Practical Training Fee, 91 Fed. Reg. 64,566 (proposed Oct. 8, 2026) (to be codified at 8 C.F.R. pt. 214). Citations herein are to the Federal Register version, 91 Fed. Reg. 64,566.

[2] 91 Fed. Reg. at 64,570–71 (describing fraud investigations, including more than 10,000 OPT participants working for "highly suspect employers").

on American innovation, advanced manufacturing competitiveness, and economic growth. DHS should withdraw the Proposed Rule and pursue more effective, evidence-based approaches to preventing fraud that are tailored to identified risks and supported by the record.

Discussion

I. The Proposed Rule Would Impose a Tax, Not a Cost-Based Fee.

DHS does not have authority to implement the "fee" contemplated by the Proposed Rule. Under the Proposed Rule, institutions eligible to admit international students must pay a $70,000 fee before an authorized school official may enter the OPT recommendation in DHS's Student and Exchange Visitor System ("SEVIS"), plus another $30,000 for each eligible extension thereafter.[3] Because the charge applies separately at each OPT stage, a single student who completes a pre-completion internship, then obtains post-completion practical training and an extension, may be subject to the same fee multiple times.[4]

DHS lacks the authority necessary to impose the fee at issue here. In particular, the Immigration and Nationality Act ("INA") authorizes DHS to recover only "the full costs of providing" immigration adjudication services.[5] However, the fee here bears no relationship to actual program costs. DHS has not applied the activity-based costing methodology it used in prior fee rulemakings (2001, 2002, 2004, 2008, and 2019) involving OPT, nor has it explained how a flat $70,000/$30,000 fee corresponds to any actual cost of administering, monitoring, or investigating OPT.[6] Furthermore, it has not explained why those particular figures would advance the agency's stated objectives, or why less restrictive alternatives would not suffice. Instead, DHS benchmarks the fee to the unrelated H-1B context.[7]

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[3] 91 Fed. Reg. at 64,568–69 (describing the SEVIS-entry payment mechanism).

[4] 91 Fed. Reg. at 64,567–68.

[5] 8 U.S.C. § 1356(m).

[6] *See* IFP Report, supra (describing DHS's historical use of Activity-Based Costing to set OPT fee in 2001, 2002, 2004, 2008, and 2019 rulemakings, a methodology abandoned without explanation in this NPRM).

[7] 91 Fed. Reg. at 64,569 (benchmarking the proposed OPT fee to H-1B fee levels).

DHS's lack of cost-recovery justification is unsurprising because the stated purpose of the fee is not to recovery costs, but, rather, reduce OPT participation, discourage perceived abuse, protect U.S. workers, and ease investigative burdens on the agency. In other words, the fee's purpose is to reshape the size and operation of the OPT program. DHS says that it is promulgating the fee under INA § 214(a)'s authority to prescribe the "time and conditions" of nonimmigrant admission, citing *Washington Alliance of Technology Workers v. DHS* as recognizing the agency's authority to establish and regulate practical training for F-1 students.[8] The "*WashTech*" decision upholds DHS's power to define the scope, duration, and conditions of OPT, but does not endorse unprecedented six-figure fee as a tool to substantially suppress participation.

Regardless of the authority upon which DHS relies, this fee amounts to unlawful taxes. For example, DHS directs the revenue to the Treasury general fund rather than to program administration, oversight, or anti-fraud enforcement.[9] Indeed, the only recent precedent for a fee this size is the Administration's $100,000 H-1B petition charge, imposed by proclamation in September 2025 and struck down in June 2026 as an unlawful tax that the Executive Branch had no authority to levy without Congress.[10] A fee untethered from cost and aimed at discouraging program use is not a user fee but a general-revenue tax, one the Independent Offices Appropriations Act and longstanding user-fee principles do not permit.[11]

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[8] 91 Fed. Reg. 64,567 (citing INA § 214(a), 8 U.S.C. § 1184(a)); Wash. All. of Tech. Workers v. U.S. Dep't of Homeland Sec., 50 F.4th 164, 180–82 (D.C. Cir. 2022).

[9] 91 Fed. Reg. at 64,572 (fee proceeds deposited to the general fund rather than dedicated to DHS oversight); *see also Learning Resources, Inc. v. Trump*, 146 S. Ct. 628, slip op. at 14-16 (2026) ("Court concluding that the statutory term "regulate" does not "include[] the power to tax[.]").

[10] Proclamation No. 10973, Restriction on Entry of Certain Nonimmigrant Workers, 90 Fed. Reg. 46,027 (Sept. 24, 2025); *State of California v. Mullin*, No. 1:25-cv-11231, *slip op.* (D. Mass. June 8, 2026), stay denied, No. 26-1320 (1st Cir. July 24, 2026) (relying in part on *Learning Resources, Inc. v. Trump*, *supra,* for the proposition that Congress must clearly delegate taxing authority to the Executive).

[11] 31 U.S.C. § 9701; *Nat'l Cable Television Ass'n v. United States*, 415 U.S. 336, 340–41 (1974).

II. DHS's Fraud-Deterrence Rationale Is Internally Inconsistent and Unsupported by the Record.

DHS justifies the fee as a way to deter fraud and create "a smaller pool of participants" so that schools will "only recommend the most promising students."[12] Yet DHS's own analysis assumes the opposite. In every modeled scenario, OPT participation among science, technology, engineering and mathematics ("STEM") students remains unchanged while only non-STEM participation declines.[13] If DHS truly believes the fee will not affect STEM graduates' behavior, it cannot simultaneously say the fee will reduce fraud, shrink the STEM participant pool, and free investigative resources for the very population it is meant to monitor. The NPRM does not explain why a fee of $100,000 or more is necessary for a population DHS predicts will be unaffected.

In fact, independent evidence points the other way. One economic study estimates that a fee of this magnitude could reduce OPT participation by 23% to 99%, depending on who bears the cost.[14] A contemporaneous survey found that STEM OPT-eligible students' willingness to remain in the United States would fall by 40% to 82% under similar fee structures.[15] DHS has recent evidence of this effect. Following the September 2025 proclamation imposing a $100,000 charge on certain H-1B petitions, initial consular filings fell by more than 90%.[16] DHS offers no reason why OPT participants would respond differently.[17]

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[12] *See* Institute for Progress, DHS's $100k Fee on STEM OPT Would Break High-Skilled Immigration (Oct. 12, 2026), quoting NPRM (hereinafter "IFP Report").

[13] *Id.* ("DHS acknowledges 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.").

[14] 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 (Sept. 2026), discussed in IFP Report, *supra.*

[15] Institute for Progress, International Student Survey on OPT and Experiential Learning (Oct. 6, 2026), discussed in IFP Report*, supra.*

[16] 91 Fed. Reg. 54,836 (technical appendix to Fee for Certain H-1B Petitions NPRM, documenting a 91.2% decline in consular H-1B receipts following the September 2025 proclamation).

[17] IFP Report, *supra* (describing DHS's rationale).

The NPRM likewise provides no support for its claim that schools will pay $100,000 for three years of STEM OPT because it offers a better annual value than $70,000 for one year of non-STEM OPT. Research indicates universities typically net only about $13,700 annually on an international master's student and about $23,000 on an international bachelor's student.[18] The proposed STEM OPT fee would far exceed the total margin schools earn on many students, and DHS identifies no mechanism by which institutions could recoup the fee from employers. DHS's assumption that institutions can absorb or pass through such costs without reducing enrollment or OPT recommendations is unsupported.

III. DHS's Own Cost-Benefit Analysis Undermines the Rule's Stated Rationale.

Section VII.A of the NPRM further undermines the premise that the proposed $70,000 and $30,000 fee levels reflect reasoned decision-making. DHS acknowledges substantial uncertainty regarding how schools, employers, and students will respond to the proposed fee and projects a broad range of potential outcomes depending on those behavioral responses.[19] Yet DHS never explains why it selected the particular fee levels of $70,000 and $30,000 rather than lower amounts.

If DHS cannot predict reliably how regulated parties will respond to the proposed fee, it cannot reasonably claim that those amounts are appropriately calibrated to achieve the agency's stated objectives. The NPRM also does not explain why alternatives would be insufficient. Instead, it simply asserts that the fee will advance DHS's goals without identifying any methodology, analysis, or evidence demonstrating why these particular figures are necessary or appropriate.

This omission is especially notable given DHS's access to extensive SEVIS participation and compliance data. The NPRM contains no explanation of how those data led DHS to conclude that $70,000 and $30,000 are the appropriate fee levels. Rather than connecting the chosen fee to a discernible standard or evidentiary basis, the NPRM merely announces the figures and assumes they

[18] Michael A. Clemens, Taxes on International Students, supra, discussed in IFP Report, *supra.*

[19] 91 Fed. Reg. at 64590 (estimating annualized costs ranging from $32 million to $8.2 billion and 10-year costs ranging from $275 million to $69.9 billion, reflecting substantial uncertainty regarding the rule's projected impacts).

will accomplish the agency's objectives. The Administrative Procedure Act ("APA") requires more than unexplained line-drawing. DHS must provide a reasoned explanation for selecting these particular fee amounts and demonstrate why they are necessary to achieve the goals the agency has identified.

Finally, the proposal fails to address the substantial reliance interests of students, institutions, and employers who have structured enrollment, investment, staffing, and hiring decisions around the existing OPT framework,[20] and does not explain why less burdensome alternatives would not adequately address its stated concerns, raising further concerns under the Regulatory Flexibility Act in addition to the APA concerns.[21]

IV. The Fee Would Harm U.S. Workers and Economy.

DHS assumes OPT participants take jobs from American workers. The evidence suggests otherwise. OPT grows the U.S. STEM pipeline and the jobs that come with it. A 2026 study found the STEM OPT extension among international students actually increased U.S. students earning STEM degrees.[22] A second study tied the extension to more skilled workers, more new businesses, and more demand for U.S. high-skilled labor, consistent with research linking OPT to greater innovation and higher earnings for American college graduates.[23] Highly skilled workers often enable broader job growth by helping companies innovate, expand, and invest in the United States. Their contributions support a range of complementary roles across the economy, creating opportunities for American workers at every skill level.

Sectors hit the hardest by this proposed fee include semiconductors and artificial intelligence, where international graduates earn 50% to over 70% of the degrees awarded by U.S. universities.[24] A $100,000-plus upfront cost for a

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[20] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016*); Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020).

[21] 5 U.S.C. §§ 601–612.

[22] CEPR Discussion Paper No. 21224, The Effects of the STEM OPT Extension on Local Labor Markets (2026).

[23] Niskanen Center, OPT Participation, Innovation, and Regional Earnings (2026).

[24] Nat'l Ctr. for Sci. & Eng'g Statistics, Nat'l Sci. Found., The State of U.S. Science and Engineering 2024.

university when a graduate is hired is simply unworkable.[25] That policy undercuts the tens of billions of taxpayer dollars the nation has already committed to reshoring semiconductor manufacturing and winning the AI race.[26] The real bottleneck in these industries is people, not capita. A six-figure tax on STEM graduates does not bring jobs home, it sends them to Canada, the EU, and Japan, with the same risk spreading to biotech, clean energy, and other critical industries.[27]

The NPRM does not provide any figures to support its hypothesis. Independent economists estimate the fee could cost the U.S. economy $110 billion to over $1 trillion a year in lost GDP within a decade, against the $39 billion and 416,000 American jobs international students already support today.[28] International students also subsidize American classmates. For every ten additional international graduate students, roughly eight more American students enroll.[29] Pricing out international students could mean 46,000 fewer American students in college every year.

The jobs and companies at stake are not hypothetical. Immigrants have founded or co-founded 59% of America's privately held billion-dollar companies, 183 of them by former international students, together worth $3.5 trillion—many built after their founders came up through OPT.[30] Nearly half of

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[25] Maggie Eastland & Lorelei Smillie, Chip Worker Shortfall Endangers US Factory Revival, Bloomberg (July 8, 2026).

[26] CHIPS and Science Act, Pub. L. No. 117-167, 136 Stat. 1366 (2022) (authorizing approximately $280 billion in funding, including $39 billion in semiconductor manufacturing incentives and $11 billion for advanced semiconductor R&D).

[27] CHIPS Act Faces Semiconductor Talent Shortage Despite $500 Billion Investment, Fortune (June 9, 2024).

[28] *See* IFP Report, supra (noting DHS "does not quantify this effect and only considers the decline in OPT participation of non-STEM students").

[29] Kevin Shih, Do International Students Crowd Out or Cross-Subsidize Americans in Higher Education?, Ass'n for Educ. Fin. & Pol'y (AEFP) Live Handbook (summarizing research finding that every 10 additional international graduate students were associated with approximately 8 additional domestic students because universities expand enrollment capacity and resources).

[30] Stuart Anderson, International Students and Billion-Dollar Startup Companies (Nat'l Found. for Am. Pol'y 2025).

America's top scientists and innovators were born abroad, many after first arriving here as students on the very OPT pathway this rule would tax away.[31]

V. The Proposed Rule Mischaracterizes the OPT-to-H-1B Talent Pipeline.

DHS suggests that students displaced by the OPT fee can simply "pursue appropriate channels to obtain employment in the United States other than the OPT, such as through the H-1B visa following graduation."[32] That suggestion misstates how the two programs interact. OPT and the H-1B program function in sequence, not as substitutes, as 82% of international STEM graduates who remain to work in the United States secure OPT before obtaining an H-1B since the H-1B quota is far below the actual needs of the labor market, and U.S. employer have to enter into a "lottery" for a chance to obtain a visa for an employee.[33] Moreover, the H-1B lottery runs each March for an October 1st start date. A student without OPT who graduates in the spring faces a work authorization gap of several months to over a year (if her employer does not "win" the lottery). In reality, OPT is not a back door around the H-1B program; rather, it is a necessary precursor to an employment-based visa.

Furthermore, DHS has separately proposed a $103,265 fee on cap-subject H-1B petitions, and the White House extended the $100,000 fee for consular-processed H-1B visas.[34] If all proposals take effect, a single STEM graduate could face cumulative federal fee of $303,265 or more, in addition to existing application fees, simply to work lawfully in the United States after graduation. Stacking a $70,000 to $100,000-plus OPT fee on top of other H-1B visa fees does not reduce fraud nor recover any cost DHS has identified; rather, it prices American-educated engineers and scientists out of the one visa pathway Congress has authorized, at the moment they are most qualified and needed.

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[31] Nat'l Sci. Bd., The State of U.S. Science and Engineering 2026 (2026); Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., Integrated Postsecondary Education Data System (IPEDS), Completions Survey (latest available year).

[32] 91 Fed. Reg. 64,578 (proposed Oct. 8, 2026) ("F-1 nonimmigrants may pursue appropriate channels to obtain employment in the United States other than the OPT, such as through the H-1B visa following graduation . . .").

[33] Stuart Anderson, The Importance of Optional Practical Training for International Students and U.S. Employers, Nat'l Found. for Am. Pol'y (Apr. 2024).

[34] 91 Fed. Reg. 54,817 (proposed Aug. 25, 2026); Proclamation No. 10973, Restriction on Entry of Certain Nonimmigrant Workers (Sept. 19, 2025), extended through Sept. 21, 2027 by Presidential Proclamation of Sept. 18, 2026.

The predictable result is not that these graduates find other domestic channels, but that they take degrees the United States helped subsidize and build their careers, and companies abroad, strengthening U.S. competitors in the global innovation race.

VI. The 30-Day Comment Period Is Inadequate to the Rule's Complexity and Economic Significance.

DHS is allowing only 30 days to comment on this Proposed Rule, which has exceptionally significant consequences for U.S. economic competitiveness and innovation.[35] On October 14, 2026, the Chamber requested an additional 60 days to review and submit its comments.

The proposal could reduce America's GDP by hundreds of billions of dollars annually. Executive Order 12,866 contemplates a 60-day comment period as the norm for economically significant rules. The issues raised by this rule are unusually complex: the proposal interacts with other recently proposed and existing immigration-related fees, including substantial new charges affecting H-1B employers and workers; it raises questions regarding DHS's statutory authority; and it relies on economic and behavioral assumptions that warrant scrutiny. The reach of this impact extends to universities, employers, students, researchers, and state and local economies throughout the country. Meaningful analysis of the rule's economic impacts, labor-market effects, and legal foundations cannot reasonably be completed within 30 days.

The U.S. Chamber renews that request here for an additional 60 days for the stakeholders to submit their comments.

[35] 91 Fed. Reg. 64,566 (comment deadline of Nov. 9, 2026; PRA-specific comments due Dec. 7, 2026.

Conclusion

The Chamber strongly supports DHS's efforts to detect, investigate, and deter fraud, abuse, and other misconduct within the OPT program and recognizes the government's compelling interest in preserving the program's integrity. Enforcement, however, should be directed at those who violate the rules, not the overwhelming majority of students, universities, and employers that comply with them. A $100,000 fee is not a targeted anti-fraud measure; it is a broad penalty imposed on lawful participants who use OPT as intended, untethered from any cost basis, internally inconsistent with DHS's own fraud rationale, and unsupported by DHS's own cost-benefit analysis. By making legal participation prohibitively expensive, the proposal would deter high-skilled talent, harm American universities and employers, and weaken U.S. competitiveness while doing little to stop those already inclined to evade the law.

For the foregoing reasons, DHS should withdraw or substantially revise the Proposed Rule and work with affected stakeholders to develop more targeted, evidence-based measures that address identified risks while preserving America's ability to attract, retain, and deploy the scientists, engineers, researchers, and innovators who drive economic growth, technological leadership, and national competitiveness.

Respectfully submitted,



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