

New Regulations about Optional Practical Training (OPT)

On April 8, 2008, the Department of Homeland Security (DHS) published a new rule (effective immediately) which has brought some significant changes to the current OPT regulations. Some of the main features of the new regulations are:

- **17-month post-completion OPT extension for certain STEM degree-holders:** students with US degrees in certain STEM (science, technology, engineering, and mathematics) fields may be eligible to apply for a one-time, 17-month extension of their post-completion OPT, for a total of 29 months of OPT. To be eligible for the extension, the student's employer must be registered in the federal E-Verify system, and agree to report to the DSO when the student is terminated or leaves the job. The student must agree to make periodic reports of his/her address and employer information to the DSO.
- **New OPT filing deadlines:** the I-765 for standard post-completion OPT can be filed up to 90 days before the program end date and up to 60 days after the program completion date, as long as it is filed within 30 days from the date the DSO entered on the OPT recommendation in SEVIS. Form I-765 has been updated (www.uscis.gov/files/form/I-765.pdf) to add a new section 17 for field of study, name of employer, and the employer's E-Verify number for STEM applicants. It also features a new code, (C) (3) (B) for regular post-completion OPT applications.
- **No more H1-B cap-gap:** the new rule automatically extends the duration of status and work authorization of all students on OPT in good visa status who are the beneficiaries of a timely-filed H1-B petition requesting a change of status from F-1 to H-1B and an employment start date of October 1 of the following fiscal year. This extension is granted also to all F-2 dependants. The extension of D/S and work authorization is automatically terminated for if the H-1B petition is rejected, denied, or revoked.
- **Limited periods of unemployment while on OPT:** the new rule has specified that in order to maintain their F-1 status while on OPT, students must be employed. In the 12-month period of post-completion OPT, student may be unemployed for an aggregate of no more than 90 days (if a student receives a STEM extension, he/she may be unemployed for no more than 120 days for the entire 29-month period of OPT).
- **New reporting responsibilities for students on OPT:** students are required to report to the DSO any change in their name or address; the name and address of their employer, and any interruption in employment. There are additional reporting requirements for students with 17-month STEM extensions.
- **All F-1 students currently in the US are subject to these new rules.**

What are STEM degrees? These are degrees awarded by US institutions in the following fields, as defined by their CIP codes:

Actuarial Science. CIP Code 52.1304.

Computer Science Applications: CIP Codes 11.xxxx (*except* Data Entry/Microcomputer Applications, which are CIP Codes 11.06xx)

Engineering. CIP Codes 14.xxxx.

Engineering Technologies. CIP Codes 15.xxxx.

Biological and Biomedical Sciences. CIP Codes 26.xxxx.

Mathematics and Statistics. CIP Codes 27.xxxx.

Military Technologies. CIP Codes 29.xxxx.

Physical Sciences. CIP Codes 40.xxxx.

Science Technologies. CIP Codes 41.xxxx.

Medical Scientist (MS, PhD). CIP Code 51.1401

Specifically *excluded* from the above codes, however, are all CIP codes ending in xx99, which are "catch-all" categories usually designated by "Other" in the CIP lists. Degrees associated with CIP codes ending in xx99 are *not* eligible for the 17-month extension. A full list of CIP Codes is available online at

<http://nces.ed.gov/pubs2002/cip2000/> .

Other requirements for the 17-month STEM extension:

Student must be currently participating in a period of standard OPT, working for a U.S. employer in a job directly related to the student's major area of study.

Student must have successfully completed a bachelor's, master's, or doctoral degree in a field on the DHS STEM Designated Degree Program List, from a SEVIS-certified college or university.

Student must have a job offer from an employer registered with the E-Verify employment verification system.

The student has not previously received a 17-month OPT extension after earning a STEM degree.

The DSO must recommend the 17-month OPT extension in SEVIS, after verifying the student's eligibility, certifying that the student's degree is on the STEM Designated Degree Program List, and ensuring that the student is aware of his or her responsibilities for maintaining status while on OPT.

Student will have to apply for the 17-month extension on Form I-765 with fee (currently \$340).

Students who timely file an application for the 17-month OPT extension will be able to continue employment while the extension application is pending, until a final decision on the I-765 or for 180 days, whichever comes first.

The employer must agree to report the termination or departure of the student to the DSO or through "any other means or process identified by DHS." An employer must consider a worker to have departed when the employer knows the student has left employment, or if the student has not reported for work for a period of five consecutive business days without the employer's consent.

What is E-Verify? E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social

Security Administration (SSA). E-Verify is currently free to employers and is available in all 50 states; participation in it is voluntary. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. Currently, less than one percent of all US employers are enrolled in E-Verify. If an employer joins, the employer will have to verify ALL new employees, including US citizens, in E-Verify. An F-1 student seeking to extend his or her OPT by 17 months can only do so if at the time of filing, the student is employed by, or has a job offer with, an E-Verify participating employer. For more information, see www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4ee4be0cbcf90110VgnVCM1000000ecd190aRCRD&vgnnextchannel=2411c9ee2f82b010VgnVCM10000045f3d6a1RCRD

What will happen next?

There are some very essential procedural steps that need to be implemented before schools can begin accepting applications for an extension of OPT under these new rules.

- SEVIS will be updated in the near future to allow schools to recommend extending authorized OPT for an additional 17 months for qualified students
- SEVIS will publish interim instructions to schools so that schools will be able to implement the new procedure for 17-months extensions
- Schools will need to update their processes, procedures, and informational materials to accommodate all the new requirements

More information online:

Text of Interim Final Rule

<http://edocket.access.gpo.gov/2008/E8-7427.htm> (text format, 27 pages)

<http://edocket.access.gpo.gov/2008/pdf/E8-7427.pdf> (pdf file, 13 pages)

Department of Homeland Security Announcement:

www.dhs.gov/xnews/releases/pr_1207334008610.shtm

US Citizenship and Immigration Services Q and A

www.uscis.gov/files/article/OPT_FAQ_4apr08.pdf

NAFSA: Association of International Educators Resource on the Interim Final Rule

http://nafsa.org/regulatory_information.sec/29_month_opt_rule_updates

Thanks to NAFSA: Association of International Educators for providing timely information on the new OPT regulations, which was used for this announcement.