

INFORMATION ON NEW OPT REGULATIONS

On April 8, 2008, DHS published the interim final rule that changes several key aspects of F-1 optional practical training (OPT).

Summary of Key Provisions

• OPT extension to 29 months for STEM students

The 12-month limit on F-1 Optional Practical Training (OPT) will be extended by 17 months, for a total of 29 months. Only students who have STEM degrees (Science, Technology, Engineering, Mathematics) in the following fields will be eligible:

- Actuarial Science
- Computer Science Applications
- Engineering
- Engineering Technologies
- Biological and Biomedical Sciences
- Mathematics and Statistics
- Military Technologies
- Physical Sciences
- Science Technologies
- Medical Scientist (MS, PhD)

Specifically excluded from the above fields are, however, are all majors designated by "Other", for example, Mathematics, Other. Degrees associated with the "Other" designation are not eligible for the 17-month extension.

• Other requirements for 17-month extension

Additional requirements for the 17-month extension include:

- Student must be currently participating in a 12-month period of 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.
 - 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.
- **H-1B cap-gap extension of D/S and work authorization until October 1.**
Duration of status and work authorization will be extended for a student on OPT, who is the beneficiary of a timely filed H-1B petition requesting an employment start date of October 1 of the following fiscal year. This would apply to all students on OPT, not just STEM students. The extension of duration of status and work authorization would automatically terminate upon the rejection, denial, or revocation of the H-1B petition filed on the student's behalf.
- **I-765 filing window**
Under the current rule, the I-765 must be filed no later than the student's program end date, and it is not specified how soon before the program end date the application can be filed. Under the new rule, a student will be able to file his or her I-765 up to 90 days prior to his or her program end date, and up to 60 days after his or her program end date.
- **Duration of employment authorization**
 - Employment authorization will begin on the date requested or the date the employment authorization is adjudicated, whichever is later.
 - Exception: The employment authorization period for the 17-month OPT extension begins on the day after the expiration of the initial post-completion OPT employment authorization, and ends 17 months later, regardless of the date the actual extension is approved.

- **Reporting Requirements while on OPT**

- All students on OPT are required to report to the DSO:
 - any change of name or address, or
 - any interruption of such employment
- In addition, students with an approved 17-month OPT extension:
 - Must report to the student's DSO within 10 days of any change of:
 - legal name
 - residential or mailing address
 - employer name
 - employer address, and/or
 - loss of employment.
 - Must make a validation report to the DSO every six months starting from the date the extension begins and ending when the student's F-1 status ends, the student changes educational levels at the same school, the student transfers to another school, or the 17-month OPT extension ends, whichever is first. The validation is a confirmation that the student's name and address, employer name and address, and/or loss of employment is current and accurate. The report is due to the DSO within 10 business days of each reporting date.

- **Limited Periods of Unemployment to Maintain Status**

- During post-completion OPT, F-1 status is dependent upon employment.
- Students may not accrue an aggregate of more than 90 days of unemployment during any post-completion OPT carried out under the initial post-completion OPT authorization.
- Students granted a 17-month OPT extension may not accrue an aggregate of more than 120 days of unemployment during the total 29-month OPT period.

F-1 students currently in the United States will also be able to take advantage of the rule's new provisions once they become effective.

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