



University at Buffalo
The State University of New York

Office of International Education
International Student and Scholar Services

M E M O R A N D U M

TO: Current and Former UB International Students

FROM: Ellen Dussourd
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RE: Requirements for Students on Optional Practical Training

DATE: December 2, 2008

On April 10, 2008, I posted a listserv announcement regarding the Interim Final Rule "Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students with STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students with Pending H-1B Petitions". Because there will be some changes soon which will affect students on OPT, I'm writing again to update you.

Status of Interim Final Rule

Since the publication of the Interim Final Rule was followed by a 60-day comment period, we fully expected that the Rule would be revised and published as a Final Rule this year. Not only has this not happened, but we recently learned that further review of the Interim Final Rule is not a priority of Department of Homeland Security's Student and Exchange Visitor Program (SEVP) officials. In fact, the Interim Final Rule will remain as is for the foreseeable future.

Issue of Unemployment during OPT

As you know, under the new rule, students on post-completion OPT are not permitted more than 90 days of unemployment during the initial 12-month period of OPT. Students who are granted a 17-month OPT extension may not have more than 120 days of unemployment during the total 29-month OPT period.

The consequences of unemployment in the Interim Final Rule are vague. The Rule states only that unemployment could affect a student's immigration status and result in denial of future immigration benefits. In addition, U.S. Citizenship & Immigration Services (USCIS) officials told the university community in May 2008 that they "would be forgiving [about periods of unemployment exceeding 90 and 120 days] in the first year".

Recently, however, the Department of Homeland Security further clarified how unemployment may affect the immigration status of students on OPT. **Beginning in early 2009, SEVIS will**

auto-terminate an F-1 student's SEVIS record if the student has been unemployed for more than 90 days (120 days for students on the 17-month OPT extension). The auto-termination of unemployed students' SEVIS records will take place 6 months after the start of their OPT. As you know, auto-termination of a student's SEVIS record is a very serious matter as it can result in arrest, detention and deportation. ***Therefore, it is very important that you not only find employment, but that you report it to the ISSS office immediately.***

For information on how to count days of unemployment, the consequences of 90+ days of unemployment and other topics, please consult the "Maintaining F-1 Status While on OPT" handout on our website (www.buffalo.edu/intlservices/documents/MaintainingF-1StatusWhileonOPT-LH_000.pdf)

Acceptable Employment for Students on OPT

There are various types of employment you may accept while on OPT. Any employment you choose must be directly related to your program of study.

- Regular paid employment for at least 20 hours per week
- Multiple employers. Total hours worked may not exceed 40 hours per week
- Payment by multiple short-term employers. Ex. Musicians and other performing artists may work for multiple short-term employers (gigs). Note: You should maintain a list of all gigs, including dates and duration.
- Work for hire. This is commonly referred to as "1099 employment", where an individual performs a service based on a contract. You should keep a record of the length of each contract as well as the name and contact information for each contracting company.
- Self-employed business owner. You may start a business and be self-employed; however, you must work full-time (40 hours per week). You must also have proper business licenses. (*Contact your local town or city government for business license information.*)
- Employment by an agency. You must keep proof that you worked at least an average of 20 hours per week while employed by an agency.
- Volunteers or unpaid interns. You may work as a volunteer or unpaid intern provided that you are not violating any labor laws. Please speak with ISSS before deciding to accept volunteer or unpaid employment, as sometimes it is difficult to determine if the work you will be doing is legal.
 - You must submit a letter from your employer about your volunteer work (See Sample Letter about Volunteering at: www.buffalo.edu/intlservices/pdf_files/VolunteerLetter.pdf)
 - You must work as a volunteer at least 20 hours per week
 - To qualify for the 17 month STEM extension you must have paid employment; volunteer positions do not qualify you for the STEM extension.

Maintaining F-1 Status While on OPT

In addition to finding employment within 90 days (120 days for students on the 17-month OPT extension), you must fulfill other reporting requirements. Specifically, all UB students on OPT must report to ISSS within ten days:

- Any change of name
- Any change of residential address

- Name and address of employer
- Any change in the name or address of employer
- When their employment changes or ends

Note: You must also send a brief report to ISSS every six months to verify the above information.

If there are further developments regarding OPT and the 17-month OPT extension, we will update you. In you have any questions, please consult the handout on “Maintaining F-1 Status While on OPT” on our website (www.buffalo.edu/intlservices/documents/MaintainingF-1StatusWhileonOPT-LH_000.pdf). If you have further questions after reading this handout, please contact our office at intlservices@buffalo.edu or (716) 645-2258.