



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: 17-Month Extension of Optional Practical Training

DATE: April 10, 2008

On April 7, I posted a listserv announcement regarding the proposed "17-Month Extension of Optional Practical Training (OPT) for Certain Highly Skilled Foreign Students". Because there have been significant developments since that announcement, I'm writing again to update you.

On April 8, 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" was published in the U.S. Government's Federal Register. Although there will be a 60-day comment period and the rule will certainly undergo changes after that period, the U.S. Department of Homeland Security (DHS) announced that the Interim Final Rule would go into effect immediately.

The Interim Final Rule makes significant changes to Post-Completion Optional Practical Training for F-1 students. These changes are summarized below.

What are the highlights of the new rule?

- The current 12-month limit on OPT is extended by 17 months--for a total of 29 months--for F-1 students with STEM (Science, Technology, Engineering, Mathematics) degrees.
- The H-1B "Cap Gap" is eliminated by extending F-1 status and OPT employment for all F-1 students on OPT who have an H-1B approval notice with an October 1st start date.
- The filing deadline for initial OPT applications has changed to include the 60-day grace period after your degree conferral date.
- Post-Completion OPT is now dependent on employment. Only limited periods of unemployment are permitted.
- Students, schools and employers are now required to report additional information to SEVIS.

Who will be eligible for the 17-month OPT extension?

F-1 students with STEM (Science, Technology, Engineering, Mathematics) degrees in the following fields will be eligible for the 17-month OPT extension. [The STEM Designated Degree Program List is based on the "Classification of Instructional Programs" (CIP) developed by the U.S. Department of Education.]

- 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

Note: All CIP codes ending in "xx99" are excluded (they are "catch-all" categories usually designated by "Other" in the CIP lists). DHS is accepting recommendations for additional degrees to be considered for inclusion on the list.

What additional requirements must F-1 students meet to be eligible for the 17-month OPT extension?

- The student must be currently authorized for a 12-month period of OPT and working for a U.S. employer in a job directly related to the student's field of study.
- The student must have successfully completed a bachelor's, master's or doctoral degree in a field on the STEM Designated Degree Program list. A SEVIS-certified U.S. college or university must have conferred the degree.
- At the time of application for the 17-month extension, the student must have a job offer or be employed by an employer registered with the "E-Verify" federal employment verification system.

What must F-1 students do to apply for the 17-month OPT extension?

- The student must apply for the 17-month OPT extension through the former school's International Student Office.
- The student must submit Form I-765 and pay the \$340 filing fee to the USCIS Service Center which has jurisdiction over the student's current place of residence.
- The student must file the OPT extension application in a timely manner, before the current OPT period expires.

What information must F-1 students report to the International Student Office of the former school?

All students on OPT must report to the International Student Office at their former school within ten days:

- Change of name
- Change of residential address
- Name and address of employer
- Change in the name or address of employer
- When employment changes or ends

The student must also report every six months to the International Student Office of his former school to verify the above information.

What is the new filing deadline for initial OPT applications?

Under the new rule, F-1 students can file their OPT application up to 60 days after the degree completion date. Note: It is not clear that SEVIS will currently accept OPT recommendations after the degree conferral date. Therefore, until SEVIS is re-programmed, students should apply before their degree conferral date.

What must the International Student Office do so that F-1 students can benefit from the 17-month OPT extension?

- The school must recommend the OPT extension in SEVIS and issue a new I-20 with the new OPT recommendation.
- The school must report the following information to SEVIS:
 - Any change in student's name
 - Any change in student's residential address
 - Name and address of student's employer
 - Any change in name or address of student's employer
 - Any interruption in student's employment

What must the employer do so that F-1 students can receive the 17-month OPT extension?

- The employer must be registered in E-Verify. (Please see below for more information.)
- The employer must agree to report the termination or departure of the student to the International Student Office of the student's former school within 48 hours. Note: If the student has not reported to work for five consecutive business days without the employer's consent, the employer is to consider the student to have left the job.

What Is E-Verify?

E-Verify is formerly known as the Basic Pilot/Employment Eligibility Verification Program. E-Verify is an Internet-based system operated by DHS in partnership with the Social Security Administration (SSA).

E-Verify allows participating employers to electronically verify the employment eligibility of their newly hired employees. E-Verify is free and voluntary. However, there are concerns whether employers will want to join E-Verify. There have been reports of data discrepancies that resulted in verification errors, indicating a worker's ineligibility for employment when that is not true. Participating employers must also permit visits by DHS and SSA to review their employment records and interview employees.

For more information on E-Verify, visit:
www.dhs.gov/ximgtn/programs/gc_1185221678150.shtm

How does the Interim Final Rule eliminate the H-1B “Cap-Gap” Problem?

The H-1B “cap-gap” occurs when an F-1 student’s status and OPT work authorization expire before the student’s H-1B begins. For example, a student whose OPT ends on July 31 and who has an H-1B for a job that is subject to the H-1B “cap” and will begin on October 1 would have to stop employment on July 31.

Under the new rule, a student currently on OPT who is the beneficiary of a timely-filed H-1B petition that requests an employment start date of October 1 will maintain F-1 status and OPT employment authorization until October 1.

Should the pending H-1B petition ultimately be denied, the student will have a sixty-day grace period from the notification date of the denial to depart the U.S., obtain admission to a new F-1 SEVIS-approved school or file an application for a change of status.

What about unemployed F-1 students on OPT?

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.

Note: No guidance has been issued regarding the consequences of unemployment beyond the 90-day and 120-day periods. Neither has guidance been issued to schools regarding reporting such periods of unemployment.

What Happens Next?

There is much to do before schools can begin accepting applications for OPT extensions under these new rules. Those include:

- SEVIS needs to be re-programmed to allow schools to recommend OPT for 17 additional months for qualified students and to accept OPT applications during the 60-day grace period.
- SEVIS needs to publish interim instructions to schools so they will be able to implement the new procedure.
- DHS needs to clarify for schools many aspects of the new regulations.
- Schools need to update their processes, procedures and informational materials to accommodate these new requirements.

Web Resources

Below are some web resources available on the 17-month OPT extension:

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_4Apr08.pdf

NAFSA: Association of International Educators Resource on the Interim Final Rule
nafsa.org/regulatory_information.sec/29_month_opt_rule_updates

Text of Interim Final Rule

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

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

Thank you to Ellen H. Badger, Director, International Student and Scholar Services, Binghamton University, for sharing information which she developed on the new OPT regulations and some of which was included in this summary.

I will update you as I learn about further developments regarding the 17-month OPT extension. In the meantime, thank you for your patience and understanding regarding the unknowns in this new rule.