

UPDATE ON OPTIONAL PRACTICAL TRAINING (OPT)

9 APRIL 2008

On Friday, April 4, 2008, USCIS announced that it would be publishing new regulations regarding OPT. These regulations were published on Tuesday, April 8, 2008, and became effective immediately.

The key provisions of the new regulations are described below. The provisions that have received the most attention are the provisions for some students to extend their post-completion OPT for an additional 17 months and the provision that will provide certain students authorized for OPT an extension of their employment authorization while waiting for their H1B approval. **THERE ARE OTHER IMPORTANT PROVISIONS IN THESE NEW REGULATIONS.** Please read the information below very carefully.

If you would like to discuss these changes with an ISFS advisor, please call to make an appointment. If you are not in Athens, please request a telephone appointment. ISFS advisors will **NOT** be able to answer questions related to these new regulations during walk in hours.

KEY PROVISIONS

Reporting Requirements while on OPT

All students on OPT are required to report to the international student office at their former school within ten days:

- Any change in name or address
- The name and address of their employer
- Any change to the name and address of the employer
- Any interruption of such employment

In addition, students with an approved 17 month extension must report to the international student office at their former school within ten days:

- Any change in name or residential/ mailing address
- The name and address of their employer
- Any change to the name and address of the employer
- Any interruption of such employment

Students with an approved 17 month extension must also make a validation report to the international student office at their former school every six months starting on the date the extension begins and ending when the OPT ends. The validation is a confirmation that the student's name and address, employer name and address, and /or loss of employment are current and accurate. The report is due to the international student office at their former school 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. Thus:

- 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.

I-765 filing window

The rule sets new deadlines for filing Form I-765 for post-completion OPT. An 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 end-date, provided that it is filed within 30 days of the date the international student advisor enters the OPT recommendation into SEVIS. Applications for the 17-month STEM extension must be filed before the current EAD expires.

OPT extension to 29 months for STEM (Science, Technology, Engineering and Mathematics) students.

The 12-month limit on F-1 Optional Practical Training (OPT) will be extended by 17 months, for a total of 29 months, for certain STEM degree holders (Science, Technology, Engineering, Mathematics) in the following fields:

- 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)

USCIS has provided a list of specific majors within the above categories that are eligible for the STEM extension. You will need to consult with an ISFS advisor to determine if your major qualifies. ISFS will publish a list of qualifying majors in the near future.

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. Please contact the employer who filed your H1B application for assistance.

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.

Adapted from information provided by NAFSA: Association of International Educators