

This document has been updated to reflect that the interim final rule was published on April 8, 2008. Links to the text of the interim final rule appear at the end of the document.

New Optional Practical Training (OPT) Rules for F-1 Students

On April 3, 2008, The Department of Homeland Security announced the publication of an Interim Final Rule that makes significant changes to Post-Completion Optional Practical Training for F-1 students.

This rule took effect upon publication of the rule in the U.S. Government's Federal Register of April 8, 2008.

Highlights of the New Rule:

- The current 12-month limit on OPT will be extended by 17 months, for a total of 29 months for certain **STEM** degree holders ONLY
- The H-1B "Cap Gap" is eliminated by extending OPT employment and status for those who are beneficiaries of an H-1B petition with an October 1 start date (available to ALL OPT participants)
- The filing deadline for initial OPT applications is changed (applies to all OPT participants)
- There are new reporting requirements for students and employers (applies to all OPT participants)
- Post-Completion OPT will now be dependent on employment. Only limited periods of unemployment will be permitted (applies to all OPT participants)

What is STEM?

S = Science

T = Technology

E = Engineering

M = Mathematics

STEM Fields include

- 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)

Certain fields that many would regard as being part of science or engineering are not included in the STEM list, but the Department of Homeland Security is inviting individuals to submit the titles of additional fields.

Additional Requirements for 17-Month Extension of OPT

Besides having to be enrolled in a “STEM” field of study, there are many additional requirements for the 17-Month Extension of OPT:

The student must be currently authorized for a 12-month period of OPT and working for a US 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 DHS STEM Designated Degree Program list, from a SEVIS-certified US college or university

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. For more information on “E-Verify,” see the next section

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

The student must apply for the 17-month extension through their former school’s international student office. The school’s Designated School official must recommend the extension and issue a new I-20 with the recommendation noted

The student applies for the extension using form I-765 with fee (currently \$340.00) to the US Citizenship and Immigration Services Processing Center having jurisdiction over the student’s current place of residence

The student must file the extension application in a timely manner, before the current period of OPT expires.

A student who files the application timely may continue employment while the extension application is pending, until a final decision is made, or for 180 days, whichever comes first

The employer must agree to report the termination or departure of the student to the International Student Office of the student’s former school, or through any other process chosen by the Department of Homeland Security

The student must agree to report the following information to the International Student Office of his former school:

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

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

What Is E-Verify?

E-Verify was formerly known as the Basic Pilot/Employment Eligibility Verification Program. E-Verify is an Internet-based system operated by the Department of Homeland Security in partnership with the Social Security Administration.

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. 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.

There have been reports of significant discrepancies in the databases currently being used that result in verification errors, indicating that a worker is ineligible for employment when that is not accurate. Participating employers must permit visits by Homeland Security and the Social Security Administration to review their employment records and interview employees.

Remember that a 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.

There is not enough information known at this writing to determine if the E-Verify requirement will have a negative impact on employer participation, and thus prevent many students on OPT in STEM fields from seeking the 17-month extension.

For more information on E-Verify, visit:

http://www.dhs.gov/ximgtn/programs/gc_1185221678150.shtm

Elimination of the H-1B “Cap-Gap”

The H-1B “cap-gap” occurs when a F-1 student’s status and OPT work authorization expires during the current fiscal year before the student can start approved H-1B employment during the next fiscal year that begins on October 1. For example, a student whose OPT ending date is July 16, 2008, and whose employer successfully files an H-1B petition for a job that is subject to the H-1B “cap” and starts October 1 currently needs to stop employment as of July 16, and depart the United States on September 15 (the last day of the 60-day grace period following OPT). While outside the United States, the student must then obtain an H-1B visa, and cannot re-enter the United States any sooner than 10 days prior to the H-1B start date.

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 of the following fiscal year will have his or her duration of status and OPT employment authorization extended to that date.

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 United States, obtain admission to a new F-1 SEVIS-approved school, or file an application for a change of status.

New Filing Deadlines for Initial OPT Applications

Currently, an applicant for post-completion OPT must file their application before their degree completion date. Under the new rule, a student will be able to file the OPT application up to 90 days **before** the degree completion date, and up to 60 days **after** the degree completion date. However, the application for OPT must be submitted to the USCIS Processing Center within 30 days of the date the school enters the recommendation for OPT into the SEVIS record.

Duration of OPT

The starting date for the OPT Employment Authorization Document (EAD) will be the date requested by the student or the date OPT is approved at the USCIS Service Center, whichever is later. But, there is an exception: the authorization period for the 17-month OPT extension begins the day after the expiration of the initial post-completion OPT employment authorization, and ends 17 months later, regardless of the date the extension is approved.

Reporting Requirements for Students and Employers While on OPT

All students on OPT must report to the international student office at their former school:

- 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/mailling 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 is current and accurate.

The employer of a student with an approved 17-month OPT extension must agree to report the termination or departure of the student to the International Student Office of the student's former school or through "any other means or process identified by the Department of Homeland Security."

Post-Completion OPT is Now Dependent on Employment

Students on post-completion OPT may not accrue an aggregate of more than 90 days of unemployment under the initial 12-month period of OPT. 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

What Happens 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. Those steps include:

- SEVIS needs to be re-programmed to allow schools to recommend extending authorized OPT for an additional 17 months for qualified students
- SEVIS needs to publish interim instructions to schools so that schools will be able to implement the new procedure
- Form I-765, Application for Employment Authorization, must be updated to add new fields for field of study, name of employer, and the employer's E-Verify number
- Schools need to update their processes, procedures, and informational materials to accommodate all the new requirements

Web Resources

There are some excellent web resources available on the new OPT rule:

Department of Homeland Security Announcement
http://www.dhs.gov/xnews/releases/pr_1207334008610.shtm

US Citizenship and Immigration Services Q and A
http://www.uscis.gov/files/article/OPT_4Apr08.pdf

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

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)