



New Optional Practical Training (OPT) Rules for F-1 Students¹

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 **post-completion** OPT will be extended by 17 months, for a total of 29 months ONLY for certain **STEM** degree holders and ONLY for employees of companies enrolled in the E-verify program (details on this appear in a section later in this document).
- 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), and individuals who exceed the specific time periods will be considered to have violated their Nonimmigrant Student (F-1) status.

What is STEM?

S = Science

T = Technology

E = Engineering

M = Mathematics

STEM Fields include

Actuarial Science (NCES CIP Code 52.1304) Computer Science (NCES CIP Codes 11.xxxx, **except** Data Entry/Microcomputer Applications, NCES CIP Codes 11.06xx)

¹ *This document is modified, with permission, from a document prepared by Ellen H. Badger (Director, International Student and Scholar Services, Binghamton University).*

Engineering (NCES CIP Codes 14.xxxx) Engineering Technologies (NCES CIP Codes 15.xxxx) Biological and Biomedical Sciences (NCES CIP Codes 26.xxxx) Mathematics and Statistics (NCES CIP Codes 27.xxx) Military Technologies (NCES CIP Codes 29.xxxx) Physical Sciences (NCES CIP Codes 40.xxx) Science Technologies (NCES CIP Codes 41.xxxx) Medical Scientist (MS, PhD) (NCES CIP Code 51.1401)

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. Determination of eligibility for a specific field of study can be made by reviewing the NCES CIP code assigned to each field of study. For example, a degree in Nursing may be considered by some to be a “Medical Science” field; however, the Nursing NCES CIP code is 51.1601 and does not, therefore, fit the current eligible fields.

Specifically excluded from the above codes, however, are all CIP codes ending in xx99, which are “catch-all” categories usually designated by “Other” in the CIP lists. Degrees associated with CIP codes ending in xx99 are not eligible for the 17-month extension.

A full list of CIP codes is available at <http://nces.ed.gov/pubs2002/cip2000/>.

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 **post-completion** 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;
- 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, and 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, generally up to 90 days before the current period of OPT expires, and the USCIS must receive a completed application PRIOR to current EAD expiration date;
- 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; and
- • The student must also agree to provide a report every six months to the International Student Office of her/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

Until this rule took effect, an applicant for post-completion OPT was required to file their application before their degree completion date. Under the new rule, a student is now 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/ 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 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.