

ALERTS

Immigration Update

NEW F-1 OPTIONAL PRACTICAL TRAINING REGULATIONS

MVA Immigration Team

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On April 8, 2008, Citizenship and Immigration Services (CIS) published a new interim final regulation, effective immediately, to allow students working pursuant to their F-1 student visa Optional Practical Training (OPT) to extend their OPT from 12 months to 29 months if certain requirements are met, most importantly:

1. That the student's degree has been issued in a science, technology, engineering or math field (STEM); **and**
2. That the employer supporting their extension request be enrolled in the E-verify program run by CIS.

The E-Verify program is a voluntary, Web-based system to verify that new hires are eligible to work in the United States. A vast majority of employers have not enrolled in E-verify due to concerns over inherent errors and problems with the system. However CIS is making enrollment in E-verify mandatory for employers who want to extend the OPT for their F-1 student employees.

In addition to the E-verify requirement, the following requirements must be met:

- The 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.
- 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 college or university.
- The student must have a job offer from an employer registered with E-verify and must not have previously received a 17-month OPT extension after earning a STEM degree.
- The Designated School Official (DSO) at the F-1 student's university 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 the responsibilities for maintaining status while on OPT.
- The student will have to apply for the 17-month extension on Form I-765 with fee. The I-765 can be filed up to 90 days in advance of the F-1 student's program end day, and up to 60 days after the program end date.
- 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.

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During OPT, maintaining F-1 status is dependent upon employment. 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." Students may not accrue an aggregate of more than 90 days of unemployment in the initial 12 month period of OPT. Students granted a 17-month OPT extension may not accrue more than 120 days of unemployment during the total 29-month OPT period.