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## **OPT Regulation Changes Effective 4/8/2008**

On April 8, 2008, the Department of Homeland Security (DHS) published an interim final regulation, effective immediately that changes some of the regulations pertaining to Optional Practical Training (OPT) for F-1 students. While the provisions of this new rule are now in effect, some changes cannot be actually implemented until the SEVIS system is upgraded and/or interim procedures are developed by DHS.

**Please read all of the following information carefully, including the common questions section at the end, before contacting Office of International Education (OIE) with your questions.**

Highlights of the new rule include:

- **Change in OPT application filing period.** Under this new rule, F-1 students may file for OPT up to 90 days prior to completion and up to 60 days after completion of program/degree requirements. This change now allows F-1 students to apply for OPT after they have completed their program instead of requiring students to apply for OPT before completion (under the prior rule). The rule also requires students to apply for OPT, with receipt by US Citizenship and Immigration Services (USCIS) within 30 days of the date the OIE advisor recommended the OPT in SEVIS.
- **“Cap-Gap” employment authorization.** The “cap-gap” occurs when someone’s current status and employment authorization (F-1 OPT, for example) expires months before the H-1B becomes available on October 1. The new rule automatically extends OPT work authorization and duration of status for ALL F-1 students who have OPT authorized and have an employer who has filed a timely H-1B application with requested October 1 employment start date and a change of status request. The OPT authorization is valid until October 1 as long as the application is pending or has been approved. The OPT authorization is automatically ended if the H-1B petition is rejected, denied or revoked. This provision applies to all students on OPT regardless of their field of study and effectively provides employment authorization and permission to remain in the US during the “cap-gap” that has typically occurred in the past between the end of a student’s OPT period and the beginning of H-1B status. This provision applies to both students currently on OPT as well as students who have recently applied for OPT or who will apply for OPT in the future.

If you qualify for the "Cap-Gap" OPT extension, please contact OIE ([oie@andrew.cmu.edu](mailto:oie@andrew.cmu.edu)) for instructions on how to obtain an I-20 that shows the OPT extension.

- **17 month OPT extension for STEM students.** The new rule allows students who received a Bachelor’s, Master’s, or doctoral degree in a STEM (Science, Technology, Engineering or Math) field to apply for a 17-month extension of their OPT. There are several important provisions to this extension possibility:
  - a. DHS (Department of Homeland Security) will determine which majors qualify as “STEM” majors. The determining factor will be the CIP code (a US government coding system); not the name of the major. The fields may change over time. There are many majors at CMU that will not be considered STEM for the purpose of the 17 month OPT extension.
  - b. The student must have completed a bachelor’s, master’s or Ph.D. in a STEM field and are working or have a job offer for a job directly related to the most recent major field of study.
  - c. In addition to the STEM requirement, students must also have a job or job offer and the employer must be a participant in the US government’s e-Verify system for electronically verifying Social Security Numbers. Currently only a small percentage of employers in the US participate in this

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program. NOTE: employers may be resistant to participating in the e-Verify program. If they do not participate, a STEM student cannot obtain the 17 month OPT extension.

- d. The employer must agree to report to OIE when the job ends or the student leaves the employer
- e. The student must report to OIE their name, residential and mailing addresses, employer's name, employer's address and/or loss of employment within 10 days of any change. OIE is required to report this information to DHS via SEVIS within 21 days. **In order to maintain status, the student must confirm the above information every 6 months** from the start date of the 17-month extension until the end of the 17 month period of OPT. The report must be submitted within 10 business days of each 6 month reporting date.
- f. Only one 17-month extension is possible regardless of how many degrees in the US that the student obtains.
- g. Students cannot request all 29 months (12 plus 17) in the initial OPT application. Students will apply for an initial 12 month period of OPT then they obtain a second OPT recommendation from an OIE advisor for the 17-month extension and submit a 2<sup>nd</sup> application (with required fee) to USCIS requesting the extension in a timely fashion (DHS recommends at least 90 days prior to the end of the initial 12 month period of OPT). If the application has been timely filed, the student may continue working while the application is pending, even if the extension is not approved prior to the end of the initial 12 month period of OPT.

- **Periods of unemployment while on OPT.** The new rule limits periods of unemployment to 90 days, for all students, while on the 12 month period of OPT; 120 days, applied to the whole 29 month period, if someone receives the 17 month STEM OPT extension. While a job offer is not required to apply for the initial 12 month period of OPT, students should be aware that they may be denied future immigration benefits from USCIS if they work less than 9 months during their 12 month period of OPT.
- **Address reporting requirements.** The regulations require students on the initial 12 month period of OPT to update OIE with any change of name or address and to report any "interruption of...employment." While this last phrase is unclear, it appears that students are expected to report the name and address of their employer to OIE while they are on OPT and, most specifically, to notify OIE if the employment ends. As this issue is clarified, OIE will update this information. During the 17-month extension for some STEM students, the regulations clearly require the student to notify OIE of the employer's name and address, in addition to any change of name or address and to provide verifications every six months about this information. DHS may enforce and/or monitor this information more closely in the future.
- **Employer/employment reporting requirement .** In recent weeks, in advance of the release of the interim final regulation, SEVP has made clear their interest in having students and institutions report on the employer name and location and employment status (i.e. employed, actively seeking employment, self-employed, etc.) during OPT. However, there is conflicting information between (1) the historical situation where employer information was not reported, collected, or required to be reported, (2) the OPT validation project recently undertaken by SEVP, and (3) the new OPT rule. Although, OIE is not currently collecting such information from most students on OPT, students may expect that employer and employment information will be required to be reported regularly in the future. Students are expected to stay abreast of F-1 changes while on OPT and follow all new reporting requirements. While OIE will attempt to outreach to students on OPT, it is critical that students keep all contact information current with OIE to facilitate such outreach. Follow OIE instructions that are emailed and posted to the "news" section of the OIE website.
- **New I-765.** In order to implement the new rule, US Citizenship and Immigration Services (USCIS) changed form I-765. The new form, dated 4/8/08, must be used effective immediately. The previous version only (dated 7/30/07) will be accepted until 5/8/08. With the new form, USCIS has changed the codes for requested OPT that must be indicated on the form. The new codes are:
  - A. Pre-completion Optional Practical Training: (c)(3)(A)
  - B. Post-completion Optional Practical Training: (c)(3)(B)
  - C. 17-month extension for STEM students: (c)(3)(C)

While the entire rule is effective immediately, actual implementation may be delayed for some aspects of the rule until USCIS and SEVP procedures and implementation instructions are published. Additionally, the SEVIS system will need several upgrades to implement all of the provisions of the rule (for example, currently SEVIS does not allow schools to recommend the additional 17 month period of OPT).

## **Commonly asked questions:**

### **Q1. Is my degree a STEM degree?**

A. OIE is in the process of determining which CMU majors have CIP codes that meet the Science, Technology, Engineering and Math designation. The broad list provided by DHS indicates that STEM majors are:

- Actuarial Science,
- Computer Science Applications,
- Engineering,
- Engineering Technologies,
- Biological and Biomedical Sciences ,
- Mathematics and Statistics,
- Military Technologies,
- Physical Sciences,
- Science Technologies,
- Medical Scientist.

However, because DHS is using CIP codes, and because certain CIP codes are excluded, OIE is in the process of determining which CMU majors, within the broad categories listed above, will qualify as “STEM” majors. Once all of the information is clear, **as soon as possible, OIE will provide information indicating which CMU majors qualify.** While everyone is anxious to receive this information, the only students who have immediate need for this information are those who are reaching the end of their initial 12 month period of OPT and who have a job with an employer who is in the e-Verify program.

### **Q2. I’m on OPT now. How do I apply for the 17 month OPT extension?**

A. First, you must have a job or job offer from an employer that participates in the e-Verify system. After you confirm that your employer is an e-Verify participant and if you believe your degree would qualify as a STEM degree, contact OIE **IF YOU ARE WITHIN 120 DAYS OF THE END OF YOUR 12 MONTH PERIOD OF OPT.** SEVP must upgrade the SEVIS software and OIE must develop new forms to be able to implement this provision of the regulations. Once new information/procedures are available, OIE will provide updates to the CMU community. **Until that information is available, OIE will only consider 17 month OPT extension requests from people who are near the end (within 120 days) of their 12 month OPT period.**

### **Q3. I recently applied for OPT. Can I change the end date so I can have 29 months of OPT?**

A. No, students cannot obtain 29 months of OPT on their initial application. The 17-month extension must be applied for during the initial 12 month period of OPT. DHS indicates that students should file a timely application which they indicate is 90 days prior to the expiration of the initial 12 month period of OPT.

### **Q4. What is e-Verify? How do I know if my employer participates in e-Verify?**

A. e-Verify is a web-based system that partners DHS and the Social Security Administration and allows employers to electronically verify the validity of Social Security numbers. Information about e-Verify can be found at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify). You have to ask your employer if they participate in e-Verify.

### **Q5. I’m on OPT and my employer just filed for an H-1B for me. How do I extend OPT to keep working?**

A. Everyone on OPT who has a timely filed H-1B petition with a change of status request and an October 1 start date for the H-1B petition automatically has their OPT extended to October 1 (or until the petition is denied, rejected or withdrawn if that occurs before October 1). Students who earned a STEM degree who have a job offer or employment with an employer who participates in e-Verify may also extend their OPT for an additional 17 months as long as they apply before the end of the initial 12 month period of OPT.

### **Q6. Do I have to pay for the 17 month OPT extension?**

A. Yes, you must file a new I-765 application for OPT with the I-765 filing fee (currently \$340). You must also have OIE’s recommendation and a new I-20 in order to file this application.

### **Q7. Can I use 12 months of OPT after one master’s degree and then obtain a 2<sup>nd</sup> master’s degree and use the 17 month period of OPT after the 2<sup>nd</sup> degree?**

A. The answer appears to be “no.” It appears that students must apply for the 17-month extension while they are currently engaged in OPT.

**Q8. What if I use 11 months of OPT after one master's degree and then use the remaining 1 month of OPT after the 2<sup>nd</sup> master's degree. Can I use the 17-month extension after the 2<sup>nd</sup> degree?**

A. The answer appears to be "no" as it appears that this new rule may prohibit students from "saving" part of their OPT for future use after another degree at the same level.

**Q9. My employer submitted an H-1B petition at the beginning of April and requested Consular Notification because my OPT is ending and I plan to travel this summer. Does this rule mean that my OPT is now extended until October 1 and I don't have to travel?**

A. If your employer filed the H-1B petition with a request for consular notification, the regulations appear to indicate that your OPT is NOT automatically extended and you may not continue to work beyond the OPT expiration date as indicated on your EAD. You might check with your company's attorney(s) to see if the petition can be changed from "consular notification" to "change of status requested."

**Q10. I'm on OPT now that ends in August. If I find out in June that I didn't get an H-1B this year, can I still work until October 1?**

A. No, if the H-1B and change of status applications are pending or approved, you can continue to work until October 1 but if the H-1B application is rejected, denied or withdrawn, you can only work until the end date on your EAD card or the date of the rejection/denial/withdrawal of the petition, whichever occurs later. However, you may be eligible to request a 17-month extension of OPT if you received your degree in a STEM field, you have a job offer or employment with a company that participates in the e-Verify program and you file for the extension before the end of your current OPT period.

**Q11. My employer filed for the H-1B for me early - by April 5. My OPT will expire before October 1. Does this new rule mean I can stay in the US?**

A. Yes, if your employer filed the H-1B petition AND requested a change of status for you, your OPT is automatically extended until October 1, 2008 as long as the petition is pending or has been approved. Employment authorization automatically ends if the petition is denied, rejected or withdrawn prior to October 1. Additionally, you may be eligible to request a 17-month extension of OPT if your OPT has not yet ended, you received your degree in a STEM field, you have a job offer or employment with a company that participates in the e-Verify program and you file for the extension before the end of your current OPT period.

**Q12. I'm on OPT now. My employer filed an H-1B petition/change of status application for me but I may not know if it's been approved until after my OPT ends. I know I can keep working while the application is pending, but what happens if I don't get the H-1B? Can I apply for the 17-month OPT extension after my OPT has expired?**

A. No, if you qualify for the 17 month OPT extension (STEM student with employer/job offer with company enrolled in e-Verify program) you MUST apply before the end of your initial 12 month period of OPT. While you are eligible to continue working while the H petition is pending, if it is not successful and you have not applied for the 17-month extension, you immediately lose employment authorization. Students may wish to discuss with their employer the possibility of requesting premium processing for the H-1B petition.

**Q13. My previous degree was a STEM degree. Can I apply for the 17-month extension based on a previous degree?**

A. No, to qualify for the 17 month OPT extension, your current degree (the one for which you received the 12 month period of OPT) must qualify as a STEM degree.

**Q14. I completed a bachelor's then had 1 year of OPT. Now I'm finishing a master's. Can I get 12 months of OPT?**

A. Yes, the regulations still allow people to obtain a new 12 month period of OPT after each succeeding higher degree of study. However, if someone is qualified for the 17-month extension for a STEM degree, only one 17-month extension is permitted.

*Additional information, including details about which CMU majors are STEM designated degrees, will be posted as soon as the information is available.*