

New OPT Benefits and Extensions

In an unprecedented alien-friendly regulation, the Department of Homeland Security extended the period of Optional Practical Training (OPT) and provided cap-gap relief for all F-1 students selected in the H-1B lottery. This rule, issued on Friday, provides an automatic extension of status and employment authorization for F-1 students with pending H-1B petitions who filed for a change of status. The automatic extension terminates on October 1st of the fiscal year for which the H-1B petition has been requested. If the H-1B petition is denied, the student will have their 60-day grace period to depart the United States. While USCIS was already authorized to provide cap-gap relief to students, they have been unwilling to do so for the past few years. This comprehensive provision significantly reduces student and employer stress by eliminating the need for thousands of students to terminate employment, depart the U.S., obtain H-1B visas, and return to their jobs on October 1st.

The rule also provides students who earn a U.S. degree in science, technology, engineering, or mathematics (STEM) and are employed by companies enrolled in the E-Verify employment verification program an additional 17 months of OPT, extending their maximum period of OPT to 29 months. Citing pressure from U.S. high-tech companies and the increased opportunities for highly skilled students in science and technology in other countries, most notably the proposed “Blue Card” program in the European Union, DHS recognized the competitive disadvantage U.S. employers are experiencing in recruiting science and engineering talent.

Overview of requirements for eligibility for 29 months of OPT:

1. Available to students whose employer is enrolled and in good standing in USCIS' E-Verify employment verification program at the time the student applies for the 17-month extension. E-Verify is an internet-based system operated by USCIS, in partnership with the Social Security Administration, which electronically helps employers verify identity and employment eligibility of newly hired employees.

2. Student must have received a U.S. degree in one of the following:

- Actuarial Science

- Computer Science (except data entry/microcomputer applications)

- Engineering (does not include Architecture, but does include Architectural Engineering)

- Engineering Technologies

- Biological and Biomedical Science

- Mathematics and Statistics

- Military Technologies

Physical Sciences

Science Technologies

Medical Scientist (MS, PhD)

3. OPT extension must be recommended by student's Designated School Official (DSO), who must verify eligibility, certify the degree, and ensure student is aware of status maintenance requirements.

4. Student must submit an application for an Employment Authorization Document (EAD) along with appropriate fees and supporting documents.

5. Filing the EAD extension prior to the end of the current OPT will permit the student to maintain continuous employment for up to 180 days while USCIS adjudicates the application.

6. Employer must notify DSO within 48 hours if the student leaves employment prior to the end of the authorized period of OPT.

Finally, the rule permits students to apply for OPT within 60 days of concluding their studies instead of the current requirement that OPT applications be submitted in advance of degree completion. This change permits students to take advantage of their full period of OPT, even when their degree completion is delayed.

Please call Jim Levine 404-527-4090 or Diane Soroko 404-527-4969 with any questions regarding this new rule.