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## Immigration Update: DHS Gives Students a Break!

By Nancy-Jo Merritt and Matthew J. Martinez

On April 4, 2008, the Department of Homeland Security released an interim final rule that will allow the extension of Optional Practical Training (OPT) for certain F-1 students. The rule was published today, April 8, 2008, in the Federal Register and is effective immediately.

### 17-Month OPT Extension for STEM Students

The new rule extends the current 12 month limit on Optional Practical Training work authorization (OPT) for F-1 students by 17 months, for a total of 29 months of OPT. The one-time extension is available only for students in science, technology, engineering and math (STEM) programs, and who are employed by businesses enrolled in the DHS E-Verify program.

To be eligible for the extension, an F-1 student must:

- Currently be participating in a 12-month period of OPT;
- Have successfully completed a bachelor's, master's, or doctoral degree in a field in the STEM Designated Degree Program List. The STEM list currently includes: actuarial science, computer science (except data entry/microcomputer applications), engineering, engineering technologies, biological and biomedical sciences, mathematics and statistics, military technologies, physical sciences, science technologies, and medical science;
- Be working for a U.S. employer in a job directly related to the student's major area of study; and
- Be working for, or have accepted employment with, an employer registered with the E-Verify employment verification system.

### How To Apply

Applicants must file a Form I-765 (Application for Employment Authorization) with USCIS, a Form I-20 endorsed by the designated school official (DSO), a copy of the STEM degree, and the required application fee. The Form I-765 is being amended to require students to indicate the degree and provide the employer's E-Verify information. Students who timely file their STEM extension applications with USCIS may continue working while their applications are pending until the earlier of 180 days or the date of the decision. For initial OPT applications, F-1 students may now apply as late as 60 days after their academic programs end.

### Additional Reporting Requirements

The student must report to his or her DSO (within 10 days) any change in legal name, residential and mailing address, e-mail address, employer name, employer address, job title or position, supervisor name and contact information, employment start-date, and employment end-date.

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The student must also report to his or her DSO every six months to confirm the information listed above whether there have been any changes or not. Employers must report any termination of the employment relationship to the graduate's DSO within 48 hours of the termination, and the DSO must report all of this information in SEVIS.

## Limitation on Period of Unemployment for All Students on OPT

The new rule also specifies that in order for students to maintain F-1 status during OPT, they may not be unemployed for more than 90 days during the initial 12-month period of OPT. STEM students who obtain a 17-month extension of OPT may not accrue an aggregate of more than 120 days of unemployment during the total 29 month OPT period.

## Finally! H-1B Cap Gap

Employers of students working on OPT which expires this summer will be happy to see that USCIS has again instituted the "Cap Gap." The lawful status of an F-1 student who is the beneficiary of an H-1B petition will be automatically extended along with any grant of OPT work authorization until October 1 of the fiscal year for which the H 1B work authorization is being requested. This would apply to all students on OPT, not just STEM students. If the H-1B petition is rejected, denied or revoked, the automatic extension of status and work authorization will immediately terminate. This extension will enable F-1 students with OPT expiring before October 1 to remain in the United States and work until their H-1B employment begins on October 1.

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