

September 13, 2024

NAFSA: Association of International Educators Response to the August 27, 2024, USCIS Policy Alert

Submitted via Email: policyfeedback@uscis.dhs.gov.

NAFSA: Association of International Educators appreciates the opportunity to provide feedback to the U.S. Citizenship and Immigration Services August 27, 2024, Policy Alert, Subject “[Science, Technology, Engineering, and Mathematics Optional Practical Training](#)” with updated guidance to the [USCIS Policy Manual](#) (Volume 2, Part F).

1. 2 USCIS-PM F.5.C – F-1 Student Optional Practical Training

Thank you for accepting NAFSA’s recommendation regarding the December 20, 2023, Policy Manual revisions to include specific reference to F-1 options during the 60-day grace period following optional practical training (OPT). The prior language stated that during the grace period “the F-1 may file to extend their student status or change to another nonimmigrant or immigrant status.” The updated language provides a clearer picture of the options available to F-1 students as it now reads, “the F-1 student may contact their DSO to change their education level, transfer to another SEVP-certified school, or file an application or petition with USCIS to change to another nonimmigrant or immigrant status.”

2. 2 USCIS-PM F.5.C.3 – STEM OPT Extension: Previously Obtained STEM Degrees

Thank you for removing the reference to MBA degrees in the section referencing previously obtained degrees. This improves the guidance in the current context because MBA degree seekers who have prior degrees in STEM fields are eligible for STEM OPT. Moving forward, this change will be beneficial as schools develop business curricula with degrees that focus on STEM fields.

3. 2 USCIS-PM F.5.C.3 – STEM OPT Extension Filing Deadlines

NAFSA urges USCIS to revise the last clause of paragraph 3 at 2 USCIS-PM F.5.C.3 to read: “...no more than **60** days after their DSO enters the STEM OPT recommendation into SEVIS.” Paragraph 3 of this section currently states incorrectly that a student filing for STEM OPT must file the Form I-765 “...no more than 30 days after their DSO enters the STEM OPT recommendation into SEVIS.” However, regulations at 8 CFR 214.2(f)(11)(i)(C) provide that the student has 60 days from the date the DSO enters the STEM OPT recommendation into SEVIS.

Note that the entry at 2 USCIS-PM F.5.C.5., *OPT Filing, STEM OPT*, uses the correct period of 60 days.

4. 2 USCIS-PM F.5.C.3 – STEM OPT Extension: Validity Period

NAFSA urges USCIS to revise the Policy Manual *STEM OPT Extension: Validity Period* section in consultation with SEVP to ensure that SEVIS programming, USCIS policy, and SEVP policy are all in accord, in a way that maximally benefits the student.

The regulations provide at 8 CFR 214.2(f)(11)(iii)(A):

“The employment authorization period for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section begins on the day after the expiration of the initial post-completion OPT employment authorization and ends 24 months thereafter, regardless of the date the actual extension is approved.”

The USCIS Policy Guidance, however, states that filing a STEM OPT extension application “during the cap-gap extension does not change the STEM OPT extension start date.” This seems to interpret the regulatory phrase “the expiration of the initial post-completion OPT employment authorization” to mean only the expiration of the standard OPT authorization, not to the automatic cap-gap extension of that standard OPT authorization.

Although this is in one way consistent with the idea that STEM OPT is always granted for a fixed 24-month period, since cap-gap authorization is an automatic extension of OPT authorization, a better interpretation would be that the 24 months of STEM OPT begins the day after the end of the cap-gap authorization, either on October 1, the natural expiration of the cap-gap authorization, or the day after “the rejection, denial, revocation, or withdrawal” when it ends early under 8 CFR 214.2(f)(5)(vi).

This is especially so because STEM OPT would have to be considered to begin retroactively when the STEM OPT application is filed during the cap-gap period, i.e., back to the day after the expiration of the original EAD end date. Since STEM OPT authorization also carries with it STEM OPT obligations (e.g. work only with an E-Verify employer, the I-983 training plan requirement, enhanced reporting requirements, and a narrower type of possible employment arrangements), this creates logistical and legal challenges.

5. USCIS-PM F.7 - Absences From the United States

2 USCIS-PM F.7.A. F-1 Students

NAFSA believes that USCIS is improperly applying the standard “5-month” temporary absence rule of 8 CFR 214.2(f)(4) to study abroad participants, which would require DSOs to terminate the SEVIS status of F-1 participants in study abroad programs lasting more than five months, including year-long programs, for example, unless the student makes a trip back to the United States every five months to “preserve” the continuity of their F-1 status and Active SEVIS status.

This is contrary to many years of SEVP interpretation. See, for example, SEVP’s [“Can International Students in the United States Study Abroad? \(April 9, 2015\),”](#) which stated:

“If you wish to study abroad, you have two options. The first is to enroll for and receive the necessary number of credits, while you study abroad, for a full course of study from the Student and Exchange Visitor Program (SEVP)-certified school that issued your Form I-20, “Certificate of Eligibility for Nonimmigrant Student Status.” Remember, your SEVP-certified school must accept the credits you receive from the study abroad program.

An alternative, if you do not plan to enroll in a full course of study while you study abroad, is to complete the study abroad program during an annual vacation, such as during your school’s summer break or during an authorized leave of absence from school.

If you leave the United States for more than five months and are not able to remain enrolled at your U.S., SEVP-certified school, you will not be able to maintain your student status. To resume your studies in the United States, you will need to seek

readmission in initial status, which includes obtaining a new Form I-20 and paying the I-901 SEVIS fee again. To seek readmission, please speak with your designated school official."

Also see SEVP's 2015 article, "[DSO Reporting Requirements for International Students Studying Abroad](#)." Even though it implies that DOS or CBP might still question study abroad absences of more than five months, it still tells DSOs to keep the SEVIS record Active during the study abroad program:

"If a student remains enrolled in a full course of study at your school during their study abroad program, then you may keep their status listed as Active in SEVIS. Remind your students that if they remain outside the United States for more than five months, then they should consult a U.S. embassy or consulate near them to determine if a new visa is needed for their return. Only if a student's current visa is no longer valid, does the student possibly need to apply for and receive a new one."

While the student is technically still in Active status, SEVP cannot ensure that the student will not be questioned about their length of time away due to the five month rule. The student may be questioned about their length of time away at either the U.S. embassy or consulate, or at the U.S. port of entry."

Not only that, under 8 CFR 214.2(f)(10) time students spend enrolled in a study abroad program is counted towards the one full academic year requirement towards eligibility for practical training (if the student had spent at least one full academic term enrolled in a full course of study in the United States prior to studying abroad), with no reference to a five-month abroad limit.

Additionally, the December 20, 2023 version of this section provided:

"For an F-1 student who has been continuously enrolled in an ICE SEVP-certified school and who undertakes study in a program abroad, DHS considers the student to have taken a temporary absence and may be admitted into the United States with a current Form I-20."

However, the August 27, 2024 revision now states:

"A student enrolled in an ICE SEVP-certified school during a study abroad program may remain active in SEVIS **if the study abroad program lasts less than 5 months**. If the program lasts longer than 5 months, then the student will need a new Form I-20 to be readmitted in student status" (emphasis added).

NAFSA urges USCIS change the USCIS Policy Manual language to reflect the following:

"A student enrolled in an ICE SEVP-certified school during a study abroad program may remain in Active SEVIS status and reenter the United States on that SEVIS record even if the study abroad program lasts more than 5 months. To reenter the United States, the student must be in Active SEVIS status, have a valid F-1 visa (if required), and have a valid Form I-20 properly endorsed by the DSO."

Reverting to the prior guidance allowing the student to be admitted without a new I-20 after a five month or longer study abroad program would provide coherence with current SEVP policy and align with longstanding practice.

NAFSA applauds USCIS for the improvements made to the Students section of the USCIS Policy Manual. We appreciate the opportunity to share our input and look forward to our continued collaboration.