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## **New Interim Rule on F-1 Optional Practical Training**

On April 8, 2008, the Department of Homeland Security (“DHS”) published an interim rule, effective immediately, that makes important changes affecting foreign students in F-1 visa status with Optional Practical Training (“OPT”) work authorization.

### **AUTOMATIC EXTENSION OF F-1 OPT TO CURE H-1B CAP GAP – APPLIES TO ALL F-1 STUDENTS**

A student’s F-1 Optional Practical Training will be extended automatically until October 1 if the student is the beneficiary of an H-1B visa petition with a request for a change of visa status and the H-1B visa petition: (1) has been timely filed; and (2) requests a start date of October 1.

This extension does not require the student to apply to DHS for an extension of OPT or a new employment authorization document (“EAD”). To be eligible, the student must not have violated the terms or conditions of his/her F-1 visa status. The automatic extension will also apply to family members in F-2 visa status. The automatic extension will terminate immediately if the H-1B visa petition is denied, rejected, or revoked.

The interim rule requires that the H-1B visa petition request a change of visa status in order for the beneficiary to be eligible for the automatic extension. Given that many beneficiaries of H-1B visa petitions filed on April 1 (before this interim rule was announced) were not eligible for a change of status as of October 1, the H-1B visa petitions filed for them could not and therefore did not request a change of visa status. We are hoping that CIS will provide a mechanism to amend the filings to request a change of visa status.

### **NEW RULE FOR 17 MONTH EXTENSION OF F-1 OPT UP TO 29 MONTHS TOTAL – APPLIES ONLY TO F-1 STUDENTS IN CERTAIN FIELDS OF STUDY AND CERTAIN EMPLOYERS**

A qualified F-1 student may apply for a one-time extension of Optional Practical Training (“OPT”) for up to 17 months beyond the normal 12 months if:

- (A) The degree that is the basis for the student’s OPT is a bachelor or higher degree in a field of study listed on the Science, Technology, Engineering and Mathematics (“STEM”) Designated Program List: Actuarial Science, Computer Science, Engineering, Engineering Technologies, Biological and Biomedical Sciences, Mathematics and Statistics, Military Technologies, Physical Sciences, Science Technologies, Medical Scientist (MS, PhD). The current list is found at <http://www.ice.gov/sevis>.
- (B) The employer of the F-1 student is registered and a participant in good standing in the E-verify program, which is an internet-based system operated by the U.S. Citizenship and Immigration Service (“CIS”), in partnership with the Social Security Administration (“SSA”) to verify employment authorization of newly hired employees of registered employers. Information about E-Verify can be found at [www.uscis.gov/E-Verify](http://www.uscis.gov/E-Verify). The employer must also agree to report the termination or departure of an employee in F-1 OPT status to the student’s school within 48 hours.



This extension requires the student to timely file an Application for Employment Authorization to extend the student's employment authorization document (EAD). As long as the application is timely filed, the student's EAD will be considered automatically extended (for up to 180 days) until a decision is made on the application.

### DURATION OF STATUS

Students continue to have 60 days after their OPT employment authorization expires as a grace period to remain in the United States without employment authorization.

### MAINTAINING F-1 OPT STATUS

Students with F-1 OPT may not accrue more than an aggregate of 90 days of unemployment during their initial period of post-completion OPT. Students granted an additional 17 months of OPT may not accrue more than an aggregate of 120 days of unemployment.

### OPT APPLICATION AND APPROVAL PROCEDURES

Deadline for filing: For Post Completion OPT, the student may file Form I-765 (Application for Employment Authorization) up to 90 days prior to completion of studies. The student must file Form I-765 before the earlier of: (1) 60 days after completion of studies, or (2) 30 days after the date the school makes a recommendation for OPT.

Start of employment: A student's work authorization begins on the start date of the employment authorization document ("EAD"). A student may not request a start date that is more than 60 days after the student's program end date. The CIS will set the start date on the EAD as the later of: (1) the date requested or (2) the date the application for employment authorization is approved.

## QUESTIONS

If you have any questions about the information in this newsletter, please contact one of the Trow & Rahal attorneys listed below.

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