

Broadcast Message: New SEVP Unit to Oversee Employment Compliance in the OPT Programs and Report on Impact on U.S. Workers

To: All SEVIS Users

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The Student and Exchange Visitor Program (SEVP) has determined that it must take bold action to ensure that the Optional Practical Training (OPT) programs operate in a manner that does not harm U.S. workers or foreign student employees, consistent with regulatory and statutory law.

Recently, U.S. Immigration and Customs Enforcement (ICE) discussed strategies with subject matter experts at the U.S. Department of Labor (DOL) and U.S. Citizenship and Immigration Services aimed at fulfilling SEVP's regulatory requirements. Under the two-year OPT extension, the duties, hours, and compensation of a foreign student who participates in the program must be commensurate with terms and conditions applicable to the employer's similarly situated U.S. workers. More broadly, ICE's mission has always included a focus on ensuring lawful practices at U.S. worksites.

SEVP is currently unable to evaluate the impact OPT has had on U.S. workers and foreign students who have obtained work authorization through the programs. To remedy this, SEVP is announcing the development of a new unit — the OPT Employment Compliance Unit — that will be dedicated full-time to compliance matters involving wage, hours, and compensation within OPT, the OPT extension, and Curricular Practical Training (CPT). This unit will publish a public-facing report at least annually on its findings, which will include detailed information on duties, hours, and compensation of OPT workers in a standard formatting that will allow for comparisons against DOL data. The first report will be published on ICE.gov by July 31, 2021.

This unit will also be responsible for recommending investigations of employers and students, as needed, to Homeland Security Investigations (HSI) to ensure that the OPT programs operate in a lawful manner at U.S. worksites. The unit will identify any evidence of unlawful practices within the OPT programs and notify the appropriate authorities. For example, if the unit were to detect evidence that an employer is using OPT in a discriminatory manner (e.g., as a means to hire only foreign nationals, or only individuals of certain nationalities to the exclusion of others), or in a manner that negatively impacts wages, this unit may notify DOL and the U.S. Department of Justice of such evidence, where HSI is unable to address such matters, so that the evidence can be investigated further.

The OPT Employment Compliance Unit will also evaluate whether employers are adhering to the attestations and training plans required under the OPT extension, which will include on-site visitation, as per the regulation. This evaluation will ensure that employment through the OPT extension is commensurate with the terms and conditions of employment for other similarly situated U.S. workers, as the employer has attested to, as required by law.

The regulatory process that created the 2016 OPT extension included significant public input during the notice and comment period on the impact the policy would have on U.S. workers.¹ DHS explained that the requirements in the OPT extension are important for “guarding against adverse impacts on U.S. workers.”² When the 2008 version of the rule to create the OPT extension was published, we concluded that the extension would apply to only “12,000 students per year.”³ We explained that this number “represents a significant expansion of the available pool of skilled workers.”⁴

As of 2019, a total of 135,960 SEVIS records have authorizations to participate in the OPT extension.⁵ Because this program has grown rapidly and is likely to be significantly more impactful to the labor market than we had originally estimated, it is critical that we collect and report wage and related data with the greatest amount of transparency. The total number of SEVIS records that have authorizations to participate in either OPT, the OPT extension, or CPT as of 2019 is over 536,000 when combined.⁶ While some of the individuals who have been authorized to obtain employment through these programs have not reported an employer into SEVIS, the program’s size warrants greater oversight.

The public comments included a request that SEVP release raw data gathered from the Training Plan and other relevant forms as to the gender, age, country of origin, level of training, field of training, institution(s) of higher education, job title, wages, employer, and work location so that an impact analysis could be run. In the response, we noted that some of this information may be available through a Freedom of Information Act (FOIA) process. Because this information is not currently compiled in a meaningful format that would lend itself to a FOIA request, our new unit will take the initiative to collect and report this information online, across all OPT programs, to the greatest extent possible.

As to the OPT extension, the regulation explains that “the employer must be enrolled in and remain in good standing with E-Verify; assist with the [...] reporting and training plan requirements; and attest that (1) it has sufficient resources and trained personnel available to provide appropriate training in connection with the specified opportunity; (2) the student on a STEM OPT extension will not replace a full- or part-time, temporary or permanent U.S. worker; and (3) the opportunity helps the student attain his or her training objectives.”⁷

¹ The term “U.S. worker” appears 175 times in the rule.

<https://www.federalregister.gov/documents/2016/03/11/2016-04828/improving-and-expanding-training-opportunities-for-f-1-nonimmigrant-students-with-stem-degrees-and>

² Id.

³ <https://www.federalregister.gov/documents/2008/04/08/E8-7427/extending-period-of-optional-practical-training-by-17-months-for-f-1-nonimmigrant-students-with-stem>

⁴ Id.

⁵ https://www.ice.gov/doclib/sevis/pdf/data-OPT-STEM-OPT-CPT_2019.pdf

⁶ Id.

⁷ As noted in the regulation, “If the employer does not employ and has not recently employed more than two similarly situated U.S. workers in the area of employment, the employer nevertheless remains obligated to attest that the terms and conditions of a STEM practical training opportunity are commensurate with the terms and conditions of employment for other similarly situated U.S. workers in the area of employment. ‘Similarly situated

SEVP is ready to advance our regulatory pledge to protect U.S. workers and ensure that the OPT programs do not harm foreign students or the labor market. The loss of employment many U.S. workers have faced since the beginning of the COVID-19 pandemic as employers lay off significant portions of their workforce (while still, in some cases, seeking to hire more foreign workers), makes this work particularly timely. Anyone who observes unlawful employment practices, including OPT participants, should call the ICE Tip Line at 1-866-DHS-2-ICE or send a tip using the webform at: <https://www.ice.gov/webform/ice-tip-form>.

Disclaimer

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U.S. workers' includes U.S. workers performing similar duties subject to similar supervision and with similar educational backgrounds, industry expertise, employment experience, levels of responsibility, and skill sets as the student. The duties, hours, and compensation of such students are 'commensurate' with those offered to U.S. workers employed by the employer in the same area of employment when the employer can show that the duties, hours, and compensation are consistent with the range of such terms and conditions the employer has offered or would offer to similarly situated U.S. employees." <https://www.federalregister.gov/documents/2016/03/11/2016-04828/improving-and-expanding-training-opportunities-for-f-1-nonimmigrant-students-with-stem-degrees-and>