

OIS Summary: 2008 STEM Extension and H-1B Cap-Gap

(Please note: this is not legal advice – it is a brief understanding of some recent regulatory changes and interpretations. NC State students: you must consult an immigration attorney or an OIS advisor about your specific situation before taking any action. Last revised: May 14, 2008)

The USCIS recently issued several regulations, policy statements, revised application forms, and other resources that affect many F-1 students at NC State University. This will be very good news for some, but others will not be affected by – or be able to take advantage of – some of these benefits. Additional information is available on the USCIS website, the links provided below, and at the OPT Information sessions held each week in Daniels Hall.

Major Changes:

- 1) F-1 graduates in most STEM fields are able to apply for a 17 month extension of their current OPT in addition to (and after the EAD is in hand) their initial 12 month OPT segment (for a total of 29 months). Students in allowable disciplines must first be authorized for the initial 12 month period of OPT before applying for the extension and must be working for – or have a job offer from - a company that is enrolled in the e-Verify program. Not all companies are enrolled in E-Verify program (nor do they want to be). You must also apply for this extension and submit it to the USCIS Service Center BEFORE your current EAD expires. Please complete the necessary forms (see below) and send everything to OIS sometime between months 3 and 10 of your valid EAD period. Please read and follow the directions!
- 2) F-1 students in all fields who are applying for their first period of OPT may now apply in the 60 day “grace period” following their completion of program date provided they meet all eligibility requirements and the USCIS Service Center receipts the application before the 60th day (applicants must also be sure to submit a complete application to the USCIS Service Center in order to arrive no later than 30 days after OIS recommends the OPT in SEVIS). This is great news for students – you no longer have to apply for post-completion OPT in the months before you graduate or submit your thesis. Please attend a weekly OPT session at OIS to get the forms and to get your questions answered.
- 3) F-1 students on OPT who are the beneficiary of an approved H-1B petition may *continue* to work in their field of study between the expiration date of their EAD and October 1st when their new H-1B status begins (this brings relief to those students who graduate in May, get an EAD for May to May, and previously had to “go off payroll” until October 1st when their H-1B was effective). While the extension is “automatic,” there is no application or extension of an EAD. You don’t need to do anything, but IF your employer requires or desires documentation from SEVIS, please follow the instructions on the link below to find out how a new Form I-20 can be requested.
- 4) Students currently caught “in the gap” and who have an approved H-1B via consular notification, may now change it to “change of status” without having to leave the country – consult your attorney for assistance. If your employer filed for an H-1B for you with Consular Notification indicated since

they expected you to be affected by the Cap-Gap, your attorney (or HR rep) can change your petition for change of status without your having to leave the country.

5) Students who accrue too many days of unemployment may lose their OPT altogether. Regular OPT students are permitted no more than 90 days (cumulative) of unemployment and those on a STEM Extension are not permitted more than 120 days of unemployment (throughout their total 29 month period). It is imperative that you maintain continuous employment status throughout your OPT. You are also required to document your periods of employment and unemployment.

6) USCIS is requiring more frequent reporting regarding your OPT activity. Students (those on OPT), Universities (the DSO and/or international offices), and employers are all having to provide more information and failure to provide this information can result in termination of your OPT and/or other consequences.

a) All students on OPT must continue to report changes in address, name, employment status, etc., to OIS

b) Students on a STEM OPT extension are required to report complete employment information every 6 months to OIS (there is a an on-line form for this on our website)

c) USCIS is currently conducting an "OPT Validation Project" with US schools and all students on OPT (most students on OPT – those given to the schools on a report generated in SEVIS) are required to report employer information, all previous specific dates of employment and un-employment while on OPT, etc. If you get an email from OIS asking for this information, please go to the web form indicated and complete the information on-line. This is not optional – not only will it be a headache for OIS to contact you a second time, your OPT may also be rescinded by USCIS. Thank you for your co-operation.

One of the constant things in our experience is change. Immigration regulations change, policies and practices change, people and jobs change – the OIS staff members are delighted to help you with your overall US experience and find great satisfaction in helping you find success. Thank you for your patience and understanding with regard to delays in processes and responses due to our heavy workload. Please remember to communicate any substantive change in your situation and contact an OIS advisor before making any changes that must be reflected or approved in SEVIS.

Best wishes.

Further Information:

- OIS Practice Summary H1B Cap Gap 2008
- <http://www.ncsu.edu/oisss/OISPracSumH1BCapGap2008.htm>

- STEM OPT Extension Application
- <http://www.ncsu.edu/oisss/pdf/STEMext.pdf>

- Graphic Display of OPT and Cap-Gap Scenarios
- <http://www.ncsu.edu/oisss/pdf/OPTScenarios.pdf>

- USCIS April 8 FAQ on OPT Extension
- http://www.uscis.gov/files/article/OPT_FAQ_4apr08.pdf

- USCIS April 18 Update to allow change of status for H-1Bs
- http://www.uscis.gov/files/article/update_f1students_041808.pdf

- USCIS regulation printed in the Federal Register (April 8)
- <http://edocket.access.gpo.gov/2008/E8-7427.htm>