

# SEVIS Technical and Policy Conference Call

*Wednesday, July 23, 2008*

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# Regular pre- or post-completion OPT

## 1. Information/Training for other Agencies

What information about the unemployment provision has been provided to other agencies, including:

- Consular offices overseas
- CBP port of entry officers
- USCIS Service Center adjudicators

SEVP Response: To date, we have primarily worked with USCIS headquarters on the OPT rule. We have included the other agencies in reviews of the rule and hope to work more with them on specific issues.

NAFSA note: SEVP also worked with the DOS Consular Affairs Visa Office to develop a cable to send to posts.

## 2. OPT for students who have completed all coursework

With regard to authorizing pre and post-completion OPT for students who have completed all coursework and have only thesis or equivalent remaining:

- Can SEVP confirm that such students can choose to apply for either pre-completion or post-completion OPT?

SEVP Response: Yes, these students are given a choice to apply for pre-completion or post-completion OPT.

- In SEVIS, what distinguishes pre-completion OPT from post-completion OPT?

SEVP Response: The program end date.

NAFSA Note: SEVP also stated that if pre-completion OPT is selected, the period of OPT must end prior to the program end date on the I-20. If post-completion OPT is selected, the OPT must start after the program end date on the I-20. The DSO may shorten the program end date to allow the student to apply for post-completion OPT. However, the DSO will need to ensure that the institution supports a policy of shortening program end dates. See the [SEVIS Q&A 2008 Conference Slides](#) or the SEVIS Q&A with SEVP transcript (available on the [SEVIS Information web page](#)) for more information.

- If the student chooses pre-completion, must a student file a new application for post-completion OPT when he or she completes all degree requirements?

SEVP Response: Yes, that would require a separate I-765.

- Can SEVP confirm that if such a student chooses pre-completion, the student can work full-time, since all course work has been completed?

SEVP Response: Yes, these students can work full time if they choose to apply for pre-completion OPT.

- If the student chooses post-completion but does not complete the degree program during the 12 months of post-completion OPT, can the student continue in the degree program after the post-completion OPT period ends?

SEVP Response: No. Program extensions are not available after post-completion OPT.

- If not, what steps must the student take?

SEVP Response: The student has to prepare to change status or depart the country prior to the end of his or her 60-day grace period.

NAFSA Note: SEVP noted that it is considering whether reinstatement will be available under the current regulations, and will comment on this in a future call and/or SEVP-issued policy guidance.

### **3. Variable hours while on post-completion OPT**

At the annual NAFSA conference, SEVP stated that students on post-completion OPT must work at least 20 hours/week to be considered “employed.” Could SEVP confirm that a student with variable hours is considered “employed” by averaging 20 hours/week while on post-completion OPT? For example, a performing arts student might work 10 hours one week and 30 hours the next week.

SEVP Response: If a student has a variable schedule, within a month, it should average out to 20 hours per week.

### **4. Further Policy Guidance on OPT**

When can DSOs expect to see further guidance on OPT?

SEVP Response: We are in the process of updating the guidance and hope to have the new version on the Web site soon. Prior to posting, we have to work within ICE and with other affected government entities so we cannot provide a specific timeframe for the update.

## 5. OPT Recommendation within 30 days of filing I-765

8 CFR 214.2(f)(11)(i)(B)(2) states that a student applying for post-completion OPT “must also file the Form I-765 with USCIS within 30 days of the date the DSO enters the recommendation of OPT into his or her SEVIS record.” In addition, the DSO must provide the student with a *signed, dated* Form I-20 indicating that OPT has been recommended.

The current I-765 instructions tell students to file the EAD application with an I-20 “endorsed by a Designated School Official within the past 30 days.” There is no signature line specifically for OPT endorsements, and some Service Centers have specified that the endorsement must be on p.3 of the I-20.

What is the current rule regarding when a student must file the I-765 with the Service Center:

- Within 30 days of the recommendation in SEVIS,
- Within 30 days of the “date issued” date at item 10 on page 1 of the printed Form I-20, or
- The shorter of the two if the dates are different?

**SEVP Response:** A student should file the I-765 with the Service Center within 30 days of the recommendation in SEVIS. We understand that there is no specific signature line for OPT endorsements and will work with USCIS to clarify questions on signatures on page 3 of the Form I-20.

## 6. Requested status and auto-completion

Will an OPT Request in “requested” status keep the record from auto-completing 60 days after the Program End Date?

**SEVP Response:** Yes, the request should keep the record in Active status. If the request remains in Requested status for more than 180 days, it will be cancelled and the record will auto-complete.

**NAFSA note:** At this time, a request older than 180 days does not auto-cancel in SEVIS; SEVP must run a maintenance job to cancel the request. SEVP had scheduled this type of maintenance job in May, but postponed it because of concerns raised by NAFSAs. SEVIS contains an alert list that identifies requests that have been in requested status more than 90 days. SEVP stated that they understand that the academic community needs more time to review the data on this alert. SEVP will notify schools when it determines an appropriate date to run the maintenance job to cancel requests older than 180 days.

# STEM OPT Extension

## 7. Changing CIP code in SEVIS

DSOs are reporting requests from students and employers to change the student's CIP code to a STEM-eligible code based on the interdisciplinary nature of the student's field of study. SEVP has stated that a DSO has discretion to change the CIP code, but advises that the DSO keep evidence justifying the change in the student file. If an institution makes an internal decision to reclassify a course of study under a different CIP code, pursuant to the institution's requirements for such a change, can SEVP confirm that a DSO may change the CIP code in SEVIS:

Prior to the Program End Date?

Prior to the completion of regular post-completion OPT?

SEVP Response: The change can be made at either time but we strongly recommend schools exercise caution in changing CIP codes. If you wish to change the code for an individual student, you should maintain documentation indicating the student was incorrectly classified. If an institution makes an internal decision to reclassify a program of study, it should be an institution-wide decision that applies to all students. The school should maintain records concerning the change and be prepared to provide justification during the adjudication process.

NAFSA Note: SEVP indicated that while it is possible to change the CIP code of an individual student, the school should be prepared to justify this change and why it was not part of a greater institutional change. In fact, such individual changes will be under much greater scrutiny. Schools are cautioned to keep good records. DSOs should work with their campus registrars to ensure that these changes are made appropriately, and in conjunction with the institution's overall policy for CIP code changes.

## 8. Information for Employers

How is SEVP educating employers regarding the need to contact DSOs when a STEM extension OPT student ceases employment? Does SEVP plan to update the Factsheet "[Information for Employers](#)" with information about the STEM OPT Extension?

SEVP Response: We are preparing guidance for employers concerning the cap-gap extension of OPT and guidance for employers of STEM extension students that we plan on placing on the Information for Employers page on the SEVP Web site.

NAFSA Note: SEVP also plans to compile a one-page handout for employers regarding student and employer responsibilities for cap-gap situations, and to explain that students may continue to work while waiting for a data fix.

## 9. Types of Employment Allowed during STEM OPT Extension

During a STEM OPT extension, is the student eligible for the following kinds of employment, and if so, what entity must be registered with E-Verify?

- Self-employment
- Employment as an independent contractor (1099 employment)
- Employment through an agency
- Employment by a consulting firm

SEVP Response: A student is eligible for each type of employment, as long as he or she meets all other eligibility requirements, including e-verify registration for the business.

NAFSA Note: SEVP commented that students who are self-employed must set up a business and register with E-Verify. For employment through an agency or consulting firm, the agency or consulting firm would need to be registered in E-Verify, but not the company for whom the student is providing services. SEVP will provide further information on 1099 employment on the August conference call.

## 10. Applying for STEM Extension during Cap Gap

Can SEVP confirm that a student may apply for a STEM OPT extension when the student is within a period of cap-gap OPT extension?

SEVP Response: Yes. The student's employer will need to withdraw the H-1B petition before the change of status occurs on October 1.

NAFSA Note: SEVP clarified that the H-1B petition only needs to be withdrawn if the student wants to continue in F-1 status under the STEM OPT extension rather than pursue the H-1B.

## H1-B Gap Cap

### 11. Waitlisted petitions

Can USCIS confirm that it will not "wait list" any H-1B petitions this year?

SEVP Response: This question will be deferred to the August conference call.

### 12. Cap-gap status without H-1B documentation

For students whose OPT was extended until June 2, but who do not yet have documentation that the H-1B petition has been receipted, approved, rejected, or denied:

SEVP Response: This question will be deferred to the August conference call.

## F/M School Certification/Recertification

### 13. Processing Times for Certification/Recertification

What is the current processing time for SEVIS certification of a brand new school? What about an existing SEVIS-approved school adding a new campus?

SEVP Response: The standard response to the question for initial schools is “a *minimum* of 4 months from the date of submission”. The average school processing time right now is around 5 months total but that time period can fluctuate greatly on the time of year the petition is submitted, the office case load upon submission, the type of evidence required and the response time of the school after a Request For Evidence is sent.

An update to add a campus in process is slightly longer on average because of the influx of Form I-17 updates submitted after the update focus given in this year's conference presentations. Additionally, the same factors affecting the processing time with initials also affect updates.

The School Certification Branch is still refining the proposed recertification process and once an estimated processing time is available we'll inform schools. Specific items to note with recertification are a) a school will maintain full access to SEVIS during the recertification review and b) The subsequent recertification date is dependent on the recertification deadline and not the actual decision date.

NAFSA Note: NAFSA asked how long the approval would take if an already certified school is updating or changing the I-17, and SEVP commented that given the influx of I-17 updates following the Spring meetings and workshops, the times are similar to those noted above. If no documentation is required for the change, the approval could be instantaneous. Approval time also depends on a school's ability to respond to requests for additional information.

SEVP further clarified that the next recertification date is dependent on the recertification deadline – not the date that the school files for recertification.

### 14. Review of Electronic Student Files

At one of the recent town hall meetings regarding recertification, SEVP stated that SEVP will review a statistically relevant sample of student files electronically. Will this be the case for all schools, or only for some schools? If the latter, what criteria will SEVP be looking at in making those decisions?

SEVP Response: As stated previously, the SCB is still refining the proposed recertification process. The statistical sample will depend on a number of factors, such as past performance.

## J-1 Issues

### 15. Reporting multiple types of part-time employment

Regarding J-1 employment reporting in SEVIS, how should an ARO report employment in cases where the student is engaged in different types of employment (e.g. student has both on-campus Fellowship and on-campus hourly employment), with varying hours/week (20 or less)?

**SEVP Response:** With the exclusion of the category of Student Intern, the exchange visitor can have multiple segments of employment entered on his or her SEVIS record. The employment segments can overlap, and the maximum length of a segment of student employment is 12 months.

The Responsible Officer/Alternate Responsible Office will use the Add Student Employment link on the *Exchange Visitor Information* screen to add each type of employment (e.g., on-campus/off-campus) to the EV's SEVIS record.

### 16. Implementing Student Intern subcategory in SEVIS

The supplementary information preceding the final student intern rule states that “the student intern will be established as a subcategory of the college and university category, and current academic sponsors will automatically be allowed to provide student internships once the final rule is published *and the updates are implemented in SEVIS.*” [73 Fed. Reg. 35066, 35067 (June 20, 2008)]. How is the Student Intern category going to be implemented in SEVIS? Is there a timeline for implementation in RTI? When will it be available in batch?

**Response:** The Student Intern will be added in SEVIS via the College/University Student drop-down list (e.g., Student Associate; Student Bachelors; Student Doctorate; *Student Intern*; Student Masters; and, Student Non-Degree. Student Intern will only be available to DoS-designated Exchange Visitor Program sponsors authorized the category of Student (College/University). The Student Intern functionality—RTI and Batch—is currently on the list of System Change Requests (SCRs) being considered for the next release of SEVIS (following the August 2008, SEVIS Release 5.10).

**NAFSA Note:** SEVP does not have a definite date for when the next update (SEVIS Release 5.11) will be released, but it is planned for Fall or Winter 2008. While the Student Intern rule became effective 7/21/08, exchange visitor programs will not be able to use the student intern category until the SEVIS functionality is available.

### 17. Documenting J student employment and academic training

SEVIS 5.8 implemented functionality to approve J student employment in SEVIS, and in August, 2008, SEVIS 5.10 will implement functionality to approve academic training in SEVIS. Under 22 CFR 62.74(b) and 62.73(b), updating SEVIS with this information “constitutes compliance with” the requirement that these types of approvals be done by the RO/ARO in advance and in writing.

- Will DOS materials such as the RO/ARO Manual and SEVIS Message board messages be updated to reflect that an RO/ARO letter will no longer be needed to authorize student employment or academic training?

**Response:** Let's start with a clarification of the Exchange Visitor Program Regulations. On December 12, 2002, the Department of State published Subpart F—Student and Exchange Visitor Information System (SEVIS), Exchange Visitor Program Regulations (22 CFR Part 62) in the Federal Register. The purpose of Subpart F was to establish the regulatory parameters for the Congressional mandated data collection that is known as SEVIS. Both sections 22 CFR 62.73(b) and 62.74(b) referred to in this question were part of the publication. Both sections state that, “An update of the SEVIS record constitutes compliance with....,” which was relevant to 22 CFR 62.23 of the Exchange Visitor Program Regulations as written and published in the Federal Register on March 19, 1993. However, on June 20, 2008 the Department of State published new regulations [22 CFR 62.23] in the Federal Register [73 FR 35068] that updated this section and established the new “Student Intern” (sub)category. In this publication, 22 CFR 62.23(f)(5)(i) - Academic Training - states that, “The student must present to the responsible officer a letter of recommendation from the student’s academic dean or advisor setting forth:...”. Additionally, 22 CFR 62.23(f)(5)(ii)(B) states that, that the responsible officer must, “Review the letter of recommendation required in paragraph (f)(5)(i) of this section; and,...” Therefore, based upon the newest Federal Register publication, the letter is still required for academic training. It is 22 CFR 62.23(f)(5)(II)(C) [also Academic Training] that states that the responsible officer must, “...Make a written determination of whether the academic training currently being requested is warranted and the criteria and time limitations set forth in paragraph (f)(3) and (4) of this section are satisfied.” It is by entering information into SEVIS concerning the student’s academic training that the regulatory requirement of 22 CFR 62.73(b) is met. 22 CFR 62.23(g)(2)(iv) - Student employment - states, “The responsible officer has approved the specific employment in advance and in writing.” It is by entering information into SEVIS concerning the student’s employment that the regulatory requirement of 22 CFR 62.74(b) is met.

**NAFSA Note:** For clarification of the above discussion, see the NAFSA Adviser’s Manual.

- What documentation can be used for I-9 purposes?

SEVP Response: Since the Form I-9 is not part of SEVIS, the SEVIS user manuals and online help will not include this information. The list of acceptable documents has been amended in the 2007 version of the Form I-9 and can be found on page 4 of the form. See the U.S. Citizenship and Immigration Services web site [Employment Eligibility Verification](#).

**NAFSA Note:** NAFSA advised DOS that the *M-274 Handbook for Employers* states on p. 42 that “J-1 students working outside the program indicated on the DS-2019

also need a letter from their responsible school officer.” Therefore, while DOS does not require a letter, a student will likely still be asked for a letter from the A/RO for I-9 purposes.

## **SEVIS Data Entry**

### **18. Punctuation Marks**

The SEVP Factsheet “[Improving Data Integrity](#)” indicates that SEVIS recognizes hyphens and DSOs should enter a student’s name as it appears in the student’s passport, including hyphens. Does the SEVIS system recognize other punctuation marks (e.g. apostrophes)? Should DSOs/AROs enter names in SEVIS without these other punctuation marks?

**SEVP Response:** This question will be deferred to the August conference call.