

Advising Students on Nuanced Employment Issues

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Workshop Modules

1. Why is this workshop important?
2. What is Employment?
3. On-Campus Employment
4. Curricular Practical Training (CPT)
5. Optional Practical Training (OPT)
6. Academic Training (AT)

Module 1

Today's Outcomes & Advising Framework

- Why does this matter?
 - What do we hope to accomplish?
 - How can we apply this?

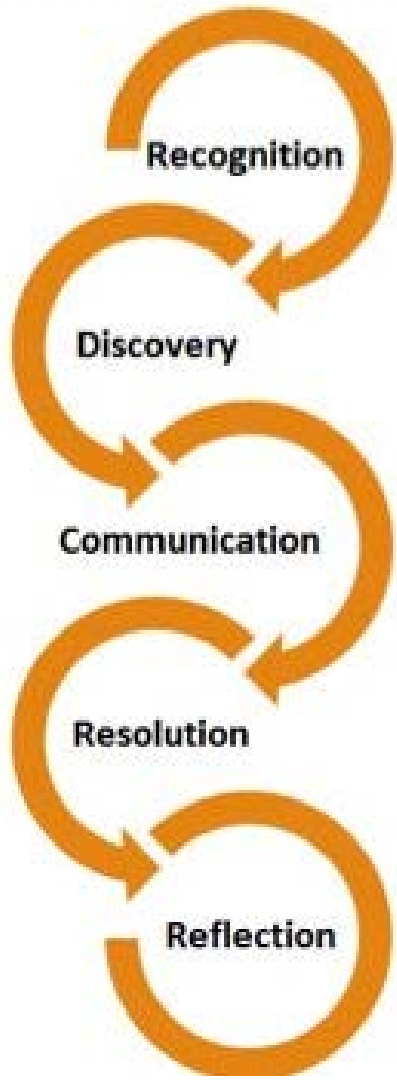


NAFSA's Advising Guidelines

- Establish and implement practices that anticipate and head off problems.
- Identify key players and communicate with them to inform, check, and verify.
- Identify all the elements of the story that matter to the exchange visitor.
- Seek key information from as many perspectives as time and resources allow: (not only the F-1 but other perspectives as well such as F-2s, department, funding sponsor, etc.).
- Identify options available to the exchange visitor and any consequences of choosing those options. Think about long-term planning/life after F/J visa.
- Refer to key resources and have consistency in office policy/practice on how you choose your resources.
- Consider the scope of your advising authority. Know when to refer someone to immigration counsel if they need legal advice or help deciding on an immigration strategy.
- Thoroughly document for follow-up and future reference.

Adapted from the J-1 Intermediate CEP

The Advising Path



Recognition – Realizing that you’re in a complex advising situation.

Discovery – What information do you know and what do you need to move forward?

Communication – Who are the stakeholders in ISSS, across campus, and/or elsewhere?

Resolution – Synthesize the information, determine the best course of action, and inform stakeholders

Reflection - Consider the case as a whole - What have you learned? Can this situation help you improve as an advisor? Are the lessons translatable?

Advising, especially employment, can be complex!

- Federal regulations
- Institutional policies
- Multiple government agencies
- Employer pressure
- Students in a state of distress or crisis

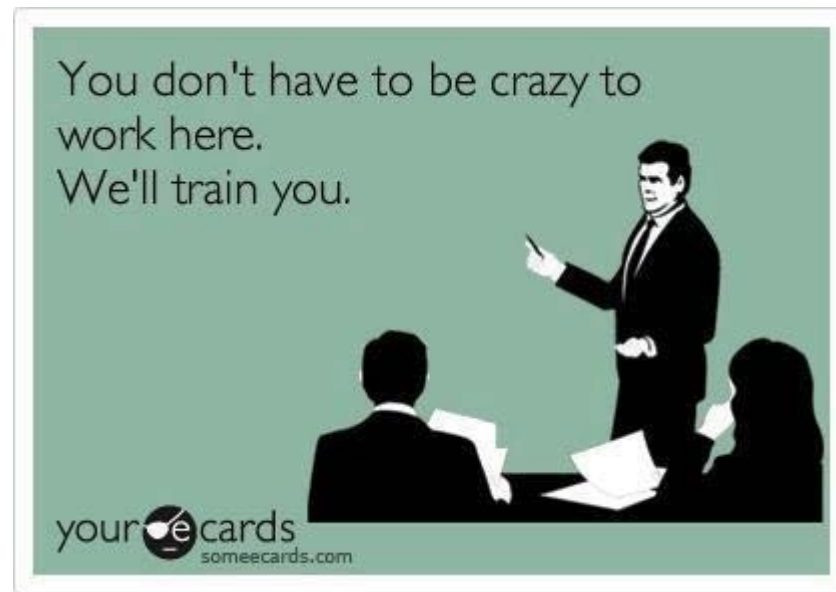
ADVANCED ADVISING

- Reveal complexity gradually
- Not easily or quickly resolved
 - Not always in person

Module 2

Employment and Work

Why do we need to have context on “work”?



- 8 CFR 214.1(e)
 - *Employment.* A nonimmigrant in the United States in a class defined in section 101(a)(15)(B) of the Act as a temporary visitor for pleasure, or section 101(a)(15)(C) of the Act as an alien in transit through this country, may not engage in any employment. Any other nonimmigrant in the United States may not engage in any employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the provisions of this chapter. **A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status** within the meaning of section 241(a)(1)(C)(i) of the Act.

What is an “Employee” vs. a “Volunteer”?

Employee: “A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.” (Henry Campbell Black, Black’s Law Dictionary (St. Paul, MN, West Publishing Co, 1991), p. 363.)

Volunteer: 7 tests under the Fair Labor Standards Act (FLSA)

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
5. The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Scenario Evaluations

- F-1 graduating student wants to continue to work as Grad Assistant after graduating.
- F-2 wants to volunteer at the local food bank
- F-1 student on CPT wants to volunteer for a consulting firm one floor up from his approved CPT employer, doing the same work she is approved for.
- J-1 student wants to sell a painting they painted to their neighbor, who saw it when he was over for dinner.
- F-1 student is selling a house he bought two years ago, for a profit of \$30,000.
- J-2 was helping her spouse's P.I.'s wife clean out her garage. She gave her \$50 as a thank you

Online Resources

- DOL Fact sheets: <https://www.dol.gov/whd/fact-sheets-index.htm>
- Undocumented workers and compensation: <https://www.dol.gov/whd/regs/compliance/whdfs48.pdf>
- M-274 – I-9 Manual: <https://www.uscis.gov/i-9-central/handbook-employers-m-274>
- USCIS Info on International Students and Work:
 - <https://www.uscis.gov/sites/default/files/USCIS/Verification/FormI-9-FactSheet-for-Students.pdf>
 - <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment>
- Study in the States Work Information: <https://studyinthestates.dhs.gov/working-in-the-united-states>
 - (note first sentence: The U.S. government takes working illegally very seriously.)

Caution: Here be Dragons....



Module 3

On-Campus Employment

Definition of On-Campus Employment

- 8 CFR 214.1(f)(9)(i)
 - *On-campus employment.* On-campus employment must either be performed on the school's premises, (including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location which is educationally affiliated with the school.

- Types of On-Campus Employment
 - Work on school premises, employed by the I-20 issuing institution
 - Work on school premises, employed by on-campus commercial firms
 - Work done at off-campus locations, but treated as on-campus

Regulatory Requirements

Eligibility	Immediately upon obtaining F-1 status.
Location	Must be considered "on-campus."
Duration	Can be used throughout
Hours per week	< 20 while school is in session; > 20 during official school breaks
Level of Work	Does not have to be related to course of study
Approval Process	Does not require DSO or DHS approval
J Students	RO/ARO adds On-Campus Employment authorization to SEVIS record. 22 CFR 62.23(g)
Miscellaneous	Employment must not displace a U.S. resident

Special Considerations

- *Initial students:* Work cannot begin more than 30 days before classes start.
- *Transfer students:* A student may begin employment at the transfer-in school after the transfer release date.
- *After degree completion:* Student may not engage in on-campus employment during the 60-day grace period unless:
 - Employment authorized for OPT
 - Employment between Change of Level
- *Concurrent enrollment:* Student may only work on the campus of the institution that issued the Form I-20.
- *Social Security Numbers:* Student must present a letter from the DSO and a letter from the on-campus employer.

Let's test our knowledge...

- **Employment A:** Barnes & Noble located in University's Student Center
- **Employment B:** Professor B's company, located at an off-campus site
- **Employment C:** Start-up company located at the University's Research & Innovation Center

Online Resources

- F-1 Student On-Campus
FAQ: <https://www.ice.gov/sevis/employment>
- SSA Policy Information Manual System
(POMS): <https://secure.ssa.gov/apps10/poms.nsf/subchapterlist!openview&restricttcategory=01102>

➤ Quick Break – *back in 10*

Module 4

Curricular Practical Training (CPT)

Curricular Practical Training

Welcome to the *Grey Space* ...



(i) **Curricular practical training.** An F-1 student may be authorized by the DSO to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full time curricular practical training are ineligible for post-completion academic training...

8 CFR 214.2(f)(10)(i)(A)

Eligibility Requirements

- In **ACTIVE** status (and not in an English language training program)
- Has completed 1 full academic year prior to request.
- The employment is an “integral part of the established curriculum”.
- The employment is “directly related to the student’s major area of study”.
- The student is enrolled in a “full course of study”.
- Required information for processing request.

Academic Year

- 1 full academic year. Question: what constitutes a full academic year?

Exceptions/Preconditions:

- A graduate program requires immediate CPT participation and this requirement is listed in the academic catalogue and required for all students in the program
- Student was lawfully enrolled on full-time basis at an SEVP-approved institution for 1 full academic year

Integral

... “practical training is defined to be alternative work/study, internship, cooperative education, or any other type of **required internship or practicum** that is offered by sponsoring employers through cooperative agreements”

-Regulation

“In practical terms, ‘integral part of an established curriculum’ means an opportunity must be required by the curriculum or, **if not required**, the student must receive credit for the training.”

-SEVP DSO Training

How it Relates

OOPS! The afterthought...

(B) *SEVIS process*. To grant authorization for a student to engage in curricular practical training, a DSO at a SEVIS school will update the student's record in SEVIS as being authorized for curricular practical training that is **directly related to the student's major area of study.**”

8 CFR 214.2(f)(10)(ii)

CPT & Full Course of Study

“F-1 students are required to maintain status (**status includes enrolling in a full course of study**) while completing CPT...” – SEVP DSO Training

- **Enrollment Requirements**
 - 9 credit hours
 - 12 credit hours
 - Reduce Course Load

CPT Authorization Hours & Enrollment

- “Part-time off-campus employment authorized under this section is limited to no more than twenty hours a week when school is in session.”
 - 8 CFR 214.2(f)(9)(ii)(A)
- If a student seeks authorization for full-time CPT, you should ensure that the CPT opportunity is considered full-time enrollment ...”
 - SEVP DSO Training

Who are our Stakeholders?



Stakeholders

- Student
- Employer
- Academic Department
- International Student Services
- You 😊

Pushing Boundaries

- Federal Regulations
- SEVP/NAFSA Guidance
- Office Policy

Let's Talk Office Policy!



Caution: Results may vary.

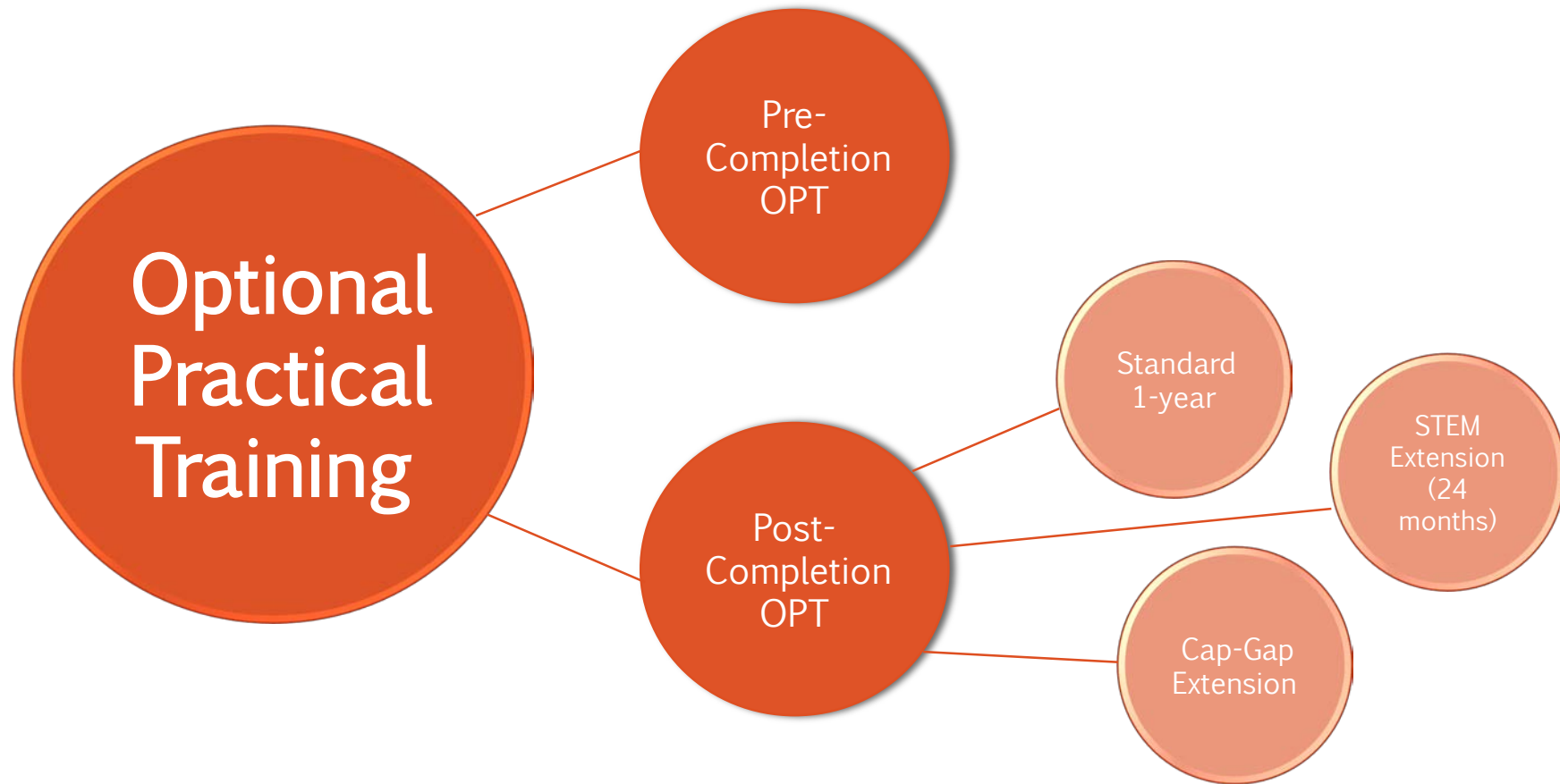
Resources

- Enrollment exceptions:
http://www.nafsa.org/uploadedFiles/Chez_NAFSA/Find_Resources/Supporting_International_Students_And_Scholars/ISS_Issues/PG1408_01_AcademicYear_20141010.pdf
- SEVP DSO Training for DSO:
http://www.nafsa.org/uploadedFiles/SEVP_DSO_Training.pdf
- SEVP Website for Practical Training:
<https://www.ice.gov/sevis/practical-training>

Module 5

Optional Practical Training (OPT)

OPT: How much time do we have?



General Eligibility Requirements

- Enrollment for at least one full academic year
 - But there are exceptions! What could they be?
- Employment must be directly related to major area of study
- Impact of prior use of full-time CPT
- 12 months of standard OPT per educational level

8 CFR 214.1(f)(10)

Pre-Completion OPT

- Used before the completion of the course of study.

➤ Special Considerations

- *Hours per week:* Can work 20 hours per week while school is in session. Full-time work allowed during vacation period.
* *Thesis students can be an exception.*
- *Application Timeline:* Can only apply 90 days prior to requested start date.
- *Employment dates:* Cannot work until student receives EAD.
- *Early Completion of Program:* Pre-Completion OPT will end if academic program finishes early.

Post-Completion OPT

- Done after completion of the course of study.

➤ Special Considerations

- *Thesis Students:* "a student who only has the thesis remaining may either apply for pre-completion OPT or post-completion OPT while completing the thesis/dissertation."
- *EAD Card Errors:* impact on the work dates.
- *Traveling:* while the application is pending and during OPT.
- *Unemployment time:* student is responsible for keeping track, but reporting in SEVIS?

STEM OPT Extension

- 24-months; must be on approved STEM Designated Degree Program List

➤ Special Considerations

- *Thesis Students:* no degree awarded.
- *Employment Requirements:* paid, 20+ hrs/week, E-Verify.
- *I-983 Form:* Student and employer must complete the Form I-983 Training Plan and present the completed form to the DSO before the SEVIS recommendation is made.
- *Reporting Requirements*

Cap-Gap Extension

- Refers to the "gap" in status that occurs in a change of status to H-1B, if the current status expires before the October 1 H-1B start date.

Taken from NAFSA Manual, 3.K.6.2

H-1B Petition Status	OPT Employment Extended Until
Filed	June 1
Waitlisted	July 28
Received	September 30
Rejected, Withdrawn, or Denied	8 CFR 214.2(f)(5)(vi)(B) states that the cap-gap extension of duration of status and employment authorization "shall automatically terminate upon the rejection, denial, revocation, or withdrawal of the H-1B petition filed on such F-1 student's behalf or upon the denial or withdrawal of the request for change of nonimmigrant status, even if the H-1B petition filed on the F-1 student's behalf is approved for consular processing." SEVP OPT Policy Guidance 1004-03 (sec. 9.1.1), however, states that "OPT authorization ends 10 days after the date of the withdrawal or denial."
H-1B change of status not approved by October 1	Cap-gap benefits (employment authorization and duration of status) are granted only through September 30. If the H-1B petition and change of status application on which the cap-gap benefit is based is not approved by October 1, the cap-gap extensions of employment authorization and duration of status end. The student must stop working (with September 30 being the final day of employment) until the H-1B petition is approved. See 3.K.6.10 H-1B cap-gap petitions not approved by October 1 for more details.

Group Discussion

- What area of OPT is most confusing or difficult to advise?
- What resources, materials, and/or multimedia do you use to assist students?
- Best Practices

Online Resources

- SEVP OPT Policy
Guidance: http://www.nafsa.org/Resource_Library_Assets/Regulatory_Information/SEVP_OPT_Policy_Guidance_1004-03/
- Study in the States STEM
OPT: <https://studyinthestates.dhs.gov/stem-opt-hub>
- USCIS STEM OPT: <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/stem-opt>
- STEM Eligible CIP
Codes: <https://studyinthestates.dhs.gov/eligible-cip-codes-for-the-stem-opt-extension>

Module 6

Academic Training

J Program Management

- Why this is important?
- Scrutiny of academic training policies and processes
- Purpose: (22 CFR 62.23(f)(1)) Primarily “...to participate in academic training ...without wages or remuneration”. Goes on to clarify that it can be for wages, if other criteria are satisfied...
 - Primarily in the U.S. to study
 - Related to major field
 - Good academic standing
 - Written approval from A/RO or RO in advance

Regulatory requirements

1. Primarily in the U.S. to study; Related to major field; Good academic standing; Written approval from A/RO or RO in advance
2. Time necessary to complete goals and objectives of training, provided that it is
 1. Approved by Dean or academic advisor, and A/RO or RO
 2. Does not exceed 18 months (undergrad and pre-doctoral), or a period equal to the duration of the full program of study (whichever is less)
 1. However, there is a possibility to extend if needed to meet degree requirements....
 3. Does not exceed 36 months for post-doctoral training

Academic Training – Procedures

1. Recommendation letter from Dean or Academic advisor to A/RO or RO. Letter must include:
 1. Goals and objectives of academic training program
 2. Description of the program (location, name and address of supervisor, # hours per week, start and end dates)
 3. How the program relates to the field of study
 4. Why it is integral to, or a critical part of, the academic program
2. The RO is responsible for:
 1. Determine any previous periods of AT
 2. Review the recommendation letter
 3. Make a written determination as to whether it is warranted and all above criteria are met.

Academic Training – Evaluation

- RO must evaluate the effectiveness and appropriateness of the AT, relating to the stated goals and objectives
- Caution: if unpaid, the AT must comply with FLSA volunteer requirements

AT Gotcha's (Possible problems....)

- AT requires extension of program – but the training can begin after the end date – within 30 days. Extension must happen before end date, or record goes to inactive.
- Employer “offer letter” may not comply with the above-state criteria. Be sure to review carefully
- Does SEVIS entry comply with the “written determination”? May want to issue a letter in addition, to be sure
- Develop a standard policy and procedure on how to evaluate the academic training. Document for EVP....
- How to interpret “post-doctoral training” Is an employment opportunity, following award of a doctoral degree, “post-doctoral training, or des it have to be a valid post-doc position?
- Self-employment as academic training?
- AT employer as “third party”, needing written agreement between institution and employer?

- Program managers (RO's are well advised to look carefully at J Program management, and how they are complying with all regulatory obligations
- NAFSA has a great tool on the website to assist with the review process.
- http://www.nafsa.org/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/Reviewing_Your_Exchange_Visitor_Program/



Questions