Foreign Students at the Crossroads: IMMACT and the New Face of the F-1 Student Regulations

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Foreign Students at the Crossroads:
IMMAct and the New Face of the F-1 Student Regulations
by Adam Green, Esq.* and Dyann DelVecchio*

This article is an analysis of F-1 and M-1 student regulations arising from passage of the Immigration Act of 1990 (IMMAct 90) and from recent amendments to 8 CFR 214.2(f) and (m). The final rules went into effect on October 29, 1991, the date of their publication in the Federal Register.

Introduction

The F-1 student program suffered a number of "sea changes" in the years leading up to 1991. With major regulatory reform packages exploding on the scene in 1983 and 1987, the dust had barely settled when the face of the F-1 student program was altered once again in the form of IMMAct and the October 1991 regulatory changes.

The new regulations' most notable changes include the total elimination of two long standing sources of employment for F-1 students: (1) off-campus employment authorization based on economic necessity and (2) summer practical training. In their place, these schemes were "consolidated" to form the Pilot Off-Campus Employment Program under Section 221 of IMMAct, a program which, rather

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1 These regulations do not affect students or scholars in the "J" visa category.

2 The exception being the Extension of Stay provisions at 8 CFR 214.2(f)(6), which were retroactive to October 1, 1991.

3 For a well-written and highly detailed explanation of the entire body of F-1 and M-1 student regulations, we recommend the newly revised Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars published by the National Association for Foreign Student Affairs (NAFSA). It can be ordered through the Publications Order Desk, National Association for Foreign Student Affairs, 1860 19th Street, NW, Washington, D.C. 20009
REGULATIONS AFFECTING F-1 STUDENTS

EMPLOYMENT
Under the new F-1 regulatory scheme, there are four categories of employment. They are:

1) On-campus work

2) Off-campus work under a period of practical training:
   (a) Curricular practical training
   (b) Post-completion practical training

3) Off-campus work under the Section 221 Pilot Program

4) Internship with an International Organization

A discussion of the eligibility requirements and the procedures for obtaining work permission in each category is provided below.

The Employment Authorization Document (EAD)
As a result of the Employer Sanctions provisions of the Immigration Reform and Control Act of 1986 (IRCA), employers may be subject to civil and criminal liabilities for knowingly hiring individuals who do not have authorization to work in the United States. The Form I-9, developed in direct response to IRCA's mandate, requires that an individual present one of a number of documents as evidence that he or she may be employed in the U.S. One such form of documentation is the EAD, a laminated photo-identification card available through INS. In order to apply for an EAD an individual must present the Form I-765 and a $60 filing fee.

Two types of F-1 student employment require an EAD. As we discuss each type of employment under the new regulations, it might prove useful to have a quick checklist of the type of documentation required for compliance with IRCA.

No Documentation Required
- On-Campus Employment

No EAD Required (DSO approves by endorsing I-20 ID):
- Curricular Practical Training
- Section 221 Pilot Program

EAD Required
- Post Completion Practical Training
- Internship with International Organization
ON CAMPUS EMPLOYMENT
8 CFR 214.2(f)(9)(i)

Upon arrival in the United States, F-1 students are permitted to accept on-campus employment under 8 CFR 214.2(f)(9)(i). An F-1 student is permitted to work up to 20 hours per week while school is in session and over 20 hours per week during vacation period or breaks in the semester. The definition of on-campus employment includes work on the school's premises (e.g., in an administrative office or academic department). Working for a commercial firm that does business on the campus and provides services to students (such as a bookstore, restaurant, or photocopying center) is also considered on-campus employment.

Among the improvements to the F-1 regulations are the on-campus employment provisions\(^8\). The regulations now permit a student transferring to a new school to work on-campus at that new school during the summer before he or she actually begins attendance; similarly, a student is who beginning a new program during the next academic term may work on campus at his "old" institution before making the transfer to the new institution or beginning the new program.

Expanded Definition
Under the new regulations the definition of "on-campus" has been expanded to include contract-based educational affiliations that enable graduate students to conduct research away from the actual campus setting under faculty supervision. Such research must be an integral part of the student's curriculum and must be commensurate with the student's level of study. (It is important to remember that this applies only to graduate students.)

The significance of this expanded provision should not be minimized. The new regulations will now permit students to assist professors who have contract-based research grants with institutions, corporations, or laboratories. Often these grants are not payable to the educational institutions themselves. Under the old regulations, students would not have been able to accept this employment as on-campus employment. Under the new regulations these affiliations might also include contracts between two educational institutions (e.g., a contract between Harvard and Stanford) or between an educational institution and a government agency (e.g., a consortium of schools conducting research at NASA; a research contract between Emory University and the Center for Disease Control).

Thus, under these regulations a student at M.I.T. may be permitted to work for her professor who holds a research contract with the Polaroid Corporation. The work

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\(^8\) With the elimination of two major sources of employment opportunities for foreign students—summer vacation practical training and off-campus employment due to unforeseen economic circumstances—the cynics among us will say that such liberalizations are nothing less than absolutely necessary.
may be performed at the Polaroid research laboratories and she may receive a paycheck directly from Polaroid. This is all permitted under the regulations provided that she is a graduate student, the work performed is an integral part of her curriculum, and the work is commensurate with her level of study. Thus, for I-9 purposes she may be paid by Polaroid and still be considered to be within the ambit of "on-campus employment."

This expansion of on-campus employment could prove to be a helpful alternative to the elimination of summer vacation practical training and off campus authorization based on financial hardship for those graduate students who are eligible.

Endorsement of Form I-9
While no documentation is required for those students who choose to work on campus, students must nevertheless complete an I-9 Form required under the Immigration Reform and Control Act of 1986 (IRCA). It is helpful if somewhere on the I-9 Form it can indicated, "On-Campus Employment Authorization under the provisions of 8 CFR 214.2(f)(9)(i)." Further, it has been suggested to us by an INS official that it would be helpful—although it is not required by the regulations—if the DSO would similarly endorse the back of the student's Form I-20 when that student is working for an off-campus employer under the new, expanded definition of on-campus employment.

PRACTICAL TRAINING
8 CFR §214.2 (f)(10)
Under the current regulations, only two forms of practical training remain: curricular practical training and post-completion practical training. Much to the frustration of many students and DSOs, annual vacation (or "summer") practical training has been eliminated entirely.

Elimination of Summer Practical Training
For no logical reason, summer practical training was discontinued with the promulgation of the new regulations. This poses a great problem for students and schools. Many students took advantage of the potential earnings, the career development opportunities, and the American work experience that could be gained through participation in a summer employment program. In fact, many students relied on the existence of such a program (and the legal work permission to support their participation in it) when they applied to school in the United States.
Now these students, many of whom are in mid-program, find that they may no longer take advantage of the summer practical training option. They are understandably incensed.

Sources in the educational community have confirmed that some schools may be successfully avoiding the problem of the elimination of summer practical training by requiring a summer "internship" period as a necessary component of a course offered during the academic school year (September through May). As is explained in the "curricular practical training" section below, students in a course that requires or makes optional a period of employment may be approved for a period of curricular practical training.

PRACTICAL TRAINING PRIOR TO COMPLETION OF STUDIES
8 CFR §214.2 (f)(10)

Under the 1991 regulations the only remaining form of pre-completion Practical Training is curricular practical training. Two types of practical training, formerly available under the regulations, have been unceremoniously eliminated. They are:

- **Summer Practical Training:**
  Where a student was permitted to engage in Practical Training during his or her annual vacation period (whether during summer or another season).

- **Practical Training After Completion of Courses Excluding Thesis:**
  The previous regulations had contained a provision whereby a student who had completed all course work for a bachelor's, master's, or doctoral degree but had yet to complete a thesis or equivalent could be eligible to apply for practical training. The new regulations do not address this contingency; thus, students with uncompleted program requirements will be barred from applying for Practical Training.

CURRICULAR PRACTICAL TRAINING
8 CFR 214.2 (f)(10)(i)

The new regulations at 8 CFR 214.2 (f)(10)(i) define curricular practical training ("CPT") as "alternate work/student, internship, cooperative education, or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school." **It is important to remember that students engaging in more than one year of curricular practical training may not be eligible for post-completion practical training.**
Most students are still required to have maintained F-1 status for a minimum of nine months before they may be eligible for curricular practical training. However, in a concession to the educational community, the Service created an exception whereby students enrolled in graduate studies requiring immediate participation in curricular practical training do not have to satisfy the 9-month requirement and may begin their employment upon enrollment. This option is only available to graduate students.

Curricular practical training comes under two headings:

- **Practical training that is required by the student's program of studies:**
  In this category, it does not matter whether the student is receiving credit for the course or program. In this event, "required" is the operative word. Examples include: student teaching, counseling, law, nursing, and engineering.

- **Practical training that is optional to the program:**
  In this situation, the student must be receiving course credit for the employment experience and it must be listed in the course catalogue and have a faculty member assigned. Examples include: a course where students have a choice either to write a paper OR to do field work.

In both cases, a student may or may not be getting paid. However, getting paid is not the significant indicator. What is important is if a student is either:

1) Working because it is required by the program; OR
2) Working because it is an option within the curriculum,

then he or she must be placed on a period of curricular practical training.

**Procedure for Obtaining Curricular Practical Training**


The student must first complete the pertinent sections of Form I-538. The DSO must then:

1) Certify the Form I-538 and forward it to the INS Data Processing Center in London, Kentucky;

2) Endorse the student's I-20 ID with "full time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)"; and,
3) Sign and date the I-20 ID before returning it to the student. At the point of receiving the I-20 ID, the student may begin work. No EAD is required.

Time Limit Calculations for Curricular Practical Training
8 CFR 214.2(f)(10)(i)

Training which is 20 hours per week or less is classified as part-time; on the other hand, curricular practical training which exceeds 20 hours per week is considered full-time employment. This distinction will become very important when determining an individual's eligibility for post-completion practical training.

Again, while there is no limit to the amount of part-time curricular practical training in which a student may engage during his academic program, students who have received a total of one year or more of full-time curricular practical training are not eligible for post-completion practical training.

Implications for "Co-op" Students
Students in co-operative education ("co-op") programs that require them to spend more than a total of 12 months in full-time practical training will be precluded from applying for post-completion practical training.

The INS's traditional rationale for this policy is that students whose curriculum mandates that they receive extensive work experience or degree-related training while still in school do not need additional training upon graduation; for these students, INS believes, post-graduate practical training would be unnecessary or redundant.

POST COMPLETION PRACTICAL TRAINING (PCPT)
8 CFR 214.2(f)(10)(ii)

The most important change in the post-completion practical training ("PCPT") scheme is that all students will be granted a single period of one year of practical training by the INS office having jurisdiction over their place of residence. The new system replaces the INS practice of issuing two six-months periods. This new approach eliminates the need to apply for an extension; under the former regulations the extension procedure had caused confusion, delays, and travel difficulties. Moreover, this means that the student does not need a job offer in order to receive practical training.

Another improvement in the new regulations is the elimination of the requirement that the training be unavailable in the student's home country.
Travel Considerations
8 CFR 214.2 (f)(13)

Gone are the days when a student's travel plans are paralyzed by the INS' failure to approve a second period of practical training in a timely fashion. Nonetheless, under the new regulations students must take care to remember that whenever they travel during a period of practical training, upon re-entry they must present:

1) A valid EAD; and,
2) A Form I-20 endorsed by the DSO within the past six months.

This might present difficulties for a student who obtains a one-year period of post-completion practical training under the new regulations, leaves the geographic area near his school, and then decides to travel more than six months after his application for practical training (the most recent time most students will have obtained their DSO's signature on the Form I-20). Therefore, students must continue to bear this requirement in mind. For their part, DSOs should be persistent in reminding students on periods of post-completion practical training that if they anticipate leaving the geographic area they should obtain an additional signature or else understand that they must plan their departures from the U.S. around sending their I-20 to the DSO for signature and having it returned to them before they may re-enter the U.S.

Period of Eligibility for Applying for Post-Completion Practical Training

It is important to note that under the new regulations the application "window" has been widened from 90 days to 120 days. (This is the eligibility period beginning 90 days before the completion of studies and continuing through 30 days after the completion of studies.) Because of the EAD requirement, students and DSOs must keep in mind that the same 120-day "window" exists for the submission of the required documents to the INS.

8 CFR §214.2(f)(10)(ii)(A) clearly states that a student is limited to one period of PCPT during his or her lifetime as an F-1 student. This means that even if a student later completes a program in a totally different field of study (after which he could legitimately benefit from an additional period of practical training), he is barred from doing so.

Time Calculations

In contrast to the previous regulations, there is no longer the possibility for a two month period of "lead time" during which a student might look for a job: PCPT starts only upon completion of studies.
The regulations at 8 CFR §214.2(f)(11) state that a student may not begin employment under PCPT until he has obtained an EAD. As a practical matter, therefore, a student should file his or her application as early as possible since, in spite of INS's commitment to timely adjudication of EAD applications, some INS offices take long periods to process the EAD.

Again, the period of PCPT beings only after the student has completed his course of study, neither before nor after.

**Procedure for Obtaining Post-Completion Practical Training**

8 CFR 214.2(f)(10)(i)(B)(C)

During the 120-day eligibility period outlined above, a student must present to the DSO the Form I-538 together with his or her current I-20ID. (The student must first complete the pertinent sections of Form I-538.) The DSO must then:

1) Certify on Form I-538 that the proposed employment is directly related to the student's major area of study and is commensurate with his or her educational level;

2) Endorse and date the student's I-20 ID to show that post-completion practical training in the student's major field of study is recommended beginning on (date of completion of the course of study); and

3) Return the I-20 ID to the student and send the Form I-538 to the INS Data Processing Center in London, Kentucky.

4) Student applies to INS office for the EAD by submitting Form I-765 and a $60 fee. For fastest processing we recommend that the student apply in person if permitted by the local INS office.

**Elimination of "Split" Periods of Practical Training:**

**The New Post-Completion Practical Training Dilemma**

The new regulations have eliminated split periods of practical training, a move that was met with opposition by many students and advisors. Apart from making the program less useful for some students (since they only have "one bite of the apple"), many students will face the difficult decision of when to apply for a one-year period of post-completion practical training. For example, a student graduating with a B.A. in May and who plans to start an M.A. program in September will either have to use only 3 months of the 12-month grant, or defer the benefit until after his Master's program is completed. This means that if the student only works for 3 months and goes back to school, he cannot recover the remaining 9 months; however, it is permissible for a student in that situation to attend school while working full-time.
Change in Employers
Although not addressed in the regulations, it would appear that, once granted a 12-month period of PCPT, a student who otherwise stays within the parameters of 8 CFR 214.2(f)(10)(ii)C(1) (employment directly related to student's area of study) would be free to change employers or add additional employers.

SECTION 221 OFF-CAMPUS EMPLOYMENT PILOT PROGRAM
8 CFR 214.2(f)(9)(ii)
29 CFR 508

The most controversial of the new F-1 regulatory provisions is known by several names. Because it was the brainchild of the fast food industry, it is often called the "McDonald's program"; it is also referred to as the "Pilot Off-Campus Program." This marks the first time that Department of Labor regulations have had a controlling effect on F-1 employment.9

This off-campus program was initially envisioned as a means by which employers themselves could obtain permission from the DOL to employ F-1 students. On the one hand, some leaders in the foreign student advising field saw no problem with a program that would aid businesses who had genuine difficulty finding enough employees to fill positions while at the same time providing a legal employment option for F-1 students. Even in its nascent stages, however, many in the international educational community resented the notion of the fast food industry lobbying for an immigration regulation that would so blatantly provide a direct benefit to those businesses. Indeed, the passage of the Section 221 Pilot Program is a testament to the power of lobbying. Now that the program is law, we should examine what went wrong.

According to the report of the House Judiciary Committee10, Congress had three goals in mind when it enacted Section 221: (1) providing foreign students with the opportunity to work in the U.S., gain experience in American culture, and earn money for educational expenses; (2) assisting employers in geographic areas experiencing difficulty attracting workers; and (3) ensuring that U.S. employees are not displaced by foreign students. It should be noted that the report's discussion of

9 The section 221 Pilot Program program expires on September 30, 1994. In April, 1994 a report on the effect of Pilot Program is to be submitted to Congress. The Interim Final Rule implementing the new labor attestation regulations for employers hiring F-1 students off-campus was published in the November 6, 1991 Federal Register. The INS and Department of Labor (DOL) regulations were effective as of October 1, 1991.

a prevailing wage, rather than being framed in protectionist rhetoric, was presented in the context of the need to protect foreign students from unscrupulous employers. The report voiced a concern for students whose employers might treat them differently from U.S. employees with regard to working conditions and wages. Thus, according to the tenor of the House Report, there was an equal concern for the protection of both foreign students and U.S. workers.

As is so often the case with legislative development, several factors intervened between the initial inspiration and the final product. First, at the time the program was originally being discussed, the United States was not in the throes of a nationwide recession and many employers were desperate to fill positions. Under the current economic circumstances, however, the number of potentially available positions has been severely constricted. Second, for no known reason (and certainly based on no need), the INS instituted this pilot program and at the same time eliminated two existing sources of employment for F-1 students (summer practical training and off-campus employment based on financial circumstances). It was as though the INS decided to add a prosthesis, but could only do so by cutting off two important appendages.

The introductory comments to the F-1 regulations explain:

The F-1 student employment program in the final rule represents a careful balance between the Service's desire to allow foreign students every opportunity to further their educational objectives in this country and the need to avoid adversely affecting the domestic labor market.\footnote{Federal Register, Vol. 56, No. 209; Tuesday, October 29, 1991. Pilot Off-Campus Employment Program 8CFR 214.2(9)(ii) at page 55610 Introductory Comments at 5.}

Unfortunately, just labeling something a "balance" doesn't make it so: INS's explanation is self-serving and disingenuous. If the INS had truly wished to provide foreign students "every opportunity to further their educational objectives" (including helping them to afford their education), it would not have cut out such important employment options. Moreover, if Congress does not see fit to extend or make permanent this "pilot" program, it too will be eliminated on September 30, 1994.

Finally, and perhaps most frustrating, is that in developing its final rule INS and DOL concocted a burdensome and complicated system that provides more than needed protection to U.S. workers at the expense of F-1 students— all in spite of the INS commissioned 1991 Price Waterhouse study that concludes that F-1 students have no adverse effect on labor markets.

Who will benefit from the Section 221 pilot program? It appears that it will only benefit those large business willing to undergo an elaborate bureaucratic procedure because their need to fill positions will outweigh their reluctance to undergo the process of labor attestation. Indeed, the DOL rule is very close in spirit to the
permanent labor certification process. We know that employers who participate in this process are usually businesses with the necessary resources or employers (large and small) who are so keen to employ a specific individual (who may have unique qualifications) that they will bear the heavy bureaucratic burden involved. In general, however, employers are extremely unwilling to engage in this process if they can otherwise find qualified U.S. employees. Moreover, it's one thing to endure the process in order to gain a permanent nuclear physicist, but why should an employer go to this trouble for a part-time, temporary hamburger flipper?12

Further, our experience has shown us that employers need to be "sold" on such a process. In the realm of labor certifications it is usually the immigration lawyer who does the "selling." But who will do the selling for the pilot program? The student, undoubtedly. But many DSOs do not want to be in a position of not only having to inform potential employers about the program, but also having to actively persuade them to participate. Already the foreign student advising community is torn in their attitudes towards how involved they want to be.

It is also important to note that in many cases (for example in communities with a large number of foreign students) there will be stiff competition for those few positions for which employers have filed a labor attestation. Compared to the old system (off-campus employment authorization based on hardship) which reviewed the student's case for work permission and then permitted that student to freely contract with an employer for a position, this pilot program artificially constrains the employment market.

In reality, we conclude, the pilot program will confound most employers, frustrate DSOs, and provide far fewer employment opportunities to F-1 students than INS's enthusiastic commentary might suggest.

PROCEDURE FOR OBTAINING LABOR ATTESTATION
8 CFR §214.2(f)(9)(ii)(C)

Since this is by far the most controversial and complicated aspect of the Pilot Program, we feel it should be discussed first. If this hurdle can be cleared, then the other two procedural considerations (a student's eligibility and the process by which he applies) are comparatively straightforward.

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12 As the National Council of Chain Restaurants pointed out in its comments on the DOL's advance notice of proposed rulemaking, this program is for part-time, not full-time employees. Moreover, students are usually inexperienced workers. To base the wage rate on the wages of full-time experienced workers would artificially inflate the wage, argued the National Council. The Council urged the DOL to base the wage rate on the starting pay of part-time workers in the precise occupation. *Interpreter Releases* Vol. 68, No. 35, Labor Dept. Drafts Proposed Rule for New F-1 Work Program, September 16, 1991.
The term SESA is used in these sections. SESA stands for "State Employment Service Agency." This agency is known by different names in different states (Department of Employment Security, Department of Employment and Training, and so on). It is important to remember that this is the state employment office.

FROM THE EMPLOYER'S PERSPECTIVE

In order to comply with the regulations, there are three important requirements an employer must satisfy. They are:

1) Recruitment;
2) Wages; and
3) Attestation.

Each requirement will be reviewed in detail.

(1) **RECRUITMENT: The First Requirement**
Under the regulations to the Section 221 Pilot Program, there are two approaches an employer might take to satisfy the recruitment requirement:

**Approach A**
Obtaining "blanket" authorization to hire F-1 students:
In order to obtain blanket authorization to hire F-1 students under the Section 221 Pilot Program, employers must do ONE of the following:

(1) **Local State Employment Office:** Place an "open job order" with the local SESA office. An open job order requires the employer to accept referrals from the local state employment office for the duration of the attestation (the attestation will be discussed in detail below).

(2) **"Help Wanted" Notice:** Post a notice of the job vacancy (or vacancies, if there are several), at the worksite for a period of 60 days, or, for the duration of the attestation, until September 30, 1984.

**Approach B**
Obtaining authorization to hire F-1 students on a "case-by-case" basis
(1) **Local State Employment Office:** List the job opening with the local SESA office for 60 consecutive days.

(2) **"Help Wanted" Notice:** Post a notice of the job vacancy (or vacancies) for a period of 60 consecutive days.
(2) **WAGES: The Second Requirement**
Employers must pay the F-1 student and all other employees holding a similar position the greater of the prevailing wage or the actual wage.

(a) **The Prevailing Wage.** The Prevailing Wage is the average rate of wages paid to employees holding similar jobs in the same geographic area (e.g., the average wage for Mechanical Engineers in Eastern Massachusetts). An employer may obtain prevailing wage information from one of three sources.

- The local state employment office (SESA office)
  The Department of Labor will not contest a SESA wage determination, thus providing safe harbor for employers
- Collective bargaining agreements
- Independent surveys (e.g., surveys published by professional, trade, business, or government organizations)

(b) **The Actual Wage.** This is the actual rate of pay given to workers holding similar jobs at the same worksite.

Employers are required to update prevailing wage information annually and to insure that F-1 students and "similarly employer workers" continue to be paid the greater of the actual or prevailing wage for the entire period of the attestation.

(3) **ATTESTATION: The Third Requirement**
The attestation is actually a form (Department of Labor Form ETA-9034. The ETA-9034 is available from regional offices of the Department of Labor and may be photocopied. On this form the employer "attests" that he or she has complied with the recruitment and wage requirements. The attestation (Form ETA-9034) may list a single worksite or multiple worksites operated by the same employer within the same geographic area. Each attestation is valid until September 30, 1994.

A new attestation must be filed for any positions not described in the previous attestation.

- **If an employer has several possible positions:**
  Employers may save themselves future work by listing all possible positions in the first attestation.

- **If an employer has several worksites:**
  Employers may also save themselves from having to file future attestations by listing all possible workplaces in the same geographic area in the first attestation.
FROM THE STUDENT'S PERSPECTIVE
Eligibility for Off-Campus Employment
8 CFR §214.2(f)(9)(ii)

To be eligible to apply for employment authorization under the Pilot Program, a student must:

1) Have been in valid F-1 status for one academic year (a minimum of 8 to 9 months, according to the institution's school year);

2) Be in good academic standing (as determined by the DSO); and

3) Understand that, if granted, the employment authorization is not to exceed 20 hours per week (when school is in session) and may extend to full time during school breaks and vacation periods.

Procedure for Student to Obtain Off-Campus Employment
8 CFR §214.2(f)(9)(ii)(B)

A student who is eligible under the requirements noted above must make a request for employment to the DSO on Form I-538. The DSO may authorize the employment for periods of one year. The permission may be renewed for additional one-year periods only if the student continues to be eligible under the provisions of 8 CFR 214.2(f)(9)(ii). 13

The employer must send the completed ETA-9034 to DOL and send a copy of that form to the student's school. The school then endorses the student's I-20 form accordingly. The endorsed DOL attestation is returned to the employer who must provide a copy to the DSO within 15 days of receipt. According to the DOL regulations, DSOs must notify the Employment Training Administration (ETA) when an employer has failed to provide the school with an accepted copy of the attestation within 90 days of the DSOs receipt of the original attestation from the employer.

This 90-day requirement is of great concern to NAFSA's membership, who see it as an unfair displacement of traditional DOL responsibility onto the shoulders of the DSOs. It is indeed ridiculous to expect DSOs to accept responsibility for knowing whether an employer has lost its labor attestation. Since (by the DOL's own admission) that information is only obtained through the INS or through a daily reading of the Federal Register, it is absurd to think that DSOs should be expected to comb the Federal Register (or press an INS officer) for this information.

13 Telegram from INS Commissioner Gene McNary to the field CO 214F-C, October 14, 1991.
Enforcement and Penalties

Any aggrieved person or organization may file a complaint with the Department of Labor's Wage and Hour Division. This office will determine whether there is "reasonable cause" to investigate. If there is a violation a hearing may be requested before an Administrative Law Judge. The only penalty is that the employer can be barred from participating in the Pilot Program in the future.

INTERNSHIP WITH AN INTERNATIONAL ORGANIZATION
8 CFR 214.2(f)(9)(iii)

For the first time the F-1 regulations address existing employment provisions for foreign students under the International Organization Immunities Act ("IOIA").

An F-1 student offered employment by a recognized international organization within the meaning of the IOIA (e.g., the World Bank, the United Nations, UNICEF) must present written certification from the organization that the proposed employment is within the scope of the organization's sponsorship. The student must apply at the INS office having jurisdiction over his place of residence. The student must present:

1) An I-20 ID endorsed for reentry by the DSO within the last 30 days; and,
2) A completed Form I-765 and $60.00 fee (for the EAD).

DURATION OF STATUS
8 CFR 214.2(f)(5)

Under the current regulations the definition of Duration of Status has changed little; it is still defined as the time during which a student is pursuing a full course of study at an approved institution or engaged in Post Completion Practical Training plus a period of sixty days' time. Students who are making "normal progress" toward completion of a course of study are considered to be maintaining status.

COMPLETION DATE ON FORM I-20AB
8 CFR §214.2(f)(7)(ii)

In a needed and welcome change, the INS has presented a new and more logical approach to calculating a student's time of completion. Anyone who was responsible for calculating expected dates of completion under the old regulations will remember what a thankless and unnecessarily Byzantine process it was.
By contrast, the new regulations take a more streamlined approach: the DSO is now required to make a reasonable estimate based on the time an average foreign student would need to complete a similar program in the same discipline. Having calculated that date, a grace period of up to one year may be added to the estimate. Therefore, a student might be given 5 years to complete a program that normally takes foreign students 4 years to complete.

While we applaud the Service for making this needed improvement, there are two areas that are inherently problematic. First, the use of the terms "reasonable" (as in "reasonable estimate") and "average" (as in "average foreign student") can be troublesome. What exactly is a reasonable estimate? Is it reasonable to state (in the interest of avoiding an extension of stay application or giving the student a "break") that a 4 year program will take 6 years to complete? And what is an "average" foreign student? Anyone who has advised foreign students knows that their skill levels are as varied as U.S. students.

Second, although 8 CFR §214.2(f)(6) clearly delineates what constitutes a full course of study, institutions will have to remind their students that (in spite of the "extra time" that might be indicated on the I-20AB), they are required to carry a certain minimum course load and make progress toward their education goal. Some students are so advanced that they may waive a substantial portion of their programs, thus leaving them to attend a mere 2 years of college. Such students need to understand from the beginning that a "5 year" notation on their I-20 AB does not mean that they may remain in valid F-1 status for 5 years.

This issue is made more serious by the fact that the present regulations fail to set forth any reporting mechanism. Thus, DSOs are only required to file reports on student's progress when INS asks them to (which may be never). See Section on I-721 below.

EXTENSION OF STAY
8 CFR §214.2(f)(7)

Students who are about to exceed the time limits noted on their Form I-20 and who need additional time to complete their program must apply to the DSO for an extension of stay. This adjudication is not performed by the INS but by the DSO.

Program extensions may be completed only by in-status students who the DSO certifies as having legitimate academic or medical reasons for the delay in their program. The regulations list as legitimate delays such issues as compelling academic reasons (unexpected research problems, changes of major, or changes of research topic) and medical reasons (such as documented illnesses). It is important to note what is NOT considered a legitimate delay: a delay caused by suspension, or a delay caused by academic probation. Moreover, it is well known that one of the most troublesome and widespread causes for programs delays-- that
of financial difficulty-- is not considered a legitimate reason and a student will not be eligible for an extension of stay if this is his only reason.

The notification procedure is as follows. The DSO must create a new Form I-20AB indicating the new completion date. An I-538 must also be completed by the DSO. Both forms must then be forwarded to the INS's Data Processing Center in London, Kentucky.

In cases where the DSO determines the student has exceeded the program period and is therefore out of status, a legitimate way to regain legal status is to depart the United States and return with a new I-20 Form. If this approach is taken, it will be essential that other necessary factors are in place-- that the student's passport and F-1 visa are valid. Moreover, students from certain countries may not be advised under any circumstances to depart the United States since re-entry may be impossible; clearly students from such countries should not pursue this option.

Reduced Course Load
8 CFR 214.2(f)(6)(E)(iii)

In a related topic, the DSO may, under certain narrow circumstances, advise a student to carry less than a full course of study. These are limited to initial difficulties with the English language or reading requirements, unfamiliarity with American teaching methods, or improper course placement. This means that a DSO may not authorize a reduced course load for a student who has financial difficulties, has been suspended, or has been placed on academic probation.

Change in Educational Levels
8 CFR 214.2(f)(5)(ii)

Students who proceed from one education level to another are considered to be maintaining status provided that the transition is accomplished in accordance with the transfer procedures set forth in 8 CFR 214.2(f)(8).

Penalties for Non-Compliance
8 CFR 214.2(f)(7)(iv)

Students who need to seek an extension of stay and do not do so are rendered out of status and therefore deportable. Such students either have to apply for reinstatement or depart the U.S. and make a new entry in order to be eligible for benefits (practical training, etc.).
TRANSFER OF SCHOOLS
8 CFR 214.2(f)(8)(ii)

The new regulations present few changes to the 1987 transfer procedures. The most notable are that, due to the more liberal procedures set forth at 8 CFR 214.2(f)(7)(ii), DSOs at the "receiving" school will not have the burden of calculating the incoming student's original entry date and the estimated time of completion of the new program.

Transfer of Schools Within the United States
8 CFR 214.2(f)(iii)

As with the old regulations, a student must first notify the school he is attending of his intention to transfer, then obtain an I-20AB from the new school. Upon receipt of the I-20AB, the DSO must:

1) Note "transfer completed" on (date)" on student's I-20ID, thereby acknowledging student's attendance;

2) Return I-20ID to the student;

3) Submit the I-20 School copy to the London, Kentucky within 30 days of receipt by the student;

4) Forward a photocopy of the I-20AB to the old school.

Note that the transfer will be completed only if the student completes the Student Certification portion of the I-20AB and returns the form to a DSO within 15 days of beginning attendance at the new school.

Transfer of Schools through Reentry into the U.S.
An alternative transfer procedure may be accomplished when a student has already notified the old school of his intended transfer, has received a Form I-20AB from the new school, and travels outside the U.S. prior to commencing studies at the new school. Moreover, under the existing INS policy, that student may re-enter the U.S. without having to go to a U.S. embassy or consulate in order to have the name of the new school endorsed on the F-1 visa page of the passport.

Students Not Maintaining Valid Status
8 CFR 214.2(f)(16)

Students who have not been maintaining their status must first apply for reinstatement before being able to transfer schools. As an alternative to applying for reinstatement, a student may travel outside the United States and re-enter on
the new I-20AB (provided he or she has satisfied the all pertinent visa requirements).

ELIMINATION OF FORM I-721
Form I-721, a computer-generated status report, was introduced by the 1983 regulations. The record-keeping system that had existed before that time had required that in each academic term the school send a status report of all students who had not registered within 60 days of the date that the student was expected. Both of these systems although they made the DSOs a watchdog for the INS and the heavy with students, provided some deterrence for students who contemplated gross and willful violations of the rules.

REGULATIONS AFFECTING M-1 STUDENTS
8 CFR 214.2(m)(14)(ii) and (iii)

Introduction
The M-1 student category is intended for student enrolled in a nonacademic or vocational program. M-1 students may not pursue a language program. Examples of M-1 programs might include: a nine-month course in photography; a one-year program at a business school, a technical program in plumbing, or a course in cosmetology. Successful completion of the course of study must lead to the attainment of a specific education or vocational objective [8 CFR 214.2(m)(9)]. M visa students may not change status to F-1 while in the U.S. This student must leave and reenter the U.S.

Many of the M regulations parallel those found a 8 CFR 214.2(f); however, because it allows a shorter period of admittance, fewer employment benefits, and less mobility with regard to transfers of program, the M is seen as the "poor cousin" of the F-1 visa.

Although the M-1 regulations prohibit employment on-campus work permission and curricular practical training, they do permit post-completion practical training.\textsuperscript{14} The regulations at 8 CFR 214.2(m)(14)(ii) discuss new regulations regarding the application for practical training; those at 8 CFR 214.2(m)(14)(iii) discuss the duration of the practical training period.

\textsuperscript{14} In fact, this is the \textit{only} form of employment authorization available to an M-1 student.
Application Procedure
In order to apply for post-completion practical training the student must submit

1) Form I-765 and $60 fee
2) The I-20 ID Copy endorsed for practical training by the DSO

The student must submit the application in person to the INS office having jurisdiction over the student's place of residence.

Duration of Practical Training
When the issuing process is complete, the student will be authorized an EAD. (The student may not begin employment until he or she is issued an EAD). The student will receive one month of practical training permission for each four months of full-time study he has completed. However, no M-1 student will receive a practical training period in excess of 6 months.

CONCLUSION

We are in the midst of a confusing time for students and their advisors. Faced with fewer employment opportunities as evidenced by the elimination of off campus work permission and vacation practical training, there will be a greater strain for schools to provide on campus work opportunities for students, and for DSOs to "sell" the merits of the pilot off-campus program to prospective employers. As mentioned above, DSOs will be torn between their frustration over the Pilot Program on the one hand and their desire to see their students earn money to achieve their education goals on the other.

Sadly, this may translate to more students being unable to complete their programs in the United States because of financial difficulties. Also, there is the time factor to consider—the time it will take for students and their advisors, on campus and off campus prospective employers to become aware of their new regulatory package, will provide the international educational community with enough confusion to last, say, at least until the new set of regulations appear on the horizon.