

AILA STUDENT & SCHOLARS COMMITTEE

THE TOP 25 THINGS THAT EVERY IMMIGRATION PRACTITIONER SHOULD KNOW ABOUT INTERNATIONAL STUDENTS AND SCHOLARS (F-1, M-1, and J-1)

The Institute of International Education estimates that U.S. institutions hosted nearly 750,000 international students and scholars during the 2007-2008 academic year, at least 7% more than they hosted during the prior year (<http://opendoors.iienetwork.org/>). Immigration practitioners may find a variety of opportunities to serve this large and growing population and their host institutions. They may be asked to handle a change of status application, an H-1B petition, or an immigrant petition and adjustment of status application for a student or scholar, or they may be retained by a higher education institution or research institution to provide legal advice concerning immigration policies and processes.

In handling these matters for students, scholars, and their host institutions, it is important for immigration practitioners to understand the laws, regulations, and agency approaches to the F, J, and M classifications. This list of the “Top 25 things every immigration practitioner should know about international students and scholars” is intended to provide an introduction to the topic and help practitioners avoid some common mistakes in handling immigration matters for international students and scholars.

1. When and where can my client apply for an F, J, or M Visa Stamp?

A consular officer may issue an F or M visa no earlier than 120 days prior to the program start date noted on the applicant’s Form I-20 visa eligibility document (though Department of State (DOS) has instructed posts to accept applications earlier from students who anticipate delays, such as security clearance delays). There is no restriction on how early a J visa may be issued. Fs, Js, and Ms may be admitted to the U.S. as early as 30 days prior to the program start date on the Form I-20 (for Fs and Ms) or Form DS-2019 (for Js).

Third country national visa processing policies vary widely among consular posts. Some consular posts, such as those in Mexico, will accept applications only from third country nationals who have previously obtained a visa in the same classification in the home country. Others may not accept applications from third country nationals or may refuse during certain periods, such as during the summer months, due to the large volume of student and scholar DS-156 applications. It is always best to check with a specific post before making plans.

2. **What does the “D/S” annotation on the I-94 mean?**

It means “duration of status.” While Ms are admitted to the U.S. for a specific period, Fs and Js are admitted to the U.S. for “duration of status” rather than for a specific period. This means that the status of Fs and Js endures as long as they continue to meet the requirements of their program of study or training. Form I-20 or Form DS-2019 serve as a guide to when a program, including practical training or academic training, ends.

3. **What is a PDSO, DSO, RO, and ARO – and why are they important?**

PDSO/DSO – Principal Designated School Official and Designated School Official (F and M programs).

RO/ARO – Responsible Officer and Alternate Responsible Officer (J programs)

Institutions approved to host Fs and Ms designate one Principal DSO, who serves as the institution’s primary Department of Homeland Security contact, and up to nine other DSOs, who handle many record-keeping functions, reporting functions in the Student and Exchange Visitor Information System (SEVIS), and approve certain benefits for students. Many also serve as international student advisors, though some (such as an admissions officer) may not. Institutions approved to host Js designate one Responsible Officer and up to nine Alternate Responsible Officers. Like DSOs, they handle a variety of record-keeping and reporting functions, approve certain benefits for students and scholars, and may serve as student/scholar advisors. DSOs and ROs are charged with maintaining the integrity of their institution’s programs, and serious sanctions or withdrawal of school approval may result from certain violations. For these reasons, you may find them protective of their programs and careful to follow regulations and agency guidance.

Handling certain legal matters for students and scholars will require the immigration practitioner to coordinate and cooperate with the DSO or RO. If so, the practitioner should determine the identity of the client’s DSO or RO and communicate with that person prior to taking action on a matter to ensure that there is no duplication of effort and that the information received from the student or scholar is accurate. The DSO or RO may be able to provide important information unknown or unavailable to the student or scholar. Some important practice points:

- Before handling any matter requiring representation of the institution, find out the institutional policies with regard to the use of outside counsel.
- Don’t assume ROs/DSOs lack knowledge of laws, regulations, and agency guidance; many are quite knowledgeable and experienced, and some are also immigration attorneys with years of experience who may know more than you.
- Understand that ROs/DSOs must balance their desire to assist the student or scholar with the requirement to maintain institutional/program compliance, and their programs are closely scrutinized by U. S. Immigration and Customs Enforcement (ICE), among others agencies. Sometimes the RO/DSO is prevented, by either regulation or SEVIS constraint, from providing what the student or scholar wants.
- Extend professional courtesy – these are your colleagues!

4. **How does my F, J, or M client maintain lawful status?**

In addition to meeting the general requirements for maintenance of nonimmigrant status (described at 8 CFR § 214.1), students and scholars must meet special requirements specific to their status, including:

a. F-1 Students

- Maintain required documentation: valid I-20, valid passport, and valid I-94 card marked "Duration of Status" or "D/S."
- Pursue a full course of study (with limited exceptions) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the U.S. and make normal progress towards completing the course of study.
- Update address, legal name, or major field of study within 10 days of a change.
- Remain in the U.S. for no longer than 60 days after completing the full course of study (60-day "grace period"), unless prior to that time the student has followed procedures for applying for practical training, changing educational levels, transferring to another approved school, or change of status.
- Refrain from engaging in unauthorized employment.
- Note also that F-2 dependents are prohibited from engaging in employment or a course of study, except that F-2 children may enroll in elementary or secondary school (K-12).

b. J-1 Exchange Visitors

- Maintain required documentation: valid DS-2019, valid passport, and valid I-94 card marked "Duration of Status" or "D/S."
- Engage only in approved activities at the authorized location for which the DS-2019 was issued.
- Update address or legal name within 10 days of a change.
- Maintain medical insurance required for J-1 visa holders.
- Remain in the United States for no longer than 30 days (30-day "grace period") after completing J-1 program.
- Refrain from engaging in unauthorized employment.
- Note that J-2 spouses and children are eligible to apply for an employment authorization document (EAD), but there is no regulation restricting J-2s from enrolling in a course of study.

c. M-1 Students

- Maintain required documentation: valid I-20, valid passport, and valid I-94 card. M-1 students are admitted for one year or for the period necessary to

complete their course of study, whichever is less, plus 30 days thereafter to depart (30-day "grace period.").

- Pursue a full course of study (with certain exceptions) at an established vocational institution or other recognized nonacademic institution and make normal progress towards completing the course of study. Full-time study may differ from school to school.
- Update address, legal name, or major within 10 days of a change.
- Refrain from engaging in unauthorized employment.
- Note also that M-2 dependents are prohibited from engaging in employment or a course of study, except that M-2 children may enroll in elementary or secondary school (K-12).

5. **When are international students and scholars considered to be in violation of status and unlawfully present?**

Guidance from legacy-INS and U. S. Citizenship and Immigration Services (USCIS) states that persons admitted for D/S are considered “unlawfully present” only when: (1) USCIS or (2) an immigration judge makes such a determination. A violation of status does not render a person who has been admitted for D/S unlawfully present, and remaining beyond the expiration date of the visa eligibility document (I-20 or DS-2019) and “grace period” does not render such a person unlawfully present or an “overstay.” For instance, an F-1 student who fails to register for a full course of study (without DSO permission) or a J-1 professor who fails to depart the U.S. by the end of the 30-day grace period following her/his program, is in violation of status but not unlawfully present or an overstay. An F or J who applies for an immigration benefit and is found to be in violation of status may be considered unlawfully present.

In practice, the most common route to unlawful presence for F-1 students is denial of a reinstatement application, an application in which a student normally admits a violation of status. If USCIS denies a reinstatement application, a change of status application, or an application for a benefit because it has found a violation of status, unlawful presence will begin to accrue the day after the denial decision is made. An immigration judge may also make a determination of status violation during exclusion, deportation, or removal proceedings. If that occurs, unlawful presence begins to accrue the day after the immigration judge issues the order. It should be stressed that unlawful presence does not accrue until a final determination is made.

It is important to emphasize that, while Fs and Js are admitted for “duration of status” (D/S), Ms are admitted for a specific period, so they have a date-specific I-94, and may accrue unlawful presence or become an overstay by remaining past the authorized period.

Note: The guidance cited here is from legacy-INS and USCIS, and some questions remain as to whether ICE and U. S. Customs and Border Protection (CBP) will continue to follow the legacy-INS guidance remain. As a result, careful advising of clients is required. For more information, see the Memo from Neufeld, Scialabba, and Chang,

5/6/2009, "Consolidation of Evidence Concerning Unlawful Presence..."
(http://www.uscis.gov/files/nativedocuments/revision_redesign_AFM.PDF)

6. **What is SEVIS?**

SEVIS (the Student and Exchange Visitor Information System) is an internet-based database administered by the DHS that collects current information on nonimmigrant students and exchange visitors from DHS-certified schools and DOS-designated exchange visitor program sponsors. SEVIS tracks and monitors current information on students and exchange visitors and allows schools and program sponsors to transmit information and event notifications to the DHS and DOS. SEVIS will be informed of status events for students and exchange visitors including, but not limited to, entry/exit data, changes of current United States address (residence), program extensions, employment notifications, and changes in program of study. SEVIS will also provide system alerts, event notifications, and reports to the end-user schools and programs, as well as for DHS and DOS offices.

7. **What is the significance of a "Prospective Student" annotation on the visa stamp?**

An individual who comes to the U.S. to visit schools or attend admissions interviews, for example, may find it easier to overcome issues of "preconceived intent" if he or she explains the planned activity to the consular officer and requests or receives a B-1/B-2 visa with a "Prospective Student" notation. Without such a notation, an applicant may have difficulty overcoming the presumption that she/he dishonestly obtained a B visa with the preconceived (and not disclosed) intent to be a student or exchange visitor. If the applicant's visa lacks the notation, and the change of status application is filed soon after entry into the U.S., the applicant faces a significant risk of denial. In many cases, it will be advisable to send the individual back to his or her home country to obtain the F-1 stamp rather than to file an I-539 (for which Premium Processing is not available) and await adjudication. As B-1/B-2 visitors are not permitted to pursue a course of study, I-539 processing delays must be considered in advising potential change of status applicants.

8. **Can my client begin school before approval of the change of status application?**

This issue requires careful analysis of both the regulations addressing change of status and the regulations governing the applicant's current status. An initial consideration is whether the applicant's current status allows study. For example, a person in H-1B or H-4 status is not prohibited from pursuing a course of study as a secondary activity, and so may begin classes prior to approval of the change of status application. A person in B-1 or B-2 status is prohibited from pursuing a course of study, and so must wait for approval of the application to begin studies. *See* 8 CFR 248.1(c)(3). Further complicating the analysis is the fact that the regulations concerning change of status to F-1 or M-1 indicate that—except for applicants whose current status is B-1 or B-2—an applicant is not ineligible for the requested change of status solely because he or she may have started a course of study before submitting the application. *See* 8 CFR 248.1(c)(1).

9. **What are post-completion and pre-completion Optional Practical Training (OPT)?**

F-1 Optional Practical Training (OPT) is discussed in the regulations at 8 CFR 214.2(f)(10)-(13). Optional Practical Training is employment that is directly related to the student's field of studies and commensurate with his/her level of studies. Optional practical training may be authorized:

a. Pre-completion

- on a part-time basis only, during the academic year while engaged in coursework.
- on a part-time or full-time basis, during the student's annual vacation period.
- on a part-time or full-time basis, while working on a Master's thesis / project or Doctoral dissertation following completion of all coursework.

b. Post-completion

- on a full-time basis only, once all degree requirements have been fulfilled.

A student is granted up to 12 months of Optional Practical Training for each higher level of study, and some who have earned degrees in Science, Technology, Engineering, or Mathematics (STEM) may be eligible for an extension of up to 17 additional months. OPT can be used on a pre-completion and/or post-completion basis, as long as the total amount used does not exceed 12 months. The student must also meet certain eligibility criteria as indicated below. Note that part-time pre-completion OPT counts at a rate of 50% toward full-time OPT. For example, 2 months of part-time pre-completion OPT is equivalent to 1 month of full-time OPT.

c. Eligibility Criteria for Pre-Completion OPT

- The student must have been a full-time student at the academic institution for at least one academic year. Students whose programs last only one academic year are eligible for post-completion OPT only.
- The student must be in good academic standing and making full-time progress toward degree completion.
- The student must not have used more than 12 months of OPT in the past at the same degree level.
- The student does NOT need to have a job offer in order to apply for OPT, although once a student is approved for OPT, the time is deducted from the 12 months regardless of whether the student actually works.

d. **Application Deadlines**

- A student may apply for pre-completion OPT up to 90 days before the intended start date of the training. If the student has not yet completed a full academic year of study, the application may be submitted up to 90 days before completion of the full academic year, but the training may not begin until the full academic year has been completed.
- A student may apply for post-completion OPT up to 90 days before the program end date. The student's application must be received by USCIS within 60 days after completion of the course of study and within 30 days of the DSO's submission of the OPT recommendation in SEVIS.
- A student who is eligible for a STEM extension of OPT may apply for it up to 120 days before the end of the post-completion OPT period.
- USCIS processing may take several months or more, so it is recommended that the student apply as early as possible.

10. **My client had Curricular Practical Training (CPT) while studying. Is my client eligible for OPT?**

An F-1 student who has engaged in a total of 12 months of full-time CPT during the program of study becomes ineligible for OPT. Most DSOs advise students carefully about this, but occasionally a student will either intentionally or unintentionally forego OPT by engaging in 12 or more months of full-time CPT. Practitioners who assist students with OPT applications should carefully calculate CPT periods to ensure the student's eligibility for OPT.

11. **How many times can my client get OPT?**

F-1 students are eligible for 12 months of OPT for each higher educational program. In other words, one year is available at the Associate's degree level, one year at the Bachelor's degree level, one year at the Master's degree level, and one year at the PhD level. Please note that an additional period of OPT is available only for each higher educational level. For example, a student who receives OPT after completing a Master's degree will not be eligible for an additional period of OPT after completion of a second Master's degree or after completion of another Bachelor's degree.

12. **Is my client eligible for change of status or adjustment of status during the grace period?**

Despite occasionally conflicting informal guidance from USCIS on this issue, a student or scholar is considered to be "in status" during the grace period and is eligible for change of status or adjustment of status. As noted above, applicants for a change of status must ensure that, with certain exceptions (F-1 to H-1B) there is no gap between the end of the grace period and the start date of the requested status.

13. **Is my client eligible for extension of status during the grace period?**

F-1s are eligible to transfer to another school during the grace period, and they may change educational level at the same institution (for instance, Master's to Ph.D.) during the grace period. Any extension of status to complete the program, though, must be authorized by the DSO prior to the program expiration date on the I-20. The effective date of extension or transfer of a J-1 must be prior to the program expiration date on the DS-2019.

14. **Are Fs, Js, and Ms subject to income tax or FICA withholding?**

Tax withholding for international students and scholars is governed by the IRS Tax Code and international tax treaties. In general, individuals in F, J, M, and Q status are not subject to FICA withholding. However, depending on the length of their program in the U.S. and the text of the relevant tax treaties, they may eventually become subject to income tax withholding. The Human Resources or International Tax office at the place of employment is expected to apply the appropriate formulas and tax treaties to determine whether withholding is required and when. Unless expert in tax issues, an immigration practitioner should advise clients to seek the advice of a qualified tax advisor.

15. **How does an F or M apply for reinstatement, and what happens if the application is denied?**

The regulations for reinstatement are found at 8 CFR 214.2(f)(16) for F-1 students and 8 CFR 214.2(m)(16) for M-1 students. An F-1 or M-1 student is eligible for reinstatement if the following conditions are met:

The student:

- Has not been out of status for more than five months at the time of filing the request for reinstatement (or demonstrates that the failure to file within the five month period was the result of "exceptional circumstances" and that the student filed the request for reinstatement as promptly as possible);
- Does not have a record of repeated or willful violations;
- Is currently pursuing or intends to pursue a full course of study at the school which issued the SEVIS Form I-20;
- Has not been employed without authorization;
- Is not removable based upon any other grounds; and
- Can establish that: 1) the violation resulted from circumstances beyond his or her control, or 2) the violation relates to a reduction in the student's course load that would have been within the DSO's power to authorize and that he or she would suffer extreme hardship if not reinstated.

In order to apply for reinstatement an F-1 or M-1 student should file a Form I-539 (with "REINSTATEMENT" written across the top in red) which should be accompanied by the following:

- A properly completed SEVIS Form I-20;

- A statement from the student explaining why he or she violated his or her status and describing the circumstances beyond his or her control and/or that the failure to be reinstated would result in extreme hardship;
- Photocopies of all previous I-20s;
- Photocopies of financial support documents to show evidence of continued funding—documents should be recent (no more than 12 months old);
- Photocopies of passport identity page, original I-94, and current visa; and
- Photocopies of transcripts and registration.
- The application is filed at the service center with jurisdiction over the school that the student plans to attend, either Vermont Service Center or California Service Center.

If USCIS denies the application, the student begins accruing unlawful presence (see Number 5 above).

Please note that the “correct the record” and reinstatement processes are quite different for Js.

16. **What is Automatic Visa Revalidation? Does my client qualify?**

The regulations for Automatic Revalidation are found at 22 CFR 41.112(d) and 8 CFR 214.1(b). Automatic visa revalidation allows Fs, Js, and Ms with expired visa stamps to travel to Canada and Mexico (contiguous territories) for less than 30 days, and re-enter with a valid I-20, DS-2019, and I-94. The expired visa stamp is "automatically revalidated" by the CBP officer and no visit to the consular post is necessary. Automatic revalidation also allows F-1 and J-1 students and scholars with expired visa stamps to travel to adjacent islands (except Cuba), for less than 30 days and re-enter with a valid I-20, DS-2019 and I-94. Three things should be noted. First, automatic revalidation is not available if the applicant has applied for a visa stamp during the travel. Second, only Fs and Js are eligible for automatic revalidation after travel to adjacent islands. Third, Fs, Js, and Ms seeking automatic revalidation must return in the same status in which they departed. Practitioners should also note that the DHS and DOS regulations on automatic visa revalidation (see references below) differ slightly but in some important respects.

17. **Can F/J/M status be maintained after applying for adjustment of status?**

Probably, but whether benefits of the nonimmigrant status will remain available and what happens to the student or scholar’s SEVIS record remain unsettled matters.

DHS has provided no formal guidance on this issue. The BIA has held that a student’s filing of an adjustment of status (AOS) application does not in itself constitute a failure to maintain nonimmigrant status. *See Matter of Hosseinpour*, 15 I&N Dec.191,192 (BIA 1975). But once the application is filed, the student or scholar may find it difficult to obtain the benefits of the nonimmigrant status. For example, while some DSOs report students who have already received an EAD based on the I-485 also receiving an EAD in connection with OPT, in various liaison settings USCIS has avoided the question of whether an adjustment applicant is eligible for OPT and indicated that for AOS applicants who also apply for OPT it would change “(c)(3)” notation on Form I-765 for

OPT to “(c)(9)” for an EAD based on AOS. Also, DSOs grant many of the benefits of F, J, and M status, and practitioners will find varying approaches in their handling of benefits for adjustment applicants. For example, some will grant extension or change of level to an F-1 student who has applied for adjustment of status but otherwise met all of the requirements of F-1 status, but some will not. Some will not recommend OPT, while others will recommend OPT (encouraging the student to disclose the pending I-485) and let USCIS decide eligibility.

The actual point at which the DSO or RO should terminate the SEVIS record of an adjustment applicant has also been a matter of much confusion. At the June 2009 NAFSA conference in Los Angeles, SEVP stated that “when a nonimmigrant student files an Adjustment of Status (Form I-485) but maintains F/M status, the student’s SEVIS record should remain active until the adjustment is approved. The DSO should then manually terminate the record for Change of status approved. Note the circumstances in the remarks and provide the student’s A-Number or Receipt Number.”

Whether a student or scholar should maintain, attempt to maintain, or do all things required by nonimmigrant status after applying for adjustment of status and until the application is adjudicated is a matter requiring careful analysis and advising by the attorney. For many clients, it will make sense to do everything necessary to maintain status until the adjustment application is adjudicated, but for others the benefits of abandoning nonimmigrant status may outweigh the risks. A key value in maintaining status is the possibility of continuing in the nonimmigrant status if, for example, the adjustment application must be withdrawn.

18. **My F-1 client has OPT but hasn’t found a job--is that a problem?**

F-1 students engaged in post-completion OPT, including those with cap-gap extensions, can accrue up to 90 days of unemployment. Those who have been granted a STEM OPT extension are allowed an additional 30 days (an aggregate total of 120 days) of unemployment. *See* 8 CFR 214.2(f)(10)(E).

19. **My client has OPT, doesn’t have a job, and needs to travel abroad. Can she return to the U.S. and continue job hunting?**

No. An F-1 student who has an unexpired EAD issued for post-completion OPT may return to the U.S. to resume employment. In practice, a student with a written job offer who has not yet begun employment is usually admitted to the U.S. to engage in OPT. *See* 8 CFR 214.2(f)(13).

20. **My F-1 client has a job but the I-765 for the OPT EAD is still pending. She needs to travel abroad--is that a problem?**

Probably not. DOS and ICE/SEVP have provided informal guidance indicating that in this situation, the F-1 can return to the U.S. but must present evidence of the job offer and evidence of the I-765 filing. Of course, a valid F-1 visa stamp (if required) and I-20 with unexpired travel signature are also required.

21. **My F-1 client is going to engage in study abroad for a full academic year. He'll be back in the U.S. before the F-1 visa stamp expires. Will there be any problems?**

Yes. A period of five consecutive months or more is considered a "temporary absence" under the regulations, and F-1 students who depart the U.S. for more than five consecutive months are required to obtain a new F-1 visa stamp even if the current visa stamp has not expired. Once an F-1 student is outside of the U.S. for five months, the visa stamp is automatically revoked and the student can re-enter the U.S. only after obtaining a new F-1 visa stamp. *See* 8 CFR 214.2(f)(4).

22. **My client has the STEM OPT extension. If he leaves his current employer, must his new employer enroll in E-Verify?**

Yes. F-1s with STEM OPT extensions must work for an employer enrolled in E-Verify. They cannot work for an employer who will not enroll in the program. *See* 8 CFR 214.2(f)(10)(c)(4).

23. **My client has the STEM OPT extension. He wants to pick up a second job with an employer who refuses to enroll in E-Verify. He'll keep working with the E-Verify employer also. Is that permissible?**

No. Even though the F-1 can have more than one employer, all STEM OPT/EAD extension employers must enroll in e-Verify. It's not enough that one employer is enrolled in the program. All employers must enroll. *See* USCIS Supplemental Q&As (for the public), 5/23/2009 on Extension of Optional Training Program for Qualified Students.

24. **What is the "cap gap"?**

OPT employment authorization and "Duration of Status" (D/S) are automatically extended for any F-1 student who is the beneficiary of a timely filed H-1B petition requesting change of status with a start date October 1st. This allows the F-1 student to remain in status and continue working until the H-1B is approved and the H-1B employment begins. If the H-1B petition is denied, rejected, or withdrawn, the cap-gap extension terminates. In addition, USCIS has established a graduated extension methodology for application of the cap-gap. The graduated extension scheme determines how long OPT and F-1 status will be extended depending on whether the H-1B petition is receipted, wait-listed, or withdrawn.

To qualify for a cap gap extension the student must:

- Be the beneficiary of a timely filed H-1B petition;
- Have an H-1B employment start date of October 1st;
- Request a change of status; and
- Not have violated the conditions of F-1 status

The regulations for "cap gap" can be found at 8 CFR 214.2(f)(5)(vi)

25. **What is the “30 day rule” and why may a “gap” in status cause denial of a change of status application?**

USCIS has taken the position, based on the regulation prohibiting Fs, Js, and Ms from entering the U.S. more than 30 days prior to program start date (on DS-2019 or I-20), that an applicant for change of status to F, J, or M must not have a gap between the current status and the requested status of more than 30 days. For example, if the B-2 status of applicant for change of status to F-1 ends more than 30 days prior to the start of the F-1 program, USCIS will deny the application. A key problem for applicants who will pursue a student program is that most institutions have fixed and inflexible program start dates, so it is not possible for the institution to vary the start date to accommodate the applicant.

Resources for Practitioners Advising Students and Scholars

General Reference Guides and Resources

NAFSA Adviser's Manual, published by the Association of International Educators:
http://www.nafsa.org/regulatory_information.sec/nafsa_adviser_s_manual/

AILA's Immigration Options for Academics and Researchers, Dan H. Berger and Scott M. Borene Eds.: <http://www.ailapubs.org/imopforacand.html>

AILA Message Center "Students and Schools" Forum: <http://messages.aila.org/>

NAFSA (Association of International Educators) International Student and Scholar Services Knowledge Communities, including discussion forums:
<http://www.nafsa.org/knowledgecommunity/default.aspx>

NAFSA (Association of International Educators) Resource Library:
http://www.nafsa.org/regulatory_information.sec/regulatory_document_library.dlib/

F, J, and M Classifications—Definitions and Requirements

INA 101(a)(15)(F): definition, academic student

INA 101(a)(15)(M): definition, vocational/nonacademic student

INA 101(a)(15)(J): definition, exchange visitor

8 CFR 214.1: general requirements, admission, extension, and maintenance of nonimmigrant status

8 CFR 214.2(f): "special requirements" for admission, extension, and maintenance of F nonimmigrant status

8 CFR 214.2(j): "special requirements" for admission, extension, and maintenance of J nonimmigrant status

8 CFR 214.2(m): "special requirements" for admission, extension, and maintenance of M nonimmigrant status

22 CFR part 62: general Exchange Visitor Program provisions and specific provisions applicable to each category (college and university students, Professors, Research Scholars, etc.)

OPT and the Cap-Gap

8 CFR 214.2(f)(10)-(13): practical training for F-1s, including “cap-gap” provision and STEM extensions

8 CFR 214.2(m)(14): practical training for M-1s

ICE/SEVP Policy Guidance to DSOs, 4/6/2009, on extension of post completion practical training and F-1 status under the cap gap regulations and STEM extensions [AILA doc. 09040761](#)

USCIS Q&As (for the public), 4/1/2009, on extension of post completion practical training and F-1 status under the cap gap regulations, [AILA doc. 09040236](#)

USCIS Supplemental Q & As (for the public), 5/27/2008, on extension of post completion practical training and F-1 status under the cap gap regulations and STEM extensions, [AILA doc. 08052760](#)

ICE/SEVP Policy Guidance to DSOs, 4/28/2008, on extension of post completion practical training and F-1 status under the cap gap regulations and STEM extensions [AILA doc. 08042861](#)

ICE/SEVP fact sheet, July 2009, “Supplemental Guidance on the Cap-Gap Extension,” http://www.ice.gov/doclib/sevis/pdf/supp_capgap_guidance_factsheet.pdf (not available as AILA doc.)

ICE OPT Checklist for Employers, 4/1/2009, [AILA doc. 09040162](#)

Program Administration, Institutional Responsibilities, and SEVIS

8 CFR 214.3: “Approval of schools for enrollment of F and M nonimmigrants,” including institutional and Designated School Official responsibilities

8 CFR 214.4: Grounds for withdrawal of school approval to host F-1/M-1 students (institutional and DSO requirements)

22 CFR 62.5, 62.6, 62.7: program application, designation, and redesignation procedures

22 CFR 62.8—62.13, and 62.70-62.79: institutional and RO responsibilities

22 CFR 62.50, 62.60: grounds for revocation of school approval to host Exchange Visitors and sanctions

List of Student and Exchange Visitor Program approved schools, 7/14/2009, [AILA doc. 08100963](#)

Map of Student and Exchange Visitor Program approved schools, 5/21/2008, [AILA doc. 08052171](#)

SEVIS User Training Slides for Schools and EVP Sponsors, 9/4/2008, from an August 2008 conference, [AILA doc. 08090465](#)

SEVIS II Brochure, 6/12/2008, describing the SEVIS II system and explaining how it is different from the original, [AILA doc. 08061265](#)

SEVP Briefing on SEVIS II: [http://www.nafsa.org/ /File/ /ac08sessions/GS205.pdf](http://www.nafsa.org/File/_ac08sessions/GS205.pdf)

Travel and Visa Applications

22 CFR 41.61: visas, students

22 CFR 41.62: visas, exchange visitors

8 CFR 214.1(b): automatic revalidation

22 CFR 41.112(d): automatic revalidation

CBP Automatic Revalidation Fact Sheet, 3/9/2009, [AILA doc. 09042869](#)

Memo from Michael Hrinyak (CBP), 3/30/2005, restating policy for correcting erroneous I-94s, [AILA doc. 05033043](#)

Memo from Michael Hrinyak (CBP), 3/31/2005, regarding students with SEVIS record errors, [AILA doc. 05033176](#)

DOS Cable, February 2009, Students and Exchange Visitors, [AILA doc. 09051963](#)

DOS Cable, July 2007, regarding processing visa applicants with “drunk driving hits,” [AILA doc. 07071670](#)

DOS Cable, March 2008, Students and Exchange Visitors, includes instruction to prioritize F, J, and M visa applications and interviews, [AILA doc. 08040255](#)

DOS Cable, March 2007, Student Visa Update, http://www.travel.state.gov/visa/laws/telegrams/telegrams_4237.html (not available as AILA doc.)

DOS Cable, March 2007, J Visa Update, [AILA doc. 07042460](#)

DOS Cable, May 2006, Student Visa Processing, allows submission of a student visa application more than 120 days before the start of studies if delays in issuance (such a security check delays) may be anticipated, [AILA doc. 06051761](#)

DOS Cable, March 2006, concerning earliest issuance of F, M and J Visas [AILA doc. 06031360](#) (supersedes August 2004 cable, [AILA doc. 04080965](#), and allows issuance of F and M visas 120 days, rather than 90 days, prior to program start date)

DOS Cable, November 2005, addressing immigrant intent issue for students State Dept. cable, [AILA doc. 05110115](#)

DOS Cable, January 2005, on the validity of student (F-1/M-1) visas subsequent to a break in studies longer than five months, [AILA doc. 06011873](#) (See also DOS Cable, March 2007, Student Visa Update, http://www.travel.state.gov/visa/laws/telegrams/telegrams_4237.html suggesting that it's up to CBP not DOS to determine visa validity)

DOS Cable, August 2004, regarding prospective students, [AILA doc. 04080964](#)

DOS Cable, February 2004, defines students for summer exchange programs, [AILA doc. 04022567](#)

DOS Cable, January 2004, regarding standard operating procedures on OPT and the I-20, [AILA doc. 04022565](#)

DOS Cable, July 2003, instructs posts to prioritize student and exchange visitor applications and interviews, [AILA doc. 03072341](#)

“SEVP Operating Instruction, F Nonimmigrants: Entry and Exit”:
http://www.nafsa.org/uploadedFiles/sevp_provides_a_list.pdf?n=9796

“SEVP Operating Instruction, M Nonimmigrants: Entry and Exit”:
http://www.nafsa.org/uploadedFiles/sevp_provides_a_list_2.pdf

Letter from Efren Hernandez (USCIS), 4/25/2005, discussing change of status from F-1 to H-1B when beneficiary travels after petition approval but before effective date of change of status, [AILA doc. 05042565](#).

Unlawful Presence and Overstay

INA 222(g): overstay

INA 212(a)(9)(B): unlawful presence

Memo from Neufeld, Scialabba, and Chang, 5/6/2009, “Consolidation of Guidance Concerning Unlawful Presence . . . ,” [AILA doc. 09051468](#)

DHS Counsel Discusses Unlawful Presence and Change of Status/Extension of Status(144 KB - 4/21/2003)

Memo from Thomas Cook, 3/27/2003, forwarding memo Janice Podolny, "Interpretation of 'Period of Stay Authorized by the Attorney General' in determining 'unlawful presence' . . .," [AILA doc. 03042140](#)

Memo from Michael Pearson, 3/3/2000, "Section 222(g) . . .," [AILA doc. 00030773](#)

Memo from Michael Pearson, 3/3/2000, "Period of stay authorized by the Attorney General after the 120-day tolling period . . .," [AILA doc. 00030774](#)

Memo of from Paul Virtue, 9/19/1997, "Section 212(a)(9)(B) Relating to Unlawful Presence," [AILA doc. 97092240](#).

DOS cable, 3/23/1998, revised guidance on the interpretation of INA section 222(g), [AILA doc. 98032392](#)

DOS cable, 9/19/1999, "Consolidated Summary of INA 222(g) Guidance," [AILA doc. 99071990](#)

DOS cable, 4/4/1998, updated guidance on unlawful presence, [AILA doc. 98040490](#)

Letter from Jaqueline Bednarz (INS), 8/23/1993, concerning reinstatement application as admission of violation of status, 70 Interp. Rel. 1120-1121 (Aug. 23, 1993) (not available as AILA doc.)

Two-Year Home Residence Requirement Applicable to some Exchange Visitors

INA § 212(e) and 22 CFR 41.63: Two-year home residence requirement applicable to some Exchange Visitors

1984 Skills List: <http://www.state.gov/documents/organization/87381.pdf>

1997 Skills List: http://exchanges.state.gov/jexchanges/docs/skills_list.pdf

2009 Skills List: <http://edocket.access.gpo.gov/2009/pdf/E9-9657.pdf>

Dept. of State cable, June 2009, informs posts of revised skills list and explains application of it, [AILA doc. 09080362](#)

9 FAM 40.202 N1.3: satisfying the requirement

Waivers of the requirement: http://travel.state.gov/visa/temp/info/info_1296.html

Restrictions on Study and Change of Nonimmigrant Status to Student

8 CFR 214.1(c): eligibility and ineligibility for change of nonimmigrant status to student

8 CFR 214.2(b)(7): prohibition on enrollment in a course of study for B-1s and B-2s

8 CFR 214.2(f)(15)(ii): restrictions on enrollment in a course of study for F-2s

LPR Process and Maintenance of Nonimmigrant Status

Matter of Hosseinpour, in which BIA found that a student's filing of an adjustment of status application did not in itself constitute a failure to maintain his nonimmigrant status (also discusses amendment of INA to allow nonimmigrant status to continue once adjustment application filed), 15 I&N Dec. 191, 192 (BIA 1975); 70 No. 42 *Interpreter Releases* 1444, 1456-58 (No. 1, 1993)

ICE/SEVP guidance for DSOs, 5/1/2006, "F and M Student Record Termination Reasons In SEVIS," states "Adjustment of Status: When a nonimmigrant student files an Adjustment of Status (Form I-485) but maintains F/M status, the student's SEVIS record should remain active until the adjustment is approved. The DSO should then manually terminate the record for Change of status approved. Note the circumstances in the remarks and provide the student's A-Number or Receipt Number."

http://www.nafsa.org/uploadedFiles/f_and_m_student_record.pdf?n=4284 (not available as AILA doc.)