NAFSA Comments on SEVP Draft Policy Guidance 1307-02: F-1 Off-Campus Employment

[24 September 2015]

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Recommendations

1. Please refer to NAFSA comments in other draft guidance documents

Definition of Educationally Affiliated

As we stated in our comments to the draft policy guidance on on-campus employment [PG 1310-05], the term "educationally affiliated" is relevant only when analyzing whether employment that takes place **off the premises of the school** may be considered "on-campus."

NAFSA suggests that the definition of "educationally affiliated" be reworded to clarify this. For example, begin the definition with a contextual comment, such as:

> **Educationally affiliated**: In the context of employment at an off-campus location that the school wishes to deem "on-campus" because of an educational affiliation [see PG 1310-05, F-1 On-campus Employment], the employment must be …

NAFSA also recommends that footnote 2 be removed. Mixing curricular practical training with the guidance on on-campus employment is too confusing at this time. NAFSA recommends that guidance on CPT be formulated first, in a separate document.

Reasonable commuting distance

NAFSA recommends that footnote 3 be moved into the body of the policy guidance itself, within definition 5, Reasonable commuting distance.

2. Clarify policy statements

Policy 4.1: Employment Start

Since off-campus employment authorization is evidenced by an EAD, there is no need for a letter from the DSO in order for the student to obtain a Social Security Number from SSA. NAFSA recommends that SEVP amend sub-bullet 2 under the severe economic hardship bullet to read:

- Has received a DSO recommendation for off-campus employment in the Student and Exchange Visitor Information System (SEVIS)

Policy 4.3: Employment End

The final bullet in Policy 4.3 states that a student's off-campus employment authorization ends "when severe economic hardship ends; even if the current authorization, i.e., the end date as listed on the student's EAD, has not passed." Accompanying footnote 12 further states that "a student should report an end of severe economic hardship to the DSO, who will edit the SEVIS record to reflect this. The student will then notify USCIS and return the EAD." NAFSA believes that this is introducing novel status maintenance, reporting, and procedural requirements that are beyond the scope of the regulations, and which should not be instituted through policy guidance.

The regulations provide only that "The employment authorization is automatically terminated whenever the student fails to maintain status," and say nothing about a sliding scale of the "end" of the economic hardship. The regulations also state that, "A student has permission to engage in off-campus employment only if the student receives the EAD endorsed to that effect." Nowhere in the regulations is mentioned a "revisiting" of the underlying economic necessity during the term of the EAD.

The fact that economic hardship authorization is limited to a maximum of a year is an inherent and sufficient control over ongoing eligibility, since a student would have to make a new showing of eligibility to the DSO and to USCIS in order to obtain a renewal.

Because of this, NAFSA recommends that SEVP delete the final bullet and the accompanying footnote 12 in Policy 4.3.

Policy 5.1: Eligibility

Problems with introducing an extra-regulatory requirement to revisit underlying economic necessity

The first paragraph of draft policy guidance item 5.1 states that "a student may engage in off-campus employment, but only if on-campus employment or practical training opportunities are unavailable, or if they are insufficient to overcome the student's unforeseen financial hardship."

Wrapping any kind of practical training into the "insufficiency or unavailability" condition for off-campus employment due to economic necessity is beyond the scope of the regulatory requirements. Although 8 CFR 214.2(f)(9)(ii)(C) states generally that a student experiencing severe unforeseen economic necessity may request off-campus employment "if other employment opportunities are not available or are otherwise insufficient, 8 CFR 214.2(f)(9)(ii), which determines the certification that must be made by the DSO, clearly references only the unavailability or insufficiency of *on-campus employment*, stating: "**employment under paragraph (f)(9)(i)** of this section is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances." It is a well-established rule of legal interpretation that specific terms prevail over the general in the same law which otherwise might be controlling.

Not only is wrapping practical training into this condition not supported by a close reading of the regulations, NAFSA believes it is not good policy to link these two kinds of activities, since practical training should be driven by the student's academic and curricular needs, not by their need for money in the face of unforeseen economic circumstances.

NAFSA therefore recommends that the first paragraph of section 5.1 be revised to delete the reference to practical training.

Need to define "break in nonimmigrant status"

The draft guidance at item 5.1 also introduces the concept of "break in nonimmigrant status." While it is a potentially useful concept, this term should be further defined, perhaps in the F-1 and M-1 General Employment guidance, to adequately distinguish this concept from "temporary absence," "brief, casual, and innocent" absences from the United States, absences due to authorized study abroad, and other concepts that interface with SEVIS status as contrasted with immigration status and nonimmigrant status.

3. Procedural issues in SEVP Fact Sheet 1707-02A

30-day filing requirement not applicable to off-campus employment applications

Process 1, paragraph 3, bullet 1 states that "USCIS must receive the application within 30 days of the date the DSO enters the recommendation in SEVIS or USCIS may deny the application…" NAFSA believes that this 30-day window applies only to Forms I-765 requesting post-completion OPT [8 C.F.R. § 214.2(f)(11)(i)(B)(2)]. That regulatory requirement is unique to post-completion OPT applications, and is applied to no other type work authorization. Requiring this rule to be applied to non-post-completion OPT applications would require a regulatory change.

If SEVP is interested in limiting the filing timeframe through policy, NAFSA suggests that they collaborate with USCIS to update their instructions to Form I-765 to state that the accompanying Form I-20 bearing the campus employment recommendation be "endorsed by the Designated School Official within the past 30 days," as the I-765 instructions currently state for other kinds of F-1 work authorization. The point of reference here is the date that the Form I-20 was signed by the DSO on page 1, which adequately reflects the recentness of the form.