

NAFSA Comments on SEVP Draft Policy Guidance 1310-05: F-1 On-Campus Employment

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Recommendations

1. Clarify the nature of a regulation as law and policy guidance as an interpretation

The purpose/Background section of the draft F-1 on-campus employment policy guidance states that, “[a]n F-1 student participating in on-campus employment must comply with 8 CFR 214.2(f)(9)(i) and *should comply with its interpretation* in this guidance to maintain nonimmigrant status...”

NAFSA suggests that SEVP better clarify nature of a regulation as law, and policy guidance as an agency’s interpretation of that law, perhaps drawing the adjudicator’s attention to the “limits of use” section at the end of the guidance. We also suggest changing the wording of the above sentence to: “... and a student who complies with the interpretation in this guidance will be seen as maintaining nonimmigrant status...” in order to signal to adjudicators that there may be other viable approaches to compliance with the regulation.

2. Clarify the context of the Definitions

The draft policy guidance defines several terms that are relevant only in the context of certain kinds of on-campus employment. NAFSA suggests that SEVP articulate the context within the definition, particularly:

Direct student services

The term “direct student services” is relevant only when employment on the premises of the school would be with an outside commercial firm. When the school itself is the employer, the regulation does not limit on-campus employment to jobs providing “direct student services.” 8 CFR 214.2(f)(9)(i) applies that condition only to on-location commercial firms, i.e., “(including **on-location commercial firms which provide services for students on campus**, such as the school bookstore or cafeteria). **Employment with on-site commercial firms**, such as a construction company building a school building, which do not provide direct student services is not deemed on-campus employment for the purposes of this paragraph.”

NAFSA suggests that definition 1 be reworded to clarify this. For example:

Direct student services: A commercial firm operating on-campus that provides services predominantly for students (e.g., a bookstore, cafeteria, or administrative services) and where students are the principal customers of the business enterprise at that location.

Educationally affiliated

Likewise, 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 definition 2 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, 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.

On-campus employment

The draft definition of “on-campus employment” improperly conflates the different kinds of on-campus employment. As discussed in our comments regarding the definitions of “direct student services” and “educationally affiliated,” there are three different types of on-campus employment, characterized by the location of the work and the nature of the employer. The draft definition should distinguish between these three types. For example, the proposed two bullet points should be reformulated into three bullets:

On-campus employment: Employment performed at any of the following:

- An on-campus location (i.e. on the school’s premises) where the school is the employer;

- An on-campus location (i.e. on the school’s premises) in a role providing [direct student services](#) with a commercial firm that has entered into an agreement with the school to provide direct student services at that location; or
- An off-campus location that is [educationally affiliated](#) with the school.

This recommendation is also consistent with SEVP’s Policy 1 in the policy section of the draft policy guidance.

Reasonable commuting distance

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

3. Clarify policy statements

Policy 3: Hours

NAFSA suggests that SEVP clarify its statement regarding the consequences of working beyond the number of hours of work allowed by the regulations. Here we repeat our objection to SEVP’s proposed integration of all types of employment into a general 20-hour per week master limit. Our argument and suggestions are set forth in our comment to Policy 4 in SEVP Draft Policy Guidance PG 1311-02: F-1 and M-1 General Employment. Likewise here, SEVP should specify that the hourly limit described in 8 CFR 214.2(f)(9)(i) applies only to that paragraph, i.e., only to on-campus employment. NAFSA suggests that Policy 3, Hours, in this draft guidance (PG-1310-05) be amended to make this clear.

NAFSA also suggests that SEVP recognize that there is a large evidentiary question when it comes to terminating a SEVIS record.

With this in mind, NAFSA offers the following example for amending Policy 3, Hours:

Hours. A DSO who has documented proof that a student has violated regulatory limitations on the number of hours of weekly **on-campus** employment should terminate the student’s SEVIS record. For purposes of determining hours of on-campus employment:

- Part-time: No more than 20 hours of on-campus employment under 8 CFR 214.2(f)(9)(i) allowed per week while school is in session
- Full-time: More than 20 hours per week of on-campus employment under 8 CFR 214.2(f)(9)(i) when school is not in session (i.e., school holidays, breaks or vacation)
- DHS may waive the 20 hour limitation on employment for a student enrolled in a full course of study during a required session due to emergent circumstances.

Policy 4.1: Start

NAFSA suggests that it clarify the nature of DSO authorization required for on-campus employment incident to status. Here we repeat our objection to a policy-driven requirement for DSO approval of individual on-campus employment authorizations, as discussed in our comment to Policy 1 in SEVP Draft Policy Guidance PG 1311-02: F-1 and M-1 General Employment. NAFSA suggests that Policy 4.1, Start, in this draft guidance (PG-1310-05) be amended to make this clear.

NAFSA also suggests moving the last two bullet points in Policy 5.1 to this Policy 4.1, because they relate to on-campus employment start date.

For example:

Start. Upon initial entry to engage in a program of study on a new SEVIS ID, a student who has reported to the school may begin on-campus employment no more than 30 days before the start of classes. Please note:

- F-1 on-campus employment is authorized “incident to status,” and no specific endorsement in SEVIS or approval by a DSO or DHS officer is necessary. However, schools must exercise due diligence to ensure that a student meets the on-campus eligibility requirements and conditions specified at 8 CFR 214.2(f)(9) before the student starts employment and thereafter. DSOs also have an important role in facilitating the student’s acquisition of a Social Security Number [see Policy 3 in this document], before the student’s work begins or as soon as possible thereafter, since employment “incident to status” does not require an Employment Authorization Document from USCIS.
- Unlike off-campus employment, a student does not have to be in F-1 status for one full academic year before starting on-campus employment
- Unlike practical training, a student does not have to be enrolled full-time at an SEVP-certified school for one full academic year before starting on-campus employment.

Policy 4.5: On-campus employment and transferring to a new school

This policy statement describes until what point a student can study at a transfer-out school. NAFSA suggests removing the phrase “while enrolled at,” to cover the situation where a student has completed studies at the transfer-out school, but has not yet reached the transfer-out date. That situation is like a student who has completed studies at one level and is in the process of moving levels at the same school. NAFSA also recommends adding language that describes at what point a student can begin study at a transfer-in school. For example:

On-campus employment and transferring to a new school. As an exception to section 4.3, while the transfer process is pending, a student may continue on-campus employment at the transfer-out school until the transfer release date in SEVIS. A student may begin on-campus employment at the transfer-in school after the transfer-in school creates a transfer-in I-20 for the student.

Policy 5.1: Eligibility

NAFSA reiterates our objection to a policy-driven requirement for DSO approval of individual on-campus employment authorizations, as discussed in our comment to Policy 1 in SEVP Draft Policy Guidance PG 1311-02: F-1 and M-1 General Employment. If DHS wishes to create a DSO approval requirement for on-campus employment, they must do so through the regulatory notice and comment process, not through policy guidance. NAFSA suggests that Policy 4.1, Start, in this draft guidance (PG-1310-05) be amended to make this clear. For example:

Eligibility. A student is eligible to engage in on-campus employment as follows:

- The student is currently maintaining status and is in good academic standing;
- The student is not a part-time border commuter student;

- The student is enrolled in a full course of study or on authorized reduced course load (except as described in section 4.4 and section 4.5); and
- The employment meets the proper criteria for on-campus employment as described in 8 CFR 214.2(f)(9)(i) and this guidance.

NAFSA also repeats its suggestion to move the last two bullet points in Policy 5.1 to Policy 4.1, Start, because the both relate to on-campus employment start date.

Policy 5.2. Determination of financial qualification for enrollment

NAFSA thanks SEVP for clarifying that on-campus employment can be used to determine a student's eligibility for I-20 issuance and F-1 status. We also appreciate SEVP's effort to define the applicability of the regulatory phrase "On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study," which has floated in different areas of the F-1 regulations over the years and is now housed in the definition of full course of study at 8 CFR 214.2(f)(6)(i)(H).

However, we suggest that the arbitrary condition allowing a scholarship, fellowship, or assistantship to "be credited toward up to half of the full course of study requirement." The regulation currently contains no such measurement, leaving that determination up to the school that has awarded the scholarship, fellowship, or assistantship. Schools are bound by other requirements for determining "full-time" status for other purposes, such as financial aid, and NAFSA suggests that SEVP not remove through this policy guidance a school's academic discretion to do so. One way to accomplish this is to borrow the phrase "are considered full-time for other administrative purposes" from the definition of full course of study for undergraduates. For example, bullet one of Policy 5.2 could be reworded to state:

- On-campus employment as stated in the terms of a scholarship, fellowship, or assistantship is part of the academic program of a student otherwise taking a full course of study, provided that the combination of scholarship, fellowship, or assistantship and any concurrent course work or research is considered full-time for other administrative purposes.

NAFSA also suggests eliminating the second bullet, relating to CPT. As we suggested in the definition of the term educationally affiliated, mixing the very complicated area of 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.

Finally NAFSA suggests that the third bullet in Policy 5.2 be amended. As we mentioned in our comments to Policy 3, Hours, we believe that the "aggregate hours" limitation while school is in session relates only to the aggregate of *on-campus employment* done under 8 CFR 214.2(f)(9)(i). We suggest that this bullet be changed to read:

- Any on-campus employment done pursuant to a scholarship, fellowship, or assistantship is still limited by the 8 CFR 214.2(f)(9)(i) limitation of 20 hours per week in the aggregate of on-campus employment while school is in session.