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Higher Education Alert

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DHS signals heightened scrutiny of CPT programs as additional H-1B changes loom

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The agency issued two August memos that outline baseline requirements for Curricular Practical Training and signal a narrower definition of which types of programs meet the standard.



What's the impact?

- With CPT programs facing increased scrutiny, institutions should review optional, elective, and post-completion internship programs to determine if CPT is genuinely integral to the curriculum required for all students.
- DSOs and institutions face increased compliance risk as SEVP emphasizes potential personal and institutional consequences for improper CPT authorizations.
- With H-1B cap-subject fees proposed to increase to over \$100,000 per application, international students may face greater barriers for post-graduation employment in the US.

The Department of Homeland Security (DHS) is signaling increased scrutiny of how colleges and universities use Curricular Practical Training (CPT), while simultaneously advancing significant changes to the H-1B program that could affect higher education institutions, affiliated entities, and other organizations that rely on H-1B cap exemptions.

CPT is a designation that allows international students to gain work experience in their area of study. In two August broadcast messages, the Student and Exchange Visitor Program (SEVP) warned Designated School Officials (DSOs) that it has identified an increase in CPT authorizations that may not satisfy regulatory requirements. SEVP also emphasized the potential consequences for institutions and individual DSOs when CPT is authorized improperly.

The messages emphasize that CPT must be *integral to an established curriculum and directly related to the student's major area of study*. CPT cannot be authorized simply to provide employment or an experience that is not required or formally recognized as part of the academic program.

At the same time, DHS has proposed an additional \$103,265 fee for H-1B cap-subject petitions. The agency has sent a separate proposed rule to the Office of Management and Budget (OMB), which would revise the criteria governing H-1B cap exemptions and increase oversight of certain third-party placements.

Heightened scrutiny of CPT

PRACTICAL IMPLICATIONS FOR CPT PROGRAMS

- / **CPT cannot be optional.** SEVP states in the messages that where a school has determined that CPT is an integral part of an established curriculum, participation cannot be optional. This could affect programs in which students may choose whether to complete an internship, practicum, or other practical training experience.
- / **The curriculum must apply consistently.** SEVP states that all students—domestic and international—enrolled in a curriculum that the institution has determined requires CPT must participate in the practical training.
- / **The training must be directly related to the student's major.** Institutions must be able to articulate and document the academic connection between the practical training experience and the student's field of study. A general employment or career-development benefit is not necessarily sufficient.
- / **Institutions must assess whether the student can complete the degree without CPT.** SEVP's August 12 message instructs DSOs to authorize CPT only when its absence would make attainment of the degree impossible and when the work associated with CPT is required for all students pursuing that degree. This makes the structure of the academic

program particularly important. If a student can satisfy all degree requirements without participating in the practical training—for example, because the internship occurs after the student’s substantive academic requirements have been completed—the institution should carefully assess whether CPT can properly be characterized as integral to the curriculum.

- / **Elective-based CPT programs present particular concerns.** SEVP states that when an elective course is optional, making the associated CPT optional, the integral and required aspects of CPT would not be satisfied.
- / **Employer relationships must support a bona fide training experience.** The regulation defines CPT in terms of required internship or practicum opportunities offered by sponsoring employers through cooperative agreements with the school. SEVP’s August guidance reinforces the importance of those arrangements and states that schools should work with legitimate, bona fide employers capable of providing appropriate practical training experience. Institutions, therefore, should not assume that internal approval of an internship by a career center or academic department necessarily addresses the separate requirement for an appropriate employer relationship and cooperative agreement.
- / **There may be gray areas that the broadcast messages do not resolve.** For example, it is not clear how SEVP would apply its guidance to an experiential learning component that is essential to a dissertation but is not separately identified as a degree requirement. Institutions should be cautious about treating the broadcast messages as establishing bright-line answers to questions that the regulation and the guidance do not expressly resolve.

DSO RESPONSIBILITIES AND INSTITUTIONAL EXPOSURE

The messages also emphasize the significance of the DSO’s role. When a DSO authorizes CPT through the student’s Form I-20, the DSO is certifying that the information is accurate, including the basis for the CPT authorization. SEVP has instructed DSOs to maintain thorough records supporting the curricular necessity of CPT and has warned that improper authorizations may result in administrative or legal consequences for both institutions and individual DSOs, including potential action that may affect an institution’s SEVP certification. SEVP has also established a confidential reporting mechanism for DSOs that believe they are being pressured by institutional leadership to make questionable or noncompliant CPT decisions or attestations.

Academic programs, international student offices, and career services may have historically viewed CPT primarily as a mechanism for facilitating students’ experiential learning or employment opportunities. The new SEVP guidance makes clear that the **academic structure supporting the CPT authorization itself is central to compliance**. Institutions should, therefore, involve academic leadership and counsel when reviewing programs rather than placing the burden of assessing curricular compliance solely on individual DSOs.

The potential consequences also extend beyond the institution. A CPT authorization may become part of a student's immigration history and could be relevant in connection with a future visa application, change of status, adjustment of status, or other immigration benefits. Institutions should consider not only whether a particular authorization presents a current SEVP compliance issue, but also whether an authorization that is later questioned could create complications for the student in a future immigration proceeding.

THE BROADCAST MESSAGES ARE GUIDANCE — NOT NEW REGULATIONS

For institutions evaluating their CPT programs, it is important to distinguish between the existing regulatory requirements and SEVP's guidance about how those requirements will be interpreted and enforced.

The broadcast messages do not, by themselves, create new regulatory obligations, and SEVP expressly states that they are not a substitute for applicable law or regulations and do not create enforceable rights or obligations. At the same time, the messages provide a significant indication of how SEVP intends to apply and enforce the existing regulatory standard. Institutions, therefore, should not treat the messages as though they amended the regulations but should take them seriously as an indication of the agency's current enforcement priorities.

The legal status of the guidance also raises a question of administrative law. To the extent SEVP is merely interpreting the existing CPT regulation, the agency generally may issue interpretive guidance without notice-and-comment rulemaking. The Administrative Procedures Act expressly exempts interpretive rules and general statements of policy from the ordinary notice-and-comment requirement.

The question becomes more complicated if the guidance is understood to impose requirements that are materially different from, or more restrictive than, the existing regulation. For example, the regulation requires CPT to be an integral part of an established curriculum and defines CPT in terms of a required internship or practicum but does not expressly state that every student in a curriculum—domestic and international—must participate or that a student must be unable to attain the degree without the practical training. SEVP's categorical statements on those points, therefore, may be viewed as an interpretation of the existing requirements but could also provide grounds for arguing that the agency has effectively established a new substantive standard without notice and comment. Whether that argument would succeed depends on the particular application of the guidance and the extent to which SEVP treats it as binding.

WHAT INSTITUTIONS SHOULD DO NOW ON CPT

Institutions with significant CPT populations should consider a targeted review of their programs and authorization practices, rather than waiting for an SEVP inquiry. Among other things, institutions should:

- / **Inventory CPT-eligible programs.** Identify the academic and curricular basis for CPT in each program.
- / **Prioritize pending CPT requests for the fall semester.** Institutions should identify students who have requested CPT based on internships already secured for fall 2026, particularly where the internship is not clearly required for graduation. Those cases may require prompt review under the new guidance. Institutions may have more time to evaluate programs supporting internships planned for summer 2027 and beyond and to determine whether academic or curricular changes are appropriate.
- / **Ask which degrees can be completed without CPT.** Identify programs in which practical training occurs after students have otherwise completed their degree requirements, or where students can graduate without participating.
- / **Review program and course requirements.** Determine whether CPT is actually required for all students in the relevant curriculum.
- / **Consider whether existing programs can be clarified or restructured.** For programs that are intended to require experiential learning but whose catalogs, degree requirements, course descriptions, or other academic materials do not clearly establish that requirement, assess whether the academic requirement can appropriately be clarified. Any such change should reflect actual academic requirements rather than simply relabeling an otherwise optional internship as mandatory.
- / **Examine elective-based CPT models carefully.** Review particularly those where students can choose whether to participate or can graduate without completing the practical training.
- / **Review CPT authorization procedures and DSO documentation.** Ensure that the academic necessity, major-relatedness, employer relationship, and SEVIS reporting are adequately supported.
- / **Evaluate consistency across student populations.** Identify where international students receive CPT, but domestic students, enrolled in the same curriculum, do not participate in comparable practical training.
- / **Review employer and cooperative agreements.** Ensure that they are current, documented, and reflect legitimate training relationships.
- / **Coordinate among international student offices, academic leadership, career services, and legal counsel before making changes to existing CPT structures.**

The key takeaway is that institutions should evaluate their programs against the governing regulation, while using the August guidance as a roadmap for the issues SEVP is most likely to scrutinize.

Regulatory changes to H-1B

PROPOSED \$103,265 H-1B FEE WOULD APPLY TO CAP-SUBJECT PETITIONS

Separately, DHS has proposed an additional \$103,265 fee for each petition subject to the H-1B cap, payable at filing and in addition to existing H-1B fees and other applicable payments.

The proposed fee would not apply to H-1B petitions that qualify for statutory cap exemptions. DHS proposes to impose the fee only on H-1B petitions subject to the annual numerical cap, including petitions eligible for the 20,000 advanced-degree exemption. DHS specifically cited the significant number of cap-exempt H-1B beneficiaries employed by educational and nonprofit research institutions as a reason for excluding cap-exempt petitions from the proposed fee.

However, the proposed fee could have a significant downstream effect on institutions' international graduates. Students who seek H-1B employment after graduation with cap-subject employers would face an employer-sponsored petition carrying a proposed six-figure additional fee. That cost could materially affect the willingness or ability of some employers to sponsor recent graduates, although the ultimate impact will depend on whether and how the proposal is finalized.

POTENTIAL CHANGES TO H-1B CAP-EXEMPTION CRITERIA

The potential significance of the proposed fee is further heightened by a separate DHS rulemaking addressing H-1B cap exemptions.

On August 24, DHS sent RIN 1615-AD00, "Reforming the H-1B Nonimmigrant Visa Classification Program," to the OMB for review. The regulatory text has not yet been publicly released. Based on the information currently available, the proposal would revise eligibility for certain cap exemptions, increase scrutiny of employers that have violated H-1B program requirements, and increase oversight of certain third-party placements.

Of particular interest to colleges and universities will be whether DHS revises its interpretation of when a nonprofit organization is sufficiently "affiliated with" an institution of higher education and when employment is considered "at" a qualifying cap-exempt institution.

Another area to watch is concurrent H-1B employment. Under current law and regulations, an individual working in cap-exempt H-1B employment may, in certain circumstances, also hold H-1B employment with a cap-subject employer. Changes affecting the scope of cap-exempt employment could, therefore, have consequences beyond the institution's own H-1B sponsorship.

What higher education institutions should watch

Taken together, the August developments point to increased DHS and SEVP scrutiny of the underlying academic and employment structures supporting immigration benefits.

For higher education institutions, the immediate CPT message is clear: CPT should be grounded in the academic curriculum and institutions should be prepared to demonstrate that basis if SEVP asks. The H-1B developments remain less settled, but institutions should begin assessing their current cap-exempt structures now—particularly where affiliated entities, third-party placements, or concurrent employment are involved.

Nixon Peabody's Higher Education team is available to help clients assess and update their practices in light of these new priorities. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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