



# STUDENTS AND COVID-19 RELATED IMMIGRATION DEVELOPMENTS

Students need to be aware of the current state of Student and Exchange Visitor Program (SEVP) guidance during the pandemic, various COVID-19-related travel bans, as well as the operating statuses of embassies and consulates around the world. These developments dictate the timing of when to secure F and M status and the ability of students to remain in compliance with U.S. immigration laws. If you have questions, please contact an immigration attorney.

## What Is the Current SEVP Guidance?

Since the pandemic's onset, SEVP has issued guidance through a dizzying array of Broadcast Messages and FAQ updates. Fortunately, litigation from various academic institutions has shaped the more flexible guidance we have today, though challenges and gray areas remain. Here are the most relevant highlights:

- ▶ Active continuing F and M students may temporarily count online classes toward a full course of study. Typically, regulations limit F students to a maximum of one course/three credits of online classes per semester and prohibit M students from taking online classes. The temporary exception applies to students who were actively enrolled at a U.S. school on March 9, 2020; are in Active SEVIS status; and who are enrolled in classes that are entirely online, regardless of whether they are inside or outside the United States. Those outside the United States are likely able to reenter with a valid visa or remain in Active SEVIS status abroad as long as they are engaged in a full course of online study. The exception also applies to students who have remained in the United States in Active status and are starting a new program of study (i.e. transfer and/or change of educational level).
- ▶ F and M students in Initial status after March 9, 2020, who are currently outside the United States will not be able to enter the United States to enroll in a U.S. school for courses of study that are fully online. This still allows for a hybrid option, where the program of study has both in-person and online components, even if the online classes are in excess of the regulatory limits. It also allows students pursuing an in-person or hybrid course of study to remain in the United States, even if their institution later switches to fully online instruction.
- ▶ Students on CPT and OPT, including STEM OPT, may work remotely while inside or outside the United States when appropriate and permitted by the employer. The employer must also be able to assess student engagement using electronic means or have an office outside the United States. Additionally, SEVP will now consider students as appropriately engaged in OPT when they are working fewer than 20 hours per week within their respective OPT opportunities.

Students should check with school officials to ensure they have submitted a procedural change plan to SEVP detailing the school's alternative procedures (such as fully online instruction or a hybrid program). Students should be sure to abide by the institution's pandemic-related alternative procedures while in place, as well as the school's policies once it resumes normal operations. Students continuing their studies outside the United States should confirm they have the following language in the remarks field of their Form I-20: "Outside the United States due to COVID-19."

## What Are Some Problems with the Current SEVP Guidance?

- ▶ SEVP has not addressed a scenario in which individuals who are physically present in the United States request a change of status to F or M. If a student was not actively enrolled at a U.S. school as of March 9, 2020, it is unclear whether they can engage in a course of study that is 100 percent online.
- ▶ For students currently on OPT or STEM OPT, the 90-day/150-day allowable periods of unemployment continue to remain in effect. This is particularly relevant given COVID-19's impact on the job market.
- ▶ Students in their final semester who are continuing their studies abroad because they are unable to secure a visa or flight to the United States may lose the opportunity to apply for post-completion OPT. The student must file Form I-765 up to 90 days before, but no later than 60 days after, the program end date. However, Form I-765 cannot be filed while the student is abroad.
- ▶ If a new/initial student is unable to secure a visa or a timely flight to the United States, the school must defer attendance in SEVIS. In such cases, the student may still engage in a course of study from abroad, but not in active F status. This would affect the student's ability to accrue one full academic year for purposes of CPT and pre-completion OPT.

## What Are the Current Travel Difficulties Facing Students, and What Are Some Possible Solutions?

What are the current travel difficulties facing students, and what are some possible solutions?

The Department of State has labeled student visas a “high priority.” In their sole discretion, some embassies or consulates may consider emergency visa appointment requests. This means it may be possible for students who have urgent travel needs to obtain approval. Students should consult the website of the embassy or consulate through which they intend to process their visa. Additionally, DOS has temporarily expanded the authority of consular officers to waive the in-person interview requirement for individuals applying for a nonimmigrant visa in the same classification, which may help students who need to renew F or M visas.



Finally, several pandemic-related Presidential Proclamations bar U.S. entry of individuals physically present in China, Iran, Brazil, the 26 nations of the Schengen Area, United Kingdom, Ireland, and South Africa within 14 days preceding their attempted entry. Students restricted by proclamations impacting the Schengen Area, United Kingdom, and Ireland will automatically be considered for a National Interest Exception to these proclamations if they are otherwise qualified for an F-1 or M-1 visa. As of January 26, 2021, all air passengers arriving to the United States, regardless of immigration status, are required to test negative for the coronavirus, via PCR or antigen test, no more than 72 hours before departure.

IF YOU HAVE QUESTIONS, PLEASE CONTACT YOUR IMMIGRATION ATTORNEY OR YOU CAN FIND AN IMMIGRATION ATTORNEY AT <https://www.aialawyer.org/>.

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