



UNIVERSITY OF RICHMOND
FOUNDED 1830

TO:
FROM: Nancy Colón
International Taxation Specialist
DATE:
RE: Explanation of an F-1 Visa

The F-1 visa is designated for an individual who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established college or university.

To Explain:

1. The F-1 applicant must intend to pursue a full course load at an institution that has been approved by the CIS to host F-1 students.
2. The applicant must also have a residence in a foreign country which he has no intention of abandoning. (The F visa classification does not permit an applicant to have dual intent.)
3. To obtain an F-1 visa the applicant must first be accepted by a school. The school's DSO (Designate School Official) then issues the Form I-20. The student then takes the Form I-20 to a US consular post and applies for the F-1 visa.
4. The DSO will indicate on the Form I-20 the period of time required to complete the course of study. An F-1 visa holder is typically admitted to the US for "duration of status", with the notation "D/S" on his Form I-94. This means they are admitted for the length of time needed to complete the study, plus any authorized period of practical training, plus a grace period of 60 days. (An extension or transfer to a new school will need CIS permission.)
5. An F-1 may not arrive in the US more than 30 days prior to the start of classes. This time period is meant to be used as a preparatory time before classes start and may not be used for employment.
6. A new F-1 student may start working on-campus 30 days before the I-20 start date.
7. An F-1 student who has finished one degree program and is moving into another and who has been issued a Form I-20 A-B to begin a new program in accordance with the provision of 8 CFR 214.3(k) and who intends to enroll for the next

*Office of International Taxation
Room G-13
Maryland Hall
University of Richmond
Tel: 804-287-6007
Fax: 804-287-6080
Email: ncolon@richmond.edu*

regular academic year, term, or session at the institution which issued the Form I-20 A-B may continue on-campus employment incident to status.

8. An F-1 who transfers from one school to another can work during the summer for whichever institution has custody of the F-1's SEVIS record.
9. 20/40 Hour Work Rule: USCIS has set a policy that restricts F-1 students to working no more than 20 hours per week while school is in session and full-time during school breaks and holidays.
 - a. UR has interpreted "full-time" as 40 hours per week. This is a hard and fast rule. (Anything above 40 hours eliminates the student's FICA exemption and gets into overtime issues.)
 - b. While special demands of research may require a student's participation for a marginal longer period from time to time, exceeding the work hour limit would only be possible with permission from OIT, OIE, and Student Employment, in consultation with the student's instructor. This permission would have to be given in advance of the work. The work would have to be in the student's field of study and would have to actually provide a learning opportunity for the student.
 - c. While supervisors have been informed of this policy, it is the student's responsibility to adhere to the correct number of weekly work hours. If a student has concerns about the number of work hours a supervisor has required, the student should contact the Student Employment Office in Financial Aid, prior to working the hours.
 - d. To remain "in status" and eligible to work, an F-1 student must adhere to the 20/40 hour per week rule.
 - e. The total number of work hours is for all combined jobs worked on campus each week. (For example, if a student has two jobs during the school year and in the same week works 10 hours in one job and 11 hours in the second job, the student would be violation of the US government regulations because the student worked 21 total hours.)
 - f. Also, if a student is employed in a salary (RA, Drill Instructor, etc.) or lump sum payment situation, the student should contact Student Employment if the student is unsure of how many hours to attribute to that week's total hours.
10. On-Campus Employment:
 - a. F-1 students who are maintaining status may work "on campus" for no more than 20 hours per week when school is in session and 40 hours per week during school breaks and annual vacation.

*Office of International Taxation
Room G-13
Maryland Hall
University of Richmond
Tel: 804-287-6007
Fax: 804-287-6080
Email: ncolon@richmond.edu*

- b. Not required to be enrolled in a degree program in order to have on campus employment.
 - c. The F-1 must be registered full-time for the following semester.
 - d. Employment is allowed at commercially run campus establishments that provide direct student services.
 - e. Employment is not allowed at commercially run firms performing labor on campus but not providing student services.
 - f. Without OPT status, on-campus employment after graduation is not authorized.
11. Off-Campus Employment:
- a. F-1 student must demonstrate severe economic hardship caused by unforeseen circumstances.
 - b. F-1 student must have been on campus for one full academic year and be in good academic standing as determined by the DSO.
 - c. If CIS approves the request, it will issue an EAD to the student
 - d. FICA exempt
12. An F-1 student who is a resident alien for tax purposes must still follow the 20/40 work hour limit. The restriction is based on visa status, not tax status.
13. Expired Documents and Employment: An F-1 is required to maintain a valid passport at all times in order to maintain his immigration status. (Contact DSO)
- a. Expired passport: The F-1 is considered out of status and can't work
 - b. Expired Visa: The F-1 is not affected by an expired visa. The F-1's authority to remain in the US is governed by their I-20 and the I-94. The I-94 should be stamped D/S, which means as long as he is maintaining his F-1 status he is allowed to remain in the US.
 - c. Expired I-20: An F-1 is considered out of status. (Note: An I-20 with a future expiration date is considered out of status if the F-1 has completed all degree requirements but hasn't applied for OPT or to another degree program.)
 - d. If both the F-1 document and the I-94 expire, the one that expires first controls the end of the status and with it the end of work authorization (to the extent the individual was authorized to work.)
14. Curricular Practical Training (CPT):
- a. An F-1 student must be authorized to participate in CPT.
 - b. F-1 needs to be earning academic credit or CPT must be required for graduation.

*Office of International Taxation
Room G-13
Maryland Hall
University of Richmond
Tel: 804-287-6007
Fax: 804-287-6080
Email: ncolon@richmond.edu*

- c. CPT must be employment that is integral to the student's established curriculum (i.e. for academic credit or as required for graduation.)
 - d. F-1 student must be in status for at least nine months in order to participate. (An exception is made for a graduate student whose program requires immediate participation in CPT as part of their degree requirements.)
 - e. CPT requires an endorsement made by the DSO on the back of the individual's Form I-20, but does not require the individual to obtain an EAD.
 - f. A student who receives one year or more of CPT may not be approved for post-completion practical training.
 - g. Maximum amount of CPT is 12 months. (Practical training of 20 hours per week is deducted at ½ the full time rate from the total period of practical training available to the individual.)
 - h. CPT off-campus employment is not FICA exempt
15. Optional Practical Training (OPT):
- a. An F-1 student may apply for OPT in order to participate in training related to the student's field of study.
 - b. Individuals in OPT are still in F-1 status derived from the university from which they graduated. The individual is considered to have the primary purpose of studying in a degree program.
 - c. Considered students and they continue to qualify for possible tax treaty exemption.
 - d. Not eligible for the FICA student exemption because they are not "working on the campus of the school, college, or university where they are enrolled and regularly attending classes."
 - e. Eligible for the NRA FICA exemption if the following 4 requirements are met if the individual is:
 - i. an NRA
 - ii. temporarily present in the US
 - iii. in primary F, M, J, or Q status
 - iv. working in accordance with the terms of their status are exempt from FICA under Section 3121(b)(19) of the Code
 - f. OPT is available in 4 circumstances:
 - i. During annual vacation and other times when school is not in session
 - ii. During school, for 20 hours per week
 - iii. After completion of all course requirements for a degree (post-completion practical training)
 - iv. After completion of a course of study
 - g. There are no hour restrictions for OPT.
 - h. The DSO must authorize OPT on the back of the individual's form I-20 and the student must apply for an EAD. The EAD would not indicate any particular school.

Office of International Taxation
Room G-13
Maryland Hall
University of Richmond
Tel: 804-287-6007
Fax: 804-287-6080
Email: ncolon@richmond.edu

- i. A student may not begin work without an EAD. Students are not allowed to work between the date when their academic requirements are complete and the start date of the OPT EAD.
 - j. Student's work authorization is unrestricted as long as the job is at the appropriate level within the field of study.
 - k. With the OPT EAD, a student may work anywhere or be self-employed as an independent contractor. The student is not restricted in terms of for whom they can work or how many hours they can work.
 - l. May not work beyond the end date of the OPT card.
 - m. If a new I-20 is granted for a new degree program, the OPT automatically terminates as of the day the new I-20 is issued and the student reverts to being restricted to working only for the institution that issued the I-20.
 - n. It is not uncommon for graduate PhD's at one school to accept OPT employment at another school.
 - o. OPT off-campus employment is not FICA exempt
 - p. Maximum amount of OPT allowed is 12 months. (Practical training of 20 hours per week is deducted at ½ the full time rate from the total period of practical training available to the individual.)
 - q. An F-1 in OPT status may not work during the 60-day post OPT period.
 - r. Post-curricular OPT employment eligibility is restricted to the graduate's area and level of completed study. The DSO will need to approve the employment as appropriate.
 - s. For travel outside the US, the F-1 visa is still valid for re-entry. The I-20 still needs to be endorsed for re-entry, just like any other F-1 student.
16. FICA: A student in F-1 status who is a nonresident for tax purposes is eligible for the NRA FICA exception.
- a. Must be at least a part-time student (6 credit hours) – auditing or non-credit class do not count.
 - b. A student working in the summer but not attending classes is eligible for the FICA exemption as long as the individual meets the following criteria under IRS 3121(b)(19):
 - i. Alien student or scholar must be temporarily present in the US in F-1, J-1, M-1 or Q status
 - ii. Alien student's or scholar's employment must be authorized under the immigration law for his particular nonimmigrant status
 - iii. Alien student or scholar must be a nonresident alien under the tax residency rules of IRC 7701(b)
 - c. Under the student FICA exemption – IRC 3121(b)(10) – summer employment by a student who is not taking any classes is subject to social security and Medicare taxes on their employment income.

Office of International Taxation
Room G-13
Maryland Hall
University of Richmond
Tel: 804-287-6007
Fax: 804-287-6080
Email: ncolon@richmond.edu

- i. Foreign students who are nonresident aliens may use IRS 3121(b)(19) to still be exempt
 - ii. Foreign students who are resident aliens for tax purposes must follow IRS 3121(b)(10) and must pay FICA during summer employment.
 - d. CPT or OPT off-campus employment is not FICA exempt (unless it is USCIS approved hard-ship employment.)
- 17. Noncompensatory Fellowship: A student in F-1 status who is a nonresident and receives a noncompensatory fellowship can:
 - a. A noncompensatory fellowship is one where the recipient is not required to provide services as a condition of receiving the fellowship.
 - b. Elect to have the fellowship taxed at a graduated rate as if it were wages.
 - c. The fellowship is not subject to Social Security and Medicare taxes.
 - d. The fellowship would be reported on a 1042 and 1042-S
 - e. A TIN is not required on the 1042-S when applying the personal exemption amount to nonqualified scholarships. (Obtain a W-8BEN from the payee as proof that the TIN was requested by was not given. Can assist payees in receiving an ITIN.)
 - f. A grant of this sort is treated as income because the money can be used at the recipient's discretion. A tax deduction may be taken on the NRA's tax return based on the actual usage. However, the grantor must treat this as cash.
- 18. Compensatory Fellowship: A student in F-1 status who is a non resident and receives a scholarship or fellowship that requires the student to perform services in order to receive it must have the payment reported as wages. It will be subject to wage-withholding and reporting on Form W-2.
- 19. Study Abroad:
 - a. Scholarship and school fees are not taxable during study abroad programs as the cost of the program is considered to be foreign-sourced income. Scholarships are sourced based on the location of the activity.
 - b. Visa application fees may be covered by UR.
 - i. NRA: It would be considered a non-qualified scholarship. It is considered foreign-sourced (no taxes and no withholding) because the activity it is supporting will take place outside of the US.
 - ii. RA: It's includible in the gross income, but it wouldn't have to be reported or withheld due to the fact that there is no reporting or withholding required on scholarships paid to RAs.
 - c. If the foreign vendor for a study abroad program is an individual, then a W-8BEN should be collected as a certificate of foreign status. Otherwise, for foreign corporations, the IRS eliminated the need to collect a withhold certificate if all services are performed abroad.

*Office of International Taxation
Room G-13
Maryland Hall
University of Richmond
Tel: 804-287-6007
Fax: 804-287-6080
Email: ncolon@richmond.edu*

20. Honorariums: F-1 students may not receive honorariums as defined under US immigration law. (Only B classification visitors may receive compensation for lecture-type services.) Honorarium-type payments for an F-1 would fall under self-employment, and would be made only in the following circumstances:
- a. Hardship off-campus employment with a CIS EAD (allows for any type of employment as long as maximum hours are not exceeded.)
 - b. Optional Practical Training might be used for self-employment related to the field of study (which may include compensated activities.)
21. Travel Reimbursement -- General:
- a. Deductible travel-related related to study – travel expenses paid or reimbursed that are attributable to study or independent research carried on by individuals in F or J status. To be deductible/excludable, the expenses must meet the temporarily-away-from-home conditions:
 - i. The travel must be temporarily-away-from-home (i.e. the taxpayer’s tax home; place of business) -- if visit longer than one year, F-1 does not qualify for this deduction
 - ii. Expenses must be incurred primarily in furtherance of the taxpayer’s business or income producing activities – travel expenses must be attributable to services.
 - b. If the travel scenario can be characterized as the F-1’s university sending the F-1 to UR on it’s behalf for purposes of research collaboration between the two schools, travel expenses would be reimbursable. If the F-1 from the other school were to provide unpaid services to UR, independent of the F-1’s approved university, this would be disallowed.
 - c. Expenses incurred for travel related to services (i.e. attending a conference to present a paper –IRS considers presentations at conferences to be providing services) are excludable from taxation.
 - i. NRA is considered on business for the University
 - ii. Must follow the accountable plan rules.
 - iii. Travel reimbursements are excludable from income in this instance
 - d. Expenses incurred for travel related to education (i.e. attending a conference for educational purposes) then the travel reimbursements are travel grants subject to withholding.
 - i. IRS considers them Category 1 payments – they are a form of personal service income to the F-1 student, paid to the F-1 in exchange for the F-1’s personal service of presenting his research paper at a conference.
 - ii. This treatment is identical to the IRS’s treatment of a researcher who is reimbursed for his travel expenses in order to present a paper at a conference.

*Office of International Taxation
Room G-13
Maryland Hall
University of Richmond
Tel: 804-287-6007
Fax: 804-287-6080
Email: ncolon@richmond.edu*

- iii. Since the reimbursements are in the nature of personal service income, then the F-1 student may deduct travel expenses under section 162 of the Code against the reimbursement income.
- iv. If the reimbursement income does not exceed the deductible expenses, then there is no taxable income in this transaction.
- v. Accountable plan rules apply to this transaction and are not reportable to the IRS and are not subject to withholding of federal income tax, except in those situations in which the reimbursement income exceeds the deductible expenses. (The excess would be taxable at 30% and reportable on Form 1042-S.)
- vi. NOTE: Immigration rules must be satisfied, too.
- e. Expenses incurred for travel related to a course of study (working on a dissertation or research paper) are not excludable from taxation.
 - i. This type of travel reimbursement is in the nature of a travel grant and is treated as a taxable non-qualified scholarship or fellowship income.
 - ii. The use of the funds are at the discretion of the recipient.
 - iii. This includes paying for travel to and from home country
 - iv. Tax at 14%
- f. Expenses incurred for relocation (i.e. moving to a new job) are not excludable from taxation. Students may be employed related to their course of study but this does not satisfy the requirement for moving for a new job.
- g. F-1 students from other institutions may be reimbursed travel expenses
 - i. The money needs to be paid to the NRA's home institution (not the NRA)
 - ii. The home institution's DSO needs to approve the activity
- h. When Services are Performed: Travel and expenses are reimbursable without taxation.
- i. When Services are not Performed:
 - i. Travel and expenses are to be taxed as a travel grant
 - ii. Tax at 14%
 - iii. Section 1441 regulation allow the use of a withholding allowance on Form 1042-S for the amount of the personal exemption (\$3400 in 2007) to offset taxable travel grants as long as the travel grant is less than the withholding allowance.
 - iv. This offset is limited to recipients in F, J, M, or Q status.
 - v. No Form W-4 or TIN is required for the offset. However, applying for a pre-tax return ITIN is recommended.
 - vi. Tax Navigator:
 1. Code the travel grant as a taxable scholarship
 2. Run the treaty analysis – TaxNav will create the 1042-S record with the appropriate income code
 3. Make sure the personal exemption amount has been applied

Office of International Taxation
Room G-13
Maryland Hall
University of Richmond
Tel: 804-287-6007
Fax: 804-287-6080
Email: ncolon@richmond.edu

4. Enter the gross amount of the award
 5. Enter the withholding amount (which should be the same as the gross if the total grant is \$3400 or less)
 6. The exemption code will be "0" and the tax rate will be 14%
22. Travel Reimbursement – Student Interview:
- a. Of course you can tax if you want to, but remember that if the reason for paying the travel is to encourage a superstar to choose your university, you could be undermining that goal. It seems to me that the IRS position on this must be general and not to fit exceptional circumstances, particularly if you make the payments based on the individuals and not on a general practice or policy relating to all applicants. Having superstar students or making special efforts to populate important research, it seems to me, are business purposes. (Linda Dodd-Major – 5/08)
 - b. While there is an argument to be made that this type of expense could be considered a business expense of the university (marketing, recruitment, etc.), IRS has never issued a formal opinion to this effect and this position has not to my knowledge been addressed in an audit situation. There is no service being provided, so unless and until something specific comes from the IRS, you are safest treating it as a travel grant and collecting the same documentation you would for anyone else receiving a scholarship or fellowship - immigration history statement, W-8BEN or W-9 depending on residency, copies of immigration documents, etc. I don't know that the IRS would differentiate between pre- and post-acceptance. (Terri Crowl – 5/08)
23. Research Subjects:
- a. Participation in clinical trials is allowed.
 - b. Payment, however, is a different story, depending on whether or not the participation is considered to rise to the level of providing services.
 - c. The IRS considers the services as employment if the student is given a script to read.
 - d. Human subject who give personal specimens or opinions are offering personal property, but those who perform a mandated activity might be perceived as providing services under tax law even if not under immigration law.
 - e. If there are services involved, it does not matter so much that they are paid, but whether they constitute employment.
24. Forgiveness of Student Loan Debt:
- a. Since loans have to be repaid, they are not considered income
 - b. Forgiveness of indebtedness should be reported on Form 1042-S

*Office of International Taxation
Room G-13
Maryland Hall
University of Richmond
Tel: 804-287-6007
Fax: 804-287-6080
Email: ncolon@richmond.edu*

- c. The only exemption code current available is Code 02, Exempt Under the Internal Revenue Code
 - d. The income is exempt from withholding but not exempt form tax
 - e. Resident aliens would have theirs reported on a 1099-MISC
25. Change of Status:
- a. A person who enters the US on an F-2 visa, for instance, and becomes an F-1 does not change their visa in the US, the person changes their immigration status.
 - b. A person is not “on an F-1 visa” but is “in F-1 visa status”
 - c. The person who changes from F-2 to F-1 must get a new visa stamp while they are out of the US. If they do not get the new visa stamp they will be fined when completing the I-193 in customs or sent back home because the paperwork doesn’t match the visa stamp.

*Office of International Taxation
Room G-13
Maryland Hall
University of Richmond
Tel: 804-287-6007
Fax: 804-287-6080
Email: ncolon@richmond.edu*