Economic Policy Institute

Submitted electronically via the Federal Register

November 9, 2026

Office of the Principal Legal Advisor
Immigration and Customs Enforcement (ICE)
Department of Homeland Security (DHS)
500 12th St SW
Washington, DC 20536

Re: *Optional Practical Training Fees* (Docket No. ICEB-2026-0100; RIN 1653-AB01), Notice of proposed rulemaking, 91 Fed. Reg. 64566 (October 8, 2026)

The Economic Policy Institute (EPI) is a nonprofit, nonpartisan think tank established in 1986 to include the needs of low- and middle-income workers in economic policy discussions. EPI conducts research and analysis on the economic status of working America, proposes public policies that protect and improve the economic conditions of low- and middle-income workers—regardless of immigration status—and assesses policies with respect to how well they further those goals. EPI submits these comments on the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM) regarding new fees that will be imposed by Immigration and Customs Enforcement (ICE) on universities for students and graduates seeking to participate in the Optional Practical Training (OPT) program. EPI has researched, written, and commented extensively on the U.S. system for labor migration, including in particular, the OPT and H-1B programs—including on H-1B wage levels and employer usage and abuses of H-1B.[1] (Significant numbers of H-1B workers were first employed in the United States through OPT program, so much so that OPT can reasonably be viewed as an H-1B program with fewer rules and worker protections.)

Educating foreign students is a long-standing and laudable feature of the U.S. higher education system. By any measure, the U.S. remains the most attractive place for the international students looking to study outside of their home countries. The United States attracts the most, and more importantly the best and brightest students, from all corners of the globe. The principal reason for this is the massive long-term investment U.S. taxpayers have made in the higher education system; equipping university laboratories with state-of-the-art research equipment and attracting the best faculty. But through funding cuts for research and attacks on universities, the current administration has put all of this at risk for current and future generations of students—both U.S.-born and foreign-born—jeopardizing scientific discoveries and innovations that benefit the U.S. economy.

[1] See for example, Daniel Costa and Ron Hira, *H-1B visas and prevailing wage levels: A majority of H-1B employers—including major U.S. tech firms—use the program to pay migrant workers well below market wages*, Economic Policy Institute, May 4, 2020; Ron Hira and Daniel Costa, *New evidence of widespread wage theft in the H-1B visa program: Corporate document reveals how tech firms ignore the law and systematically rob migrant workers*, Economic Policy Institute, December 9, 2021.

A separate but related issue is that the U.S. employment-based immigration system has serious flaws when it comes to protecting workers and labor standards, and major reforms are long overdue. One especially flawed component of the system is the OPT program, through which U.S. employers hire and employ hundreds of thousands of student workers and recent university graduates every year.

We believe that U.S. policy should seek to attract and retain the best and brightest students from around the globe. Those who are eventually allowed to work in U.S. labor market, however, should be paid according to U.S. wage standards, and before being hired, employers should be required to test the labor market to ensure that no U.S. workers already present in the United States are available. Recent foreign graduates of U.S. universities who meet certain qualifications should then also be allowed to quickly obtain lawful permanent resident status (a green card), so that they are not bonded to employers by virtue a precarious immigration status, and so they can fully integrate into economic and political life in the United States. Those general principles should guide our labor migration policy to ensure that foreign students entering the U.S. labor market will fill demonstrated labor shortages and not be exploitable and underpaid "guestworkers." Otherwise employers will be allowed to hijack the immigration system in a way that puts downward pressure on the wages of all workers in the United States and overlooks local workers seeking employment opportunities.

One of the best ways to achieve this with respect to the student workers and recent graduates who work in OPT would be for ICE and DHS to support regulatory and statutory changes that will ensure workers can exercise their labor and employment rights free of employer retaliation or coercion. To that end, EPI urges the administration to support and work with Congress for passage of the Keep STEM Talent Act, bipartisan legislation that enables talented graduates from U.S. colleges and universities to continue contributing to the U.S. economy while ensuring that they are paid fairly and that U.S.-born professional workers are not overlooked for entry-level positions. Under this legislation, international graduates who earn advanced STEM degrees from U.S. universities would be exempt from the annual numerical caps on green cards if their employers receive approved labor certifications and pay them at least the local median wage level for their specific occupation. The Keep STEM Talent Act would offer in-demand graduates a high-road alternative to precarious temporary work visas, while enhancing America's global leadership.

EPI opposes the proposed rule.

Sadly, the proposed rule does not represent a true reform of the OPT program. Rather, it is an attempt to discourage usage of the program by penalizing both host universities and the students and graduates who will be prohibited from entry-level training and job opportunities. Therefore, EPI opposes the proposed rule and urges ICE/DHS to withdraw it: Requiring a fee of $70,000 for initial OPT applications and $30,000 for any subsequent OPT is arbitrary and capricious, and does not serve the interests of workers in the United States. EPI proposes that DHS consider alternative, more holistic reforms, which are outlined herein.

Table of Contents

1) ICE's claim that the proposed OPT fees are needed to administer the program and fight fraud is not credible given ICE cannot use those funds. 4

2) Rather than a new proposed fee, ICE should consider alternative reforms to the OPT program that would protect wages and working conditions for all workers. 4

a) The OPT program lacks adequate wage rules that would protect against undercutting U.S. wage standards and the exploitation and underpayment of F-1 OPT workers. 5

b) The OPT program should require that employers advertise job openings to U.S. workers before hiring OPT workers. 7

c) ICE should end the tax loophole that incentivizes employers to hire OPT workers over U.S. workers. 8

d) ICE should prohibit employment placement agencies and staffing/outsourcing firms that send workers to third-party employers from hiring OPT workers. 8

e) ICE should create a screening program to prevent employers with a record of violating labor and employment laws from hiring through OPT. 9

3) DOL should play a primary role in managing the OPT program, or at least partner with ICE in managing the aspects related to wages and working conditions. 10

4) ICE should help the public better understand the impact of the OPT program by increasing transparency and annually publishing key data on its usage. 11

5) Students and recent graduates will ultimately end up paying the news fees, leading to exploitation and debt bondage. 12

6) Conclusion. 13

1) ICE's claim that the proposed OPT fees are needed to administer the program and fight fraud is not credible given ICE cannot use those funds.

ICE in the NPRM cites rapid growth in the program and serious instances of fraud. Both are valid concerns in a program that has no real worker protections that can be enforced to protect labor standards and hold lawbreaking employers accountable. However, ICE has so far chosen not to create worker protections or seriously combat fraud, while now claiming that "without the fees proposed in this rule, it cannot operate OPT consistent with its focus on preventing fraud and may shut down the program entirely." There is an obvious problem with this rationale, which ICE admits in the proposed rule, when stating that ICE does not have authority to maintain or use these excessive new fees. In fact, the proposed rule explains that the fees would be deposited in the U.S. Treasury as a "miscellaneous receipt" and that the funds would not be able to be used for any aspect of the OPT program without Congressional action. Thus, the fees will be used to fund government activities that are unrelated to OPT. In addition, given the level of appropriations ICE has received since fiscal year (FY) 2025, which total over $116 billion that can be used through FY 2029,[2] it is likely that ICE could find already appropriated funding that it could redirect and use for administering the OPT program and combatting fraud. This maneuver would be subject to congressional limits on ICE funding but should be explored considering the exorbitant amounts of funding that ICE has already received.

2) Rather than a new proposed fee, ICE should consider alternative reforms to the OPT program that would protect wages and working conditions for all workers.

In the proposed rule, ICE has failed to consider a range of alternatives that could improve the OPT program and more effectively achieve its purported goals of reducing fraud and helping U.S. workers. For example, ICE could require that employers pay OPT workers at prevailing wages and recruit U.S. workers before hiring OPT workers. ICE could prevent employers that engage in fraud or violate wage and hour and labor laws from employing student workers through the OPT program. ICE could also require transparency in the OPT program by including public disclosure of all employers and the wages paid to OPT workers and their occupations. ICE could ban the use of OPT by outsourcing, staffing, and placement agencies. ICE could also support universities and labor organizations to provide educational materials to student workers about their workplace rights and provide immigration status protections for student workers who report labor violations. Some of these proposed reforms are discussed in the following subsections.

[2] National Priorities Project, *Federal Spending for Immigration Enforcement*, Institute for Policy Studies, July 2026.

a) The OPT program lacks adequate wage rules that would protect against undercutting U.S. wage standards and the exploitation and underpayment of F-1 OPT workers.

The large size of the OPT program—with more initial approvals every year than the number of new H-1B petitions since at least FY 2015[3]—means it is a large and significant pathway into the U.S. labor market. As such, there should be adequate wage safeguards to protect both U.S. workers and F-1 OPT workers, as well as labor standards more generally. They do not exist. ICE should thus implement a new and enforceable wage rule for OPT.

Regulatory language that governs the STEM OPT extension at 8 CFR § 214.2(f)(10)(ii)(C)(8) purports to protect wage standards through an employer attestation on the required training plans. That section reads:

> ***Duties, hours, and compensation for training.*** The terms and conditions of a STEM practical training opportunity during the period of the 24-month OPT extension, including duties, hours, and compensation, must be commensurate with terms and conditions applicable to the employer's similarly situated U.S. workers in the area of employment… If the employer does not employ and has not recently employed more than two similarly situated U.S. workers in the area of employment, the employer nevertheless remains obligated to attest that the terms and conditions of a STEM practical training opportunity are commensurate with the terms and conditions of employment for other similarly situated U.S. workers in the area of employment. "Similarly situated U.S. workers" includes U.S. workers performing similar duties subject to similar supervision and with similar educational backgrounds, industry expertise, employment experience, levels of responsibility, and skill sets as the student. The duties, hours, and compensation of such students are "commensurate" with those offered to U.S. workers employed by the employer in the same area of employment when the employer can show that the duties, hours, and compensation are consistent with the range of such terms and conditions the employer has offered or would offer to similarly situated U.S. employees. The student must disclose his or her compensation, including any adjustments, as agreed to with the employer, on the Form I-983 or successor form.

The provisions in this section are overly vague and deferential to employers and allow them to attest, such that they are virtually unenforceable in practice in any meaningful way. Has ICE ever found an employer to have violated these provisions, or enforced these provisions? And if so, how?

The current rule essentially allows employers to decide what the commensurate wage is for a U.S. worker who is "similarly situated" to the STEM OPT worker, and attest that they believe this is true. Under this rule the STEM OPT worker is then responsible for reporting the wage/salary information on their Mentoring and Training Plan.

[3] U.S. Immigration and Customs Enforcement, "2007 to 2024 Annual Growth in OPT, STEM OPT, and CPT Authorizations and Employment Authorization Documents (EAD) Issuances," SEVP Data Library, accessed November 7, 2026. See also, Rachel Rosenthal "The STEM Graduate System Is Broken. Here's How to Fix It." *Bloomberg*, March 10, 2021.

There are two main problems with this. First, the employer should not be allowed to set the STEM OPT worker's wage. The employer is not an uninterested party with the goal of ensuring fairness to U.S.-born and foreign-born workers. Employers are driven by a profit motive, and have a vested interest in, and derive profit from, paying employees the lowest wage possible (without losing the worker or violating the law). Instead, the wages paid to all OPT workers, including those on a STEM OPT extension, should be set according to data maintained by the U.S. Department of Labor (DOL) which show the average wages earned by workers in every region of the United States by occupation and local area.

A new rule that expanded the training plan requirement that includes the STEM OPT wage attestation to all OPT workers, for example, would not be sufficient. What's needed is a simple and effective rule that would protect against the undercutting of U.S. wage standards by requiring that employers pay OPT workers the prevailing wage according to an existing and reliable wage data source, such as the DOL's the Occupational Employment and Wage Statistics survey, which is used to set H-1B wage levels. This makes sense considering the number of H-1B workers who are likely to have been employed in OPT immediately before changing to H-1B status. The U.S. Citizenship and Immigration Services' (USCIS) annual H-1B Characteristics report for FY 2024 reported that 37% of all new H-1B petitions were approved for someone in F status[4] and USCIS also posted on X.com that, for FY 2027, "An overwhelming 71.5% of selected aliens [for new employment in H-1B] hold a U.S. master's degree or higher, compared to 57% last year."[5] Most of those selected petitions were likely for persons who were previously employed in OPT, thus, having a similar wage rule to H-1B and using the same data set used to set H-1B wages, could be a rational and sensible approach—so long as H-1B prevailing wage rates end up being set at reasonable levels in the methodology rule that is currently being finalized at DOL.[6]

In addition, the only clear statutory authority that has ever existed for an OPT-like program was a three-year pilot program created by section 221 of the 1990 Immigration and Nationality Act[7] that allowed foreign graduates to work in fields unrelated to their degree. That pilot program required employers to pay workers the actual wage paid to similarly situated workers or a prevailing wage, as well as recruit U.S. workers for 60 days. While that program was later allowed to sunset, congressional direction about wages and employment opportunities for U.S. workers should inform ICE's decision to mandate a clear, appropriate wage level for OPT participants who become employed after graduation.

Also, the OPT program does not contain an outright ban on employers who hire OPT employees as unpaid interns or volunteers, although volunteer work is not permitted for the STEM OPT extension. To prevent employers from hiring recent graduates and paying them nothing, ICE should

[4] U.S. Citizenship and Immigration Services, *Characteristics of H-1B Specialty Occupation Workers*, Fiscal Year 2024 Annual Report to Congress, October 1, 2023 – September 30, 2024, April 29, 2025
[5] USCIS, post on X.com on May 21, 2026 at 1:37 PM.
[6] For our discussion and recommendations on the DOL H-1B prevailing wage methodology, see Daniel Costa and Ron Hira, "EPI comment on DOL proposed rule to update the prevailing wage methodology for the H-1B, H-1B1, and E-3 visa programs, and EB-2 and EB-3 green cards," Public Comments, May 26, 2026.
[7] Sec. 221. Off-Campus Work Authorization for Students (F Nonimmigrants), Pub. L. 101-649, 104 STAT. 4978.

propose a regulation that prohibits employers from hiring any OPT workers as unpaid interns or paying them only a non-salary "stipend" for their work.

b) The OPT program should require that employers advertise job openings to U.S. workers before hiring OPT workers.

Well over 200,000 F-1 nonimmigrants are employed in the United States every year through the OPT program. However, employers are not required to first advertise jobs filled by OPT workers for a set period of time. That means that U.S. workers—especially recent young college graduates looking for entry level opportunities, who are currently experiencing recession-level unemployment rates—may miss out on a chance to apply for these positions. In order to ensure that U.S. born and lawful permanent residents are not overlooked for entry level jobs in the United States, employers should have to advertise OPT job opportunities on an electronic public database for at least 60 days, and be required to hire any equally or better qualified U.S. workers who apply for those positions.

Employer attestation of the need for a worker, as permitted in the H-1B program, is an insufficient means of assessing real labor market needs and is an inadequate measure to protect the U.S. labor market. The OPT program does not even have that. The only related protective measure is a required employer attestation for STEM OPT employers, who are required to attest that their STEM OPT employee will not replace a full- or part-time, temporary, or permanent U.S. worker (see 8 § 214.2(f)(10)(ii)(C)(10)(ii)).

A more meaningful system that includes a labor certification requirement must be put in place for OPT, as well as all other visa programs that lack one. It is essential to prevent employer practices that exploit visa programs to undercut or displace an existing local workforce. Given the already substantial size of the OPT program, and the fact that it is uncapped, the potential for adverse effects is real unless more meaningful measures—such as those proposed here—are implemented to ensure that local candidates are given fair consideration for all relevant job opportunities.

Finally, independent of whether a training plan is created, a requirement similar to 8 CFR § 214.2(f)(10)(ii)(C)(10)(ii) should be applied to the entire OPT program, and rewritten to more broadly prohibit an employer from employing an OPT worker where it has laid off any similarly employed U.S. worker in the occupation within the period beginning 120 calendar days before the date the OPT worker is to begin employment. In addition, during the term of employment, employers should be required to lay off any OPT worker before laying off any similarly employed U.S. worker, as is already required in other employment-based visa programs.[8] The entire OPT program should also include a prohibition on employers employing an OPT worker when there is a strike or lockout at any of the employer's worksites within the area of intended employment of the OPT worker, as again is already required in other employment-based visa programs.[9]

[8] See for example, 29 C.F.R. § 503.16(v).
[9] See for example, 29 C.F.R. § 503.16(u).

c) ICE should end the tax loophole that incentivizes employers to hire OPT workers over U.S. workers.

As discussed in the previous section, employers should be required to pay OPT workers (and all employees hired through temporary visa programs) at the same rate they would pay local workers in the same occupations. As long as regulations allow visa-contingent workers to be paid less than their local counterparts for the same work, there are clear and inappropriate incentives for employers to prefer to hire through those programs. In the case of the OPT program, the fact that employers of OPT workers are not required to pay federal payroll taxes is a serious problem which disadvantages U.S. workers seeking entry-level professional jobs. Even at the same rate of pay, the cost savings associated with employing OPT workers instead of U.S. workers distorts the labor market to the detriment of U.S. workers. While ICE is aware of the existence of this tax loophole that benefits employers of OPT workers and mentions it in the proposed rule, ICE's proposed rule does not address it in any meaningful way, other than by attempting to reduce demand in the OPT program. To combat the potential discrimination this will result in against U.S. workers, ICE should work with other appropriate federal agencies to require employers of OPT workers to begin paying payroll taxes, or create a system for employers to pay an amount equal to the payroll taxes they would have been required to pay if they had hired a U.S. worker, into a new fund to encourage employment of entry-level professional workers, or at the very least, to the U.S. Treasury.

d) ICE should prohibit employment placement agencies and staffing/outsourcing firms that send workers to third-party employers from hiring OPT workers.

The 2015 proposed rule establishing the STEM OPT extension stated that "DHS does not envision that . . . 'temp' agencies will generally be able to provide eligible opportunities under the proposed STEM OPT extension" because they cannot comply with proposed mentoring requirements.[10] In EPI's comment on the proposed rule we agreed that temporary employment agencies, especially those that would outsource and outplace F-1 nonimmigrant workers in STEM OPT, would not be able to comply with proposed duties, hours, and compensation requirements.[11] We asked DHS to therefore include language in the final rule that would explicitly disqualify temporary employment agencies from employing STEM OPT workers. DHS opted not to include such a prohibition for STEM OPT, and the result is that eight years later, a review of the top employers reveals that thousands of workers hired through STEM OPT are in fact employed by firms with a staffing and outsourcing business model.[12] Thousands of OPT workers are employed by outsourcing firms as well.

---

[10] 80 Fed. Reg. 63390 (October 19, 2015).
[11] See also, 80 Fed. Reg. at 63395 ("DHS assumed that most temporary agencies would not be able to comply with the requirements of the Mentoring and Training Plan.").
[12] See the list of employers and the final column in the table showing the number of students participating in STEM OPT in 2024, in Immigration and Customs Enforcement, "2024 Top 200 Employers for OPT and STEM-OPT Students," SEVP Data Library, accessed November 7, 2026. For an example of firms that we consider to have an outsourcing and offshoring business model, see Table 1 in Daniel Costa and Ron Hira, "Tech and outsourcing companies continue to exploit the H-1B visa program at a time of mass layoffs: The top 30 H-1B employers hired 34,000 new H-1B workers in 2022 and laid off at least 85,000 workers in 2022 and early 2023," *Working Economics* blog (Economic Policy Institute), April 11, 2023.

In 2015, when we shared our concern with DHS and urged further regulatory action to end the use of the OPT program by temp agencies, our ask was substantiated by non-public DHS data on OPT employers that we had reviewed at the time. At least 500 STEM OPT participants had already in fact been employed by temporary employment/staffing companies, which furthermore have a business model that facilitates the outsourcing and offshoring of professional jobs. The OPT program should not be allowed to facilitate outsourcing and offshoring, which is often done for the purpose of earning profits at the cost of U.S. jobs; an activity that is not consistent with ICE's stated goals for the OPT program. Outsourcing firms have also been associated with paying the lowest wages allowed by law, numerous and egregious legal violations, and have been found to have replaced thousands of U.S. workers, sometimes forcing them to train their own replacements employed through an H-1B or L-1 visa.

e) ICE should create a screening program to prevent employers with a record of violating labor and employment laws from hiring through OPT.

We have previously recommended that DOL should create a front-end screening process that reviews the labor and employment law records of employers hiring through the H-1B program, and that those found to have violated certain laws in the previous five years be prohibited from using the program.[13] We have made similar arguments in the H-2A and H-2B context.[14] A similar process is required to prevent lawbreaking employers from hiring through the OPT program.

We recommended that ICE/DHS to take steps to exclude lawbreaking employers that violate labor, employment, and immigration laws from OPT hiring. ICE should consult with DOL to develop a list of key applicable laws and operate the system jointly with DOL, with employers being required to attest that they have not violated those laws, and with DOL screening employer records.

We believe DHS should consider similar provisions for employers seeking to hire through the H-1B program, as we have recommended previously, because there have been numerous credible accusations of lawbreaking against H-1B employers, as well as investigations and litigation, finding that H-1B employers and recruiters that have been guilty of wage theft, financial bondage, and even human trafficking. Given that many of the biggest OPT employers are also H-1B employers, and that OPT is the main feeder program of workers into H-1B, such a mechanism is reasonable for OPT. The reality is ICE/DHS have very limited staffing and expertise to investigate the labor and workplace violations of OPT employers, and it is difficult in practice for OPT workers to come forward and complain themselves about employer lawbreaking—because they could face retaliation and lose their status, and possibly the opportunity to become H-1B workers and eventually lawful permanent residents. Thus, at a minimum, to act as a backstop and keep lawbreaking employers out of the program, ICE/DHS should have its own list of legal violations and

[13] See for example, Daniel Costa and Ron Hira, "EPI comment on DOL proposed rule to update the prevailing wage methodology for the H-1B, H-1B1, and E-3 visa programs, and EB-2 and EB-3 green cards," Public Comments, Economic Policy Institute, May 26, 2026.
[14] See for example, Daniel Costa "EPI comments on DOL's proposed rule on 'Improving Protections for Workers in Temporary Agricultural Employment in the United States,'" Public Comments, Economic Policy Institute, November 14, 2023.

deny any OPT application for employment with a firm that has violated any of the laws or regulations on the list in the preceding five years.

3) DOL should play a primary role in managing the OPT program, or at least partner with ICE in managing the aspects related to wages and working conditions.

In general, it is important to note that the OPT and STEM OPT programs are large temporary labor migration programs—and should be managed as such, with the necessary measures to protect workers and labor standards. The appropriate agency that should primarily be responsible for the management of all temporary work visa programs is DOL, based on its staff expertise and mandate to protect the wages and working conditions of all workers in the United States, not to mention its role in workforce training.

More specifically, ICE does not have expertise in labor and employment law, or in determining what adequate wages and working conditions are for OPT workers. The fact that the ICE included some language in the 2016 STEM OPT regulation requiring that employers attest that their OPT workers will be paid a "commensurate" wage was a step forward relative to the OPT program and the 2008 STEM OPT rule, both of which did not require that *any* minimum or commensurate wage be paid.

But even for STEM OPT, the attestation requirement is inadequate and flawed, as we noted in our 2015 comment on the proposed rule. Instead, just as DOL's Office of Foreign Labor Certification reviews applications for other employment-based visas, so should they certify that employers hiring through the OPT program are paying market wages and have not displaced local workers. We realize that it would be illogical and ineffective for ICE to be the agency that reviews and assesses such information. ICE has neither the expertise nor the mandate to ensure fair wage rates or prevent worker exploitation. Protection of labor standards is the central work of the DOL, and the agency must have an oversight role in a program with the size and scope of the OPT program and the STEM OPT extension. DOL's role in overseeing the program should include authority to initiate investigations of potential fraud and abuse and must be adequately funded to ensure that the agency has the staff and resources to provide effective oversight. In addition, it would be more appropriate and beneficial for workers if DOL conducted worksite visits or on-site reviews (such as those introduced in the 2016 STEM OPT regulation), to ensure employer compliance with program requirements, rather than sending ICE agents whose primary function is to enforce immigration laws, rather than labor standards.

While we realize this would require a new coordinated interagency effort, we also believe that DOL involvement is the only realistic way to ensure the protection of wages and working conditions in the OPT program.

4) *ICE should help the public better understand the impact of the OPT program by increasing transparency and annually publishing key data on its usage.*

In order to improve oversight and understanding of our legal immigration system, relevant agencies should always publish timely online information for each visa category and subcategory, as well as any other work programs created by federal regulations or federal agency guidance, including OPT and STEM OPT. Nonimmigrant visa programs continue to be plagued with fraud and abuse, including violations of wage and hour, anti-trafficking, and anti-discrimination laws by employers. Transparency is a critical tool to keep the public and policymakers informed, as well as to empower advocates to ensure fair treatment and high standards within these visa programs.

The possibility for worker abuse in a program like OPT that has no worker protections, and which is administered by ICE—an agency with no mandate or expertise on protecting labor standards—is high and concerning. In fact, a 2014 review by the Government Accountability Office found that ICE had not developed adequate monitoring mechanisms to ensure basic compliance with OPT regulations.[15] Since the year that review was completed, the program has nearly tripled in size, and ICE notes in the proposed rule that "the use of OPT and related fraudulent activities in OPT have expanded significantly" since 2016.[16]

Rather than increasing transparency in OPT, ICE has instead opted to prevent the public from accessing vital information on the OPT program and STEM OPT extension. The Student and Exchange Visitor Program (SEVP) Data Library on ICE's website publishes some data on OPT and STEM OPT usage dating back to 2017.[17] However, ICE has stopped publishing OPT and STEM OPT data since 2024. And the data that are available are mostly general summaries published on PDFs, rather than micro data with key detailed information about OPT positions, such as geographic locations, occupations, and wages paid to OPT workers.

ICE should restart publishing annual data on the SEVP Data Library and begin publishing new information that includes the underlying raw data gathered from the I-938 and I-765 forms used in the OPT and STEM OPT programs, including any other relevant information such as the full list of employer names and locations, and the occupations, wages, and work locations of all OPT and STEM OPT workers, as well as their gender, age, country of origin, level of training, field of training, and institution(s) of higher education.

We consider public disclosure to be an essential element of a more effective accountability system and urge ICE to consider this request.

---

[15] Government Accountability Office, *STUDENT AND EXCHANGE VISITOR PROGRAM: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization*, GAO-14-356, February 27, 2014.
[16] 91 Fed. Reg. 64572.
[17] Student and Exchange Visitor Program, "SEVP Data Library," U.S. Immigration and Customs Enforcement, accessed November 7, 2026.

5) Students and recent graduates will ultimately end up paying the news fees, leading to exploitation and debt bondage.

ICE's proposed rule will effectively eliminate OPT for all but the very richest universities, employers, and students, and disproportionately impact those who come from poorer families, cutting off critical opportunities for them to make significant contributions in their fields based on an inability to pay the exorbitant fees. The fees reflect a pay-to-play approach to the immigration system that the current administration has taken. In addition, the proposed fee will do nothing to improve working conditions for young professional workers and recent graduates. ICE claims in the proposed rule, without evidence, that the new fees will increase university scrutiny and result in only the most promising students participating in OPT.

At page 64575 of the proposed rule, "DHS acknowledges that the schools may pass the financial obligation of this proposed fee onto F-1 nonimmigrant students, all students, or employers." DHS goes on to state—again without evidence—that allowing students and employers to pay the fee "would further discourage misuse of OPT." We find this prediction and its reasoning to be unconvincing. In practice, what's more likely is that the proposed rule will shift fee costs onto OPT workers themselves in most cases, because of an unwillingness and in many cases inability of universities to pay the exorbitant fee. Universities that consider paying the fee may respond by increasing tuition costs, which would negatively impact both students who are U.S.-born and foreign-born.

Employers are also unlikely to pay the large fee because of the relatively short-term nature of OPT employment and the uncertainty of the H-1B lottery. Employers that do pay the fee are likely to respond by lowering salaries for OPT workers or by treating the fee payment as a loan—leaving OPT workers indebted to their employers—and by deducting a share of the OPT worker's salary to pay back the fee. As a general principle, workers should never be allowed to pay a fee in order to access a job. This is enshrined in both international law and domestic law, including in the H-2A and H-2B visa programs.[18] ICE does not prohibit fee payment by OPT workers in the proposed rule, and in fact, the OPT fee acts as a de facto recruitment fee charged by the federal government. In effect, rather than requiring payment of fair wages to skilled workers, the proposed fee will give employers significant leverage to underpay and exploit OPT workers; perhaps even turning employers into de facto loan sharks. In turn, the fee will additionally degrade standards for similarly situated U.S.-born student workers and recent graduates as well.

[18] See for example, International Labour Organization, "Is a migrant worker required to pay fees to agencies or levies to the government for recruitment?" in *ILO Helpdesk: Questions and answers on business and labour migration*, last visited November 7, 2026, citing ILO, *General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs*, May 22, 2019; and *Private Employment Agencies Convention* (No. 191), Article 7, adopted June 19, 1997. For the prohibition in the H-2A program, see for example, 20 CFR § 655.135(k) and for H-2B, see for example, 20 CFR § 655.20 and 29 CFR § 503.16.

6) Conclusion.

As noted in the introduction, we oppose the imposition of the $70,000 and $30,000 fees for participation in the OPT program and urge ICE to abandon this rulemaking. The OPT program has numerous flaws and we urge separate rulemakings that are intended to protect the foreign students and recent graduates who participate in the OPT program, and the wages and working conditions of U.S. workers who are similarly employed, especially young professional jobseekers and recent graduates of U.S. universities.

Regards,

Daniel Costa, Esq.
Director of Immigration Law and Policy Research
Economic Policy Institute