# Enact H.R. 2315. End OPT.

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## Introduction

Many Americans may be surprised to learn that each year hundreds of thousands of foreign students and recent graduates receive authorization to remain in the United States for employment through a program called Optional Practical Training (OPT). They may be even more surprised to learn that Congress never voted to create this program, and that OPT exists through executive-branch regulations stemming from the F-1 student-visa category, which Congress created solely for temporary study.

H.R. 2315, the *Fairness for High-Skilled Americans Act of 2025*, would amend the Immigration and Nationality Act to bar employment authorization under OPT. Introduced by Representative Paul Gosar (R-AZ) in March of 2025, H.R. 2315 has gained 39 cosponsors but has not advanced beyond its initial referral to the House Judiciary Committee, where it has remained without a hearing or vote for over a year and a half. Specifically, the bill would add a provision stating that an F-1 nonimmigrant may not "be provided employment authorization in the United States pursuant to the Optional Practical Training Program" unless Congress expressly authorizes that program by statute.[1] This paper argues that OPT has adversely affected U.S. workers, created serious national-security and oversight risks, and rests on executive authority far broader than Congress ever explicitly conferred. For these reasons, Congress should adopt H.R. 2315 and terminate the OPT program.

## Creation and Expansion

Although OPT has become a significant feature of the U.S. immigration system, Congress did not establish it by statute as an employment-based visa category. Rather, OPT emerged through federal immigration regulations. The Immigration and Nationality Act, which created the F visa category, defines an F-1 nonimmigrant as a person admitted to the United States "temporarily and solely for the purpose of pursuing such a course of study."[2] This definition is especially relevant because approximately 99 percent of OPT participants hold F-1 status.[3]

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[1] *Fairness for High-Skilled Americans Act of 2025,* H.R. 2315, 119th Congress (2025). https://www.congress.gov/bill/119th-congress/house-bill/2315/text

[2] Immigration and Nationality Act § 101(a)(15)(F)(i); 8 U.S.C. § 1101(a)(15)(F)(i)

[3] Wilson, Jill H. 2025. Optional Practical Training (OPT) for Foreign Students in the United States. https://www.congress.gov/crs-product/IF12631.

Federal regulations have permitted practical training for foreign students in the U.S. since 1947.[4] However, in 1992, the Immigration and Naturalization Service—the predecessor to the Department of Homeland Security (DHS)—issued a regulation allowing F-1 students to receive up to 12 months of practical training directly related to their field of study, including training undertaken after completion of their academic program.[5] This marked the first modern regulatory authorization of post-completion practical training as a form of employment authorization for F-1 students.

Over the next decade and a half, corporate lobbyists petitioned Washington to expand OPT.[6] For example, in November 2007, Microsoft's then managing director of federal government affairs, Jack Krumholtz, wrote a letter to Michael Chertoff, the DHS Secretary, urging the administration to extend OPT. As he put it, "OPT can be extended quickly. It would require no more than the issuance of a regulation to replace the word 'twelve' with 'twenty-nine' in 8 C.F.R. 214.2(f)(11)."[7] Consequently, in 2008 DHS issued a rule extending OPT by 17 months for qualifying graduates in STEM fields, allowing up to 29 total months of employment when combined with the standard 12-month post-completion period.[8]

Following the 2008 extension, OPT participation increased sharply. In the 2006–07 academic year, approximately 42,000 foreign students received OPT authorization. By 2016–17, just one decade later, that number had climbed to roughly 176,000, more than four times the earlier total.[9]

In 2016, after the 2008 rule was vacated on procedural grounds, DHS issued a new rule replacing the 17-month extension with a 24-month STEM extension.[10] Under the current system, an eligible F-1 student with a qualifying STEM degree may receive up to 36 months, or three full years, of OPT from a regulation tied to an F-1 "student" visa classification. Furthermore, a

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[4] Bier, David J. 2020. "The Facts about Optional Practical Training (OPT) for Foreign Students." May 20. https://www.cato.org/blog/facts-about-optional-practical-training-opt-foreign-students.

[5] "Pre-Completion Interval Training; F-1 Student Work Authorization." 1992. Federal Register 57 (139). https://archives.federalregister.gov/issue_slice/1992/7/20/31948-31957.pdf#page=7.

[6] Frates, Chris. 2008. "Tech Vacancies Languish on Immigration Snag." Politico, Politico, January 21. https://www.politico.com/story/2008/01/tech-vacancies-languish-on-immigration-snag-008014.

[7] Krumholtz, Jack. 2007. "How Extending OPT Will Help." November. https://www.bloomberg.com/graphics/2021-opinion-optional-practical-training-problems-stem-graduates-deserve-better-jobs-opportunities/documents/krumholtz.pdf.

[8] Department of Homeland Security. 2008. "Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B Petitions." Federal Register, April 8. https://www.federalregister.gov/documents/2008/04/08/E8-7427/extending-period-of-optional-practical-training-by-17-months-for-f-1-nonimmigrant-students-with-stem.

[9] Institute of International Education. (2025). "International Student Enrollment Trends, 1948/49 - 2024/25." Open Doors Report on International Educational Exchange. https://opendoorsdata.org/data/international-students/enrollment-trends/.

[10] U.S. Government Accountability Office. 2016. Department of Homeland Security: Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students. https://www.gao.gov/products/gao-16-532r.

student may actually participate in the 24-month STEM OPT extension twice over their academic career. Provided a student earns a second qualifying STEM degree at a higher educational level, they may be eligible for an additional 12 months of standard OPT and a second 24-month STEM OPT extension, equaling up to 72 months, or six years, of total employment authorization.[11]

The program's scale continued to expand dramatically. The Congressional Research Service (CRS) reports that 418,781 nonimmigrant (temporary) students and recent graduates held OPT authorization at some point in 2024. That figure represents 26 percent of the 1.58 million F-1 and M-1 students and recent graduates in the United States.[12] Similarly, Immigration and Customs Enforcement's (ICE) 2024 Student and Exchange Visitor Information System (SEVIS) report records 194,554 foreign students in the United States with OPT authorization (up 21 percent from 2023) and a separate 95,384 with STEM OPT authorization.[13]

Additionally, unlike many employment-based immigration programs, OPT is not subject to an annual numerical cap on the number of F-1 or M-1 nonimmigrants who may participate.[14] Accordingly, one million F-1 students could receive OPT authorization next year, and their participation would be fully permissible under the current statutory and regulatory framework. Moreover, the program carries no prevailing-wage requirement. Regular OPT sets no wage standard at all, while STEM OPT requires only an employer's attestation that pay is "commensurate" with similarly situated U.S. workers.[15]

Finally, OPT is frequently connected to longer-term employment and residence status. CRS describes OPT as a bridge to H-1B status and, eventually, permanent residence.[16] OPT's "cap-gap" extension allows eligible graduates to continue working while an employer's H-1B petition is pending, providing a bridge to H-1B status and, eventually, employer sponsorship for permanent residence. Thus, a program framed as short-term practical training has developed into a substantial employment and immigration pathway which was never expressly authorized by Congress.

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[11] Department of Homeland Security. 2026. "Students: Determining STEM OPT Extension Eligibility." March 25. https://studyinthestates.dhs.gov/stem-opt-hub/for-students/students-determining-stem-opt-extension-eligibility.
[12] Wilson, Optional Practical Training.
[13] U.S. Immigration and Customs Enforcement. 2025. Student and Exchange Visitor Program (SEVP) 2024 SEVIS by the Numbers Report Executive Summary Background. https://www.ice.gov/doclib/sevis/btn/25_0605_2024-sevis-btn.pdf.
[14] Wilson, Optional Practical Training.
[15] 8 C.F.R. § 214.2(f)(10)(ii)(C)
[16] Ibid.

**Economic Consequences**

The largest and most obvious consequence of that unlegislated growth is economic. OPT authorizes hundreds of thousands of foreign graduates to work in the same fields and at many of the same firms that employ recent U.S. college graduates, including fields in which domestic graduates face weak entry-level labor-market outcomes. That concentration is notable given the labor-market conditions confronting recent domestic graduates. The Federal Reserve Bank of New York reported unemployment rates of 7.0 percent for recent computer-science graduates and 7.8 percent for recent computer-engineering graduates, among the highest rates across the 73 majors it tracks.[17] The Bank also reported an underemployment rate of 19.1 percent for recent computer science graduates and an average underemployment rate of 19.6 percent across all engineering majors.

Based on the available data, a conservative estimate is that approximately 150,000 recent U.S. graduates in computer science and engineering are either unemployed or underemployed. At the same time, among F-1 and M-1 nonimmigrants authorized for OPT in 2024, 31 percent majored in computer science (~130,000 individuals) and another 18 percent majored in engineering (~75,000 individuals).[18] Together, those fields accounted for nearly one-half of all OPT-authorized students and recent graduates, placing more than 200,000 work-authorized foreign graduates in the same high-skilled, entry-level labor markets sought by recent American graduates. In a market already leaving an estimated 150,000 recent American computer-science and engineering graduates unemployed or underemployed, expanding an uncapped work-authorization program in those same fields is undoubtedly harmful to American-born graduates.

CRS names Amazon, Google, Microsoft, Meta, and large university systems among leading employers. ICE's 2024 SEVIS report identified that Amazon alone was associated with 5,379 regular OPT participants and 6,679 STEM OPT participants.[19] Taken together, these data are difficult to reconcile with the claim that OPT primarily fills labor shortages in STEM fields, given the comparatively weak employment outcomes facing recent U.S. graduates in those same fields.

Even if a genuine labor shortage in technical fields threatened U.S. competitiveness, that would not establish that OPT is the appropriate mechanism for addressing it. Congress has already created the H-1B program, which is limited to specialty occupations and requires employers to attest to specified wage and working-condition protections.[20] In contrast, OPT imposes neither a

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[17] Federal Reserve Bank of New York. 2026. "The Labor Market for Recent College Graduates." https://www.newyorkfed.org/research/college-labor-market#--:explore:outcomes-by-major.
[18] Wilson, Optional Practical Training.
[19] U.S. Immigration and Customs Enforcement, Student and Exchange Visitor Program.
[20] 20 C.F.R. § 655 Subpart H (2026). https://www.ecfr.gov/current/title-20/chapter-V/part-655/subpart-H.

comparable labor-market test nor a requirement that employers demonstrate the unavailability of qualified U.S. workers for the position.

The D.C. Circuit already treated the overlap as competition. In *Washington Alliance of Technology Workers v. DHS*, the D.C. Circuit held that American technology workers represented by the plaintiff union were "direct and current competitors" with OPT participants.[21] The record included evidence that union members had applied for STEM positions that were also advertised as open to OPT applicants.

Furthermore, under IRC § 3121(b)(19), F-1 students who remain nonresident aliens for tax purposes are generally exempt from Social Security and Medicare taxes on wages earned through authorized practical training, including OPT.[22] In 2026, employers generally owe 6.2 percent of covered wages for Social Security and 1.45 percent for Medicare, for a combined employer-side Federal Insurance Contributions Act (FICA) rate of 7.65 percent.[23] Accordingly, an employer paying an OPT worker $100,000 in wages may avoid up to $7,650 in employer-side FICA liability. This creates a structural advantage for employing an OPT worker over an otherwise similarly situated worker whose wages are subject to FICA.

Georgetown's B. Lindsay Lowell and Johanna Avato found that foreign students and temporary visa workers earned less, on average, than U.S.-born workers and permanent immigrants, identifying a measurable earnings disadvantage associated with temporary immigration status.[24] In 2017, the Department of Labor filed an administrative complaint against Oracle America claiming that the company's hiring and compensation practices disadvantaged American workers. Specifically, the complaint alleged both that Oracle preferred Asian applicants over similarly situated non-Asian applicants, and that Oracle's preference for workers whose employment authorization depended on continued sponsorship contributed to wage suppression within that workforce.[25] At the time, Howard University professor Ron Hira argued that the complaint undercut the technology industry's claimed shortage of skilled labor.[26] Although the Department of Labor lost the case in 2020 and declined to appeal, the complaint illustrates

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[21] *Washington Alliance of Technology Workers v. Department of Homeland Security* (2022). https://law.justia.com/cases/federal/appellate-courts/cadc/21-5028/21-5028-2022-10-04.html.
[22] I.R.C. § 3121(b)(19); IRS. 2026. "Foreign Student Liability for Social Security and Medicare Taxes." https://www.irs.gov/individuals/international-taxpayers/foreign-student-liability-for-social-security-and-medicare-taxes.
[23] IRS. 2026. "Publication 15, (Circular E), Employer's Tax Guide." https://www.irs.gov/publications/p15.
[24] Lindsay Lowell, B., and Johanna Avato. 2014. "The Wages of Skilled Temporary Migrants: Effects of Visa Pathways and Job Portability." International Migration 52 (3): 85–98. https://doi.org/10.1111/imig.12133.
[25] Baron, Ethan. 2019. "H-1B: Oracle Favored Hiring Foreign Graduates of U.S. Colleges Over American Grads, Feds Allege." The Mercury News, January 25. https://www.mercurynews.com/2019/01/25/h-1b-oracle-favored-hiring-foreign-graduates-of-u-s-colleges-over-american-grads-feds-allege/.
[26] Ibid.

concerns about the bargaining position of workers whose employment authorization depends on a single employer, and about how that dependence can affect pay.[27]

Recognizing OPT's adverse effect on U.S. workers does not require resolving every empirical dispute about the precise scale of displacement. It only requires recognizing that OPT is an uncapped work-authorization program that places participating foreign graduates in direct competition with U.S. graduates in fields where early-career employment conditions remain difficult, while affording participants a payroll-tax advantage. If the government's policy priority is protecting the employment opportunities and economic interests of U.S. students and workers, the economic case presented here provides a substantial policy basis for Congress to end OPT.

**National Security and Fraud**

OPT's scale, lack of a cap, and incomplete oversight have also made the program difficult for the government to administer securely and monitor effectively. Every year, hundreds of thousands of foreign students and recent graduates are authorized through OPT to work in the United States, many in STEM fields that may provide access to advanced technology, sensitive research, and intellectual property. A work-authorization channel of that scale requires reliable screening, complete employment information, and meaningful worksite oversight to identify fraud, noncompliance, and potential technology-transfer or counterintelligence risks. Official reviews have identified material gaps in each of these areas.

In 2014, the Government Accountability Office (GAO) found that ICE had not identified or assessed the fraud and noncompliance risks associated with OPT in accordance with DHS risk-management guidance. This was despite concerns raised by ICE's Counterterrorism and Criminal Exploitation Unit and field agents, who had identified potential OPT-related risks through prior and ongoing investigations.[28] GAO identified cases in which school officials had recommended OPT employment outside students' major fields of study, contrary to program requirements, and found that 38 percent (48,642) of the OPT records it analyzed lacked an employer name. Without this employer information, ICE could not reliably determine where OPT-authorized students were working, whether their jobs were related to their fields of study, or whether they were complying with applicable limits on unemployment.

GAO later found that from 2016 through 2020, 12 percent of post-completion OPT records and 60 percent of pre-completion records still lacked the employer-name information required by

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[27] Paretti, J., & Lotito, M. J. (2020). Oracle's Victory in Pay Discrimination Suit May Reshape OFCCP's Enforcement Priorities. Washington Legal Foundation, 29(11). https://www.wlf.org/wp-content/uploads/2020/11/11132020ParettiLotito_LOL.pdf

[28] GAO-14-356, Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization. 2014. https://www.gao.gov/assets/gao-14-356.pdf.

agency policy.[29] The report also identified factors relevant to assessing technology-transfer risk, including an individual's nationality, STEM field of study, access to sensitive research, and subsequent U.S. employment. GAO noted that Chinese nationals accounted for approximately one-third of foreign graduate students in STEM fields at U.S. universities during the 2016–2020 period, and that some of those students had access to sensitive research.
Similarly, the Office of the Citizenship and Immigration Services Ombudsman (CISOMB), an independent office within DHS that provides administrative assistance and oversight, raised concerns in its 2020 annual report. The report identified OPT and the STEM extension as showing "indicators that they are being leveraged by foreign governments as a means of conducting espionage or illicit technology transfer in the STEM areas." It also stated that there appears to be "a high risk that the OPT is being used as a means for strategic adversaries to conduct espionage and technology transfer from the United States."[30] The report specifically discussed concerns involving Chinese nationals, a particularly salient issue given that Chinese nationals accounted for 24 percent of OPT participants between 2020 and 2024.[31] To mitigate these risks, the report offered administrative and operational strategies, including greater assistance to designated school officials and stronger safeguards for issuing employment authorization documents.

Program-integrity fraud is well-documented and now the subject of an ongoing federal investigation. In May 2026, Acting ICE Director Todd Lyons said OPT had "become a magnet for fraud" and that ICE had identified more than 10,000 foreign students associated with "highly suspect employers," in a review of just the top 25 OPT employers.[32] Worksite visits found empty buildings and locked doors at addresses listed for hundreds of students, small residences used as worksites, multiple firms claiming the same address without a lease, and "phantom" employees who did not appear. Lyons also cited financial red flags, including tax liens, collections, and cross-border cash movement.

Supporters of the STEM OPT extension argue that its additional safeguards, including E-Verify and completion of Form I-983, together with existing DHS screening, sufficiently manage program risks. Yet these measures do not independently address every fraud, national-security, or technology-transfer concern. E-Verify does not independently establish that an employer is operational, that a listed position is bona fide, or that the work provides no access to sensitive technology.[33] Likewise, Form I-983 documents the asserted relationship between the training opportunity and the student's degree, but does not authenticate an employer's operations or

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[29] GAO-23-106114, Efforts Underway to Address Technology Transfer Risk at U.S. Universities, but ICE Could Improve Related Data. 2022. https://www.gao.gov/assets/D23106114.pdf.
[30] Annual Report 2020 Citizenship and Immigration Services Ombudsman. 2020. https://www.dhs.gov/sites/default/files/publications/20_0630_cisomb-2020-annual-report-to-congress.pdf.
[31] Wilson, Optional Practical Training.
[32] Lyons, Todd. 2026. "ICE/USCIS STEM OPT Press Conference." https://www.youtube.com/live/iiq-_m-XnHU?si=7_v47fXLb4cmaGCN.
[33] E-Verify. 2026. "E-Verify: Fact Vs. Fiction." https://www.e-verify.gov/facts.

identify a shell entity.[34] A work-authorization program of this scale, concentrated in STEM fields, and marked by documented reporting and compliance vulnerabilities is poorly suited to manage residual technology-transfer risk. This provides a further reason for Congress to end OPT by statute.

**Authority and Legal Concerns**

The central legal issue is not simply whether DHS may administer OPT under the D.C. Circuit's interpretation of existing law, but whether Congress should expressly authorize a major, uncapped employment program operating within a visa classification created for temporary study. As discussed above, the Immigration and Nationality Act (INA) does not establish OPT. DHS created the program through regulation, relying principally on INA § 214(a)(1), which authorizes the Secretary of Homeland Security to prescribe the "time" and "conditions" of a nonimmigrant's admission and stay.[35]

The D.C. Circuit upheld that interpretation in *Washington Alliance of Technology Workers v. DHS*, holding that § 1184(a)(1) "amply supports" DHS's authority to authorize post-completion practical training, including STEM OPT.[36] However, judicial approval of DHS's interpretation does not amount to congressional enactment of OPT. The court held only that the statute permits the program. It did not establish that Congress affirmatively adopted OPT's current uncapped, multi-year structure.

The divide in *WashTech* highlights the major-questions concern regarding OPT. Under the major questions doctrine, as articulated in *West Virginia v. EPA*, an agency asserting authority over a matter of "vast economic and political significance" must identify clear congressional authorization.[37] A merely plausible reading of a broad, general statutory provision is not enough. In her dissent, Judge Henderson argued that OPT presents precisely this problem because DHS has relied on its authority to set the "time" and "conditions" of nonimmigrant admission to create an uncapped, multi-year work-authorization system involving hundreds of thousands of foreign graduates that substantially impacts the U.S. labor market. Although the *WashTech* majority upheld DHS's interpretation under existing law, the major-questions concern remains relevant to whether Congress should leave such a program in regulatory hands.

Additionally, when the D.C. Circuit denied rehearing en banc in 2023, Judge Rao dissented from that denial, joined by Judge Henderson. The dissent again underscored the view that OPT's scale and the panel's expansive reading of DHS authority raised a serious, ongoing major-questions

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[34] Department of Homeland Security. 2026. "Employers and the Form I-983." September 24. https://studyinthestates.dhs.gov/stem-opt-hub/for-employers/employers-and-the-form-i-983.
[35] 8 U.S.C. § 1184(a)(1).
[36] *Wash. All. of Tech. Workers v. DHS*, 50 F.4th 164 (D.C. Cir. 2022). https://media.cadc.uscourts.gov/opinions/docs/2022/10/21-5028-1967339.pdf
[37] *West Virginia v. EPA*, 597 U.S. 697, 716 (2022). https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf.

concern.[38] The Supreme Court later declined to review *WashTech*, leaving the D.C. Circuit's decision in place. When a different challenger pressed the major-questions argument in 2024 in *Save Jobs USA v. DHS*, a challenge to DHS's regulation granting work authorization to H-4 spouses of H-1B workers, the D.C. Circuit declined to revisit the question, holding that stare decisis bound the panel to *Washtech's* earlier interpretation.[39] In October of 2025, the Supreme Court denied certiorari in that case, letting the D.C. Circuit's reasoning stand.[40]

But judicial rulings that support an agency's interpretation of a statute do not equal congressional consent, and legislative silence on the issue is not the same as legislative endorsement. Litigation may have run its course, but Congress remains the appropriate body to determine, through legislation, whether a work-authorization program of this magnitude should exist.

**Conclusion**

OPT places hundreds of thousands of foreign graduates in direct competition with American workers in fields where they are already struggling to find jobs, while a payroll-tax exemption gives employers a structural incentive to prefer the foreign hire. For over a decade, federal auditors have identified oversight weaknesses in the program that enable fraud and noncompliance, and recent ICE investigations have renewed concern about the program's national security vulnerabilities. Yet despite its scale, OPT was never enacted by Congress and exists entirely through executive regulation upheld by courts.

Taken together, these failures describe a program that has outgrown every justification offered for it. The harm from these failures is not theoretical. Every year, hundreds of thousands of American graduates face diminished job prospects, and the program has consistently exposed significant national-security and technology-transfer vulnerabilities. Congress now has a direct opportunity to act, and it should act swiftly. H.R. 2315 should be enacted, and the OPT program terminated.

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[38] *Wash. All. of Tech. Workers v. DHS,* No. 21-5028 (D.C. Cir. Feb. 1, 2023). https://www.uschamber.com/assets/documents/Order20Denying20Rehearing20En20Banc20-20Washington20Alliance20of20Technology20Workers20v.20U.S.20Department20of20Homeland20Security2028DC20Circuit29.pdf

[39] *Save Jobs USA v. DHS*, No. 23-5089 (D.C. Cir. 2024). https://law.justia.com/cases/federal/appellate-courts/cadc/23-5089/23-5089-2024-08-02.html.

[40] *Save Jobs USA v. DHS*, No. 24-923, cert. denied Oct. 14, 2025. https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24-923.html.