

J-1 TRAINING AND INTERNSHIP PROGRAMS: UPDATES AND WHAT'S NEW

by Laura A. Edgerton, Amy M. Nice, and Lois Magee*

On June 19, 2007, the Department of State (DOS) issued an interim final rule concerning the processing of J-1 visas for trainees and a new subset of trainees—interns.¹ The interim final rule took effect on July 19, 2007. DOS's Bureau of Educational and Cultural Affairs (ECA) manages the J-1 program through its Office of Exchange Coordination and Designation. This article summarizes what we believe to be the key changes in the J-1 training and internship category and in ECA's oversight of the category.

PURPOSE OF REGULATORY CHANGES

The stated purpose of the interim final rule is to, among other things, “eliminate the distinction between ‘non-specialty occupations’ and ‘specialty occupations,’ establish a new internship program, and modify the selection criteria for participation in a

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¹ 72 Fed. Reg. 33669 (June 19, 2007).

training program.”² The new regulations also increase the ability of DOS to monitor quality and compliance among participants more closely.

One of the major changes in the new rules addressed new training program eligibility requirements. The purpose behind this change was to deal with perceived abuses by host organizations that were enabling the J-1 to be used in situations in which a work visa (such as an H-1B) was more appropriate, but unavailable.³ Although recognizing that “work is an essential component of on-the-job training, and that in many respects there are no conceptual or legal distinctions between an employee and a trainee,” the changes aim to ensure that the visa is used appropriately for training, learning and cultural exchange, rather than work, purposes.⁴

Another major conceptual change underlying the interim final rule is that all qualifying credentials of participants are now limited to education and experience obtained abroad. ECA felt this change was necessary to ensure that the intern or trainee had established ties abroad and would be more likely to return home after completing his or her J-1 training program.⁵

NEW PARTICIPANT ELIGIBILITY REQUIREMENTS

Education/Work Experience Requirements for Trainees vs. Interns

In addition to the interim final rule's imposition of a new educational and work experience requirement for trainees, the rule establishes the new intern subset of the trainee category, which is subject to different requirements and is aimed at current students and recent graduates.

Trainee Requirements

The interim rule now focuses on the *amount* of prior experience that the trainee has acquired, rather

² *Id.* at 33669 (summary).

³ *Id.* at 33670.

⁴ *Id.*

⁵ *See id.*

than the type of training.⁶ It still remains a requirement that the individual be training for a skilled occupation, and that training for the purpose of pursuing an unskilled occupation is not permitted. The new rules also limit the amount of time that can be spent on clerical tasks—which is considered unskilled work—to 20 percent.⁷ Accordingly, the new regulations require that to be eligible to participate in a training program, trainees must have either (1) a degree or professional certificate from a postsecondary academic institution outside the United States and at least one year of prior related work experience in their occupational field acquired outside the United States, or (2) five years of work experience outside the United States in their occupational field.⁸

Intern Requirements

To qualify as a bona fide intern, the candidate must (1) be currently enrolled and pursuing studies at a degree- or certificate-granting postsecondary academic institution, or (2) have graduated from such institution no more than 12 months prior to the exchange visitor program begin date and be entering the United States to participate in an internship program related to his or her specific academic field.⁹

English-Language Fluency

Under the new regulations, J-1 trainees and interns must have sufficient English fluency to be able to fully participate and understand the training that they are receiving. To meet this standard, applicants' fluency must be verified by a recognized English language test (e.g., TOEFL), by signed documentation from an academic institution or English language school, or through a documented interview conducted by program sponsors or a third party in person, by videoconferencing or by web camera.¹⁰

Training in a Designated Occupational Category

To be eligible for a J-1 training or internship program under the new regulations, the applicant must be receiving training in one of the following occupational categories: agriculture, forestry, and fishing; arts and culture; certain types of aviation; construction and building trades; education, social sciences, library science, counseling and social services;

health-related occupations; hospitality and tourism; information media and communications; management, business, commerce and finance; public administration and law; the sciences, engineering, architecture, mathematics, and industrial occupations; or “such other occupational categories that the Department may from time to time include in training and internship programs.”¹¹

TRAINING PLAN ELIGIBILITY REQUIREMENTS

New Form for Placement Plan

The interim final rule mandates the use of the new DS-7002 form¹² to describe the training/intern placement plan (T/IPP).¹³ This new form can be requested by a consular officer as a prerequisite to issuing a J-1 visa to a trainee or intern.¹⁴ In order for the T/IPP to be sufficient under the new regulations, it must identify goals and objectives, detail the knowledge, skills, or techniques to be imparted, and describe the methods of evaluation and supervision.¹⁵ If the training or internship has rotations, then a description of these elements must be provided for each rotation.¹⁶

The DS-7002 T/IPP contains two primary pages. The signature page must be completed for each training supervisor. That is, if the intern or trainee will rotate through three different departments, three different signature pages must be submitted. Page 2 of the T/IPP must be completed for each separate phase of the training.

The new rules also impose special T/IPP requirements depending on whether the applicant is a trainee or an intern. For *trainees*, the regulations state that the T/IPP must be divided into specific and various phases and components, and for each phase or component must describe the methodology of training and provide a chronology or syllabus.¹⁷ For *interns*, the T/IPP must describe the role of the intern in the organization and, if applicable, identify various departments or functional areas in which the

⁶ *Id.*

⁷ 22 CFR §62.22(j)(4).

⁸ 22 CFR §62.2 (definition of “trainee”).

⁹ 22 CFR §62.22(a); *see also* 22 CFR §62.2 (definition of “intern”).

¹⁰ 22 CFR §62.22(d).

¹¹ 22 CFR §62.22(c)(2).

¹² The form is reproduced at the end of this article.

¹³ 22 CFR §62.22(i)(1).

¹⁴ *Id.*

¹⁵ 22 CFR §62.22(i)(2).

¹⁶ *Id.*

¹⁷ 22 CFR §62.22(i)(3).

intern will work. It also must identify the specific tasks and activities the intern will complete.¹⁸

Conflicting guidance has been given to various J program sponsors as to when a section of training rises to the level that a separate T/IPP is needed. It appears that ECA and individual consular posts may have different views. By way of general guidelines, no training program of longer than six months should be summarized in a single phase. Progressive phases should instead be described on separate “page 2” submissions. While early guidance from ECA had indicated that phases should not exceed five months, consular posts have expressed concern about having to scan excessive documents when numerous, separate “page 2” submissions are part of the T/IPP. As a result, some training program sponsors require a separate DS-7002 for each rotation, phase, or component of the training, while others have revised their instructions. The best advice is to check with the specific program sponsors for their expectations before translating the training plan into a T/IPP on the DS-7002.

Individualized Plans

The interim final regulations for intern and trainee programs make it clear that ECA requires *individualized* T/IPPs.¹⁹ There is a clear expectation that the training program reflect the needs of the specific trainee or intern. While this expectation is not “new,” because ECA has been advising sponsors of this concern for some time, there has never been a regulatory imperative to ensure compliance or any regulatory text underlying ECA’s position. For many years, J program sponsors were encouraged by ECA to provide sample training plans to model what was expected from host companies. Over time, that led to the “cloning” of plans, and an inability for host companies to document they were delivering training that helped the career development of a particular J-1 participant. To address this concern, the next section focuses on how to write an effective training plan under the new regulations.

How to Write a Training Plan

The development of an effective training program is central to a successful J trainee or intern application. Yet, many employers struggle to understand how to put together a program that is bona fide training. Typically, the employer can pull up a job

description with no difficulty, but, unless there is a professional trainer on staff, writing a training program can be a real challenge. A training plan is a 180-degree departure from a job description. A job description describes what an employee will do for a company; a training plan details what the company will do for the trainee or intern. While a job description puts the employee’s skills to work, a training plan works on the development of the skills. Although this seems obvious, thinking in this way allows the employer to begin to understand what constitutes bona fide training.

Effective training recognizes that different people have distinct learning styles. The best training plans combine a variety of training activities. Classroom instruction provides a theoretical base helpful in understanding the reason for acquiring a certain skill. Guided research projects provide a more universal view of how competency is developed. Learning journals provide the opportunity for reflection, and a tangible record of skills acquisition for future reference. Special projects provide active engagement in the skill being developed.

Questions to Answer in Developing a Training Plan

A training plan is just that—a plan. Starting with the needs of the trainee or intern and the resources of the training site, defining the desired outcomes of the training, scheduling training activities that progressively develop the necessary skills to achieve planned outcomes, providing on-going periods of reflection and feedback, and identifying the criteria to determine that skills and competencies have been acquired are the bare bones of an effective training plan. The steps can be summarized as following:

- Step one: What does the trainee or intern need to learn?
- Step two: What human and physical resources does the training site have in order to teach these skills?
- Step three: By the end of the training, or training phase, what will the trainee or intern have learned to do?
- Step four: How and when will the trainee or intern learn these skills?
- Step five: When and how will the trainee reflect on and receive feedback on his or her performance during the training activity?

¹⁸ 22 CFR §62.22(i)(4).

¹⁹ 72 Fed. Reg. 33669, 33670 (June 19, 2007).

- Step six: How will we know the trainee or intern has mastered the skill? When and how will this be measured?

Components of a Training Plan

Effective training includes four key components: defined outcomes, experiential learning, reflection and feedback, and formal evaluation. A training program has clearly defined outcomes.

Training Outcomes

The outcomes are based on the learning needs of the potential intern or trainee and the human and physical resources at the potential training site. Consider the example of the new driver. It is not enough to simply hand the trainee the keys and say, “Here. Take the car and go learn how to drive.” A good training program instead identifies the final objectives of the training: for example, “the new driver will be able to identify and avoid potential hazards while driving”; “the new driver will be able to fill the gas tank at a self serve station”; “the new driver will be able to control the vehicle on icy roads.” Without clearly defined outcomes, no training program exists. The outcomes define and guide what training will occur.

Experiential Learning as Training

Experiential learning is the key difference between the classroom and training experience. Training takes the individual beyond theoretical knowledge into the practical application of skills. Thus, classroom experience forms part of a training program, but it alone does not represent the whole. Experiential learning is the justification for on-the-job training. However, just as the classroom learning does not qualify as an entire training program, neither does on-the-job training. Again, the J regulations are very clear on this point.²⁰ What moves on-the-job training, or any other training activity, away from a mere means of gaining experience and positions it as a legitimate training activity is reflection and feedback.

Reflection and Feedback

Reflection and feedback provide the opportunity for the trainee and the trainer to acknowledge what has been learned, and to refine and expand on skills learned through the training activities. Let’s again

use the example of the new driver. Merely having the experience of driving by itself is not a training experience. Until the new driver has the opportunity to reflect on the experience and to receive feedback, an active awareness of the skills learned does not occur. Feedback, however, is more than an admonition to “watch out for the curb.” It is an active dialog about what has been learned, as well as how and why. A common rule of thumb for reflection and feedback is that this element of training takes at least as long as the preceding training activity.

Evaluation

The fourth component of training is formal evaluation. Formal evaluation tracks and measures the progress of acquiring the skills and competencies to reach the defined outcomes. It is separate from reflection and feedback in that it occurs at planned intervals in order to measure change. In the new driver example, formal evaluation is the licensing test. Evaluation differs from reflection and feedback, which are subjective, in that it is an objective measure against predetermined criteria.

Program Exclusions

In formulating training programs, bear in mind that programs having any of the following characteristics are *not* eligible for J-1 classification:

- Trainees or interns are placed in unskilled or casual labor positions, in positions that require child/elder care, or clinical or other work involving patient care (*e.g.*, physical therapy, nursing, early childhood education).²¹
- Trainees or interns are placed into positions, occupations, or businesses that could bring the J-1 program or DOS into notoriety or disrepute. (Although undefined, “notoriety or disrepute” is generally thought by the exchange community to mean that anything that might be the subject of negative newspaper or television reporting needs to be avoided.)²²
- Staffing or employment agencies are engaged or involved in any way to recruit, screen, orient, place, evaluate, or train candidates for participation in a trainee or internship program.²³

²⁰ 22 CFR §62.22(b)(1)(ii): The requirements in these regulations for trainees are designed to distinguish between bona fide training, which is permitted, and merely gaining additional work experience, which is not permitted.

²¹ 22 CFR §62.22(j).

²² *Id.*

²³ *Id.*

- The T/IPP involves more than 20 percent clerical work or involves tasks that are not necessary for completion of the training or internship program.²⁴
- “Hospitality and tourism” training and internship programs of six months or longer that do not have at least three departmental or functional rotations.²⁵
- Interns are placed in the field of aviation. (Trainees may be placed in certain aviation training programs.)²⁶

PROGRAM SPONSOR OBLIGATIONS TO SCREEN HOST COMPANIES

In addition to the above changes, the new regulations mandate that each host company providing training have a Dun & Bradstreet identification number (DUNS), which is provided to the program sponsor.²⁷ ECA felt that the DUNS number provided a benchmark for assessing a company’s reliability. Academic institutions, government entities, and family farms who are acting as the training provider are exempt from the DUNS requirement.²⁸ Furthermore, each training-program sponsor is required to have a written agreement with any third party that provides training or acts in any manner on behalf of the program sponsor.²⁹ Written agreements are also required with any partner organizations the program sponsor may use outside the United States.³⁰ One of the new program sponsor requirements that is most vexing to the exchange community is the requirement that every host organization providing training be visited by the program sponsor.³¹ Program sponsors must conduct site visits for any host company providing training that has not successfully trained J-1 participants through that sponsor previously, if the training provider either has less than \$3 million in annual revenues or less than 25 employees.³² These new program-sponsor obligations are probably best thought of as part of ECA’s implementation

of the “know your customer” constraint established in the Patriot Act.³³

DURATION OF TRAINEE AND INTERN PARTICIPATION

Interns may have J-1 internships lasting only 12 months, while trainees may have J-1 trainee status for up to 18 months.³⁴ However, “hospitality and tourism” training programs can be of no more than 12 months duration.³⁵ Agriculture training programs also are limited to 12 months, unless the additional six months of the program consists of classroom participation and studies.³⁶ Note as a practical matter that any 18-month training program that is classified as “management, business, commerce and finance” for an assignment in a hospitality or tourism industry employer will be carefully reviewed by ECA to confirm that it is really management or business training.

An intern may participate in multiple internships while enrolled as a student abroad, or within one year of graduating, as long as each successive J-1 intern period addresses the development of new skills.³⁷ A trainee may participate in more than one period of J-1 trainee status if he or she spends at least two years outside the United States after his or her initial training period.³⁸ Likewise, if an individual comes to the United States as a J-1 intern but no longer qualifies for intern designation because he or she is not enrolled in school abroad or it has been more than 12 months since his or her graduation, the individual can come to the United States as a trainee if he or she spends at least two years outside the United States after his or her last J-1 internship period.³⁹

CONCLUSION

The interim final rule of June 19, 2007, attempts to strike a balance between addressing the perceived abuses⁴⁰ of the training category of the J-1 visa with

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ 22 CFR §62.22(g)(3).

²⁸ *Id.*

²⁹ 22 CFR §62.22(g)(1).

³⁰ 22 CFR §62.22(g)(2).

³¹ 22 CFR §62.22(g)(4).

³² *Id.*

³³ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

³⁴ 22 CFR §62.22(k).

³⁵ *Id.*

³⁶ *Id.*

³⁷ 22 CFR §62.22(n).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ DOS, “Stronger Action Needed to Improve Oversight and Assess Risks of the Summer Work Travel and Trainee Cate-

regard to the intent of the Fulbright-Hays Act,⁴¹ and the need to expand citizen exchange to promote the public policy objectives of the United States. As the need grows to build the United States’s national “soft power”⁴² to improve our image and position overseas, the exchange of international trainees and interns is more than merely developing the skills and competencies of young professionals. Each J-1 program is part of a larger picture of promoting stability, goodwill, and U.S. interests around the world. The changes brought by the interim final rule seek to strengthen the likelihood of the J-1 visa successfully achieving this idealistic intent. It is an intent we can all support.

gories of the Exchange Visitor Program” (GAO-06-106, Oct. 2005), available at www.gao.gov/new.items/d06106.pdf.

⁴¹ 22 USC §2451 *et seq.*

⁴² Remarks delivered by Secretary of Defense Robert M. Gates, Landon Lecture, Manhattan, KS, Nov. 26, 2007.



U.S. Department of State

OMB APPROVAL NO. 1405-0170
 EXPIRATION DATE: 07-31-2009
 ESTIMATED BURDEN: 60 minutes

TRAINING/INTERNSHIP PLACEMENT PLAN

Check one: <input checked="" type="checkbox"/> Trainee <input type="checkbox"/> Intern	Occupational Field		Number of Years of Experience	
	Level of Degree BSci	Date Awarded (mm-dd-yyyy)	Field of Study	
PARTICIPANT INFORMATION				
Trainee/Intern Name (Last, First, MI)			U.S. Residence Address	
U.S. Telephone Number		FAX Number	Email Address	
SITE OF ACTIVITY INFORMATION				
Host Organization			Address	
Supervisor's Name (Last, First, MI)			Email Address	
Phone Number		FAX Number	Supervisor's Title	
Dates of Program (mm-dd-yyyy) From _____ To _____		Hours Per Week	Will Trainee/Intern receive a stipend? <input type="checkbox"/> Yes <input type="checkbox"/> No	If so, how much? \$ _____ per _____
CONTRACT AGREEMENT				
NOTE- Sponsors will not approve any contracts, and Trainees/Interns may not begin their programs until both a Training/Internship Placement Plan (page 2) and proof of required insurance that meets 22 CFR 62.14 is on file with the sponsor.				
Trainee/Intern- I hereby acknowledge, understand and agree to the attached Training/Internship Placement Plan.				
Trainee/Intern Signature			Date (mm-dd-yyyy)	
Supervisor- I certify that I will provide on-site supervision and that this training/internship is known and approved by this company/business or organization (site of activity). I will ensure that the required insurance is in place that meets 22 CFR 62.14 and provide the sponsor with written evaluations of the trainee/intern's performance, including the number of hours performed, the type of training, and the quality of the performance. At minimum, I will submit the evaluation at the mid-point and end of the program.				
Supervisor's Signature			Date (mm-dd-yyyy)	
Sponsor- I approve the attached Training/Internship Placement Plan. I certify the following:				
1. Sufficient planning, equipment, and trained personnel will be dedicated to provide the training/internship specified; 2. The training/internship program is not designed to recruit and train aliens for employment in the United States; 3. Trainees/Interns will not displace full-time or part-time U.S. employees; and 4. That training and internship programs in the field of agriculture meet all requirements of the Employment Relationship under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act (29 CFR Part 500). I understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads: "Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both."				
Sponsor's Signature (RO/ARO)			Date (mm-dd-yyyy)	
Program Sponsor Name			Program Number	

Program Sponsor Name		Program Number	
TRAINING/INTERNSHIP PLACEMENT PLAN An acceptable Training/Internship Placement Plan should cover a definite period of time and should consist of definite phases of training or tasks performed with a specific objective for each phase. The plan must also contain information on how the trainees/interns will accomplish those objectives (i.e. classes, individual instruction, shadowing, etc.). Each phase must build upon the previous phase to show a progression in the training/internship. A separate copy of page 2 must be completed for each phase if applicable (i.e., if the trainee/intern is rotating through different departments).			
Name of Trainee/Intern (Last, First, MI)		Field of Training/Internship	
Name of Phase	Start Date for this Phase (mm-dd-yyyy)	End Date for this Phase (mm-dd-yyyy)	Phase _____ of _____
Specific Objective for This Phase			
Skills to be Imparted for This Phase			
Justification for On-The-Job Training			
Chronology or Syllabus of Training or Tasks Performed During This Phase			
Method of Evaluation and the Frequency of Supervision During This Phase			