



# INTERNATIONAL EXCHANGE CENTER

AMERICAN IMMIGRATION COUNCIL

## PRACTICE ADVISORY

### UNDERSTANDING THE FINAL RULE FOR J-1 TRAINEE AND INTERN PROGRAMS

New final rules became effective Sept. 9, 2010 for J trainee and intern programs 22 C.F.R. § 62 (2010). With few exceptions, the final rule will produce little change to the way J trainee and intern programs have been administered since the interim-final rule of 2007.

#### **What are the significant changes?**

1. Clarification of the required academic background for interns.
2. Elimination of the requirement that sponsors secure a Dun & Bradstreet report on all host companies.
3. Clarification that social work falling under Public Administration and Social Service Professions is allowed; clinical social work is not allowed.
4. Clarification that dental services are not allowed.
5. Elimination of training or internships for counter help positions.
6. Clarification that telephone interviews are appropriate when video conferencing is not available for the purpose of screening English language proficiency.

#### **Who can be an intern under the new rule?**

Interns must be either currently enrolled in and pursuing post-secondary academic studies abroad, or have graduated from an overseas post-secondary academic institution no more than 12 months prior to the start date of his or her exchange visitor program.

In the Analysis of Comments to the new rule, the Department of State explains that it expects “currently enrolled” to mean that the potential intern has completed at least two academic semesters’ credit before participating in a J internship program.

An internship must be in the intern's specific academic field.

### **Who can be a trainee?**

The new rule makes no changes to the definition of a trainee.

Trainees are individuals who have either a degree or professional certificate from a post-secondary academic institution abroad and at least one year of related work experience acquired outside the United States, or have five years of related work experience acquired outside the United States.

A trainee program must be in the applicant's specific occupational field.

### **What about foreign nationals with degrees from the United States?**

The new rule does not change that U.S.-based education or degrees cannot be used to establish eligibility for either J-1 training or intern programs.

### **Will sponsors screen applicants differently?**

Sponsors must interview every J-1 applicant either in-person or by video conference or web camera. The new rule allows sponsors to use a telephone interview if a video or web camera conference is not possible.

All third parties involved in the recruitment and selection process must have a written agreement with the sponsor detailing what are the parties' responsibilities.

### **Who can be a host organization?**

A host organization conducts training or internship programs on behalf of Department of State designated program sponsors (such as the American Immigration Council). A host organization must sign a written agreement with the program sponsor.

Host organizations that have not successfully participated in the J visa sponsor's training or internship programs must be visited by a representative of the visa sponsor prior to approval of a DS-2019. Companies with 25 or more employees or with at least three million dollars in annual revenue are exempt from this mandatory visit.

The host organization must have workers' compensation insurance. Where possible, the intern or trainee must be covered by the insurance.

The host organization must be able to provide an Employer Identification Number (EIN).

The requirement found in the interim-final rule that all host organizations have a Dun & Bradstreet Number has been dropped in the new rule.

Host companies must agree to contact the visa sponsor immediately in the event of an emergency involving trainee or interns.

The final rule clarifies that social work falling under Public Administration and Social Service Professions is allowed; clinical social work is not allowed.

### **Who can not be a host organization?**

Staffing or employment agencies may not be involved in a J intern or training program.

### **How will the training or placement plans be affected?**

All training or placement plans must be detailed on form DS-7002.

The trainee or intern, host organization supervisor, and responsible officer of the visa sponsor must sign the form prior to the issuing of the form DS-2019. Host organizations and J program participants should understand that, as with all government forms, providing false information can have serious legal ramifications.

Training or internship placement plans must be tailored to the individual skills and experience of the trainee or intern.

The DS-7002 is not expected to be revised before 2012. In the meantime, the form still displays a field for the Dun & Bradstreet Number. Guidance from the Department of State suggests this field should be completed as “not applicable.”

### **Are any occupations excluded from J intern or training programs?**

The new rule continues to restrict trainees or interns from placement in unskilled or casual labor positions, positions involving more than 20 percent clerical work, positions involving the provision therapy, medication, or other clinical or medical care (e.g. sports or physical therapy, psychological counseling, nursing, speech therapy, or early childhood education.)

In addition, the new rule states that:

- Clinical social work is not allowed.
- Veterinary sciences are not allowed.
- Dental services are not allowed.
- Direct patient contact is not allowed.
- Hairdressers are not allowed.

The final rule also eliminates training or internships in counter help positions.

As always, no intern or trainee can be placed in a position that will displace full- or part-time, temporary or permanent American workers or serve to fill a labor need.

### **What are the maximum lengths allowed for programs?**

There are no changes under the new rule:

An intern program has a maximum length of 12 months.

A trainee program has a maximum length of 18 months, except;

Hospitality and Tourism<sup>1</sup>, which is limited to 12 months

If an agricultural program does not contain at least 6 months of classroom study, it is limited to 12 months.

### **Can participants apply for additional intern or training programs after completing their original program?**

Interns **may** participate in additional internship programs as long as they maintain post-secondary student status at an overseas institution or begin a new internship program within 12 months of graduation. Additional internships must be at a more advanced level of skills and competencies than prior internships.

Trainees **are allowed** repeat participation provided that applicants spend at least two years outside of the United States between programs and otherwise meet the eligibility requirements. Additional training cannot repeat skills or competencies covered in earlier training programs.

Participants who have successfully completed internship programs, but are no longer enrolled in an overseas institution or within 12 months of graduation may participate in a training program after a two-year period of residency outside the United States following the end of their internship program.

### **For more information about the Practice Advisory or J programs, contact:**

International Exchange Center, American Immigration Council  
Suite 200, 1331 G St., NW  
Washington, DC 20005

Phone: 202-507-7500

[J1Program@immcouncil.org](mailto:J1Program@immcouncil.org)

[www.internationalexchangecenter.org](http://www.internationalexchangecenter.org)

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<sup>1</sup> Higher level management training may still last 18 months, even at a hospitality facility.