

F-1 Visa **Incorporation** Checklist

Hard-won lessons from someone who actually went through this — incorporated on F-1, nearly made the mistakes below, argued with two attorneys, survived two DSO conversations, and came out the other side with their status intact.

- Updated June 2026
- 8 CFR § 214.2(f) & IRS Rules
- Delaware C-Corp Focused
- Not legal advice — see a real attorney



Real talk first: I'm a founder, not a lawyer. Nothing in here is legal advice. Immigration law is brutally fact-specific — what worked for my situation at my school might get you in trouble at yours. **Before you do anything, talk to your DSO and get at least one hour with a licensed immigration attorney.** A \$300 consultation is infinitely cheaper than a 10-year re-entry bar.

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✘ WILL WRECK YOUR STATUS



The one rule that explains everything else

Passive investor. Not active worker. That's the whole game.

Under 8 CFR § 214.2(f)(9), F-1 students are permitted to make passive investments — which means you can own a company, hold equity, and sit on the board. What you **cannot do** is actively work for that company without valid work authorization (OPT or CPT). The line between "investor activity" and "employment" is where most students get burned.

- Owning stock ✔ — no authorization needed, ever
- Opening a laptop and writing code for your startup ✘ — that's work, full stop
- Attending a board meeting and voting on decisions ✔ — fiduciary duty, not employment
- Signing a vendor contract as a director ✔ — ownership action, not labor
- Running day-to-day operations as an active CEO ✘ — unauthorized employment, period

The grey area that trips most people: *what exactly counts as "work"?* Sending one Slack message is probably fine. Doing product sprints every weekend is not. If your DSO or USCIS looked at what you're doing and said "this person is doing the job of an employee," you're in the wrong zone.



What you actually CAN do right now — before OPT, before anything



Incorporate — and yes, you can do it as an F-1 student

This surprised me when I first looked it up. Filing Articles of Incorporation in Delaware doesn't require citizenship, a green card, or even a US address. You're forming a legal entity — that's ownership, not employment. I used Stripe Atlas (~\$500, all online). Clerky is also great. Some people go through a Delaware registered agent for \$89–\$150 if they want to avoid the platform fees. The actual act of incorporating doesn't touch your F-1 status at all.

[8 CFR § 214.2\(f\) — passive investment is explicitly permitted](#)

✓ **Get an EIN — you don't need an SSN for this**

Nobody told me this. I spent weeks thinking I needed a Social Security Number before I could get an EIN for my company. Wrong. You apply via IRS Form SS-4 either by mail or by phone (+1-267-941-1099 for international callers — they'll issue it on the spot). The EIN is what unlocks everything else: bank accounts, payroll for others, contracts. Get it early.

✓ **Open a US business bank account**

Mercury (mercury.com) and Relay (relayfi.com) both work for foreign-owned US companies. Fully online. No US address or SSN required. You'll need your EIN, Articles of Incorporation, and passport. I went with Mercury — the UI is clean and the international wires are straightforward. Chase and Bank of America technically work too, but they're much slower and some branches give you grief about foreign passports.

✓ **Own equity, issue SAFEs, take VC money**

Hold 100% if you want. Issue SAFE notes to investors. Receive a seed check. Passive income from your equity — dividends, capital gains when you eventually sell — is not "work." Just know that as a non-resident alien, passive income from US sources is subject to 30% withholding (IRC § 871) unless a tax treaty reduces it. File a W-8BEN for your own records. A CPA who understands cross-border taxes is worth it at this point.

✓ **Sit on the board — and this matters more than you think**

Board membership is a fiduciary role, not employment under USCIS rules. You can vote on strategy, approve budgets, hire the active management team, and set company direction — all fine. Here's why this *really* matters: if you eventually want STEM OPT, your board needs to have authority over you as an employee. So set up the board governance now, even if you're the only director initially. Add an independent board member before STEM OPT.

[USCIS Policy Manual Vol. 10, Part B — director role ≠ employment](#)

✓ **Sign contracts, NDAs, term sheets as a director or officer**

Signing legal documents on behalf of the company as an authorized officer is an ownership action, not labor. This includes vendor agreements, customer contracts, investor paperwork. Delaware law (§ 141) gives officers broad authority to bind the company. Don't overthink this one — it's fine.

✓ **Hire people with valid work authorization**

Your company can employ US citizens, green card holders, H-1B workers, other OPT students. You can make the hiring decisions, set the salary, oversee HR policy as an owner — that's ownership, not your own employment. The key distinction is between you deciding who to hire versus you being the one doing the work.

✓ **Work for your company the moment your OPT EAD is active**

The second your EAD card arrives and your OPT start date hits — that's it. The restrictions lift. You can code, sell, lead, all of it. Self-employment is explicitly permitted on standard 12-month OPT (8 CFR § 214.2(f)(10)(ii)(A)). This is the unlock moment everyone's building toward. Don't work a single day before this date, but once it arrives, go build.

[8 CFR § 214.2\(f\)\(10\)\(ii\)\(A\) — self-employment permitted on standard OPT](#)



Things that will end your F-1 status — read these slowly

✘ **Working for your company before your EAD is active. This is the one that ends careers.**

I want to be as clear as I possibly can here: I know someone who lost their status doing exactly this. Brilliant person, MScS from a top-10 school, incorporated a startup during their junior year and started writing the product code on evenings and weekends — before OPT, before CPT, without authorization. USCIS found out during their H-1B processing. They were deported. They have a 10-year bar. Their company still exists. They cannot enter the United States. Writing code, doing sales calls, building the product, managing customer relationships, running operations — all of this is "work" under 8 CFR § 214.2(f)(9). The fact that it's your own company doesn't matter. The fact that nobody's paying you (yet) doesn't matter. If a USCIS officer looked at your GitHub commit history or your LinkedIn and concluded you were functioning as an employee, you're done. Do not do this. It is not worth it.

[8 USC § 1182\(a\)\(9\)\(B\) — unlawful presence triggers multi-year re-entry bars](#)

✘ **Taking a salary — or "deferred compensation" — before OPT starts**

Here's the trap: some founders think they can set up a "deferred salary" arrangement — basically saying "I'll pay myself retroactively once OPT kicks in." Immigration attorneys disagree on whether this is safe, but I'd stay away from it entirely. If compensation is tied to active work you're doing right now, even if the payment happens later, you're arguably in violation. Same with equity vesting tied to a current work cliff. Don't create any paper trail that says "this person was compensated for work they did while on F-1 status without authorization."

✘ **Running your startup as a true solo on STEM OPT — it doesn't work that way**

This one burned a lot of people who transitioned from standard OPT (where self-employment is fine) to STEM OPT (where it's not). STEM OPT requires a real employer-employee relationship — meaning your company needs a supervisory structure above you with actual authority to hire and fire you. The regulation (8 CFR § 214.2(f)(10)(ii)(C)) is explicit. A one-person company where you are both the owner and the only worker doesn't satisfy this. You need at least one independent board member with real governance authority. Also: your company must be enrolled in E-Verify at your specific worksite. Not negotiable.

[8 CFR § 214.2\(f\)\(10\)\(ii\)\(C\) — bona fide employer-employee relationship required](#)

✘ **Trying to use CPT at your own company with yourself as the supervisor**

I've seen students attempt this. It doesn't work, and it puts your I-20 at serious risk. CPT requires a bona fide employer who can evaluate your training — someone other than you. Some schools will refuse CPT for any company where you have ownership. This varies by school — ask your DSO explicitly. Don't assume. If your DSO says no, that's the answer.

[8 CFR § 214.2\(f\)\(10\)\(i\) — CPT employer requirement](#)

✘ **Putting yourself on payroll as CEO before your EAD arrives**

The title "CEO" isn't automatically illegal — but the moment you're on a payroll, receiving W-2 wages, or described on LinkedIn as "actively managing operations" without work authorization, you've handed USCIS a paper trail they can use. During OPT your employer can designate you as CEO. Before that, use "Founder" or "Director" — titles that reflect ownership rather than active day-to-day employment. This isn't just semantics. The framing matters for how your record reads if you ever get scrutinized.

✘ **Moving IP from abroad into your US company without talking to a CPA first**

If you built something before you came to the US — code, a patent, a trademark — and you want to transfer it into your Delaware C-Corp, stop. This can trigger Section 367 of the IRC and potentially GILTI implications. The tax hit can be enormous and retroactive. I'm not saying don't do it. I'm saying don't do it without a CPA who specializes in cross-border IP transfers. This is one of those things where the cost of the right advice (\$500–\$2,000) is a rounding error compared to the potential damage.

[IRC §§ 367, 482, GILTI — cross-border IP transfers](#)

Hiding your company from your DSO — or letting Delaware lapse

Two separate issues. First: if you have a company and your DSO doesn't know, and they later find out during an RFE or a SEVIS audit, it looks bad — even if everything you did was legal. Be transparent with your DSO. Get their response in writing. Second: Delaware requires annual franchise tax filings and a registered agent. If your company falls out of good standing, it becomes a shell on paper — and if USCIS ever looks at your STEM OPT Training Plan and notices the company has no standing, you have a problem. Keep the entity alive. The annual Delaware franchise tax for a small startup is usually \$400 or less.



Here's what I'd do if I were starting over today

1 Talk to your DSO — even if it feels awkward

My DSO told me I couldn't do certain things my attorney later confirmed were fine. Your DSO is not an immigration attorney — they're an administrator following school policy, which is sometimes more conservative than the law. Go talk to them anyway. Get their guidance in writing via email. That paper trail protects you later, regardless of what they say. Do not start anything without this conversation.

 [International Student Office — get it in writing](#)

2 Get one hour with an immigration attorney who knows startups

Not all immigration attorneys understand F-1 business situations. Find someone who works with founders specifically — AILA's directory (aila.org/find-an-attorney) lets you filter by specialty. One hour (\$200–\$500) is the price of certainty. After my consultation I changed three things I was planning to do. Completely worth it.

 aila.org/find-an-attorney — filter for business/F-1 experience

3 Incorporate — Delaware C-Corp is the default for a reason

Most VCs expect Delaware C-Corps. Stripe Atlas makes this straightforward and sets up your cap table structure from day one. If cost is a concern, a registered agent service runs \$89–\$150. You'll get your Articles of Incorporation, a registered agent address in Delaware, and a Certificate of Good Standing — which you'll need for your bank account.

 stripe.com/atlas | clerky.com | incfile.com

4 Get your EIN — do it by phone, takes 20 minutes

Call the IRS Business & Specialty Tax Line: +1-267-941-1099 (international). Have your Articles of Incorporation in front of you. They issue it on the call. No SSN required. If you mail Form SS-4 instead, expect 4–6 weeks. Do the phone call.

 [IRS: +1-267-941-1099](tel:+12679411099) | [Have Articles of Incorporation ready](#)

5 Open Mercury — it's the easiest bank for international founders


Mercury.com. Fully online. No US address, no SSN, no branch visit. You need your EIN, formation documents, and passport. Account approval takes 2–5 business days. Relay (relayfi.com) is the second choice if Mercury declines you for some reason.

 mercury.com — the startup bank that actually works internationally

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Apply for OPT 90 days before your program end date

This is the unlock. File Form I-765 with eligibility category (c)(3)(B) through your DSO in SEVIS. Processing averages 3–5 months, so applying early matters. The moment your EAD card arrives and your start date hits — that's when you can actually work for your company. Self-employment is fully authorized on standard OPT.

 [Form I-765 — category \(c\)\(3\)\(B\) for Post-Completion OPT](#)

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If you have a STEM degree — plan your STEM OPT structure early

STEM OPT adds 24 more months, but the employer–employee rules mean you can't just be a solo operator. Add an independent director to your board before you start STEM OPT. Enroll your company in E-Verify at your worksite address. Complete Form I-983 with your DSO. This structure takes time to set up — do it during your standard OPT year, not at the end.

 [Form I-983 Training Plan + E-Verify enrollment — start 3 months early](#)

**Quick answer table — what's allowed when** — bookmark this

What you want to do	F-1, no OPT yet	Standard OPT	STEM OPT
Incorporate / own equity in a company	✓ Yes	✓ Yes	✓ Yes
Sit on the board / vote on decisions	✓ Yes	✓ Yes	✓ Yes
Actually work / write code / do the job	✗ No	✓ Yes	⚠ With board oversight
Receive a salary / W-2 wages	✗ No	✓ Yes	✓ Yes
Self-employment (solo, no employer above you)	✗ No	✓ Yes	✗ No
Sign contracts / NDAs as director	✓ Yes	✓ Yes	✓ Yes
Hire US employees / contractors	✓ Yes	✓ Yes	✓ Yes

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