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New Rules for STEM OPT Extension (Continually Updated, As Needed)

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Submitted by Rajiv S. Khanna on Mar 13th 2016

The new rule regulating the Optional Practical Training (OPT) program for F-1 students with degrees in science, technology, engineering, or mathematics (STEM), becomes effective on May 10, 2016.

Here are the changes and key points in the new rule:

- F-1 STEM students undergoing a 12-month Optional Practical Training (OPT) in the can extend their OPT for 24 months (instead of the earlier 17 months)
- Thus, STEM students will now have a period of 36 months of practical training (potentially giving us three shots at the H-1 ?lottery,? if we so choose)
- The existing 17-month STEM OPT extension will continue to be effective until May 9, 2016. The cap-gap benefit for existing students in OPT also stays in place
- The 24-month extension is available to F-1 STEM OPT students:
 - Attending accredited schools;
 - Whose employers participate in the E-verify* program; and
 - Whose employers accept and comply with the following requirements
- Cap-gap extension continues to be available under the new rule (Roughly stated: timely filed H-1 applicants can continue working till 1 October even after expiration of their OPT)

Employers? compliance in hiring STEM OPT Students:

The employers must:

- Enroll in E-Verify

- Create a formal mentoring and training plan to ensure students receive work experience appropriate for their field of study
- Be prepared for site visits by the USCIS (already expected and accepted under the H-1 program)
- Ensure that the terms and conditions of STEM OPT employment (including duties, hours, and compensation) are commensurate with those applicable to similarly situated U.S. workers.
- Attest that: (i) The employer has sufficient resources and trained personnel available to provide appropriate mentoring and training to the STEM student; (ii) the employer will not terminate, lay off, or furlough any full-time or part-time, temporary or permanent U.S. workers as a result of providing the STEM OPT to the student; and (iii) the student's opportunity assists the student in attaining his or her training objectives.

Students' Compliance (Reporting) Requirements.

The new rule:

- Requires STEM OPT students to report to DHS any changes to their names or addresses, as well as any changes to their employers' names or addresses.
- Requires students to periodically verify the accuracy of this reporting information.

The new rule further:

- More clearly defines which fields of study (Department of Education Classification of Instructional Program, CIP, categories) are considered acceptable for STEM OPT extensions;
- Creates a process for public notification in the Federal Register when DHS updates the list of eligible STEM fields on the Student and Exchange Visitor Program's (SEVP's) Web site;
- Permits an F-1 student undergoing OPT to use a prior eligible STEM degree from a U.S. institution of higher education as a basis to apply for a STEM OPT extension, as long as the student's most recent degree was also received from an accredited educational institution; and
- Retains the 90-day maximum period of unemployment during the initial period of post-completion OPT, but allows an additional 60 days (for an aggregate of 150 days) for students who obtain a 24-month STEM OPT extension.

Transition between the old and the new regulations

Students who are already in the 17-month STEM OPT on May 10, 2016

- Students with existing 17-month STEM OPT EADs on May 10, 2016, are **NOT** required to transition their extension by requesting an additional seven-month period. EADs

indicating a 17-month OPT extension that have been issued and are valid prior to May 10, 2016, remain valid until expiration, and the student, the student's employer and the student's DSO must continue to abide by all the terms and conditions that were in effect when the EAD was issued.

- Students whose 17-month STEM OPT extension EADs remain valid after May 10, 2016, and **who are either ineligible or chose not to apply for the 24-month STEM OPT** extension, must continue to follow all the terms and conditions that were in effect when their 17-month STEM OPT employment authorization was granted. See the next heading for how to apply for 7-month extension.

Conditions for applying for 7-month extension

- **150 Calendar Days Remaining on EAD.** To qualify for the seven-month extension, student in 17-month period must have at least 150 calendar days remaining on the 17-month OPT period at the time the Form I-765, is filed, and they must otherwise meet all requirements of the 24-month STEM OPT extension.
- DHS will NOT automatically convert already granted 17-month extensions into 24-month extensions.
- **Applications for 7-month extension must be received by the USCIS between 10 May 2106 and August 08 2016.**
- Extension requests must be filed within 60 days of the date the DSO enters the recommendation for the 24-month STEM OPT extension into the SEVIS record.

Students filing for 17-month extension before 10 May 2016

- DHS will continue to accept new and adjudicate the 17-month STEM OPT extension applications until 9 May 2016. Any 17-month STEM OPT EAD that is issued before May 10, 2016, will remain valid until the EAD expires, is terminated or revoked.
- In cases where:
 - a student submits a Form I-765 requesting a 24-month STEM OPT extension; and
 - such application is **adjudicated** before May 10, 2016,

in such cases, the student's Form I-765 will be treated as a 17-month extension request and will be adjudicated in accordance with the 17-month STEM OPT regulations

---> ---> --->Practice pointer: Everyone submitting new 17-month extensions before 10 May 2016 should request 24 months of OPT. You will, in all likelihood, get 24 months.

Students whose 17-month extensions are pending on 10 May 2016

- USCIS will issue Requests for Evidence (RFEs) to students whose applications are still pending on that date. The RFEs will allow students to effectively amend their application to demonstrate eligibility for a 24-month extension without incurring an additional fee or having to refile their EAD application.
(Content of the RFE's: RFEs will, generally, ask that students submit a new Form I-20 that was endorsed on or after May 10, 2016. This endorsement indicates that the DSO recommends the student for a 24-month STEM OPT extension and that the student has

returned a completed and signed Form I-983 to the DSO)

Students whose 17-month STEM OPT extension expires prior to May 10, 2016, or who have less than 150 days remaining on their 17-month STEM OPT extension

- Students whose 17-month STEM OPT extension expires prior to May 10, 2016, or who have less than 150 days remaining on their 17-month STEM OPT extension EADs on the date that they are able to properly file their STEM OPT extension are not covered under the transition plan. These students are ineligible to benefit from the 24-month STEM extension for purposes of practical training associated with their most current degree. To become eligible for the 24-month STEM extension, students who are not covered under the transition plan would first need to earn another qualifying STEM degree at a higher educational level.

Excellent resource for information (DHS STEM OPT hub):

<https://studyinthestates.dhs.gov/stem-opt-hub> [2]

Nonimmigrant Visas:

[F-1 Visa](#) [3]

[OPT](#) [4]

[STEM](#) [5]

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[2] <https://studyinthestates.dhs.gov/stem-opt-hub>

[3] <https://immigration.com/visa/nonimmigrant-visas/f-visa/f-1-visa>

[4] <https://immigration.com/visa/nonimmigrant-visas/opt>

[5] <https://immigration.com/visa/nonimmigrant-visas/f-visa/stem>