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NEW STEM OPT EXTENSION RULE: WHAT EMPLOYERS NEED TO KNOW

TECHNOLOGY MAY-RATHON

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OVERVIEW:

- Background for these changes
- What are the new rules and who may apply for benefits?
- Employer oversight and compliance obligations
- Preparing for ICE Site Visits

Background

- November 2014 Executive Action
 - President Obama announces executive action to improve administration of immigration laws, including an initiative to strengthen and expand OPT for STEM graduates.
- March 2014 Lawsuit
 - In March 2014 the Washington Alliance of Technology Workers (the “WashTech” lawsuit) challenged DHS authority to establish any kind of OPT for foreign students. WashTech also argued that DHS did not act in accordance with the Administrative Procedures Act when it originally promulgated the STEM OPT extension rules in 2008.

Background (cont'd)

- August 2015 Decision
 - Court rules against WashTech on issue of DHS authority to create OPT, but ruled in favor of WashTech on APA claim. It vacated the 2008 rule but stayed that “vacatur” first until February 2016 and again until May 2016, which allowed the STEM OPT extension rules to stay in force, and gave DHS time to publish a new proposed STEM OPT rule to cure the procedural defects of the 2008 rule.
- Proposed Rule published October 19, 2015; Final Rule on March 11, 2016.
- WashTech litigation is ongoing.

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**WHAT ARE THE NEW
RULES, AND WHO MAY
APPLY FOR BENEFITS?**

The New Rules

- Beginning May 10, 2016
 - F-1 STEM OPT extensions increased from 17 months to 24 months
 - STEM degree fields updated
 - STEM OPT extensions may be granted on basis of earlier STEM degree
 - Students may have up to two 24-month periods of STEM OPT
 - STEM OPT unemployment limits increased
 - Students and employers will have significant new obligations

24-Month STEM OPT Extensions

- STEM OPT extensions increased from 17 months to 24 months, for a total of 36 months
- Students must
 - provide Employer Training Plan (completed Form I-983) to DSO for review
 - obtain endorsed I-20 from DSO
 - file Form I-765 EAD Application with USCIS, along with copy of degree
- If approved, EAD will be valid for 2 years from initial 12-month OPT expiration
- Allows student to remain in the US for another attempt at H-1B lottery

24-Month STEM OPT Extensions (cont'd)

- 17-month STEM OPT extension applications pending on 5/10/2016 eligible for 24-month extension: USCIS will issue RFE
- Must apply for STEM OPT extension during OPT validity (NOT during 60-day grace period)
- Students may apply for up to TWO 24-month STEM OPT extensions, each at the end of a separate STEM education program
- Degree must have been awarded by accredited and SEVP-certified institution (including for-profit institution), but not overseas campus of US institution

Transitional Rules for Students with 17-Month Extensions

- May apply to add 7 months to STEM OPT
- Student **MUST** have at least 150 days of valid OPT remaining on the date of filing of the Form I-765
- Must apply on or after May 10, 2016
- Must apply before August 8, 2016
- File Form I-765 with endorsed I-20 within 60 days of the DSO's recommendation

STEM Degree Fields Updated

- Updated STEM Designated Degree Program List
- Available at www.ice.gov
- Includes 2-digit CIP codes
 - 14: Engineering
 - 26: Biological and Medical Sciences
 - 27: Mathematics and Statistics
 - 40: Physical Sciences
- Also includes 6-digit CIP codes for “Related Fields” (fields involving innovation and development of new technologies)

OPT Extensions Based on Earlier STEM Degree

- Current 17-month rule requires that STEM OPT extension be based on the degree that supported the student's standard 12-month postcompletion OPT
- New Rule: F-1 students in OPT based on award of degree in non-STEM field may obtain 24-month OPT extension based on award of earlier degree in STEM field
 - Prior degree conferred no more than 10 years before new DSO request
 - Prior degree on the new current STEM degree list
 - Both degrees must be from US SEVP-certified institutions
 - The OPT opportunity must be directly related to the prior STEM degree
 - Prior degree must actually be conferred, not substantially completed

Second STEM OPT Period After Higher Degree

- OLD: Current 17-month STEM OPT rule limits individuals to one lifetime STEM OPT extension
- NEW: Under 24-month rule, students are eligible for a second STEM OPT extension (a total of two lifetime STEM OPT extensions) after:
 - Earning another qualifying STEM degree at a “higher degree level” and
 - Obtaining a new initial grant of standard 12-month postcompletion OPT based on the higher degree

STEM OPT Unemployment Limits Increased

- Unemployment during 24-month STEM OPT extension increased by 60 days to a total of 150 days
- Unemployment during initial 12-month OPT period remains at 90 days
- Exceeding the unemployment limit causes a status violation
- Travel abroad may constitute unemployment
- Employers must report unemployment or any other material changes to DSO within 5 business days

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**EMPLOYER OVERSIGHT
AND COMPLIANCE
OBLIGATIONS**

Employer's Obligations for 24-Month STEM Extensions

- Be enrolled in E-Verify and in good standing
- Report material changes in the STEM OPT student's employment to the student's DSO within 5 business days
- Implement a formal training program to augment the student's academic learning through practical experience
- Provide an OPT opportunity that is commensurate with those of similarly situated US workers in duties, hours, and compensation
- Complete Form I-983, Training Plan for STEM OPT students attesting to the following:
 - That the employer has sufficient resources and trained personnel available to appropriately train the student
 - That the student will not replace a full- or part-time, temporary, or permanent US worker
 - That the OPT work will help the student attain his or her training objectives

Employer Training Plan

- How will the STEM OPT “formal training plan” change the typical duties/activities of a STEM OPT student?
 - Duties and activities may not change at all
 - Employer must conceptualize and articulate the student’s work activities in a way that shows how those activities relate to the student’s STEM degree and advance and develop the student’s prior academic STEM learning
 - Employer will need to articulate goals for the training, including the specific skills, knowledge, abilities, and techniques that the student is expected to gain through the training
 - Employer must describe performance evaluation process and supervision

Employer Training Plan (cont'd)

- Employer will have to complete a Form I-983 for student to submit to DSO, in order for DSO to issue endorsed I-20 for the OPT extension filing
- Student and employer will also be required to provide an annual evaluation of the student's progress to the DSO
- DSO will maintain Form I-983 and employer evaluations
- Review information and sample Form I-983 answers at <https://studyinthestates.dhs.gov/stem-opt-hub>

Form I-983 Excerpts

- <https://www.ice.gov/sites/default/files/documents/Document/2016/I-983.pdf>

SECTION 3: EMPLOYER INFORMATION (Completed by Employer)			
Employer Name:		Street Address:	
		Suite:	
Employer Website URL:		City:	State:
		ZIP Code:	
Employer ID Number (EIN):	Number of Full-Time Employees in U.S.	North American Industry Classification System (NAICS) Code:	
OPT Hours Per Week (must be at least 20 hours/week):		Compensation	
		A. Salary Amount and Frequency: _____	
		B. Other Compensation (Type and Estimated Amount or Value):	
		1. _____	
		2. _____	
		3. _____	
		4. _____	
Start Date of Employment:			
(mm-dd-yyyy) _____			

Form I-983 Excerpts

SECTION 4: EMPLOYER CERTIFICATION

I declare and affirm under penalty of perjury that the statements and information made herein are true and correct to the best of my knowledge, information and belief. I understand that the law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document in the submission of this form.

I certify on behalf of the employer that this Training Plan for STEM OPT Students ("Plan") is approved and that:

1. I have reviewed and understand this Plan, and I will ensure that the supervising Official follows this Plan;
2. I will notify the DSO at the earliest available opportunity regarding any material changes to this Plan, including but not limited to, any change of Employer Identification Number resulting from a corporate restructuring, any reduction in compensation from the amount previously submitted on the Plan that is not tied to a reduction in hours worked, any significant decrease in hours per week that a student engages in a STEM training opportunity, and any decrease in hours below the 20-hours-per-week minimum required under this rule;
3. Within five business days of the termination or departure of the student during the authorized period of OPT, I will report such termination or departure to the DSO (*Note: business days do not include federal holidays or weekend days; and an employer shall consider a student to have departed when the employer knows the student has left the practical training opportunity, or when the student has not reported for practical training for a period of five consecutive business days without the consent of the employer*); and
4. I will adhere to all applicable regulatory provisions that govern this program (*see 8 CFR Part 214*), which include, but are not limited to, the following:
 - a. The student's practical training opportunity is directly related to the STEM degree that qualifies the student for the STEM OPT extension, and the position offered to the student achieves the objectives of his or her participation in this training program;
 - b. The student will receive on-site supervision and training, consistent with this Plan, by experienced and knowledgeable staff;
 - c. The employer has sufficient resources and personnel to provide the specified training program set forth in this Plan, and the employer is prepared to implement that program, including at the location(s) identified in this Plan;
 - d. The student on a STEM OPT extension will not replace a full- or part-time, temporary or permanent U.S. worker. The terms and conditions of the STEM practical training opportunity—including duties, hours, and compensation—are commensurate with the terms and conditions applicable to the employer's similarly situated U.S. workers or, if the employer does not employ and has not recently employed more than two similarly situated U.S. workers in the area of employment, the terms and conditions of other similarly situated U.S. workers in the area of employment; and
 - e. The training conducted pursuant to this Plan complies with all applicable Federal and State requirements relating to employment.

Note: DHS may, at its discretion, conduct a site visit of the employer to ensure that program requirements are being met, including that the employer possesses and maintains the ability and resources to provide structured and guided work-based learning experiences consistent with this Plan.

Signature of Employer Official with Signatory Authority: _____

Printed Name and Title of Employer Official with Signatory Authority: _____

Date: (mm-dd-yyyy) _____ Printed Name of Employing Organization: _____

Form I-983 Training Plan Elements

Student Role: Describe the student's role with the employer and how that role is directly related to enhancing the student's knowledge obtained through his or her qualifying STEM degree.

Goals and Objectives: Describe how the assignment(s) with the employer will help the student achieve his or her specific objectives for work-based learning related to his or her STEM degree. The description must both specify the student's goals regarding specific knowledge, skills, or techniques as well as the means by which they will be achieved.

Employer Oversight: Explain how the employer provides oversight and supervision of individuals filling positions such as that being filled by the named F-1 student. If the employer has a training program or related policy in place that controls such oversight and supervision, please describe.

Measures and Assessments: Explain how the employer measures and confirms whether individuals filling positions such as that being filled by the named F-1 student are acquiring new knowledge and skills. If the employer has a training program or related policy in place that controls such measures and assessments, please describe.

SECTION 6: EMPLOYER OFFICIAL CERTIFICATION

I declare and affirm under penalty of perjury that the statements and information made herein are true and correct to the best of my knowledge, information and belief. I understand that the law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document in the submission of this form.

Employer Official with Signatory Authority - I certify that:

1. I have reviewed, understand, and will follow this Training Plan for STEM OPT Students (Plan);
2. I will conduct the required periodic evaluations of the student;*
3. I will adhere to all applicable regulatory provisions that govern this program (*see 8 CFR Part 214.2(f)(10)(ii)*); and
4. I will notify the DSO regarding any material changes to or material deviations from this Plan at the earliest available opportunity, including if I believe the student is not receiving appropriate training as delineated in this Plan.

Signature of Employer Official with Signatory Authority: _____

Printed Name and Title of Employer Official with Signatory Authority: _____ Date: (mm-dd-yyyy) _____

Additional Obligations

- Duties, hours, and compensation of STEM student must be commensurate with those of other similarly situated employees, or, if the employer does not employ, and has not recently employed, 2 similarly situated employees, duties, hours, and compensation must be commensurate with those of similarly situated US workers in the area of employment
- STEM student must work at least 20 hours a week
- Any material changes in employment necessitate a modified Form I-983

Additional Observations

- Students cannot qualify for STEM OPT extensions unless they will be bona fide employees of the employer signing the Training Plan
- Volunteer/unpaid positions cannot support a STEM OPT extension
- Self-employment cannot support a STEM OPT extension

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PREPARING FOR ICE SITE VISITS

STEM OPT Site Visit Basics

- Rule allows ICE to visit employer locations where STEM OPT students are being trained
- Purpose of site visits is to confirm information provided on Form I-983
- ICE will provide notice of at least 48 hours, unless visit is triggered by evidence of noncompliance
- Visits will be performed by ICE officers
- ICE site visit program not as well funded as USCIS H-1B site visit program
- Site visit follow-up in writing
- ICE estimates that site visits will take 5 hours

Preparing for a STEM OPT Site Visit

- Make sure all relevant people in your organization (from receptionist to student to student's supervisor) know of the possibility of a site visit
- Develop a written protocol on how to handle site visits
- Make sure all information on Form I-983 is accurate and remains accurate
- Make sure student and supervisor are accompanied at all times during visit

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Asia Pacific
Europe
Latin America
Middle East
North America

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Beijing	Frankfurt	Moscow	Princeton	Washington, DC
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