

MAY 9, 2016 BULLETIN TO ALL IMMIGRATION CLIENTS

New STEM OPT Extension Program Requirements

The new 24-month STEM (Science Technology, Engineering, and Math) Optional Practical Training (OPT) program will take effect on May 10, 2016. The substantially revised STEM OPT program expands total OPT time to 36 months for F-1 students with a qualifying U.S. STEM degree. Under the new program, F-1 STEM degree students will now be eligible for 12 months of initial OPT *plus* an additional 24-month extension of OPT. The new regulations also allow some F-1 students who already have a 17-month STEM OPT to apply for an additional seven (7) months.

The standard 12-month OPT program will remain unchanged. F-1 students granted a 17-month STEM OPT extension before May 10, 2016, will remain subject to the prior STEM rules unless they file for an additional seven (7) months of OPT under the new rules. The new requirements will only apply to those seeking a grant of STEM OPT under the new regulations.

NEW STEM OPT EXTENSION REQUIREMENTS

The new STEM OPT extension program imposes significant new obligations on students, employers, and schools. Employers will be subject to increased obligations, including the following:

- Completing a training plan for each F-1 student working pursuant to a STEM extension and updating the plan if there are changes to the program.
- Conducting regular evaluations of the F-1 student through the STEM extension period and submitting evaluations to the employee's designated school official (DSO).
- Making required reports to the F-1 student's DSO.
- Ensuring that the F-1 student's compensation and other working conditions are commensurate with those of similarly situated U.S. employees.
- Undergoing compliance inspections conducted by U.S. Immigration and Customs Enforcement (ICE).

The above-listed obligations will apply only to employers of F-1 students working on a STEM OPT approved under the new regulations. They will not apply during the F-1 student's initial 12 months of regular OPT or during a 17-month STEM OPT that was approved prior to May 10, 2016, and will not be further extended under the new STEM OPT regulation.

F-1 STUDENTS APPLYING FOR STEM OPT EXTENSION BEFORE MAY 10, 2016

For F-1 students who apply for STEM OPT before May 10, 2016, and whose STEM OPT extension is approved **on or before** May 9, 2016, the employment authorization document (EAD) will be valid for

17 months and neither the employer nor the F-1 student will be subject to the new regulation requirements.

If the F-1 student's application for STEM OPT is filed prior to and **remains pending** on May 10, 2016, the student and the employer will become subject to the new requirements. USCIS will issue a request for evidence (RFE) asking the F-1 student and employer to prepare a training plan and submit it to the DSO so that the DSO can issue a new I-20 form with a new STEM OPT endorsement.

F-1 STUDENTS ON AN ALREADY APPROVED 17-MONTH STEM OPT EXTENSION

F-1 students who already have a 17-month OPT may be eligible to apply for an additional seven (7) months of STEM OPT, provided they meet the requirements of the new STEM OPT program rules, listed below:

- The F-1 student's qualifying degree must meet the new requirements of the regulation.
- The F-student must have at least 150 days remaining on the 17-month STEM OPT EAD **on the day** USCIS receives the petition.
- The employer and the F-1 student must comply with the new rules, including having an approved training plan and a new I-20 endorsed for a STEM OPT extension by the student's DSO.
- The F-1 student must file for a seven-month extension on Form I-765 between May 10, 2016, and August 8, 2016. Applications for a seven-month extension will **not** be accepted after August 8, 2016.

DEGREES THAT QUALIFY AN F-1 STUDENT FOR STEM OPT EXTENSION

To qualify for a STEM OPT extension, an F-1 student must have earned a degree or completed all requirements towards a degree in a field that appears on the STEM Designated Program List issued by ICE. The current list of eligible degree fields will be in effect through May 9, 2016, after which a revised list will take effect and will be available on the U.S. Customs and Border Protection (CBP) website. As previously the case, however, not every STEM degree will qualify for an OPT extension. Students should consult their DSO and the CBP list. The revised STEM-designated degree list covers four broad degree classifications: Engineering, Biological and Biomedical Sciences, Mathematics and Statistics, and Physical Sciences. Degrees falling under these broad groups will automatically qualify for a STEM extension under the new rule. A number of degree fields outside of these four broad areas will also qualify for STEM OPT extensions under the new regulations. Among these are degrees in computer and information science; intelligence, air and military sciences; management science; business statistics; actuarial science; econometrics; and quantitative economics.

PERMISSIBLE EMPLOYMENT DURING THE STEM OPT PERIOD

The 24-month STEM OPT period is limited to certain employers and employment opportunities, as listed below:

- A STEM OPT employer must be enrolled in and using the E-Verify program at the STEM OPT worksite.
- A STEM OPT employer must have an Employment Identification Number (EIN).

- The employment opportunity must be directly related to the student's qualifying STEM degree.
- There must be an employer-employee relationship between the employer and the F-1 student during the STEM OPT period. Employment for a staffing agency and other labor-for-hire arrangements will not qualify.
- Volunteer employment does not qualify.
- An F-1 student may not work concurrently for multiple employers during the STEM OPT period.

We will continue to learn more about the new program's benefits and implications as we utilize it for/with our clients and are happy to assist you in deciding whether to use the new program for your F-1 student employees as well as how to best implement the new STEM OPT extension program in each of your businesses.

Please contact any member of the Cohen & Grigsby Immigration Department at 412.297.4900 if you have any questions regarding this information. To receive future bulletins, please send an e-mail to bulletins@cohenlaw.com

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