

IMMIGRATION

DHS INCREASES PERIOD OF STEM OPTIONAL PRACTICAL TRAINING TO 24 MONTHS: IMPOSES ADDITIONAL REQUIREMENTS ON EMPLOYERS AND F-1 STUDENTS

by *Elise S. Levasseur, Esq.*

The U.S. government never gives without getting something in return, and the same is true with the new STEM 24-month, Optional Practical Training (OPT) Program. On March 11, the Department of Homeland Security (DHS) published a final rule permitting F-1 students who receive STEM (science, technology, engineering and mathematics) degrees, *and who meet other requirements*, to apply for a 24-month extension of their post-degree completion OPT.

The new 24-month STEM OPT program replaces the 17-month extension previously available to certain students, and imposes significant changes on employers, F-1 Students and Designated School Officials (DSOs). It does not affect existing OPT 12-month programs. Eligible students can begin to apply for a 24-month STEM OPT extension on May 10.

New Program Benefits and Eligibility

To be eligible the new 24-month OPT program, the graduate must meet the following requirements:

1. The graduate must have been granted OPT and currently be in a valid period of OPT (see limitations described below);
2. The graduate must have earned a bachelor's, master's or doctoral degree from a school that is accredited by the U.S. Department of Education's (DOE) recognized accrediting agency, and is certified by the Student and Exchange Visitor Program (SEVP) when the application is submitted. The revised list of degrees, which will become effective on May 10, can be found at the [U.S. Immigration and Customs Enforcement \(ICE\) website](#);
3. The graduate must work for an employer who meets all of the requirements under the STEM OPT employer responsibilities section described below; and,
4. The graduate must submit Form I-765, Application for Employment Authorization **up to 90 days before current OPT Employment Authorization expires**, and within 60 days of the date the student's DSO enters the recommendation for OPT into the F-1 student's Student and Exchange Visitor System (SEVIS) record.

An F-1 student participating in a 12-month period of post-completion OPT based on a non-STEM degree may be eligible to use a prior STEM degree earned from a U.S. institution of higher education to apply for a STEM OPT extension. Both degrees must be received from an accredited and SEVP certified institution, and the practical training

opportunity must be directly related to the STEM degree. For example, an F-1 MBA graduate is not eligible for a STEM OPT extension, but if that MBA graduate had earned a bachelor's degree in mathematics from a qualifying U.S. institution, then he or she may be eligible for STEM OPT based on completion of an earlier STEM bachelor's degree program.

The new program also permits participation in two lifetime STEM OPT programs instead of only one lifetime period of STEM OPT under the current STEM OPT program. For example, if the F-1 student enrolls in a new academic program in the future and earns another qualifying STEM degree at a higher educational level, the F-1 student may be eligible for one additional STEM OPT extension so long as the STEM degree was conferred within ten years of the STEM extension application date, and the STEM degree is on the revised list by the date the DSO endorses the F-1 student's I-20AB form for a 24-month OPT extension, and in addition, the student must be in a period of 12-month OPT based on his or her most recent degree.

Applying For Stem Opt Extension

To apply for a 24-month STEM OPT extension, the F-1 student must wait to file her form I-765 with the application fee until on or after May 10. The student's Form I-20, Certificate of Eligibility for Nonimmigrant Status must be endorsed by the F-1 student's DSO on or after May 10, 2016, and a copy of the STEM degree must be provided.

If the F-1 student files a timely application for extension of STEM OPT, and his or her existing period of OPT expires, **the USCIS will extend employment authorization for 180 days.**

Student Obligations After Receiving A Stem Opt Extension

Once the STEM OPT is granted, the F-1 students, must:

1. Report changes to her DSO within ten days of the change by including:
 - Student's name;
 - Student's residential or mailing address;
 - Student's email address;
 - Employer's name; and,
 - Employer's address.
2. Report to the DSO every six months to confirm the information listed above **regardless of whether the information has changed.**

Unemployment During The Stem Opt Period

Under the new regulations, the period of permitted student unemployment has changed as follows:

Period of OPT	Permitted period of unemployment
12 months	90 days
17-month STEM	120 days*
24-month STEM	150 days*

*If the F-1 student is granted an additional seven-month extension in addition to her 17-month STEM-OPT (for a total of 24 months), then she may be unemployed for total of 150 days.

New Employer Stem Opt Employer Responsibilities

1. If an employer wants to provide an additional practical training opportunity to a STEM OPT graduate, during her extension, the employer must:
 2. Be enrolled in E-Verify and remain in good standing in the E-Verify program;
 3. Report material changes to the STEM OPT student’s employment to the DSO within five business days;
 4. Implement a formal training program to augment the student’s academic learning through practical experience;
 5. Provide an OPT opportunity commensurate with those of similarly situated U.S. workers in duties, hours and compensation;
 6. Complete a Form I-983, Training Plan for STEM OPT students. In this form, the employer must attest that:
 - The employer has sufficient resources and trained personnel available to appropriately train the student;
 - The student will not replace a full-or part-time, temporary or permanent U.S. worker; and,
 - Working for the employer will help the student attain her training objectives.

Also, the employer must also conduct regular evaluations of the F-1 student, and report the same to the DSO, as well as attest that the employer will not replace a U.S. worker with an F-1 STEM OPT employee.

New DHS Worksite Visit Initiative

ICE may now visit employer worksites to verify whether the employer is meeting new STEM OPT program requirements, including whether it is maintaining the ability and resources to provide structured and guided work-based learning experiences for the STEM OPT student.

Special Rules For Students Who Have A 17-Month Stem Opt Extension (Or Have An Application Pending On May 10 For A 17-Month Extension)

The new rule authorizing the 24-month STEM OPT extension will go into effect on May 10. If the student has a 17-month STEM OPT extension, the student may apply to add seven months to her STEM OPT period on or after May 10 **as long as the student has at least 150 days of valid employment authorization remaining on the date the student properly files the Form I-765.** The Form I-765 must be filed, with fee, on or before August 8, 2016. Applications with less than 150 days of validity remaining and/or applications filed after August 8, 2016 will be denied.

Until May 9, the USCIS will continue to adjudicate STEM OPT applications under the 2008 interim final rule. Any STEM OPT extension application filed and approved before May 10 will be granted a 17-month extension. If the F-1 student has an application for a 17-month STEM OPT extension that remains pending on May 10, the USCIS will send a Request for Evidence (RFE) to permit the student to demonstrate eligibility for the 24-month STEM OPT period.

This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of immigration. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered here.

DW Immigration: Global Mobility with a Personal Touch!

FOR MORE INFORMATION CONTACT:



Elise S. Levasseur is a Member in Dickinson Wright’s Troy office. She can be reached at 248.433.7520 or elevasseur@dickinsonwright.com.



Christian S. Allen is Of Counsel in Dickinson Wright’s Troy office. He can be reached at 248.433.7299 or callen@dickinsonwright.com.



Lisa D. Duran is a Member in Dickinson Wright’s Phoenix office. She can be reached at 602.285.503d2 or lduran@dickinsonwright.com.



Suzanne K. Sukkar is Of Counsel in Dickinson Wright’s Ann Arbor office. She can be reached at 734.623.1694 or ssukkar@dickinsonwright.com.



Kevin J. Weber is a Partner in Dickinson Wright’s Toronto office. He can be reached at 416.367.0899 or kweber@dickinsonwright.com.