

On March 11, 2016, the Department of Homeland Security (DHS) issued its final rule for international students with US degrees in science, technology, engineering and mathematics (STEM) seeking extension of Optional Practical Training (OPT) (the “Final Rule”) employment authorization. The Final Rule creates a new 24-month STEM OPT extension period along with additional government oversight and substantial new requirements for students, their universities and their potential STEM employers. It replaces a 2008 interim rule that provided a 17-month extension for STEM OPT graduates and was struck down by a federal court due to a procedural deficiency.

International students attending a US institution of higher education on an F-1 nonimmigrant visa may apply for 12 months of OPT work authorization to complement their field of study. OPT is available either during their degree study (pre-completion OPT), following graduation (post-completion OPT) or divided between the two periods. The Final Rule establishes an additional 24-month extension (permitting a total OPT period of 36 months) for qualifying graduates in STEM fields, provided the student seeks employment with an employer enrolled in and in good standing in the E-Verify electronic verification program (E-Verify).

The Final Rule’s most important provisions include:

- **Longer Term:** The central change to the program is increasing the STEM OPT extension from 17 to 24 months.
- **Multiple STEM OPT Extensions:** Up to two STEM OPT extensions may be applied for based on two qualifying STEM degrees from accredited US colleges or universities.
- **Defining STEM Degrees:** A clearer legal definition is established and the government will continue to maintain a definitive “STEM Designated Degree Program List” of all qualifying degrees at the Student and Exchange Visitor website: www.ice.gov/sevis.
- **Form I-983 Training Program:** STEM OPT extension applicants and their employers must now present a formal training program using the new DHS Form I-983. The plan must include specific learning objectives and proper evaluation and oversight and is submitted to the school for approval. Material changes to the program must be reported to the school, as well as termination or departure of the student.

- **Self-Evaluation Requirement:** The rule imposes an annual self-evaluation requirement, under which the student must report to their designated school official (DSO) on his or her progress with the practical training. The student’s employer must sign the self-evaluation prior to its submission to the DSO.
- **Prior STEM Degrees May Qualify:** Even if the foreign student’s most recent degree is not in a STEM field, a prior US STEM degree may qualify for a current extension in some instances. Plans based on previous degrees must be submitted to the institution that provided the student’s most recent degree.
- **E-Verify:** Employers must still participate in DHS’ E-Verify program to employ F-1 students during the 24-month extension. In addition, employers must report changes in the student’s STEM OPT employment (including termination or departure) to the DSO within five business days.
- **Site Visits:** DHS may conduct employer site visits to verify compliance. Forty-eight hours of notice will be provided unless the visit was triggered by a complaint or evidence of noncompliance.
- **Protections for US Workers:** The terms and conditions of the training program, including compensation, must be “commensurate” with similarly situated US workers at the employer and in the area of employment. Furthermore, the employer must attest on Form I-983 that: (1) It has sufficient resources and personnel available to conduct the training; (2) the student will not replace a US worker; and (3) the opportunity will help the student attain his/her training objectives.
- **Minimum Hours:** F-1 Students must work at least 20 hours per week, per employer.
- **Short Unemployment Break:** F-1 students may still be unemployed for a short period between their initial period of post-completion OPT and the STEM OPT extension. Periods of unemployment may not exceed 90 days during an initial 12-month OPT period, or 150 days during the 24-month OPT extension period.
- **Students on 17-month Extensions:** F-1 students wishing to transition from the traditional 17-month extension to the 24-month duration may file a new Form I-765 for an Employment Authorization Document (EAD) between May 10, 2016 and August 8, 2016. As of the filing date, the student must have at least 150 days of validity remaining on their current EAD.

The additional seven months of OPT validity will be particularly helpful for students seeking to apply for the limited number of H-1B visas available annually. Nearly two-thirds of all H-1B applications in 2015 were rejected due to quota limitations, with even more applications expected in 2016. The Final Rule's 24-month STEM OPT extension is welcomed by many students and their prospective employers since it will allow many F-1 students to re-apply for an H-1B during the following two years.

If you have any questions, or would like more information regarding STEM OPT participation or immigration developments, please contact your designated Squire Patton Boggs lawyer or office.

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