

NEW STEM OPT EXTENSION RULE TO BE EFFECTIVE MAY10th 2016: RULE DELIVERS MUCH AWAITED RELIEF TO H-1B LOTTERY HOPEFULS.

March 9th, 2016, the U.S. Department of Homeland Security (DHS) released an copy of the final rule pertaining to optional practical training (OPT) for certain students with degrees in science, technology, engineering, and mathematics (STEM). The official version of the final rule is slotted to be published in the *Federal Register* on March 11th, 2016. The new rule will permit employers to retain the talented international students who rely upon the F-1 nonimmigrant student visa for a longer period. USCIS will begin accepting applications under this provision on May 10th, 2016. Prior to that date, USCIS will continue to accept applications under the existing 17-month STEM OPT procedure.

What Employers and Extended STEM Student Hopefuls Need to Know About the New Rule . . .

This new and long-awaited STEM regulation includes the following major provisions:

- It increases the STEM OPT extension period from 17 months to 24 months (for a total STEM OPT period of 36 months);
- It automatically extends work authorization if students properly file a STEM OPT extension;
- It permits students currently approved for a 17-month extension of work authorization to apply for the balance of the new 24-month extension if they meet certain requirements pertaining to timing of their applications;
- It allows students enrolled in a subsequent STEM degree program at a higher level to become eligible for an additional 24-month STEM OPT extension upon completion of the subsequent, higher level program;
- It permits eligibility for the 24-month STEM OPT extension under the new rule to be based on a previously obtained STEM degree (with certain limitations);
- It provides new and clearer definitions of STEM fields of study within the Department of Education categories;
- It requires students and employers to submit a formal training plan (i.e., learning objectives for the student) and certain employer attestations to protect the U.S. workforce—both of which the student and employer must submit on Form I-983 Training Plan for STEM OPT Students (to be promulgated by USCIS);
- It adds new reporting requirements for students and their employers, including confirmation of the student's physical residence and employment status every six months, regular evaluations regarding the student's progress with the training plan, and immediate notification regarding termination of the student's employment; and
- It provides for DHS site visits to employer locations in which STEM OPT students are employed. The DHS will generally give advance notice of such visits but may also conduct an unannounced visit if triggered by a complaint or other evidence of violation of the regulations.

In addition, the updated rule retains other original provisions from the 2008 interim rule, such as:

- E-Verify and reporting requirements for STEM OPT employers; and
- a cap-gap extension for F-1 nonimmigrants with timely filed H-1B cap-subject petitions requesting change of status.

New Rule Requires Employers to be Vigilant and To Establish Mentoring and Training Programs for OPT Participants.

One of the most notable changes in the new rule is the requirement for employer implementation of formal mentoring and training programs for OPT participants. Employers will be required to create a mentoring and training plan, which is signed and certified by the employer (and the student) as a prerequisite to obtaining the STEM extension period; this plan is to be submitted on USCIS' new Form I-983 (the "Plan"). The Plan must describe the field in which the employee will receive training; list the name, title, and contact information of a designated supervisor within the company; and describe in detail the following:

- how the proposed work assignment is directly related to the student's degree;
- a list of the goals and objectives of the program, including a detailed explanation on how the goals will be achieved;
- a list of the supervisor's qualifications to provide training and how often the supervisor will interact with the student to further training;
- a list of other employees who will supervise or train the student and their respective qualifications; and
- the methodology for measuring the student's acquisition of the required skills and knowledge for the position.

Consideration Needs to be Given to Special Requirements for Current Holders of 17-Month STEM OPT Seeking 7-Month Extension.

As a transitional measure, starting on May 10th, 2016, certain students with the 17-month Employment Authorization Documents (EAD) will have a specific and limited window in which to apply for the additional seven (7) months of OPT to benefit from the full additional 24-month STEM OPT period. In order to qualify for the additional seven (7) months of OPT, STEM student hopefuls must satisfy the following requirements:

- The student must meet all requirements for the new 24-month STEM OPT extension, including but not limited to submission of the required training plan to the university on the new Form I-983. The student must also obtain the necessary recommendation for the additional 7-month STEM OPT extension from the university's Designated School Official (DSO).
- The student must file Form I-765 Application for Employment Authorization with USCIS *on or before August 8th, 2016 and within sixty (60) days* of the date that the DSO updated the SEVIS record.
- The student must have *at least one hundred and fifty (150) calendar days remaining* prior to the expiration of the 17-month STEM OPT EAD at the time Form I-765 is filed. The purpose of this 150-day period is to ensure that the student will have at least one year of

practical training under the enhancements introduced in this rule, including site visits, reporting requirements, and a statement and evaluation of goals and objectives.

Another important aspect of the new rule is that it expands the amount of time a foreign student may be unemployed while in OPT status. Students may not be unemployed for an aggregate of more than ninety (90) days during the initial OPT period. Under the new rule, students granted a 24-month OPT extension may not be unemployed for an aggregate of more than one hundred and fifty (150) days (which, prior to the new rule, was 120 days) during the total OPT period (i.e., students may not be unemployed for more than 150 days for the twelve (12) months of initial OPT plus the 24-month STEM extension period).

The new STEM OPT rule now paves the way for H-1B hopefuls to enter the H-1B April 1st Lottery for more years so that, as a Nation, we do not train talented STEM workers and send them back to their countries of origin. We continue to find that providing a pathway for STEM workers to continue to work in the U.S. leads to the additional development of STEM jobs and increased opportunities for U.S. workers in those STEM fields.

For more information about the new STEM OPT rule, please feel free to contact the U.S. immigration and Nationality Lawyers at the Nachman Phulwani Zimovcak (NPZ) Law Group, P.C. by e-mailing to us at info@visaserve.com or by calling our office at 201-670-0006 (x100). We are immigration lawyers who handle the full-spectrum of U.S. immigration and nationality law services for our business and individual clients and we would be pleased to assist you.