

# STEM Optional Practical Training Extension

By Erin Brown

Improving on what has already been a critical lifeline to many graduating students and employers alike, the U.S. Department of Homeland Security (DHS) published a final rule Mar. 11, 2016 allowing certain F-1 students who receive science, technology, engineering and mathematics (STEM) degrees and meet other specified requirements, to apply for a 24-month extension of their post-completion Optional Practical Training (OPT). The 24-month extension replaces the 17-month STEM OPT extension previously available to STEM students. Eligible students may begin to apply for a 24-month STEM OPT extension May 10, 2016.

STEM-based OPT has been critical to the development of American innovation with graduating students providing sorely needed brainpower to startups and Fortune companies alike. As a policy, when a foreign national graduates from a university or college in the United States, he/she may be granted employment authorization for full time practical training at each education level (i.e., undergraduate, graduate and post-graduate). The foreign national student is generally authorized up to a total of 12 months of OPT employment authorization, which is issued by DHS by way of a work authorization card. Students who graduate with a STEM degree and are currently in an approved post-completion OPT period may now apply for a 24-month STEM extension of their post completion OPT, granting the student a total of 36 months of employment authorization. This additional period of employment authorization has allowed students to meaningfully utilize their degrees in the marketplace, often leading to visa sponsorship, while simultaneously benefiting the U.S. economy through the availability of a highly-educated and talented workforce.

The increase to a 24-month STEM period is the result of DHS' original 2008 rule allowing the extension of F-1 OPT by 17 months for certain STEM students. This rule was challenged as having been incorrectly implemented, as the U.S. District Court for the District of Columbia determined that DHS improperly promulgated the regulation allowing the 17-month STEM extension for OPT without complying with the notice and public comment rulemaking requirements. Realizing the significant policy and practical problems

that would arise with eliminating employment authorization for thousands of workers, the presiding judge permitted the rule to keep the STEM OPT regulation in place through Feb. 12, 2016, during which time DHS was to submit the new regulation for notice and comment by the public and interested stakeholders. The regulation was temporarily kept in place so that foreign students relying on the STEM extension would not be required to depart the United States or left without employment authorization.

On Oct. 19, 2015 the Department of Homeland Security issued the overdue notice of proposed rulemaking to amend the F-1 OPT regulation from 17 months to an additional 24 months of optional practical training if the student has earned a degree in a STEM field. As a result of the notice of proposed rulemaking, DHS received over 50,500 comments from interested stakeholders. Under the new rule extension, employers must work in conjunction with each STEM OPT student to prepare and implement a formal training plan with identified learning objectives and a plan for achieving those objectives. To fulfill this requirement, the student and employer must complete and sign a training plan for STEM OPT students (Form I-983) and submit it to their respective designated school official (DSO). The new formal training plan requirement applies to all students applying for 24-month STEM OPT extension.

STEM remains an important part in attracting foreign students to the United States. While the program has been subject to scrutiny and criticized for permitting foreign students to occupy prized and well-compensated positions, the United States continues to lag behind the rest of the world in attracting its own citizens into the STEM fields, thus making employers in health care, manufacturing, telecommunications, information technology and other similarly situated fields reliant upon the ongoing availability of foreign graduates to fill their available positions. The STEM program also leads to clear and tangible benefits, as annual statistics from the U.S. Patent Office almost routinely provide evidence that nearly 50 percent of U.S. patents are filed by foreign nationals. While STEM-based employment is often described by practitioners as a "band-aid"

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type of approach to resolving the country's ongoing patchwork immigration system, the benefits of providing these highly-skilled individuals with more time to ply their trade in the United States, all while benefiting the country, is a benefit that no American should be eager to see go.

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