

MARCH 15, 2016 BULLETIN TO ALL IMMIGRATION CLIENTS

USCIS Announces New STEM OPT Regulations

The U.S. Citizenship & Immigration Services (USCIS) has issued new F-1 student visa regulations that increase the amount of Optional Practical Training (OPT) employment authorization available to foreign students with academic degrees in a STEM (Science, Technology, Engineering, Mathematics) field of study.

The regulations take effect on May 10, 2016, and primarily expand (from 17 months to 24 months) the STEM OPT period that begins after the foreign student's 12-month period of normal OPT. The STEM degree must have been awarded by an accredited U.S. college or university -- as is the case with H-1B visa petitions filed under the advanced degree exemption. The new regulations also allow STEM OPT eligibility based upon a previous U.S. STEM degree and not just the foreign student's most recent degree.

The foreign student and his/her STEM OPT employer must execute a formal training plan (Form I-983) that identifies learning objectives and how these learning objectives will be achieved. The employer must remain in good standing with the E-Verify program and make three attestations:

- 1) That it has sufficient resources and personnel to provide the training,
- 2) That the F-1 visa foreign student will not replace a full-time or part-time U.S. worker, and
- 3) The employment opportunity helps the foreign student attain his/her training objectives.

Employer reporting requirements have also been added.

In addition, the OPT STEM employer becomes subject to "Site Visits" from the Department of Homeland Security to confirm that the promised work-based learning experience is occurring.

USCIS must still create Form I-983 and issue additional guidance, but the new STEM OPT system should come into better focus between now and May 10, 2016.

STEM foreign students will now, therefore, be eligible for three (3) OPT years, i.e., the initial one (1) year grant followed by the two-year STEM extension. STEM OPT employment on an EAD is much less expensive than H-1B visa employment. STEM foreign students and their employers must now decide in what year(s) an H-1B visa petition will be filed. If there were adequate H-1B visa quota numbers such that there would not be a need for the mid-April "visa lottery" (which, unfortunately, is not currently the case), the best practice may be to file the H-1B visa petition towards the end of the third OPT year.

Also, STEM foreign students not born in India or China may be able to file Form I-485 or to acquire employment-based permanent residence before their OPT period expires. In that case, they would never need a period of employment in H-1B visa status.

Although these new rules certainly broaden employment opportunities for F-1 STEM students, they also impose significant new obligations on students, employers, and schools, each of which will require good coordination and planning to ensure timely and accurate filings.

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 by e-mail, please send an e-mail to bulletins@cohenlaw.com

Copyright © 2016 by Cohen & Grigsby, P.C. (No claim to original U.S. Governmental material.)

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of Cohen & Grigsby, P.C. and is intended to alert the recipients to new developments in the area of immigration law. The hiring of a lawyer is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about Cohen & Grigsby's qualifications and experience.