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New Requirements for Employers of STEM OPT Students — Seven Extra Months for Seven Extra Requirements

The new STEM Optional Practical Training (OPT) regulation extends the practical training for F-1 students with qualifying degrees from 17 months to 24 months. It also introduces an employer requirement to complete a training plan as part of the employment authorization application process, provides for employer site visits, and includes many new employer reporting requirements and attestations. The changes are meant to strengthen program oversight and require employers to be more active in maintaining the integrity of the program. Further, the regulation continues the requirement that employers must participate in e-Verify for the student to qualify for the STEM extension. A new list of qualifying STEM degrees, dated May 10, 2016, is also available.

At this time, many employers are being asked to complete a Form I-983 training plan for students applying for a STEM extension. Students are currently applying for initial 24-month STEM extensions as well as 7-month extensions past their existing 17 months (if they have at least 150 days of validity left on their current Employment Authorization Card). Those students seeking a 7-month extension of their already-granted 17-month extension must apply to the USCIS by August 8, 2016. If a student's 17-month OPT extension is already pending, then the USCIS will issue a request for evidence regarding the additional time. In all of these scenarios, the employer and student must meet the new regulation's requirements, including preparing a Form I-983 training plan.

The Designated School Official (DSO), who oversees F-1 nonimmigrant students, must ensure that the employer completes the Form I-983 with the student. The employer must answer four main questions on the Form I-983; have the form signed by an official of the employer with signatory authority who can attest that the student on the STEM OPT extension will not replace a full- or part-time, temporary, or permanent U.S. worker; and make certain attestations about the terms and conditions of the practical training opportunity being commensurate with those applicable to similarly situated U.S. workers.

The four questions that the employer must answer are as follows:

- How are the student's assignments with the employer related to the student's STEM degree?
- How will the assignments with the employer contribute to the student making progress toward professional goals and objectives?
- How will the employer evaluate the student?

- How will the employer supervise the student?

The new regulation also provides for Immigration Customers Enforcement (ICE) to conduct site visits, typically after providing 48 hours of notice. ICE will be limited to checking information related to the STEM employment and ensuring that the student's learning experience is consistent with the Form I-983. Following the site visit, the employer could receive a written request for additional information. ICE may also conduct some of these inspections by phone or e-mail.

The employer also has new reporting requirements: it must review and sign the student's annual self-evaluation form and notify the DSO if the student is terminated for any reason within five business days after the termination. In addition, if the student is not terminated but instead leaves the employment voluntarily, the employer must notify the DSO of the student's departure.

In sum, the employer is signing up to carry out the following new obligations:

- Prepare a training plan (Form I-983).
- Designate an official with signatory authority to sign the plan.
- Certify that the student is not replacing a U.S. worker.
- Certify that the student's terms and conditions of employment are commensurate with similarly situated U.S. workers.
- Review the student's self-evaluation form.
- Agree to ICE site visits.
- Notify the DSO if the student is terminated or leaves employment.

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