



**Roger Tsai**

Partner  
303.295.8171  
Denver  
[RYTsai@hollandhart.com](mailto:RYTsai@hollandhart.com)

## STEM OPT Extension Lengthened to 24 Months

**Publication — 3/18/2016**

The Department of Homeland Security's Final Rule governing STEM Optional Practical Training (OPT) places new obligations on employers of F-1 STEM OPT international students and increases the available STEM OPT extension period from 17 to 24 months. As of September 2015, more than 34,000 students were in the U.S. under STEM OPT. Here are the essential highlights of the final rule you'll need to know.

### STEM OPT Extensions

The initial OPT period is 12 months but the new rule allows qualifying F-1 STEM students to apply for a 24-month extension of the OPT period, replacing the 17-month extension period previously available. When combined with the initial 12-month standard OPT period, the new STEM extension will allow international students to work in the U.S. for up to 36 months after graduation.

### New Form I-983 and Formal Training Plans Required

Under the new rule, employers must work in conjunction with each STEM OPT student to prepare and implement a formal training plan that identifies learning objectives and a plan for achieving those objectives. To fulfill this requirement, the student and the employer must complete and sign a new Form I-983 and submit it to the Designated School Official (DSO). The new formal training plan requirement applies to all students applying for STEM OPT after May 11, 2016.

The Form I-983 requires that the student and employer identify the following:

- duties and assignments that the student will work on during the OPT training, and how such tasks relate to the student's STEM degree;
- the specific skills the student is expected to learn or apply during OPT, including goals and a timeline of the training curriculum;
- how the employer will offer oversight and supervision, which may include how an existing training program or policy achieves the required oversight and supervision; and
- mechanisms by which the employer assesses whether the person in the OPT position is actually obtaining new knowledge and skills.

### E-Verify, Reporting Requirements and Site Visits

The DHS's final rule places numerous obligations on employers who employ STEM OPT students. In light of the federal lawsuit filed by the Washington Alliance of Technology Workers challenging STEM OPT,

these changes are designed to improve the integrity of the STEM OPT program and ensure that U.S. workers are not displaced or adversely impacted. For instance, as part of the Training Plan, the employer must attest the student will not replace a full or part-time, temporary or permanent U.S. worker, and the F-1 employee will be paid a salary commensurate with similarly situated U.S. workers.

First, employers must be enrolled in and remain in good standing with E-Verify. Second, both the student and the employer have reporting requirements, primarily as follows:

1. validation of student's employment status six-months after the start of STEM OPT employment;
2. a self-evaluation requirement by which the student must report to the DSO on his or her progress with the practical training, which must be signed by the employer;
3. reports on any changes in employment status must be made by both the student and the employer within five days; and
4. reports to the DSO must be made by both the student and the employer on any material changes to, or deviations from, the student's formal training program.

Third, DHS has the discretion to conduct employer site visits with 48 hours of notice to verify whether the employer is meeting the STEM OPT program requirements, including that they have the ability and resources available to provide structure and guided work-based learning experiences.

### **What Happens To Pending I-765 Applications?**

The 17-month extension period under the current STEM OPT rules continue in effect through May 9, 2016. Consequently, I-765 Applications for Employment Authorization requesting a STEM OPT extension filed and approved prior to May 10, 2016 will result in a 17-month extension, not the longer 24-month extension available under the new rule.

Students with a 17-month STEM OPT wishing to request the additional seven-month extension will need to file a Form I-765 on or after May 10 but no later than August 8, 2016 with a new Form I-20 and a completed and signed Form I-983 attesting to the training and monitoring plan. Students must have at least 150 calendar days remaining on their 17-month extension prior to filing the Form I-765 requesting the additional seven month extension.

Students with an I-765 application still pending on May 10, 2016 will receive an RFE (request for evidence) from USCIS requesting documentation to establish that the student is eligible for the 24-month extension under the new rule. This will require filing a new Form I-20, endorsed on or after May 10th indicating that the DSO recommends the

student for a 24-month OPT extension, and a completed and signed Form I-983 attesting to the training and monitoring plan.

If you have questions about this new rule and its potential effect on your business, please contact me at [RYTsai@hollandhart.com](mailto:RYTsai@hollandhart.com) or 801-799-5976.