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New Rules for 17-Month STEM Extension (Ongoing Updates until completed)

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Submitted by Rajiv S. Khanna on Oct 19th 2015

24 December 2015

DHS has asked for an additional extension of stay to 10 May 2016 of the court order under which the STEM extension of OPT was invalidated by the DC federal court. DHS needs time to review appx. 50,500 comments they have received on the new proposed regulations. Historical discussion pertaining to the lawsuit is at this link: <http://www.immigration.com/blogs/17-month-stem-cap-gap-opt-extension-voided-court> ^[2]

19 October 2015

USCIS is proposing the following Rule (original attached to this blog entry in .PDF format). I will continually update, until no more updates are necessary.

Quick Review of the Key Changes Proposed in the STEM OPT Extension Rule

1. ***Lengthened STEM Extension Period for OPT. (17 months to 24 months)*** The proposal would increase the OPT extension period for STEM OPT students from 17 months to 24 months. The proposal would also make F-1 students who subsequently enroll in a new academic program and earn another qualifying STEM degree at a higher educational level eligible for one additional 24-month STEM OPT extension. **So if you took 24 months during Master's degree, you will get another 24 months after your PhD.**
2. ***Clarifying STEM Definition and CIP Categories for STEM OPT Extension.*** The

proposed rule would more clearly define which fields of study (more specifically, which Department of Education Classification of Instructional Program (CIP) categories) may serve as the basis for a STEM OPT extension. The proposal also sets forth a process for public notification in the **Federal Register** when DHS updates the list of eligible STEM fields on the Student and Exchange Visitor Program's (SEVP's) Web site.

3. ***Mentoring and Training Plan.*** The proposal would require employers to implement formal mentoring and training programs to augment students' academic learning through practical experience, intended to equip students with a more comprehensive understanding of their selected area of study and broader functionality within that field.

4. ***You Can Get Extension Based Upon Previously Obtained STEM Degrees.*** The proposal would permit an F-1 student participating in post-completion OPT to use a prior eligible STEM degree from a U.S. institution of higher education as a basis to apply for a STEM OPT extension, as long as the student's most recent degree was also received from an accredited educational institution. Additionally, in order for such a student to be eligible for the STEM OPT extension, the employment opportunity must be directly related to the previously obtained STEM degree.

5. ***Safeguards for U.S. Workers in Related Fields.*** To guard against adverse effects on U.S. workers, this proposal would require terms and conditions of a STEM practical training opportunity (including duties, hours, and compensation) to be commensurate with those applicable to similarly situated U.S. workers. In addition to requiring a related attestation in the Mentoring and Training Plan, an employer would also be required to attest that: (1) The employer has sufficient resources and trained personnel available to provide appropriate mentoring and training in connection with the specified opportunity; (2) the employer will not terminate, lay off, or furlough any full- or part-time, temporary or permanent U.S. workers as a result of providing the STEM OPT to the student; and (3) the student's opportunity assists the student in attaining his or her training objectives.

6. ***School Accreditation and Employer Site Visits.*** The proposal would enhance the academic benefit and oversight of STEM OPT extensions by (1) generally limiting eligibility to students with degrees from schools that are accredited by an accrediting agency recognized by the Department of Education; and (2) clarifying DHS discretion to conduct employer on-site reviews at worksites to verify whether employers are meeting program requirements, including that they possess and maintain the ability and resources to provide structured and guided work-based learning experiences.

7. ***Compliance Requirements.*** In addition to reinstating the 2008 IFR's reporting and compliance requirements, the proposal would revise the number of days that an F-1 student may remain unemployed during the practical training period. The current program allows a student to be unemployed up to 90 days during his or her initial period of post-completion OPT, and up to an additional 30 days (for an aggregate of 120 days) if the student receives a 17-month STEM OPT extension. The proposed rule would retain the 90-day maximum period of unemployment during the initial period of post-completion OPT, but allow an additional 60 days (for an aggregate of 150 days) for students who obtain a 24-month STEM OPT extension.

What Remains Unchanged from Prior Rules

In addition to these changes (as compared to the 2008 IFR), the proposal would retain other provisions of the 2008 IFR, as follows:

1. *E-Verify and Reporting Requirements for STEM OPT Employers.* The proposal would require STEM OPT employers to be enrolled in USCIS' E-Verify program and to report certain changes in the STEM OPT student's employment.
2. *Reporting Requirements for STEM OPT Students.* The proposal would require STEM OPT students to report to DHS any changes to their names or addresses, as well as any changes to their employers' names or addresses. Students would also be required to periodically verify the accuracy of this reporting information.
3. **Cap-Gap Extension for F-1 Nonimmigrants with Timely Filed H-1B Petitions and Requests for Change of Status.** The proposal would include the 2008 IFR's "Cap-Gap" provision, under which DHS would temporarily extend an F-1 student's duration of status and any current employment authorization if the student is the beneficiary of a timely filed H-1B petition and requests a change of status. The Cap-Gap extension would extend the OPT period until October 1 of the fiscal year for which the H-1B visa is being requested.

Nonimmigrant Visas:

F-1 Visa [3]

STEM [4]

Attachments:

https://www.immigration.com/sites/default/files/STEM_Regs_Proposed_Locked_0.pdf

Source URL (retrieved on 22 Jun 2018 - 02:19): <https://www.immigration.com/blogs/new-rules-17-month-stem-extension-ongoing-updates-until-completed>

Links:

[1] <https://www.immigration.com/blogs/new-rules-17-month-stem-extension-ongoing-updates-until-completed>

[2] <http://www.immigration.com/blogs/17-month-stem-cap-gap-opt-extension-voided-court>

[3] <https://www.immigration.com/visa/nonimmigrant-visas/f-visa/f-1-visa>

[4] <https://www.immigration.com/visa/nonimmigrant-visas/f-visa/stem>