



## A CLOSER LOOK AT THE FORM I-983 - TRAINING PLAN FOR STEM OPT STUDENTS

*Posted on April 27, 2016 by Cora-Ann Pestaina*

As we previously blogged about [here](#), on March 11, 2016 the Department of Homeland Security (DHS) published a final rule amending regulations to expand Optional Practical Training (OPT) for students with U.S. degrees in Science, Technology, Engineering, or Mathematics (STEM). This new rule will take effect on May 10, 2016 and will replace the 17-month STEM OPT extension previously available to STEM students most significantly expanding the extension period to 24 months. But the new rule sets forth various requirements that must be met by schools, students and employers. In addition, it raises questions regarding how OPT will be perceived going forward.

The standard 12-month OPT program will remain intact. Eligible students can still engage in a 12-month program of OPT during or after the completion of an academic program. They can work at a regular job for any US employer for the duration of the authorized OPT period provided the employment qualifies as related to their major area of study in the US. But one of the more confusing aspects of the STEM OPT program is that even after engaging in regular employment for 12 months, a student wishing to apply for a STEM OPT extension, will have to prove, through submission of an elaborate Training Plan, that he or she will, for the next 24 months, be no more than a mere trainee! When questioned about this, DHS rejected the notion that students who have completed the 12-month OPT period should be considered “seasoned trainees” who don’t need this new Training Plan. The new Training Plan also leaves us with questions as to what will now be considered “training” as far as OPT is concerned.

In order to obtain this new 24-month STEM OPT, the employer must have an Employer Identification Number (EIN) and be enrolled in the E-Verify program. .

The employment opportunity must be directly related to the student's qualifying STEM degree and there must be an employer-employee relationship between the employer and the student. Therefore, employment for staffing agencies where an employer-employee relationship is not maintained or other labor-for-hire arrangements will not qualify. . The student is also not permitted to engage in concurrent employment for multiple employers during the STEM OPT period but is permitted to change STEM OPT employers. Within 10 days of the employment start date, the student and the new employer must complete a Training Plan on [Form I-983](#) and submit it to the DSO.

Let's take a closer look at this elaborate Training Plan on [Form I-983](#).

### **SECTION 1: Student Information**

This section of the Form I-983 must be completed by the student and requires the student to provide information on the school recommending STEM OPT and the school where the STEM degree was earned if different from the recommending school. A student may be eligible for a STEM extension based on a previously earned STEM degree which is different from the school of most recent enrollment from which the DSO will be recommending STEM OPT. This section also requires information about the STEM degree; the student's SEVIS number; and the dates of the specific STEM OPT requested period.

A student previously granted a 17-month STEM OPT and now seeking a new 7-month extension must have at least 150 days remaining on the 17-month STEM OPT Employment Authorization Document (EAD) on the day that the USCIS receives the application for the 7-month extension. The student must file for a 7-month extension on Form I-765, Application for Employment Authorization, between May 10 and August 8, 2016. Applications will no longer be accepted after August 8, 2016.

### **SECTION 2: Student Certification**

By signing this section of the Form I-983, the student will certify, under penalty of perjury, that the training is related to the STEM degree and that he or she:

- Has reviewed, understands and will adhere to the Training Plan;
- Will notify the DSO if the employer is not providing the training as per the plan;
- Understands that DHS may deny, revoke or terminate the STEM OPT of students who it determines are not engaging in the training under the

- plan; and
- Will notify the DSO at the earliest opportunity of any material changes or deviations from the Training Plan.

If there are material modifications to or deviations from the Training Plan during the STEM OPT extension period, the student and employer must, within 10 days of the change, sign a modified Training Plan reflecting the material changes, and the student must file this modified Training Plan with the DSO at the earliest available opportunity. Material changes include any change of EIN resulting from a corporate restructuring; any reduction in compensation from the amount previously submitted on the Training Plan that is not the result of a reduction in hours worked; and any significant decrease in the hours per week that a student will engage in the STEM training opportunity. DHS has explained that, basically, a material change is any change from the existing Training Plan that would render an employer or student's attestation inaccurate, or render inaccurate the information in the Training Plan on the nature, purpose, oversight, or assessment of the student's practical training opportunity.

### **SECTION 3: Employer Information**

This section of the Form I-983 must be completed by the employer and requests basic information such as the employer's name, address and number of employees. The employer must indicate the number of hours of work per week, which must be at least 20 hours (except when the student is granted leave under the employer's standard leave policy, e.g. vacation or sick days) and the offered compensation.

An unpaid, volunteer position may not form the basis of a STEM OPT extension. However, DHS has interpreted "compensation" to include wages and other forms of remuneration, including housing, stipends, or other provisions typically provided to employees. The total compensation must be commensurate with that typically provided to US workers possessing similar skills and experience, and performing similar duties.

### **SECTION 4: Employer Certification**

By signing this section of the Form I-983, the employer will certify, under penalty of perjury, that:

- The Training Plan has been reviewed and understood and will be followed;

- The DSO will be notified of any material changes;
- The termination or departure of the student during the authorized OPT period will be reported to the DSO within 5 business days;

DHS has determined that an employer “knows” a student has left the OPT opportunity once that student has not reported for training for 5 consecutive business days without the employer’s consent. Business days do not include federal holidays or weekend days.

In this section of the Form I-983, the employer also certifies that it will adhere to all regulatory provisions that govern the Training Program. These include:

- The student’s practical training is directly related to the STEM degree that qualifies the student for the STEM OPT extension;
- The student will receive on-site supervision and training by experienced and knowledgeable staff;
- The employer has sufficient resources and personnel to provide the training and is prepared to implement the program;
- The student will not replace a full-time, temporary or permanent US worker and the terms of conditions of the students employment are commensurate with similarly situated workers; and
- The training complies with all applicable Federal and State employment requirements.

DHS has explained that the barred “replacement” of U.S. workers refers to the loss of existing or prior employment. The employer is not barred from discharging an underperforming employee simply because it also hired a STEM OPT student. DHS states that it will look at the totality of the circumstances to assess compliance with the non-replacement certification.

This section of the Form I-983 also sets forth that DHS may, at its discretion, conduct a site visit of the employer to ensure that the Training Program’s requirements are being met and that the employer possesses and maintains the ability and resources to provide structured and guided work-based learning experiences consistent with the Training Plan. DHS may contact the employer, the student or the DSO in person or via telephone or email to obtain information. Based on previous on-site-reviews of schools, DHS estimates that an employer site visit may include review of records and questions for the supervisor, and will take five hours per employer. DHS will provide notice to the

employer 48 hours in advance of any site visit, unless the visit is triggered by a complaint or other evidence of noncompliance with the STEM OPT extension regulations, in which case DHS may conduct an unannounced site visit. Immigration and Customs Enforcement (ICE) currently intends to use federal employees for the site visits. There may be times when contractors accompany federal employees, but ICE currently intends that federal employees will be in charge of such visits.

### **SECTION 5: Training Plan for STEM OPT Students**

In this section of the Form I-983, the student and the employer must enter the contact details of the individual who will be responsible for monitoring the student's goals and performance and must describe:

- What tasks and assignments the student will carry out during the training and how these relate to the STEM degree;
- The training curriculum and timeline including the specific goals and objectives of the program;
- The specific skills, knowledge and techniques the student will learn or apply;
- How the student will achieve the goals;
- How the employer will provide oversight and supervision; and
- How the employer will measure and confirm whether the student is acquiring new knowledge and skills.

### **SECTION 6: Employer Official Certification**

Here the employer must certify, under penalty of perjury that:

- It has reviewed, understands and will follow the Training Plan;
- It will conduct the required periodic evaluations of the student; and
- It will notify the DSO regarding material changes or deviations from the Training Plan.

The employer's official who signs this section of the form need not be the same person who signed on behalf of the employer in section 4.

Also on the Form I-983, the student must provide a self-evaluation which the employer must review for accuracy and sign. DHS states that the student evaluation is intended to confirm that the student is making progress toward his or her training objectives and it differs from typical employer evaluations

which focus more on how well an employee is performing his or her duties. Evaluations must be completed every 12 months (i.e. at the 1 year mark and at the end of the 24 month STEM OPT period) as DHS believes that this better reflects normal employer practices where annual reviews are standard. Any appropriate individual in the employer's organization with signing authority can sign the evaluations that the student will submit to the DSO.

USCIS will begin accepting applications for a 24-month extension on May 10, 2016. The student must submit the completed and executed Training Plan to the DSO and obtain a newly endorsed Form I-20 recommending the 24-month STEM extension. The student must file an application for employment authorization within 60 days of the DSO's endorsement and no more than 90 days before the 12-month EAD expires. Students will get an automatic 180-day extension of their work authorization if their initial 12-month OPT EAD expires while the STEM OPT EAD application is still pending.

There may be some hiccups ahead as students, employers and DSOs get used to the new rule. DHS has expressed its awareness of the fact that the new requirements will require training to ensure that all affected parties understand their role in the process. But DHS has also expressed its confidence in the abilities of DSOs to review Training Plans and has clarified that the DSO need not possess technical knowledge of STEM fields of study or conduct additional outside research into a particular employer but need only confirm that the Training Plan (1) explains how the training is directly related to the student's qualifying STEM degree; (2) identifies goals for the STEM practical training opportunity, including specific knowledge, skills, or techniques that will be imparted to the student, and explains how those goals will be achieved through the work-based learning opportunity with the employer; (3) describes a performance evaluation process to be utilized in evaluating the OPT STEM student; and (4) describes methods of oversight and supervision that generally apply to the OPT STEM student. The DSO should also ensure that all form fields are properly completed. DHS will find that the DSO has met his or her obligation under the rule if the Training Plan meets these requirements. DHS believes that its power to conduct site visits; request to review Training Plans; withdraw DSO certifications; and withdraw a school's participation in the F-1 program will provide the necessary checks to ensure the new program's success.

The new STEM OPT Training Plan effectively changes the way OPT has been

viewed previously and also could potentially create contradictions. As previously mentioned, a student under the 12-month OPT need not have submitted to such an elaborate Training Plan, but now during the STEM OPT extension phase, would have to revert to being a trainee rather than an employee. This Training Plan would also stymie students who have created their own startups. While students may be employed by start-up businesses on STEM OPT, students may not provide employer attestations on their own behalf. Therefore, a self-employed entrepreneur and sole founder of a business with no employer-employee structure would need to make modifications to the business model in order to meet the STEM OPT requirements. It also remains to be seen whether STEM OPT would have to imitate the standard under the J-1 and H-3 visa programs, where productive work has to be incidental to the training. It would be completely contradictory if a student during the 12-month OPT could engage in productive work, but to be granted a STEM OPT extension would have to forego productive work in favor of training, as imposed under the H-3 and J-1 programs. It is hoped that DHS does not emphasize too much on training, recognizing that foreign students who have graduated in STEM fields ought to be able to unleash their talents in creating innovative startups that will lead to economic growth, change business models and paradigms, resulting in new job opportunities for thousands if not millions of American workers.