

What F-1 Students Need to Know About the New STEM OPT Program

April 7, 2016

A substantially revised [STEM optional practical training \(OPT\) program](#) will take effect on May 10, 2016. The new program expands OPT to 36 months for F-1 students with a qualifying U.S. STEM degree – 12 months of initial OPT plus a 24-month extension of OPT – but imposes significant new obligations on students, employers and schools. The new requirements will apply only to those working in or seeking a grant of STEM OPT under the new regulations. The standard 12-month OPT program will remain unchanged. F-1 students granted a 17-month STEM OPT extension before May 10, 2016 will remain subject to the prior STEM rules unless they file for an additional seven months of OPT under the new rules.

The following are Fragomen's preliminary answers to F-1 students' frequently asked questions about the new STEM program and its transitional rules. In the weeks leading up to May 10, we expect the Department of Homeland Security to issue guidance on how the new program will be implemented. These FAQs will be updated as DHS provides further clarification about the new rule.

BASICS AND TRANSITIONAL RULES FOR CURRENT STEM OPT APPLICANTS AND GRANTEEES

1. How will the STEM OPT program change for F-1 students?

Under the new regulations, F-1 students with a qualifying STEM degree can hold OPT work authorization for up to 36 months – 12 months of initial OPT and 24 months of STEM OPT. Some F-1 students who already have a 17-month STEM OPT will be eligible to apply for an additional seven months.

F-1 students will be subject to increased obligations if they pursue a STEM extension of OPT under the new rules, including:

- Preparing a training plan with their employer, and updating the plan when changes to the STEM OPT employment occur (see Questions 11 – 13);
- Conducting regular self-evaluations of their progress toward the goals of the training plan, in collaboration with their employer (see Questions 14-16); and
- Making required reports to their designated school official (DSO) (see Question 21).

These obligations will apply only to F-1s working on a STEM OPT extension approved under the new regulations. They do not apply during the F-1's initial 12 months of regular OPT or during a 17-month STEM OPT that was approved before May 10, 2016 and will not be further extended under the new regulation.

2. I am an F-1 student on 12-month initial OPT. My application for a STEM OPT extension must be filed before May 10 (the effective date of the new rule). Will my employer and I be subject to the requirements of the new rule?

It depends. If your application for a STEM extension of OPT is approved on or before May 9, your employment authorization document (EAD) will be valid for 17 months. You and your employer will not

be subject to the requirements of the new rule; you will be required to comply with earlier program requirements, discussed in Question 4 below.

If, however, your application for STEM OPT is filed prior to and remains pending on May 10, you and your employer will become subject to the new requirements. USCIS will issue a request for evidence (RFE) asking you and your employer to prepare a training plan and submit it to your DSO so the DSO can issue a new I-20 form with a new STEM OPT endorsement. These requirements are discussed further below.

3. *I am an F-1 student already working on a 17-month grant of STEM OPT. May I request a 7-month extension so that I can take advantage of the 24-month OPT period allowed under the new rule?*

Yes, provided that you meet the requirements for a 7-month extension outlined in the new rule:

- Your qualifying degree must meet the new requirements of the regulation. See Question 6.
- You must have at least 150 days remaining on your 17-month STEM OPT EAD as of the day USCIS receives your application for a 7-month extension.
- You and your employer must comply with the new rules, including having an approved training plan (see Question 11) and a new I-20 endorsed for a STEM OPT extension by your DSO.
- You must file for a 7-month extension on Form I-765 between May 10, 2016 and August 8, 2016. Applications for a 7-month extension will not be accepted after August 8.

Because applications for 7-month extensions are especially time-sensitive, you and your OPT employer should contact your designated Fragomen professional as soon as possible to determine your eligibility and next steps.

4. *I am currently working on a valid 17-month STEM OPT extension, but I am not eligible for the additional 7 months of employment authorization. How will the new rule impact my current STEM OPT?*

If you hold a valid 17-month STEM OPT EAD issued before May 10, 2016, you can continue to work through the EAD expiration, unless the EAD is withdrawn or revoked. You and your STEM OPT employer will remain subject to the earlier STEM OPT program rules. No training plan or evaluations are required, but you must be sure to comply with reporting requirements and ensure that you do not exceed the limit on unemployment (see Questions 20 and 21).

5. *My non-STEM OPT will expire before May 10, 2016. Can I request a STEM extension while I am in the 60-day grace period?*

No, once you are in the 60-day grace period following completion of OPT, you become ineligible to apply for a STEM extension of OPT.

If you have completed your 17-month STEM OPT period and are in the 60-day grace period on May 10, you will not be eligible for an additional 7 months of STEM OPT. Similarly, if you have completed your

initial 12-month grant of OPT and are in your 60-day grace period, you may not apply for a 24-month STEM extension on or after May 10.

If you are a STEM graduate completing an initial 12-month OPT period before May 10, you are strongly encouraged to file for a 17-month extension before your 12-month EAD expires.

QUALIFYING STEM EDUCATION

6. How do I know if my degree qualifies for a STEM OPT extension?

In order to qualify for a STEM OPT extension, you must have earned a degree or completed all requirements towards a degree (other than a thesis or similar requirement) in a field that appears on Immigration and Customs Enforcement's (ICE's) STEM Designated Program List. Eligible degree fields are listed by their Classification of Instructional Programs (CIP) code. The current [list](#) will be in effect through May 9, 2016, after which [a revised list](#) will take effect. The qualifying degree must be from an accredited U.S. institution and must be directly related to the STEM OPT employment opportunity.

As has long been the case, not every STEM degree will qualify for an OPT extension. The revised STEM-designated degree list covers four broad degree classifications: Engineering (CIP code 14), Biological and Biomedical Sciences (CIP code 26), Mathematics and Statistics (CIP code 27), and Physical Sciences (CIP code 40). Degrees falling under these broad groups will automatically qualify for a STEM extension under the new rule.

A number of degree fields outside these four broad groups will also qualify for STEM OPT extensions. These are listed individually by their individual six-digit CIP code. Among these are degrees in computer and information science; intelligence, air and military sciences; management science; business statistics; actuarial science; econometrics; and quantitative economics.

If you are uncertain whether your degree qualifies, consult your DSO for the specific CIP code.

7. I have just completed a degree in a non-STEM field, but my prior U.S. degree was in a STEM field. Am I eligible for a STEM extension based on the earlier degree?

Under the new rule, you may be eligible for a STEM extension if you hold a prior U.S. degree in a qualifying STEM field, provided that:

- Your previously obtained STEM degree is directly related to the OPT opportunity;
- Your prior STEM degree was conferred within 10 years of the STEM extension application date; you cannot qualify merely on the basis of having met degree requirements;
- Your prior STEM degree was earned at a U.S. institution that was accredited and registered with the Student and Exchange Visitor Program (SEVP) at the time the DSO endorses your I-20 for the 24-month STEM extension;
- Your prior STEM degree is in a field listed on [the revised STEM designated program list](#) at the time the DSO endorses your I-20 for a 24-month STEM OPT extension; and
- You are currently in a period of 12-month OPT based on your most recent U.S. degree.

8. *Is there a limit on the number of STEM OPT extensions an F-1 can obtain? Will I be eligible for a second 24-month STEM OPT extension if I obtain a second STEM Degree?*

An additional 12 months of regular OPT plus a 24-month STEM extension will be available if you earn or complete all course requirements (excluding thesis or equivalent) towards another qualifying STEM degree, provided that the second degree is at a higher level than the first STEM degree.

Your second STEM extension may not immediately follow the first STEM extension. That is, a course of study and an initial 12 months of OPT must occur between the two STEM OPT periods.

You may not be authorized for more than two lifetime STEM OPT extensions, regardless of whether they were 17- or 24-month extensions.

QUALIFYING EMPLOYMENT

9. *Can I accept any job during the STEM OPT period?*

No, the 24-month STEM OPT period is limited to certain employers and employment opportunities, as follows:

- Your STEM OPT employer must have an Employment Identification Number (EIN).
- Your STEM OPT employer must be enrolled in and using the E-Verify program at your STEM OPT worksite.
- The employment opportunity must be directly related to your qualifying STEM degree.
- There must be an employer-employee relationship between you and your employer. During the STEM OPT period, self-employment or employment with a staffing agency will not qualify.
- Volunteer employment will not qualify.
- You may not work concurrently for multiple employers during the STEM OPT period.

10. *How many hours a week must I work during STEM OPT? Is part-time work acceptable?*

You may work less than full time, but you must work at least 20 hours per week during STEM OPT, except when you take leave under your employer's standard leave policy.

TRAINING PLAN AND EVALUATIONS

11. *What must be included in the STEM OPT training plan?*

The new rule requires you and your employer to jointly prepare a formal training plan on [Form I-983](#) and submit it to your DSO. Your DSO cannot recommend you for a STEM extension of OPT until he or she reviews and approves the plan.

The plan must explain how the STEM employment will provide a work-based learning opportunity and must also describe:

- The specific goals of the training opportunity, including the knowledge, skills or techniques that will be imparted to you;

- How your employer intends to meet these goals;
- How the training is directly related to your qualifying STEM degree;
- Your employer's methods for evaluating the success of the training opportunity;
- How your employer will oversee and supervise your employment-based training; and
- Your compensation, which must be commensurate with that paid to similarly situated U.S. employees.

In addition, you and your employer must attest that you will comply with STEM OPT program rules.

Your DSO must review the training plan to make sure that it contains all of the required elements and is signed by you and your employer before he or she can issue you a new I-20 with a STEM OPT endorsement.

12. What happens if there are changes to my STEM OPT training plan? Must my employer and I amend the plan?

Yes, if there are any material changes to or deviations from the training opportunity described on Form I-983, you and your employer must submit a modified plan to your DSO. Examples of material changes include, but are not limited to:

- A significant decrease in your work hours per week;
- Any decrease in your hours worked below 20 hours per week (other than due to time off pursuant to employer's leave policy);
- Any reduction in your compensation (other than due to a reduction in your work hours);
- A change in your employer's EIN number due to a corporate restructuring; and
- Any change or deviation from the existing plan that would render the training plan or your or the employer's attestations inaccurate.

You must submit the modified plan to your DSO as soon as possible after a material change.

13. Can I change employers during the STEM OPT period? Do I need to submit a new training plan if I change employers while working on a 24-month STEM OPT extension?

Yes, you may change employers provided the new job meets program requirements and the new employer is registered and participating in E-Verify.

If you change jobs while working on a 24-month STEM OPT extension, you and your new employer must prepare and submit a new training plan to the DSO within 10 days of starting the new opportunity. This obligation also applies to those working on a 17-month grant of STEM OPT who have filed for a 7-month extension and change employers after filing.

14. Is my employer required to evaluate my performance under the new training plan?

You must complete self-evaluations on Form I-983, and your employer must review them for accuracy and sign them. Evaluations must be completed within the first 12 months of your STEM OPT

employment and again at the conclusion of the STEM OPT. Evaluations are due to the DSO within 10 days after the close of the evaluation period.

15. If I have applied or been approved for a 7-month extension of my STEM OPT, are my employer and I subject to the new evaluation requirement?

Yes. You and your employer will become subject to the evaluation requirements upon the filing of your application for a 7-month extension. If you have more than one year remaining in OPT from the date of filing for the 7-month extension, two evaluations will be required. If, however, you have only 12 months remaining in STEM OPT as of the date of filing, only one evaluation will be required.

16. My employer already evaluates my performance. How is the STEM OPT evaluation process different from my employer's typical evaluation process?

While your employer can certainly draw from its already existing evaluation processes, the purpose of an internal performance evaluation is different from that of a STEM OPT evaluation. An internal performance evaluation focuses on how well you are performing the duties of your job and is often used to determine salary increases and promotions. A STEM OPT evaluation, on the other hand, focuses on your progress in meeting the goals outlined in the training plan. It is not intended to subjectively evaluate how well you perform your duties.

FILING PERIODS AND PROCEDURES

17. I need to request a 17-month STEM OPT extension before May 10, 2016 (the effective date of the new rule). What is the process for applying and can I continue working while my application is being adjudicated?

You must take the following steps if you will be applying for a 17-month STEM OPT extension before May 10:

- Request a STEM OPT extension from your DSO, who will confirm your eligibility for a 17-month STEM extension.
- Obtain a newly endorsed I-20 from your DSO, recommending a 17-month STEM extension.
- File your EAD application on Form I-765 before May 10, within 30 days of the DSO endorsement and no more than 120 day before your 12-month EAD expires.

If your EAD application remains pending after the new regulation takes effect on May 10, additional requirements will apply; see Question 18. If your initial 12-month EAD expires while your request for a 17-month extension is pending, you may continue working for an additional 180 days while the application is adjudicated.

18. I plan to file for a 24-month STEM OPT extension on or after May 10, 2016. What is the process for applying? Can I continue working while my application is being adjudicated?

You must take the following steps when applying for a 24-month STEM OPT extension on or after May 10:

- With your employer, prepare and execute a training plan on Form I-983.
- Submit the training plan to your DSO, who will confirm that your degree, employer and employment opportunity meet the program requirements per the I-983 training plan.
- Obtain a newly endorsed I-20 from your DSO on or after May 10, recommending a 24-month STEM extension.
- File your EAD application on Form I-765 on or after May 10, within 60 days of the DSO's endorsement and no more than 90 days before the 12-month EAD expires.

Should your initial 12-month EAD expire while your request for a 24-month extension is pending, you may continue working for an additional 180 days while the application is adjudicated.

19. I am on a 17-month STEM OPT extension and qualify for an additional 7 months. What is the process for applying and can I continue working while the application is being adjudicated?

You must take the following steps when applying for a 7-month STEM OPT extension of your 17-month STEM OPT:

- With your employer, prepare and execute a training plan on Form I-983.
- Submit the training plan to your DSO, who will confirm that your degree, employer and employment opportunity meet the program requirements per the I-983 training plan.
- On or after May 10, obtain a new endorsed I-20 from your DSO recommending a 7-month STEM extension. DSOs are not authorized to provide a STEM OPT endorsement under the new rule until May 10.
- File your EAD application on Form I-765 between May 10 and August 8, 2016. Your application must be submitted to USCIS within 60 days of your DSO's endorsement. As noted above, you must have at least 150 days remaining on your current EAD on the day your application is received by USCIS.

If you are already on a 17-month STEM extension and are seeking an additional 7 months of STEM OPT, you will not benefit from an automatic 180-day extension of work authorization following the expiration of your current EAD. The new EAD must arrive before your old one expires or you will have a gap in work authorization.

YOUR OBLIGATIONS AND REPORTING REQUIREMENTS

20. What happens if I lose or quit my job? Is there a limit to how long I can remain unemployed?

You are not required to remain continuously employed during your OPT period but there are limits to how long you may be unemployed. Your obligations will vary depending on whether you are in a 12-month initial grant of OPT or a 17- or 24-month STEM extension:

- 12-month initial period of OPT: You may be unemployed for no more than 90 days during your initial period of OPT. You must report to your DSO if you lose your initial OPT job or you leave your job before the OPT period ends.

- 17-month STEM OPT extension: You are permitted a maximum of 120 days of unemployment during your entire post-completion OPT period – 90 days during the initial 12-month period and an additional 30 days once granted the STEM extension. You must report to your DSO within 10 days if you lose your job or leave it before the STEM OPT period ends. See below if you will apply for a 7-month extension of your STEM OPT.
- 24-month STEM OPT extension: You are permitted a maximum of 150 days of unemployment during your post-completion OPT period – 90 days during the initial 12-month grant and an additional 60 days once you are approved for a 24-month STEM extension. If you are on a 17-month STEM extension and have applied for a 7-month extension, you will be limited to 120 days of total unemployment until the 7-month extension has been approved. You must report to your DSO within 10 days if you lose your job or leave it before the STEM OPT period ends.

SEVIS tracks unemployment dates closely. In addition to reporting employment terminations as required, you are encouraged to timely report to your DSO when you start your initial OPT employment and when you begin your STEM OPT employment. Reporting your start date can help ensure that your SEVIS record correctly reflects your dates of employment and that unemployment limits are not mistakenly triggered in the system.

21. How often do I need to report to my DSO during STEM OPT?

Every six months during your STEM OPT period, you will need to submit a report to your DSO to confirm the validity of the information in your SEVIS record. The report is due within 10 business days after each reporting period.

You must also report the following events to your DSO:

- Changes in personal and employment information: You must report changes in your legal name, residential or mailing address, or your employer's name and address within 10 days of the change.
- Material changes to your training plan: You must notify your DSO of any material changes to the training plan by filing an amended training plan on Form I-983 "at the earliest available opportunity." Your employer will have to help prepare and sign the new plan. (This is not required if you are on a 17-month OPT that will not be extended further.)
- Employment termination: When your employment is terminated – voluntarily or involuntarily – before the end of your STEM OPT period, you must report your employment termination within 10 days (though your employer must do so within 5 business days, or 48 hours if you are on a 17-month OPT that will not be extended further).
- A change of employer: As discussed above, you and your new employer must complete a new training plan and submit it to your DSO within 10 days of the start of your new employment. (If you are on a 17-month OPT that will not be extended, no training plan is required but you must report the change in employment to your DSO within 10 days.)

In addition, you are obligated to notify your DSO as soon as possible if you believe your employer is not meeting its obligations under the law and as outlined in the training plan.

Failure to comply with these requirements could jeopardize your F-1 status.

COMPLIANCE AND ENFORCEMENT

22. Should my employer and I expect periodic worksite visits from the Department of Homeland Security?

Yes. Under the new rule, the Department of Homeland Security has the authority to visit your STEM OPT worksite to make sure that you and your employer are meeting program requirements. Site visits may include interviews with you and your supervisor and a review of your training plan and other documentation.

In general, the government will give your STEM OPT employer 48 hours' notice in advance of a site visit, but could make an unannounced visit if there is a complaint or other evidence of noncompliance with program rules.