



May 2016

Big Changes for Employees on Student Visas – What Employers Need to Know

Foreign students in post-secondary programs are eligible for one year of work authorization after graduation. This work authorization is called Optional Practical Training (OPT). Since 2008, foreign students with certain science, technology, engineering, and math (STEM) degrees who receive offers of employment from companies enrolled in E-Verify, the internet-based employment eligibility program administered by the Department of Homeland Security (DHS), have been eligible for an additional 17 months of OPT, for a total of 29 months of work authorization.

On May 10, 2016, DHS issued new regulations that represent a complete overhaul of how the STEM OPT program has operated since 2008. This article addresses the good, bad, and ugly aspects of the new program.

Change for the Better?

The new program's most positive change is that it lengthens the STEM OPT extension from 17 months to 24 months. This means that a qualifying student can potentially work for an employer for three years post-graduation without having to obtain an H-1B or other work visa.

The new program is also broader in some ways. Assuming they meet certain additional filing requirements, under the new program students with 17-month extensions can apply for an additional seven month extension. Students with OPT can rely on a previous STEM degree to obtain the extension, as long as they can show that the duties they intend to perform during the OPT period directly relate to their STEM degree.

But these generous provisions are accompanied by several significant new requirements for participating students, employers and universities. This article provides some helpful hints on how employers can handle the "bad and ugly" aspects of this new program.

Dealing with the Bad

As with the previous STEM OPT regime, the participating employer must be enrolled in E-Verify, but that is nearly the only similarity between the two programs.

The biggest change with the new STEM OPT program is the new training plan, Form I-983, that must be completed by the student and the employer. The employer and student must show in this seven-page form how the duties the student will perform over the next two years relate to the student's STEM degree and how the employer can contribute to the student's progress towards professional goals and objectives.

Many employers may cringe at the thought of creating a two-year training plan for an employee. In completing the form employers should focus on clarifying how the position relates to the student's STEM degree, demonstrating how the work will factor into the student's professional development, and explaining how the student will be evaluated and supervised.

Under the new program, the student must complete a self-evaluation every 12 months. The evaluation should refer to the student's accomplishments in terms of the training plan. The employer must review and sign off on the student's self-evaluation. This process is similar to an annual performance review and evaluation.

The form also requires attestations from the employer and the student. The employer must certify that the STEM OPT student is not replacing a U.S. worker and that the STEM OPT student will be paid commensurate to similarly situated U.S. workers.

It is important for employers to document the basis for these attestations. Typically, with a STEM OPT extension, a student is continuing his or her employment with an employer and so the student is not replacing anyone. For the wage attestation, though, employers should consider writing a memo to the file explaining the basis for the student's offered wage and how it is appropriate and equal to workers with duties, qualifications, and level of supervision similar to the STEM OPT student.

Handling the Ugly

The I-983 form also includes reporting requirements for both the employer and the student.

In addition to checking in with the Designated School Official (DSO) every six months and completing the annual self-evaluations, the student must report any material change to the training plan, change in employer, termination, as well as employer noncompliance. Employers should take note that students are instructed to leave a training opportunity they consider noncompliant and are required to report noncompliance to Immigration and Customs Enforcement (ICE).

Employers should take care to timely comply with its STEM OPT reporting requirements as they are tied to the students' immigration status. Employers are required to sign off on the annual self-evaluations, work with the student to report any material change to the training plan, and report a student's termination or unauthorized departure to the DSO. A student's failure to complete an annual evaluation within 10 days of its due date will result in termination of that student's status. It is critical for employers to be aware of this and to take steps to remind their STEM OPT students to complete all requirements of this program.

The new STEM OPT program also includes site visits, which are carried out by Student Exchange Visitor Program (SEVP) officers. SEVP is a division of ICE, so the SEVP officers will likely be accompanied on site visits by ICE agents.

SEVP officers are required to give employers 48 hours' notice before visiting the STEM OPT student's worksite unless the site visit is triggered by evidence of noncompliance with the STEM OPT program.

The scope of these visits is limited to confirming information related to the STEM OPT employment and the contents of the I-983 training plan. SEVP adjudicators will want to see documentation of the employer's attestations regarding the student's employment and compliance with the terms of the training plan.

To prepare for these visits, employers may wish to notify all employees who may be contacted by and interact with ICE (receptionists, managers, student employees) – and prepare them for these visits.

Is the New STEM OPT Program Right for You?

By participating in the new STEM OPT program, employers are taking on significant new responsibilities. ICE is looking to employers to uphold the integrity of its program by reminding students to check in with their DSOs, complete their annual evaluations, and report any changes to the training program. Employers are also responsible for writing training plans, making attestations, taking on reporting requirements, and subjecting themselves to site visits. Employers should consult with counsel to ensure compliance with the new program and they should weigh these new administrative burdens against the benefit of a longer tenure with existing student employees to decide whether to participate in this new program.

For more information on the STEM OPT program or other Immigration matters, please visit Greenberg Traurig's [Inside Business Immigration Blog](#).

Business Immigration & Compliance Group

Greenberg Traurig's Business Immigration and Compliance Group is a multidisciplinary business immigration practice representing businesses, organizations, and individuals from around the world on a wide range of immigration-related matters. The group has achieved international recognition for legal advocacy, results-oriented service, and responsiveness to its clients. Greenberg Traurig's *Inside Business Immigration* blog addresses the latest developments affecting employers, including the E-Verify program, Form I-9 compliance, Department of Labor issues (H-1B, H-2B and LCA), identity fraud in the workplace, electronic Forms I-9s, EB-5 investor regional center compliance, and ICE worksite enforcement audits.

This *GT Alert* was prepared by **Rebecca B. Schechter** and **Kristen W. Ng**. Questions about this information can be directed to:

- > [Rebecca B. Schechter](#) | +1 703.903.7578 | schechterr@gtlaw.com
- > [Kristen W. Ng](#) | +1 703.749.1388 | ngk@gtlaw.com
- > Or your [Greenberg Traurig](#) Attorney

The Business Immigration & Compliance Team

- > Laura Foote Reiff | +1 703.749.1372 | reiff@gtlaw.com
- > Martha J. Schoonover | +1 703.749.1374 | schoonoverm@gtlaw.com
- > Kate Kalmykov | +1 973.443.3276 | kalmykovk@gtlaw.com
- > Ian R. Macdonald | +1 678.553.2467 | macdonaldi@gtlaw.com
- > Pamela Mak | +1 703.749.1363 | makp@gtlaw.com
- > Kristen T. Burke | +1 713.374.3615 | burkekt@gtlaw.com
- > Rosanna M. Fox | +1212.801.3197 | foxr@gtlaw.com
- > Nataliya Rymer | +1 215.988.7881 | rymern@gtlaw.com
- > Kristin Aquino-Pham | +1 678.553.4755 | aquinophamk@gtlaw.com
- > Shaoul Aslan * | +1 703.749.1330 | aslans@gtlaw.com
- > Jordi S. Bayer | +1 212.801.2178 | bayerj@gtlaw.com
- > Jennifer Blloshmi ~ | +1 310.586.6538 | blloshmij@gtlaw.com
- > Kristin Bolayir ~ | +1 703.749.1373 | bolayirk@gtlaw.com
- > Dillon R. Colucci | +1 949.732.6592 | coluccid@gtlaw.com
- > Scott T. Decker | +1 678.553.4753 | deckers@gtlaw.com
- > Nataliya Dominguez | +1 703.903.7583 | dominguezn@gtlaw.com
- > Patricia A. Elmas ~ | +1 703.749.1371 | elmasp@gtlaw.com
- > Matthew Galati | +1 215.988.7861 | galatim@gtlaw.com
- > Jennifer Hermansky | +1 215.988.7817 | hermanskyj@gtlaw.com
- > Cole F. Heyer | +1 678.553.2117 | heyerc@gtlaw.com
- > Kristen W. Ng ‡ | +1 703.749.1388 | ngk@gtlaw.com
- > Courtney B. Noce € | +1 678.553.2457 | nocec@gtlaw.com
- > Linnea Porter | +1 678 553 1121 | porter@gtlaw.com
- > Rebecca B. Schechter | +1 703.903.7578 | schechterr@gtlaw.com
- > Sylvia Sobczyk | +1 973.443.3239 | sobczyk@gtlaw.com
- > Shaun K. Staller | +1 215.988.7882 | stallers@gtlaw.com
- > Lauren A. Tetenbaum | +1 212.801.6894 | tetenbauml@gtlaw.com
- > Matthew Virkstis ¥ | +1 703.749.1300 | virkstism@gtlaw.com
- > Yeyun Yang | +86 (0) 21 6391 6633 | yangy@gtlaw.com

*Admitted in the District of Columbia and U.S. Court of Appeals for the D.C. Court, not admitted in Virginia, and is limited to federal immigration practice.

~ Not admitted to the practice of law.

‡ Admitted in New York, and not admitted in Virginia.

€ Admitted in New Jersey and New York, and not admitted in Georgia

¥ Admitted in Vermont, not admitted in Virginia, and is limited to federal immigration practice.

Albany +1 518.689.1400	Delaware +1 302.661.7000	New York +1 212.801.9200	Silicon Valley +1 650.328.8500
Amsterdam + 31 20 301 7300	Denver +1 303.572.6500	Northern Virginia +1 703.749.1300	Tallahassee +1 850.222.6891
Atlanta +1 678.553.2100	Fort Lauderdale +1 954.765.0500	Orange County +1 949.732.6500	Tampa +1 813.318.5700
Austin +1 512.320.7200	Houston +1 713.374.3500	Orlando +1 407.420.1000	Tel Aviv[^] +03.636.6000
Berlin⁻ +49 (0) 30 700 171 100	Las Vegas +1 702.792.3773	Philadelphia +1 215.988.7800	Tokyo[⌘] +81 (0)3 4510 2200
Berlin-GT Restructuring⁻ +49 (0) 30 700 171 100	London[*] +44 (0)203 349 8700	Phoenix +1 602.445.8000	Warsaw[~] +48 22 690 6100
Boca Raton +1 561.955.7600	Los Angeles +1 310.586.7700	Sacramento +1 916.442.1111	Washington, D.C. +1 202.331.3100
Boston +1 617.310.6000	Mexico City⁺ +52 55 5029.0000	San Francisco +1 415.655.1300	Westchester County +1 914.286.2900
Chicago +1 312.456.8400	Miami +1 305.579.0500	Seoul[∞] +82 (0) 2.369.1000	West Palm Beach +1 561.650.7900
Dallas +1 214.665.3600	New Jersey +1 973.360.7900	Shanghai +86 (0) 21.639. 6633	

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ⁻Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ⁻ Berlin - GT Restructuring is operated by Köhler-Ma Geiser Partnerschaft Rechtsanwälte, Insolvenzverwalter. ^{}Operates as Greenberg Traurig Maher LLP. ^{**}Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. ⁺Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [∞]Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. [⌘]Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [~]Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2016 Greenberg Traurig, LLP. All rights reserved.*