

One Minute Memo®



STEM OPT Update: Program Remains Valid Through May 10, 2016

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On January 23, 2016, the U.S. District Court for the District of Columbia granted a motion to extend the stay of vacatur of the current STEM Optional Practical Training (OPT) program until May 10, 2016, providing the Department of Homeland Security (DHS) with an additional 90 days to finalize a new STEM OPT rule. The ruling means that F-1 students with a valid Employment Authorization Document (EAD) based on a STEM OPT extension may continue to work beyond February 12, 2016. This ruling will also allow U.S. Citizenship and Immigration Services (USCIS) to continue to accept and adjudicate applications for STEM OPT extensions over the next several months.

Background

The STEM OPT program allows recent university graduates who majored in a STEM field (Science, Technology, Engineering, or Mathematics) to receive an additional 17 months of work authorization beyond the initial 12 months of OPT that they receive upon completion of their academic program. Due to the increased demand for H-1B visas the past few years, the STEM OPT program significantly benefits employers wishing to hire and retain talented foreign student graduates who do not secure an H-1B through the H-1B cap lottery, as it allows for a longer period of OPT employment and multiple chances at future H-1B lotteries.

In August 2015, the district court ruling in *Washington Alliance of Technology Workers v. the Department of Homeland Security* vacated the STEM OPT program due to procedural flaws regarding its creation. However, the Judge originally stayed her ruling keeping the STEM OPT program in place until February 12, 2016, allowing DHS six months to finalize a new STEM OPT Rule.

On October 19, 2015, DHS published its eagerly anticipated STEM OPT rule in the Federal Register for a 30-day comment period ending on November 18, 2015. DHS received an unprecedented 50,500 comments in response to the proposed rule. Based on the volume and content of these comments, DHS argued that additional time was needed to respond to the comments, formulate the final STEM OPT rule, train agency personnel, and conduct outreach to the regulated community in advance of the rule's final publication. Moreover, DHS argued that a potential regulatory gap would cause hardship to participating workers and employers.

CONCLUSION

As a result of the district court's ruling, DHS now has until May 10, 2016 to finalize the STEM OPT rule that was published on October 19, 2015. In granting the extended stay of vacatur, the court emphasized that "it will not consider any additional requests for relief."

The proposed rule offers potentially significant benefits to STEM OPT applicants, including in particular, a 24-month extension of work authorization. However, the rule as currently written imposes additional requirements on U.S. employers. For a thorough analysis of the proposed rule, please refer to our previous [client alert](#) on the subject.

Seyfarth Shaw LLP's Immigration Group is closely monitoring developments impacting the STEM OPT program and will provide updates as necessary.

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