

# Carnegie Mellon University

## Office of International Education

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### STEM OPT Final Regulation Summary

On 3/11/2016 Homeland Security published a final rule to extend the STEM OPT benefit and provide “Cap-Gap” OPT for people with 12-month OPT who have a pending or approved H-1B petition. **This rule became effective May 10, 2016** (<https://www.federalregister.gov/documents/2016/03/11/2016-04828/improving-and-expanding-training-opportunities-for-f-1-nonimmigrant-students-with-stem-degrees-and>). It is unclear whether or not this resolves the “Wash Tech” court case completely or if the Judge will need to make a final ruling. Below is an initial summary of the main provisions of the new rule. The Office of International Education (OIE) will be updating this document as we learn more about the government’s policies and plans for implementation of the rule. The rule is complex and adds new requirements for students, employers and schools. It raises a number of practical questions, some of which cannot yet be answered.

#### Cap Gap Coverage:

For all F-1s whose OPT ends between April 1 and Sept. 30, the rule extends their employment authorization if an employer has timely filed an H-1B petition with a change of status request on their behalf and the H petition is pending or approved. While receiving less attention than the STEM OPT issue, this is a key provision that benefits students in all academic disciplines.

#### **STEM OPT Benefits:**

1. The rule provides for 24-months of STEM OPT extension, beyond the initial 12-month period of OPT, for students who are in a designated STEM degree (per the list in effect at the time the student applies for the STEM OPT extension), as long as the employer is enrolled in the E-Verify program for all the employer’s new hires.
2. The 24-month STEM OPT extension may be granted **twice** in a student’s lifetime, as long as the 2nd period is after earning a higher degree. For example, a student may pursue a STEM bachelor’s degree and receive 12 + 24 months of OPT, return to school for a STEM master’s degree and receive an additional 12 + 24 months of OPT.
3. The rule expands eligibility for the STEM extension to students in non-STEM degrees if they previously earned a designated STEM degree from an accredited US school within the past 10 years. For example, a student who earns an MBA at Carnegie Mellon would be eligible for 12 months of OPT based on the MBA and could receive the 24-month STEM OPT extension based on a previous degree in Computer Science, etc.

#### **Compliance Requirements:**

1. Employers must inform schools of termination of employment or un-authorized absences from work of 5 consecutive days (or more) which schools must report in the SEVIS system.
2. Employers and students must complete and sign a multi-page “individualized training plan”, on form I-983, which includes employer attestations about duties, wages and compensation related to the STEM OPT employee in comparison to similarly situated US workers and that the STEM OPT student will not replace a US worker.
3. Students must report to OIE (within 10 days) when they start a job, if they change jobs, if they make changes to the training plan, if they move or change their address or if they lose their job.
4. Students must submit verification reports every 6 months to OIE. OIE must then submit a verification report to the SEVIS system. Students must also submit an evaluation at the mid-point of the STEM OPT extension (12 months) and at the end (24 months, or earlier if the position ends earlier). OIE must retain all documentation, including the individualized training plans and evaluations, and present them to Homeland Security upon request for three years beyond the end of the STEM OPT period (6 years post-graduation from Carnegie Mellon University).

#### **Other Key Changes to the New Regulation:**

1. Students granted a 24-month OPT extension may not accrue an aggregate of more than 150 days of unemployment dating back to the start of the initial 12-month OPT period.
2. A student meeting the edibility requirements for a 24-month STEM extension may request an extension of employment by filing Form I-765 up to 90 days prior to the expiration date of the student’s current OPT employment authorization.
3. The student seeking the 24-month extension must properly file the I-765 with USCIS within 60 days of the date the DSO recommends OPT in the SEVIS system.
4. Students may not be their own (sole) employer or provide employer attestations on their own behalf. Additionally, there must be an employer/employee relationship with the employer providing training on site, which means that people will typically need to be employed directly by the company, not employed by a third party or temp. employment agency. The government guidance is that the “employer that signs the Training Plan must be the same entity that employs the student and provides the practical training experience.”
5. To qualify for the STEM OPT extension, the position must be 20 hours per week or more. Employment with multiple employers is only possible if both positions will be more than 20 hours per week and if both employers comply with all of the STEM OPT regulations, including completing and signing the I-983 Training Plan.