STEM OPT Employer Criteria

It is very important that students working on the STEM OPT extension and their employers understand the USCIS criteria for establishing the employee/employer relationship. Ever since the 24-month STEM OPT rule was first published, DHS has consistently held the position that the STEM OPT employer and student must have a "bona fide employer-employee relationship." The employer that signs the Training Plan must be the same entity that employs the student and provides the practical training experience.

There are several aspects of the STEM OPT extension that do not make it apt for certain types of arrangements, including:

- multiple employer arrangements
- sole proprietorships
- employment through "temp agencies"
- employment through consulting firm arrangements that provide labor for hire, and
- other relationships that do not constitute a bona fide employer-employee relationship

Students and employers should keep the following in mind when applying for the STEM OPT extension and completing the I-983 STEM OPT Training Plan:

- In order to establish a bona fide relationship, the employer may not be the student's "employer" in name only, nor may the student work for the employer on a "volunteer" basis. Moreover, the employer that signs the Form I-983 must be the same entity that provides the practical training experience to the student.

- The "personnel" who may provide and supervise the training experience may be either employees of the employer, or contractors who the employer has retained to provide services to the employer; they may not, however, be employees or contractors of the employer's clients or customers.

- Under no circumstances would another F-1 student on OPT or a STEM OPT extension (who is undergoing training in their own right) be qualified to train another F-1 student on a STEM OPT extension.

- A STEM OPT employer may not assign, or otherwise delegate, its training responsibilities to a non-employer third party (e.g., a client/customer of the employer, employees of the client/customer, or contractors of the client/customer).

- Online or distance learning arrangements may not be used to fulfill the employer's training obligation to the student. For instance, the employer may not fulfill its training obligation to provide a structured and guided work-based learning experience by having the student make periodic visits to the employer's place of business to receive training, while the student is actually working at the place of business or worksite of a client or customer of the employer.

- The employer may not fulfill its training obligation by having the student make periodic telephone calls or send periodic email messages to the employer to describe and discuss their experiences at the place of business or worksite of a client or customer of the employer.
• The training experience must take place on-site at the employer's place of business or worksite(s) to which U.S. Immigration and Customs Enforcement (ICE) has authority to conduct employer site visits to ensure that the employer is meeting program requirements. This means that ICE must always have access to a student's worksite; if the student is sent to different worksite locations as part of the training opportunity, ICE must be able to access such worksite locations. For instance, the training experience may not take place at the place of business or worksite of the employer's clients or customers because ICE would lack authority to visit such sites.

• The student's practical training experience must be provided by the employer's own trained or supervisory personnel at the employer's own place of business or worksite(s), to which ICE has authority to conduct employer site visits to ensure that the employer is meeting program requirements.

• Staffing and temporary agencies may seek to employ students under the STEM OPT program, but only if they will be the entity that provides the practical training experience to the student at its own place of business and they have a bona fide employer-employee relationship with the student. For instance, a student might possibly receive STEM-related training while working in such an entity's information technology (IT) department.

• Such entities may not, however, assign or contract out students to work for one of their customers or clients, and assign, or otherwise delegate, their training responsibilities to the customer or client. As noted above, the employer that signs the Form I-983 must be the same entity that provides the practical training experience to the student.