

FORM I-983 OVERVIEW & COMPLIANCE



MELTZER HELLRUNG
IMMIGRATION SOLUTIONS

EMPLOYERS AND THE FORM I-983



Prospective employees who graduated from a degree program in Science, Technology, Engineering and Mathematics (STEM) fields may be eligible to apply for an additional 24 months of Occupational Practical Training (OPT) beyond the initial 12 months granted after graduation. Employers who wish to sponsor this additional period of work authorization must be E-Verify participants.

Each STEM OPT employee needs to prepare and execute, with the prospective employer, a formal training plan (Form I-983) that identifies learning objectives and a plan for achieving those objectives. Employers will **not** incur any fees or expense for employing a STEM OPT employee. The STEM OPT employee will obtain Form I-983 online and is responsible for returning the completed and signed form to their Designated School Official (DSO). DSOs are responsible for keeping the completed form in the employee's record.

TIPS ON COMPLETING FORM I-983



While not too complicated, here are some tips for consistency in completing Form I-983 and surviving an audit.

Section 3 of Form I-983: Employer Information

- ⇒ The employee's STEM OPT start date and the agreed-upon number of training hours per week.
 - Please note, in order to qualify for STEM OPT, the employee must work a minimum of 20 hours per week.

- ⇒ Information about compensation, including the dollar amount of salary, stipend and/or other compensation and the frequency of pay.
 - Other compensation may include housing, tuition waivers, transportation costs, etc. Remember, the compensation allocated to the STEM OPT employee must be commensurate with that applicable to a similarly situated U.S. worker.
 - The term "similarly situated U.S. workers" includes U.S. workers performing similar duties and with similar educational backgrounds, employment experience, levels of responsibility and skill sets as the STEM OPT employee.

Section 4 of Form I-983: Employer Certification

- ⇒ In this section, the employer must attest that the employee on the STEM OPT extension will not replace a full-time or part-time temporary or permanent U.S. worker. The employer must also certify that the terms and conditions of the STEM OPT opportunity are commensurate with similarly situated U.S. workers.
 - If the employer does not employ and has not recently employed more than two similarly situated U.S. workers, the employer must instead ensure that the terms and conditions of the STEM OPT opportunity they offer is commensurate with those similarly situated U.S. workers employed by other companies of analogous size and industry and in the same geographical area of employment.
- ⇒ The employer must designate an Official with Signatory Authority for this certification. The Official with Signatory Authority must be familiar with the STEM OPT employee's goals and performance, as well as have the authority to affirm that the statements provided on Form I-983 are true and correct.
- ⇒ The individual who signs this section's certification need not be, but can be, the same individual who signs the Employer Official Certification in Section 6.
 - Regardless of how the form is prepared, we recommend that employer's use a single point of contact's email address and telephone number on all Forms I-983 to ensure the company's designated point of contact receives all relevant communication (including notifying of an ICE inspection).

Section 5 of Form I-983: Training Plan for STEM OPT Employees

The STEM OPT employee and employer must work together to finalize Form I-983 training plan and document it in Section 5 of the form.

THE FOLLOWING INFORMATION MUST BE INCLUDED IN THE PLAN:

- ⇒ The specific STEM field of the training opportunity, which can be found on the employees I-20. Some common examples include:
 - Computer and Information Sciences, General 11.0101
 - Computer Programming/Programmer, General 11.0201
 - Computer Science 11.0701

- ⇒ Details about the tasks and assignments the employee will carry out during the training opportunity and how those tasks *relate* to the employee's STEM degree.
 - The plan must also describe the specific skills, knowledge and techniques the employee will learn or apply and an explanation as to how the employee will achieve the goals set out for the training opportunity. This description should include the training curriculum and timeline.

- ⇒ Explanation about how the employer will provide oversight and supervision of the STEM OPT employee.
 - If the employer has a training program or related policy in place that controls such oversight and supervision, a description of this program or policy may suffice to fulfill this requirement.

- ⇒ Information about the measures and assessments the employer will use to confirm that the STEM OPT employee is acquiring new knowledge and skills.
 - If the employer has a training program or related policy in place that controls such measures and assessments, a description of this program or policy may suffice to fulfill this requirement.

EMPLOYER COMPLIANCE



Evaluation of Employee Progress

The evaluation of a STEM OPT employee's training progress is a shared responsibility of both the employee and the employer.

- ⇒ The employer must review and sign the self-evaluation to verify its accuracy. Although not required, employers may elect to attach and submit their own evaluation of an employee's progress.
- ⇒ Once completed and signed by the appropriate individual in the employer's organization, the STEM OPT employee must return the "Evaluation of Employee Progress" to their DSO, who will keep it in the employee's record.

Failure of either the employee or employer to timely and accurately complete the employee evaluation could result in termination of the employee's status.

- ⇒ To ensure evaluations are completed timely, the employer should calendar two important dates (12 and 24 months after start date) and proactively initiate the self-evaluation process with the employee prior to those dates. If an opportunity ends early the employee must submit the final evaluation within 10 days following the conclusion of the opportunity.
- ⇒ The employer should also verify the accuracy of the self-evaluation against the I-983 training plan previously submitted to ensure its accuracy. If a material change has occurred, the I-983 training plan should be modified and resubmitted to reflect the change.

Material Changes to Form I-983

Both STEM OPT employees and employers are obligated to report to the DSO material changes to, or material deviations from, the employee's formal training plan.

MATERIAL CHANGES OR DEVIATIONS MAY INCLUDE, BUT ARE NOT LIMITED TO:

- ⇒ Any change of the employer's Employer Identification Number, (i.e., the company's Federal Tax ID number) resulting from a change in the employer's ownership or structure.
- ⇒ Any reduction in employee compensation that is not tied to a reduction in hours worked.
- ⇒ Any significant decrease in hours per week that an employee engages in a STEM training opportunity.
- ⇒ Changes to the employer's commitments or employee's learning objectives as documented on the Form I-983.
 - If changing job title or job description reach out to counsel to determine if it constitutes a material change.

So long as the STEM OPT employee and employer meet the regulatory requirements and the modified Form I-983 meets the specified requirements, the employee's employment authorization will not cease based on a change to the plan.

Wage Assessment

The compensation allocated to the STEM OPT employee **must** be commensurate with that applicable to a similarly situated U.S. worker. Additionally (and unlike H1B), compensation can include housing, tuition waivers, and transportation costs, etc.

- ⇒ The term “similarly situated U.S. workers” includes U.S. workers performing similar duties and with similar educational backgrounds, employment experience, levels of responsibility and skill sets as the STEM OPT employee.

PREPARING FOR SITE VISITS BY ICE



U.S. Immigration and Customs Enforcement (ICE) conducts site visits at worksite locations where employees are employed pursuant to STEM Optional Practical Training (OPT). The purpose of site visits is to verify that employers are complying with STEM OPT requirements and meeting the obligations of Form I-983 training plans.

Advance Notice

ICE provides 48 hours' advance notice of a site investigation unless site visit is triggered by evidence of noncompliance with STEM OPT program rules.

Conducting Site Visits

Site visits will be limited to checking information related to the STEM OPT employment and ensuring that employees and employers are engaged in work-based learning experiences that are consistent with the information supplied on the employee's Form I-983.

AS PART OF A SITE VISIT, ICE MAY:

- ⇒ Confirm that the employer has sufficient resources and supervisory personnel to effectively maintain the program.
- ⇒ Ask employers to provide the evidence they used to assess wages of similarly situated U.S. workers (as discussed above).

While ICE may physically inspect some sites, it may first or instead request information concerning compliance through email or by phone.

PREPARING FOR A SITE VISIT

Site visits can be announced or unannounced (if triggered by evidence of noncompliance). In either instance, front desk personnel should be trained on how to respond should an ICE officer appear and request access to people or information.



WE RECOMMEND THE FOLLOWING:

- ⇒ Have front desk personnel / security request to see the officer's badge and record the officer's name.
- ⇒ Give front desk personnel / security a list of people within the company to contact should an ICE officer appear and instruct them to contact the person(s) immediately to meet the ICE officer and answer any questions (even if the ICE officer has requested to speak to a specific, different person).
- ⇒ The designated representative(s) may also request, and it is highly recommended to have, counsel present either in-person (if local) or by phone.

If a STEM OPT employee works offsite (e.g. third party vendor) it is important to ensure that front desk personnel / security at the offsite location follow the same procedures and is provided a list of contacts within your company (as well as theirs) to notify you of the inspection so you can make arrangements to attend in-person or by phone.

ADDITIONALLY, WE RECOMMEND:

- ⇒ Maintaining a process for reviewing and **saving copies of** all Forms I-983 to ensure compliance and appropriate updating (such as a single point of contact within the company or a managed program through your immigration counsel);
 - We also recommend using your single point of contact's email address and telephone number on all Forms I-983 to ensure communication of an ICE inspection is received by the company's designated point of contact event of an announced visit.
- ⇒ Ensuring the relevant employees and their managers are aware of everything in the Form I-983 (e.g. through a targeted annual training); and
- ⇒ Maintaining a list of all STEM OPT employees and updating the list as changes in status occur (e.g. a change to H1B status or termination).
 - Meltzer Hellrung can help with tracking STEM OPT employees by providing expiration reports to ensure continued work authorization and/or purging from the document pool those individuals that have left the company or changed to another status (e.g., H1B).