



## ALERTS

### DHS Announces New Initiatives To Attract, Retain Foreign STEM Talent In The U.S.

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#### Highlights

In a move seen as helping the U.S. economy, several immigration initiatives are underway to attract and retain foreign STEM scholars, students, researchers, and experts

DHS has added 22 new degree fields that are eligible for the STEM OPT extension

DHS has spelled out how entrepreneurs and STEM graduates can demonstrate their eligibility for an O-1 temporary visa or permanent residency in the National Interest Waiver category

On Jan. 21, 2022, the Department of Homeland Security (DHS) and the Department of State announced a series of significant steps designed to attract and retain STEM (science, technology, engineering, or mathematics) talent in the United States. Indicating their importance to the administration, the White House [released a fact sheet](#) in tandem.

These significant changes now provide employers and talented foreign nationals, whether employees or entrepreneurs, with more clarity about visa options for immigrating to the United States – both temporarily or permanently as legal residents.

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In a move viewed as a way to boost the U.S. economy, the agencies added new qualifying degrees for the STEM Optional Practical Training (OPT) program and to the O-1 Extraordinary Ability and National Interest Waiver (NIW) programs.

The changes include:

1. The addition of 22 qualifying degrees to the designed program list for the STEM OPT extension
2. The creation of a process for the public to request a degree be added or removed from the designated degree list
3. Updates to the policy manual for the O-1 temporary visa category to include examples of persuasive evidence that STEM graduates and entrepreneurs can provide
4. Updates to the policy manual for the NIW permanent residency category to include the types of persuasive evidence that STEM graduates and entrepreneurs can provide, clarifying the limited value of labor certification with regard to entrepreneurs, and clarifying the inherent value of retaining graduates in certain STEM fields
5. The Department of State has established the Early Career STEM Research initiative
6. The Department of State will allow J-1 Exchange Visitors enrolled in a pre-doctoral STEM program to qualify for an extension of up to 36 months for the purpose of practical training in 2022 and 2023

## STEM OPT Degree Additions

DHS made several new degree programs eligible for the STEM OPT extension, with immediate effect. These degree programs cover several fields of study, including forestry, climate studies, and interdisciplinary degrees involving economics, mathematics, computer science, data science, analytics, and industrial and organizational psychology. A [complete list](#) of these updates and DHS's justification is available in the Federal Register.

As background, individuals who graduate from U.S. degree programs with a minimum of a bachelor's degree are eligible to apply for a 12-month period of practical training, also known as OPT. Individuals who graduate with a degree in a designated STEM field can qualify for an additional 24-month extension to this OPT period if their employment meets certain requirements. This extension has become particularly critical, as demand for visas such as the H-1B has increased considerably, while the available number of visas has remained static for a decade.

Individuals eligible for the STEM OPT extension can maintain their U.S. employment for three years while awaiting selection in the annual "H-1B lottery." The addition of fields such as data science and data analytics is particularly important to foreign students and their employers, as the analysis of big data becomes a more valuable skill.

## Changes to the O-1 and NIW Policy Manual



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With these new guidelines, DHS has responded to long-standing requests for guidance on the eligibility of STEM graduates and entrepreneurs for the temporary O-1 visa and the NIW permanent residency category by identifying specific examples of evidence such applicants can present to meet these eligibility requirements.

Describing how entrepreneurs can meet the requirements for O-1 classification, DHS provides several examples, including utilizing a founder's equity as proof of compensation, even if a startup founder's cash compensation is low; funding from traditional sources of capital for startups, such as venture capital, angel investors, and government agencies; and proof of contribution of intellectual property to a startup, particularly where such IP has been commercialized or has significant potential for commercialization.

The NIW is a category permanent residency that does not require labor certification, or a traditional labor market test. In addition to emphasizing the importance of such evidence to eligibility for a NIW, DHS notes that there may be "little benefit from labor certification" in the case of an entrepreneur. DHS also explicitly states that U.S. competitiveness in certain STEM fields is a particularly relevant and urgent consideration when evaluating eligibility for a NIW.

## Conclusion

While these changes fall short of those needed to address many bottlenecks in the U.S.'s ability to attract and retain STEM talent, such as addressing lengthy green card backlogs, they are nevertheless significant. DHS's clear endorsement of the eligibility of STEM graduates and entrepreneurs for O-1 visas makes clear that the O-1 visa is a valuable alternative to the quota-limited H-1B visa category.

These new initiatives acknowledge that job creation in of itself is of national interest, and that conducting labor market tests for traditional entrepreneurial roles does not promote Congress's intent in requiring labor certifications. The agency's acknowledgement of various forms of evidence that entrepreneurs and STEM graduates can present to establish eligibility for such visas provides valuable clarity to such applicants and to the U.S. Citizenship and Immigration Services (USCIS), which is charged with adjudicating such applications.

These changes advance the policy goal to attract and retain valuable STEM and entrepreneurial talent in the U.S. by providing clarity for evaluating risk and planning. Both employers and foreign nationals should consider reevaluating their options, given these regulatory and policy revisions.

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