



STEM OPT, waiting  
and waiting and  
waiting some more...

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# Presenters

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# Background

- ▶ Presidential immigration executive action initiatives – directives to ICE and USCIS starting in 2014 including goals to “Strengthen” and “Expand” STEM OPT
- ▶ Senator Grassley letter to DHS in June 2015 addressing concern over management of OPT use and data tracking and reporting relating to students on OPT and STEM OPT
- ▶ August 12, 2015 District Court in DC vacates (annuls) the 2008 OPT STEM Extension provision based on a WashTech lawsuit (Washington Alliance of Technology Workers)
- ▶ Vacatur of STEM regulation effective February 13th, 2016
- ▶ DHS published proposed regulation on 10/19/2015; 30 day comment period; over 50,000 comments received which must be read

# ...and the saga continues...

- ▶ DHS filed a motion on December 22, 2015 to the District Court to request to extend the vacatur until May 10<sup>th</sup>, 2016
  - ▶ Providing apx. 30 days to complete rulemaking and 60 days for a delayed effective time period for training personnel & the community
- ▶ On Jan. 11<sup>th</sup> WashTech filed their response to the DHS request
- ▶ In sum, WashTech is arguing that
  - ▶ The District court does not have the authority to grant this relief without the consent of the court of appeals
  - ▶ there are no extraordinary circumstances to justify the extension.
  - ▶ There is no guarantee the extension would ensure timely publication of the new rule
  - ▶ The issues faced by Stem OPT students are a direct result of poor decisions and strategies taken by DHS.

# Good news?

- ▶ DC District court ruled on January 23<sup>rd</sup> that the DHS stay was warranted and has allowed an extension of the vacatur through May 10, 2016.
- ▶ DHS has communicated they plan to publish final regulations by March 11, 2016
- ▶ With a 30 day period to go into effect
- ▶ Important to consider possible implications of STEM OPT changes for your campus
- ▶ USCIS is continuing to process EAD work permits based on the 17<sup>th</sup> month extension

# Proposed regulations MAY include:

- ▶ changes from a 17 month extension to a 24 month extension
- ▶ Employment required to be related to the degree field
- ▶ 90 days of unemployment in the first 12 months of OPT, but changes the maximum days of unemployment in the STEM OPT extension period to 60 days, adding an additional 30 days
- ▶ Requirement that the OPT application be filed within 30 days of the date the DSO enters the recommendation in SEVIS to within 60 days (STEM OPT ONLY).

# Possible components - continued

- ▶ STEM extension may be possible based on a previous STEM degree, as long as the current degree is from an accredited institution, and the previous degree was earned within 10 years preceding the application date.
- ▶ Second STEM extension period if a second, higher degree is completed. No more than two STEM extensions are possible.
- ▶ When a STEM extension application, employment may continue after the current work card expires (180 days with a receipt).
- ▶ Students currently approved for a 17 month STEM extension may apply for the balance of the modified extension period (proposed for 24 months).



# Proposed Components - continued

- ▶ Automatic “Cap-Gap” relief will likely be included in the final rule, allowing students whose employers file an H-1B petition to remain in the U.S., in some cases with work authorization, until the H visa is available on October 1st.
- ▶ Students will continue to be allowed to apply for OPT beginning 90 days prior to program end date, and ending 60 days after the program end date.



# Proposed Components - continued

- ▶ Expectations for student reporting to the school will likely be increased
  - ▶ Any change of name, residential address, changes in employment, and the address of their employers to their schools, and requires them to report in to the school within 10 days
  - ▶ Confirmation of information, at least every 6 months (also within 10 days of the 6 month required reporting dates)
  - ▶ The rule indicates that SEVP is working towards a system where students would be required to report this directly to SEVIS themselves, without having to go through the DSO at the sponsoring school.
- ▶ Proposed regulation included expectation that students must provide to the DSO's, at six month intervals, an evaluation of the progress of their training, and whether the goals are being met.

# Proposed Components - continued

- ▶ Still requires employers to be enrolled in the E-Verify program
- ▶ Still requires employers to notify the school of a termination of employment within two days
- ▶ Employers must have an employer identification number (EIN)
- ▶ Work must be a minimum of 20 hours per week
- ▶ The student must complete an “individualized” “Mentoring and Training Plan” (MTP), and have the employer sign it. The employer must sign this, and the student must present it to the DSO, prior to the DSO recommending a STEM OPT extension.

# Proposed– MTP

- ▶ SEVP form I-910 (draft)
- ▶ The plan must explain how the employment will provide a work-based learning opportunity; state specific goals; detail knowledge/skills/techniques to be taught to the student; indicate how the mentorship and training is related to the STEM degree field; describe methods of evaluation as well as frequency of supervision.
- ▶ If a student changes employment, the student must submit a new training plan within 10 days to the DSO, and obtain a new DSO recommendation.
- ▶ This plan must also include the compensation offered, and the student must report any change in compensation.
- ▶ Employers would be required to provide DHS with student compensation information on the MTP
- ▶ Employers must agree on the MTP that they will notify the school within two days if the employment terminates
- ▶ The plan must include re-current evaluations every 6 months.
- ▶ The evaluations must document the student's progress toward the goals as outlined on the MTP
- ▶ The evaluations must be provided to the DSO, and the DSO must make a copy (digital copy ok) available to DHS for three years following completion of the STEM program.

# I-910 – information from the student

- ▶ School Code
- ▶ Qualifying Major and CIP code
- ▶ Type of degree – is it most recent
- ▶ Employment authorization number
- ▶ Student, Supervisor, and Employer attestations

# I-910 –information from the employer

- ▶ Employer website (url)
- ▶ EIN
- ▶ E-Verify #
- ▶ # full-time employees
- ▶ NAICS code
- ▶ Is the employer classified as a Small Entity
- ▶ Work hours per week
- ▶ Compensation amount
- ▶ Extensive attestations
- ▶ Agreement to subjectivity to site visits from DHS

# MTP Information

- ▶ Training field
- ▶ Supervisor name, title and contact info
- ▶ Describe student's role, and the program's direct relation to the student's STEM degree
- ▶ Describe specific goals and objectives, as well as a detailed explanation as to the means by which the goals will be achieved
- ▶ Supervisor's qualifications to provide training. How often will he or she supervise or train the student? List names of all employees who will provide supervision or training, and describe each of their qualifications.
- ▶ How will student's knowledge, skills and technique acquisition be measured?

# Periodic evaluations

- ▶ Every six months
- ▶ Self-assessment
- ▶ Must include discussion of accomplishments, successful projects, contributions...
- ▶ Must include any changes to goals or objectives
- ▶ Signed by student and supervisor



# I-910 (DHS) estimate of expenses / costs

- ▶ This impacts 43,970 STEM students annually, 1,109 DSO's, 16,891 employers of
- ▶ STEM Students: 1.57 (\$54.57) hours initially, and 1.17 (\$162.68 total) hours per evaluation
- ▶ DSO's: .25 (\$9.83) hours for initial review of I-910 form, and .083 (\$13.05 total) hours per evaluation submission
- ▶ Employers' 2 hours (\$160.24) for initial submission and review of form (by supervisor and HR specialist), and .25 hours (\$80.12 total) per evaluation
- ▶ Total annual costs estimated at \$15,021,474

# Resources

- ▶ NAFSA's information page on STEM OPT:
  - ▶ [http://www.nafsa.org/Find\\_Resources/Supporting\\_International\\_Students\\_And\\_Scholars/ISS\\_Issues/Issues/Focus\\_On\\_STEM\\_OPT/](http://www.nafsa.org/Find_Resources/Supporting_International_Students_And_Scholars/ISS_Issues/Issues/Focus_On_STEM_OPT/)
- ▶ Link to Supporting & Related Material document issued by the Immigration and Customs Enforcement Bureau (ICEB)
  - ▶ <http://www.regulations.gov/#!documentDetail;D=ICEB-2015-0002-0009>
- ▶ This comment letter writing resource provides the ISSS advising community with guidelines for responding to draft guidance and addresses some commonly asked questions about the process.
  - ▶ [http://www.nafsa.org/Find\\_Resources/Supporting\\_International\\_Students\\_And\\_Scholars/Network\\_Resources/International\\_Student\\_and\\_Scholar\\_Services/Tips\\_f\\_or\\_Writing\\_a\\_Useful\\_Government\\_Comment\\_Letter/](http://www.nafsa.org/Find_Resources/Supporting_International_Students_And_Scholars/Network_Resources/International_Student_and_Scholar_Services/Tips_f_or_Writing_a_Useful_Government_Comment_Letter/)

# Discussion & Advising

