IMPLEMENTING THE NEW STEM RULE

TUESDAY, JULY 12, 2016

WORCESTER POLYTECHNIC INSTITUTE
PRESENTED BY

• Your NAFSA Region XI KCISS Rep – Amanda Connolly, Clark University
• Your NAFSA Region XI Regbud – Parker Emerson, Yale University
• Your NAFSA Region XI GRAC Team Members
  • Liz Goss, Goss Associates; Chair, ISSRP Employment-Based Subcommittee
  • Maureen Martin, Harvard University
  • Tom Thomsen, WPI
HOW DID WE GET HERE?

• 2008 OPT STEM rule originally published
• 2014 Washington Alliance of Technology Workers filed lawsuit
• 2015 Court vacated original STEM rule but gave DHS 6 months to publish a new STEM rule following proper procedure
• 2016 New STEM Rule Published to be effective 5/10/2016
WHAT HAS CHANGED?

• Increase from 17–24 months
• Increase from one to two STEM OPT extensions possible
• Increase in unemployment time from 120 to 150 days
• Volunteering and self-employment no longer possible
• Expansion of STEM OPT fields eligible
• Introduction of training plan (Form I–983) and self-evaluation reporting
WHAT HAS CHANGED (PART II)

• Students must be paid while on STEM OPT and must work at least 20 hours per week per employer and wages must be competitive

• Possibility of applying for STEM OPT extension based on previously earned degree

• 60 day filing window after DSO recommendation

• 90 day application period prior to OPT expiration date

• New reporting requirements
WHAT HAS STAYED THE SAME?

• Employer must be an E-Verify employer
• Employment must be directly related to student’s field of study
• 180 day automatic OPT extension after STEM application is timely filed
• Cap-gap option is retained
• DSO recommendation
• 6 month reporting requirement
TRANSITIONAL ISSUES

Students with approved or pending 17 month STEM OPT

• Students with pending 17 months STEM on May 10, 2016 receiving RFE.
• Use the RFE Option in SEVIS, issue new I-20 Form to be submitted in response to RFE. Must have Form I-983

• Students on approved 17 months STEM OPT. Use the extend option in SEVIS. Student must submit a completed OPT application, I-765, fee etc. and a completed I-983

• Deadline for applying is August 8, 2016

• NOTE: To be eligible for the additional 7 months of STEM OPT, the student must have 150 days of valid employment authorization remaining (from May 10, 2016) on the date of filing.
APPLYING FOR THE 24 MONTH EXTENSION

• Student MUST be in valid 12 month post-completion OPT to be able to apply.
  • STEM OPT extension cannot be applied for as stand-alone period of OPT.
• DSO can issue the I–20 for the STEM OPT application up to 90 days prior to OPT ending.
• DSO must review completed Form I–983 prior to recommending the STEM OPT extension.
APPLYING FOR THE 24 MONTH EXTENSION

• Student must be employed by an employer that is in good standing with E-Verify program

• Student must be in a qualified major based on CIP Code:
  • CIP Codes are decided by the institution based on curriculum. DSOs should not change CIP Codes in a SEVIS record based solely on student request.

• Student must work with employer to complete the Form I-983.
APPLYING FOR THE 24 MONTH EXTENSION

Student decides to apply for the 24 month STEM OPT extension

Student completes Form I-983 with employer, along with any university request forms and submits to DSO

DSO reviews Form I-983 and student SEVIS record to confirm eligibility for the STEM OPT extension.

DSO issues STEM OPT I-20 with SEVP required language in SEVIS

Student assembles I-765 application with supporting documents and sends to USCIS *

* Up to 90 days before OPT ends, but before last day of OPT

Student reports any address/employment changes during STEM OPT. Updates Form I-983 with major changes

DSO reports changes in SEVIS, confirms participation at 6 and 18 months, and collects evaluations at 12 and 24 months.
APPLYING FOR THE 24 MONTH EXTENSION

• When extending OPT in SEVIS, DSO must enter the following:
  • “I have reviewed the Form I–983. It is completed, signed, and addresses all program requirements.”
  • What exactly are you looking for?

• Bona–fide employee–employer relationship
  • STEM OPT regulation says that not all employment situations may be appropriate for the STEM OPT extension
APPLYING FOR 24 MONTH EXTENSION

• Documents to include in the I–765 application package:
  • Completed I–765 application requesting STEM OPT extension
  • Copies of valid passport and most recently issued visa
  • Printout of I–94 information from most recent entry
  • Copies of any previous EAD cards (front and back)
  • Copies of STEM OPT extension I–20 and all previous I–20s
  • Copy of diploma or official transcript confirming issuance of STEM degree
  • 2 passport-style photos taken within past 30 days and not used on any previous immigration document
  • Check for $380 made payable to U.S. Department of Homeland Security
APPLYING FOR 24 MONTH EXTENSION –
SUGGESTIONS FOR IMPLEMENTATION OF NEW RULE

• Update internal forms and website to include correct information about applying for STEM OPT

• Create internal policies for how you will review the Form I–983 and handle any questions/concerns/discrepancies

• Develop internal process for how to handle reporting requirements
  • Update employment reporting forms as necessary
  • Formalize process for completing 6 and 18 month participation reporting
  • Formalize process for collecting 12 and 24 month performance evaluations to add to file
APPLYING FOR STEM OPT BASED ON A PREVIOUS DEGREE

• Must be on 12 month OPT to file for the extension
• Previous degree must have a STEM CIP Code
• Job must be directly related to the previously earned STEM degree
• A typical example would be a student with a STEM BS degree in mathematics followed by a MS degree in economics and working as business analyst using mathematical science skills.
EMPLOYER OBLIGATIONS

• Must be an E-verify Employer in good standing
• Must provide a bona fide training plan that enhances the student’s academic experience
• Attestations of resources & wage compliance obligations
• Reporting requirements
EMPLOYER REGULATIONS

• The STEM OPT employee will not replace a full-time or part-time, temporary or permanent U.S. worker

• The duties, hours, and compensation are commensurate with terms and conditions applicable to the employer’s similarly situated U.S. workers [two or more] in the area of employment

• Must attest to resource and personnel levels available to appropriately train the student

• The employment must comply with all applicable Federal and State requirements relating to employment (e.g. licensure)
EMPLOYER REPORTING

• Must report any material change
• Must report the termination or departure of the STEM OPT employee to the OISS, if the termination or departure is prior to the appointment end date
• Such reporting must be made within five business days of the termination or departure
• The department should consider an employee to have departed if the employee has not reported to work for a period of five consecutive business days without the consent of the employer
EMPLOYER (3rd Party or Institution) vs. DSO

- Don’t be exclusive owner of STEM rules that are not specifically DSO related
- STEM regulations about employer responsibility = institutional HR policy
- DSO does not have expertise to help develop STEM “training plan”
- Don’t “re-create wheel” – establish campus partners
  - HR, Labor Relations, General Counsel
- Look at similar international office practices for:
  - What are your institutional practices as a STEM OPT Employer
  - H-1B Prevailing Wage, Actual Wage, Record Keeping, etc…
  - J-1 Student Intern DS-7002 and evaluation process
FORM I–983

WHO CAN COMPLETE IT?
WHO MUST SIGN IT?
WHEN MIGHT DSO REJECT OR QUESTION IT?
COMPLETING THE I-983 FORM

1. Student Information
2. Student Certification
3. Employer Information
4. Employer Certification
5. Employer Training Plan
6. Employer Official Certification
**EMPLOYER INFO AND CERTIFICATION**

- **FEIN:** 00999999999
- **NAICS for Higher Education:** 611310
- **E-verify XXXXXX**
EMPLOYER OFFICIAL CERTIFICATION

• I declare and affirm under penalty of perjury ..............

• Employer Official with Signatory Authority – I certify that:

• 1. I have reviewed, understand, and will follow this Training Plan for STEM OPT Students (Plan);

• 2. I will conduct the required periodic evaluations of the student;*

• 3. I will adhere to all applicable regulatory provisions that govern this program (see 8 CFR Part 214.2(f)(10)(ii)); and

• 4. I will notify the DSO regarding any material changes to or material deviations from this Plan at the earliest available opportunity, including if I believe the student is not receiving appropriate training as delineated in this Plan.

• Signature of Employer Official with Signatory Authority:

____________________________________________________________
WHAT IS A DSO’S ROLE IN REVIEWING THE I–983 INFORMATION?

• Incomplete sections/ signatures – YES
• Extremely evident that there are errors – Perhaps
• Not clear that work is in STEM? – Who are we to know?
• Training plan not sufficient? – Who are we to know?
• Wage issues – Who is obligated to certify?

*Institutional Policy is Critical
DSO REPORTING RESPONSIBILITIES

• REPORTING REQUIRED EVENTS FROM STUDENT / OR EMPLOYER
• REPORT INITIAL EVALUATION WITHIN 12 MONTHS OF THE APPROVED STARTING DATE ON THE STEM OPT… AND
• THE EMPLOYER AND EMPLOYEE ARE REQUIRED TO COMPLETE A CONCLUDING EVALUATION AT THE FINISH OF THE STEM OPT
WHO REPORTS TO WHO?

DSO Does/Does Not Report to SEVIS

Student reports event

Employer reports event

Employer DSO reports
WHAT IS DSO’S ROLE IF REPORTING DEADLINE NOT MET?

• Set new deadlines and warnings?
• Terminate record?
DISCUSSION TOPICS

• Institutional policy and CIP codes
• Defining STEM/E-Verify employer
• Bona fide employer/employee relationship
• Do contractors/placement agencies ever qualify?
• I–983: Creating training plan, DSO role, institutional policy, “signatory authority”, employer role, future on-line I–983
• DSO reporting responsibilities: 6 month reports, change of employer, final evaluation
RESOURCES

• **STUDY IN THE STATES:**
  - [https://studyinthestates.dhs.gov/stem-opt-hub](https://studyinthestates.dhs.gov/stem-opt-hub)
  - [https://studyinthestates.dhs.gov/assets/sevp_stemopt_transitionplaninfo_pending_v1.pdf](https://studyinthestates.dhs.gov/assets/sevp_stemopt_transitionplaninfo_pending_v1.pdf)
  - [https://studyinthestates.dhs.gov/form-i-983-overview](https://studyinthestates.dhs.gov/form-i-983-overview)

• **NAFSA:**
  - [http://www.nafsa.org/Find_Resources/Supporting_International_Students_And_Scholars/ISS_Issues/STEM_OPT_Rulemaking](http://www.nafsa.org/Find_Resources/Supporting_International_Students_And_Scholars/ISS_Issues/STEM_OPT_Rulemaking)
RESOURCES

• Yale has two STEM sites:
  • Yale students http://oiss.yale.edu/immigration/f-1-students/employment(optional-practical-training/stem-opt-extension
  • Yale department admins hiring new STEMers http://oiss.yale.edu/for-departments/hiring-international-students/hiring-stem-opt-employees

• Harvard also has two STEM sites:
  • Harvard students: http://www.hio.harvard.edu/optional-practical-training-opt
  • Harvard department admins hiring new STEMers: http://www.hio.harvard.edu/administrator-guide (includes two guides to completing I-983 for Harvard and non-Harvard employers)