



# IMPLEMENTING THE NEW STEM RULE

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WORCESTER POLYTECHNIC INSTITUTE

# PRESENTED BY

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- Your NAFSA Region XI Regbud – Parker Emerson, Yale University
- Your NAFSA Region XI GRAC Team Members
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# 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:
  - <https://www.ice.gov/sites/default/files/documents/Document/2016/stem-list.pdf>
  - 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 \*



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

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

# 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 (3<sup>RD</sup> 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

DEPARTMENT OF HOMELAND SECURITY  
U.S. Immigration and Customs Enforcement  
**TRAINING PLAN FOR STEM OPT STUDENTS**  
Science, Technology, Engineering & Mathematics (STEM) Optional Practical Training (OPT)

OMB CONTROL NO. 1653-0054  
EXPIRATION DATE: 03/31/2019

SECTION 1: STUDENT INFORMATION (Completed by Student)			
Student Name (Surname/Primary Name, Given Name):		Student Email Address:	
Name of School Recommending STEM OPT:	Name of School Where STEM Degree Was Earned:	SEVIS School Code of School Recommending STEM OPT (including 3-digit suffix):	
Designated School Official (DSO) Name and Contact Information:		Student SEVIS ID No.:	STEM OPT Requested Period: (mm-dd-yyyy) From: _____ To: _____
Qualifying Major and Classification of Instructional Programs (CIP) Code: _____			
Level/Type of Qualifying Degree: _____			
Date Awarded: (mm-dd-yyyy) _____			
Based on Prior Degree? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Employment Authorization Number: _____			
SECTION 2: STUDENT CERTIFICATION			
I declare and affirm under penalty of perjury that the statements and information made herein are true and correct to the best of my knowledge, information and belief. I understand that the law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document in the submission of this form.			
I certify that:			
<ol style="list-style-type: none"><li>1. I have reviewed, understood, and will adhere to this Training Plan for STEM OPT Students ("Plan");</li><li>2. I will notify the DSO at the earliest available opportunity if I believe that my employer is not providing me with appropriate training as delineated on this Plan;</li><li>3. I understand that the Department of Homeland Security (DHS) may deny, revoke, or terminate the STEM OPT of students whom DHS determines are not engaging in OPT in compliance with the law, including the STEM OPT of students who are not, or whose employers are not, complying with this Plan;</li><li>4. My practical training opportunity is directly related to the STEM degree that qualifies me for the STEM OPT extension; and</li><li>5. I will notify the DSO at the earliest available opportunity regarding any material changes to or deviations from this Plan, including but not limited to, any change of Employer Identification Number resulting from a corporate restructuring, any nontrivial reduction in compensation from the amount previously submitted on the Plan that is not tied to a reduction in hours worked, any significant decrease in hours per week that I engage in a STEM training opportunity, and any decrease in hours below the 20-hours-per-week minimum required under this rule.</li></ol>			
Signature of Student: _____			
Printed Name of Student: _____ Date: (mm-dd-yyyy) _____			



# EMPLOYER INFO AND CERTIFICATION

- FEIN: 0099999999
- NAICS for Higher Education  
= 611310
- E-verify XXXXXX

SECTION 3: EMPLOYER INFORMATION (Completed by Employer)				
Employer Name:		Street Address:		Suite:
Employer Website URL:		City:	State:	ZIP Code:
Employer ID Number (EN):	Number of Full-Time Employees in U.S.:	North American Industry Classification System (NAICS) Code:		
OPT Hours Per Week (must be at least 20 hours/week):	Compensation			A. Salary Amount and Frequency: _____
Start Date of Employment:  (mm-dd-yyyy) _____				B. Other Compensation (Type and Estimated Amount or Value): 1. _____ 2. _____ 3. _____ 4. _____

SECTION 4: EMPLOYER CERTIFICATION
<p>I declare and affirm under penalty of perjury that the statements and information made herein are true and correct to the best of my knowledge, information and belief. I understand that the law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document in the submission of this form.</p>
<p>I certify on behalf of the employer that this Training Plan for STEM OPT Students ("Plan") is approved and that:</p> <ol style="list-style-type: none"><li>1. I have reviewed and understand this Plan, and I will ensure that the supervising Official follows this Plan;</li><li>2. I will notify the DSO at the earliest available opportunity regarding any material changes to this Plan, including but not limited to, any change of Employer Identification Number resulting from a corporate restructuring, any reduction in compensation from the amount previously submitted on the Plan that is not tied to a reduction in hours worked, any significant decrease in hours per week that a student engages in a STEM training opportunity, and any decrease in hours below the 20-hours-per-week minimum required under this rule;</li><li>3. Within five business days of the termination or departure of the student during the authorized period of OPT, I will report such termination or departure to the DSO (Note: business days do not include federal holidays or weekend days; and an employer shall consider a student to have departed when the employer knows the student has left the practical training opportunity, or when the student has not reported for practical training for a period of five consecutive business days without the consent of the employer); and</li><li>4. I will adhere to all applicable regulatory provisions that govern this program (see 8 CFR Part 214), which include, but are not limited to, the following:<ol style="list-style-type: none"><li>a. The student's practical training opportunity is directly related to the STEM degree that qualifies the student for the STEM OPT extension, and the position offered to the student achieves the objectives of his or her participation in this training program;</li><li>b. The student will receive on-site supervision and training, consistent with this Plan, by experienced and knowledgeable staff;</li><li>c. The employer has sufficient resources and personnel to provide the specified training program set forth in this Plan, and the employer is prepared to implement that program, including at the location(s) identified in this Plan;</li><li>d. The student on a STEM OPT extension will not replace a full- or part-time, temporary or permanent U.S. worker. The terms and conditions of the STEM practical training opportunity—including duties, hours, and compensation—are commensurate with the terms and conditions applicable to the employer's similarly situated U.S. workers or, if the employer does not employ and has not recently employed more than two similarly situated U.S. workers in the area of employment, the terms and conditions of other similarly situated U.S. workers in the area of employment; and</li><li>e. The training conducted pursuant to this Plan complies with all applicable Federal and State requirements relating to employment.</li></ol></li></ol>
<p><b>Note:</b> DHS may, at its discretion, conduct a site visit of the employer to ensure that program requirements are being met, including that the employer possesses and maintains the ability and resources to provide structured and guided work-based learning experiences consistent with this Plan.</p>

# 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:**

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# 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?



# 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/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>

- 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)