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**NAFSA: Association of  
International Educators**

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Student and Exchange Visitor Program  
U.S. Immigration and Customs Enforcement  
500 12th Street SW  
Washington, DC 20536

Re: Docket No. ICEB-2015-0002

Dear Ms. Westerlund,

The higher education associations below write today in response to the notice of proposed rulemaking (NPRM) published at 80 Federal Register 63375 (October 19, 2015): Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with Science, Technology, Engineering, and Mathematics (STEM) Degrees and Cap-Gap Relief for All Eligible F-1 Foreign Students.

We applaud the Department of Homeland Security (DHS) for acting to finalize the rule before the court-ordered deadline imposed in *Washington Alliance of Technology Workers v. U.S. Department of Homeland Security*, which vacated the current OPT rule on procedural grounds. Furthermore, we support Immigration and Customs Enforcement's efforts to mitigate court-created uncertainty while at the same time improving the program.

## **Benefits of STEM OPT Program**

Foreign students are crucial to strengthening United States' diplomatic and economic interests. These students strengthen our ties with countries across the globe and are an integral element of our foreign policy. Foreign students and scholars who have studied in the United States become, at a minimum, informal ambassadors when they return home, sharing an appreciation for common values, counteracting stereotypes about the U.S. and enhancing respect for cultural differences. In some cases, future U.S. and foreign leaders will have studied together, fostering even more direct diplomatic connections.

Foreign students also greatly contribute to the economic well-being of the United States. According to NAFSA: Association of International Educators, during the 2014-2015 academic year, international students and their families supported 373,000 jobs and contributed \$30.5 billion to the U.S. economy.

Moreover, foreign students offer U.S. students the opportunity to understand and navigate different cultures. The ability to perform and compete globally is essential to a 21st century education. Since only two percent of U.S. students study abroad each year, having international students on U.S. campuses enriches and diversifies the experience for all students.

At the same time, foreign students are attracted to the United States due to the extremely high quality of U.S. institutions. While the U.S. higher education system is a magnet for the best and brightest from around the world, the competition for these students has never been greater. Recognizing how important foreign students are to a country's economic and diplomatic objectives, our competitors are going to great lengths to draw students to their colleges and universities.

The Optional Practical Training (OPT) program is an important part of why foreign students are attracted to the United States. Like U.S. students, their international peers understand that an important part of an education occurs outside of the classroom. The interest in practical training to buttress the field of study is substantial. If the opportunities do not exist in the U.S., foreign students would have alternative options in countries with friendlier policies.

The OPT program appropriately focuses on the critical part of an education that occurs in partnership with employers. Experiential learning is a key component of the educational experience. OPT allows students to take what they have learned in the classroom and apply "real world" experience to enhance learning and creativity while helping fuel the innovation that occurs both on and off campus.

The undersigned organizations strongly support the proposed rule extending STEM OPT to 24 months. The new rule seeks to strike an appropriate balance by distributing requirements among all who participate in the STEM OPT program: foreign students, institutions of higher education, and employers. We do have some concerns and requests for clarification relative to the expanded role for Designated School Officials at U.S. universities. As most postdoctoral positions span the length of 36 months, we believe the proposed extension of STEM OPT from 17 months to 24 months, for a total of 36 months of OPT, aligns well with this standard. For other students, we also believe that three years is a sufficient amount of time to learn the requisite skills to be proficient in their profession. We believe this extension period will encourage international students to continue their education and training in the United States.

Although higher education institutions retain exclusive responsibility to maintain the foreign student participants' records in the Student and Exchange Visitor

Information System (SEVIS), the rule appropriately recognizes the relationship between the foreign students and the employers. The required Mentoring and Training Plan executed and signed by students and employers will state the students' learning objectives while also detailing the employers' obligation to meet those objectives and protect foreign students and American workers from exploitation.

We appreciate the opportunity to review these regulations and provide comments that follow pertaining to the provisions addressed in the NPRM.

### **1. Provide Extended OPT Opportunities to All Fields of Study**

Learning through experience is distinct from learning that takes place in the classroom. Experiential learning opportunities have become an integral part of U.S. higher education in all fields of study, and should not be reserved only for American students or, in the case of foreign students, only for STEM degrees.

The proposed rule makes clear that an expanded period of OPT will only be available to STEM degree graduates. However, to address the changing nature of U.S. higher education and the demand for longer periods of experiential learning in other areas of study, a process should be identified to make expanded OPT opportunities available to foreign students pursuing areas of study outside of STEM fields.

Foreign students' positive impact on the U.S. economy, international standing and influence extend well beyond those students who obtain STEM degrees; therefore, we urge DHS to propose new rules to expand OPT to all fields of study.

### **2. Ensure Flexibility in STEM Categorization**

We agree that DHS must have flexibility to identify STEM degrees, for which an extended period of OPT is available, to allow for potential changes in fields of study, spurred by changes in technology, academic programs, and trends. However, this flexibility is not achieved through incorporating by a footnote reference the STEM categories, or "summary groups," of a 2009 *Stats in Brief* document developed by the Department of Education's National Center for Education Statistics (NCES), Institute of Education Services (<http://nces.ed.gov/pubs2009/2009161.pdf>). While it may be preferable to identify the categories of study that fall under the individual STEM areas, there is not a preexisting categorization that is sufficient for the STEM OPT rule. The STEM categorization must be designed to meet the dynamic needs of the STEM areas, U.S. higher education, innovation, and the goal of extending STEM OPT to more degrees. We support using the Department of Education Classification of Instructional Program (CIP) taxonomy to serve as the basis for degrees that qualify for STEM OPT extension, but we urge DHS not to limit the STEM categories to those identified in the 2009 *Stats in Brief*.

For more than a decade, academics and policy makers have been concerned about the ability of the United States to maintain its competitive advantage in the global economy, and have showed increasing interest in improving STEM education. The 2009 *Stats in Brief* report was written to understand the profile of undergraduates who pursue and complete certain STEM degrees, identifying categories of STEM on which to focus the study. The categories identified were: mathematics, natural sciences, physical sciences, biological/agricultural sciences, engineering/engineering technologies, and computer/information sciences. The goal of the 2009 report was to identify outcomes of the students studying in degrees falling under those categories. Repurposing this categorization in the NPRM will unnecessarily limit the STEM degrees for which foreign student are eligible for an extended period of STEM OPT. For example, it is uncertain that numerous fields on the current DHS list, such as Naval Science, Social Psychology, and Archeology would be included under the proposed categorization. The addition of “related fields” to the limited categories does not adequately broaden the fields, nor does it provide a level of clarity or certainty needed for the rule.

A further limitation of the report is that it is based on undergraduate STEM experience, which is too narrow to capture graduate level STEM fields, especially those being pursued by students who obtained their baccalaureate-level education outside the United States, and who have come here for more specialized STEM education.

### **3. Assign Appropriate DSO Review of Mentoring and Training Plan**

Many of our concerns with the proposed rule relate to the Mentoring and Training Plan that employers must formalize and Designated School Officials (DSO) must approve. We are concerned that employers may not have the resources to complete the form, which is extensive. It is not unusual for companies to have their legal counsel review our student employment forms, and sometimes they will not sign off on them for a variety of reasons. It has also been our experience that employers have not necessarily complied with the 2008 interim final rule to report on the termination or departure of an OPT student to the DSO. Therefore, we are concerned that the extensive process proposed for employers will further inhibit employer participation in, and/or compliance with the program. Further, the proposed regulations are silent on what happens to the student or to the employer for non-compliance. These are self-reporting events that a DSO has no way of monitoring or knowing. There should be no repercussions to the school or the DSO for not getting these data from the student or employer.

DHS fails to specify the level of review DSOs must apply in the review of the new formal Mentoring and Training Plan. We recommend that DHS specify a standard of review appropriate to the role and experience of DSOs. Responsible for maintaining SEVIS data and advising foreign students, DSOs are not able to become experts in each area of STEM education or the practical application of such study. Nor are DSOs investigators able to identify efforts to commit fraud. We believe that DSOs should only be required to apply the level of review similar to

that which is required of the Department of Labor (DOL) when reviewing Labor Condition Applications: completeness and obvious errors or inaccuracies. To require a higher standard than the one that applies to DOL – experts in labor law – would place an undue burden on institutions of higher education, as a whole, and DSOs specifically. While responsibility for the accuracy and veracity of the Mentoring and Training Plan must fall to the employer and the student, in the case of a dual responsibility as both institution and employer, a clear standard of review for the DSO and employer are imperative. Responsibility for detecting any fraud and ensuring compliance with the Mentoring and Training Plan should fall to DHS.

In addition, the DSO skillset is about ensuring that an F-1 student is aware of their visa compliance requirements and generally does not involve academic advising or career counseling. Putting the burden on the DSO to review a Mentoring and Training Plan beyond completeness and to check for obvious errors or inaccuracies is outside the purview of normal DSO job functions or skillsets and is problematic.

The proposed rule also requires students provide their DSO with an evaluation every six months. This would increase the burden and workload on the DSO to both collect and monitor when students' plans and evaluations are due, in particular because students' OPT employment and start dates vary. As we read it, the six month evaluation period would vary from person to person. This adds up to a significant time and resource burden if an institutions has a considerable number of students on STEM OPT. We suggest changing the language of the regulations to require consistent evaluation dates twice a year, for example, on April 15 and October 1. We applaud the Department of Homeland Security for working toward technology that would allow students to update basic information in the Student and Exchange Information System (SEVIS) on their own. Providing students with the ability to maintain their own records would lessen the burden on DSOs. We urge the expeditious implementation of this technology to establish a mechanism for students to self-report either via a portal in SEVIS or with the U.S. Citizenship and Immigration Services when they change, evaluate, or terminate their Mentoring and Training Plan.

#### **4. Require Appropriate Wages and Documentation**

Our organizations fully support mandating employer compliance with Federal and State requirements relating to employment. Foreign students must be paid the same as similarly situated U.S. workers. However, requirements should not be so onerous as to dissuade employers that do not already participate in the H-1B program from participating in the STEM OPT program. To meet the stated goals of expanding and extending OPT, requirements for proof of an appropriate wage must not be so burdensome as to deter small employers or those new to the OPT program from participating in the program.

An entrepreneurial and innovative mindset is woven into the fabric of the U.S. experience and education. Consequently, many graduates from U.S. higher education, irrespective of their citizenship, seek to start their own companies or

work for start-up corporations. Although the current STEM OPT regulation and SEVP guidance allows for self-employment, the proposed rule does not allow STEM OPT students this option or other types of entrepreneurial enterprises. Maintaining U.S. competitiveness in higher education argues for providing foreign students similar opportunities available to U.S. graduates. Furthermore, it is not in best interest of the United States to force the most innovative and entrepreneurial graduates to leave the United States if they seek to develop and apply what they have learned at a U.S. higher education institution. We encourage DHS to examine these trends, maintain the current policy of allowing self-employment, and expand employment opportunities to more entrepreneurial endeavors.

#### **5. Ensure SEVIS Functionality**

The rule will require updates to SEVIS. To support the success of the program, we urge DHS to ensure the updates are in place as soon as possible after the rule is final. We look forward to working with the Student Exchange Visitor Program to produce guidance to the field on the SEVIS updates and the implementation of the new rule.

#### **6. Hold Foreign Students Harmless if Deadline is Not Met**

Most importantly, as a result of DHS's efficiency during this rulemaking process, we expect the final rule will be implemented before the February 12, 2016 deadline imposed by the court. If, however, this is unsuccessful and the current STEM OPT program ends, foreign students must be held harmless. Relief must be provided that allows STEM OPT students to maintain lawful status and continue to work until a final rule is in place.

Thank you for the opportunity to comment. If you have any questions concerning our recommendations above, please do not hesitate to contact Heather Stewart at [heathers@nafsa.org](mailto:heathers@nafsa.org) and Craig Lindwarm at [clindwarm@APLU.ORG](mailto:clindwarm@APLU.ORG).

Sincerely,

American Association of Collegiate Registrars and Admissions Officers  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Universities  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities  
College and University Professional Association for Human Resources  
Council for Christian Colleges & Universities  
Council on Governmental Relations  
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