

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

1615 H STREET, N.W.
WASHINGTON, D.C. 20062

RANDEL K. JOHNSON
SENIOR VICE PRESIDENT
LABOR, IMMIGRATION, &
EMPLOYEE BENEFITS

JONATHAN B. BASELICE
DIRECTOR
IMMIGRATION POLICY

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Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503
ATTN: Desk Officer
U.S. Immigration and Customs Enforcement
Department of Homeland Security

By electronic submission: www.regulations.gov

By electronic submission: OIRA_submission@omb.eop.gov

**RE: Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students
80 Fed. Reg. 63376 (October 19, 2015)
RIN Number 1653-AA72**

To Whom It May Concern:

The U.S. Chamber of Commerce writes in response to the request for comments by the Department of Homeland Security (DHS) and the Office of Information and Regulatory Affairs (OIRA) on the collection of information discussed in the Notice of Proposed Rulemaking entitled *Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students*, 80 Fed. Reg. 63376 (October 19, 2015) (hereinafter referred to as “NPRM,” or “proposal”). The Chamber and its members were pleased to see the agency act in an expeditious manner to issue the NPRM in order to prevent the STEM OPT Extension from expiring due to the ruling issued in *Washington Alliance of Technology Workers v. U.S. Department of Homeland Security*.¹ Moreover, it was also reassuring to see the agency take concrete steps to improve upon the terms set forth in the 2008 Interim Final Rule that established the STEM OPT Extension and the Cap-Gap Relief provisions.²

¹ *Washington Alliance of Technology Workers v. U.S. Department of Homeland Security*, Civil Action No. 14-529 (D.D.C. Aug. 12, 2015).

² 73 Fed. Reg. 18944 (Apr. 8, 2008).

The Chamber understands DHS's desire to ensure that each recipient of the STEM OPT Extension receives meaningful practical work experience that is directly related to their course of study, which furthers the value of the education that they received in the U.S. However, there are certain aspects of the proposed Form I-910, STEM Mentoring and Training Plan, that are concerning to our members and the Chamber provides meaningful suggestions to DHS and OIRA in order to make completing this form more straightforward for all the relevant stakeholders. In doing so, the Chamber expects that it will make the government's ability to review these MTP forms much easier as well, which should enhance processing efficiency.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region, as well as state and local chambers and industry associations, and is dedicated to promoting, protecting, and defending America's free enterprise system.

SUGGESTED CHANGES TO STUDENT INFORMATION SECTION

The proposed Mentoring and Training Plan contains many boxes where the vague description of the information requested will cause reasonable individuals to be confused as to what exactly is being requested of the student. Simple clarifications in certain fields for requested information would do much to avoid confusion during this process. Many of these clarifications can literally borrow from the language in the proposed STEM OPT Mentoring and Training Plan Instructions. These suggested clarifications are related to the information requested in the proposed "Section 1" of the Form I-910, and they are as follows:

- **The "SEVIS ID No." box should be labeled "Student SEVIS ID No."** – this box can be confusing because it does not specifically identify that the information requested by the government is the individual F-1 visa holder's Student and Exchange Visitor Information System Identification Number. By clarifying that the government is looking to obtain the student's ID number, and not that of the school in which he/she just attended, or the school where he/she earned the qualifying degree for the STEM extension, this will help avoid unnecessary problems.
- **"School Name and Campus Name" should be reorganized to indicate which school's information is being requested** – students completing this section of the form are not reasonably apprised as to whether the government is seeking the information of the school that he/she most recently attended or the school wherein he/she obtained the qualifying degree for the STEM OPT Extension. This box label should indicate that the information being requested is of the school that recommended the current OPT; a possible label could be "School that Recommended Current OPT." To that end, there should also be a prompt that requests "School Where Qualifying Degree was Earned" and that box should ask for the school name, the campus name, and the approximate date when the

qualifying degree was earned. To provide further ease of use for both the students and the government adjudicators, there should be a small box prompt that the student may check off if they earned the qualifying degree at the same institution that recommended the current OPT.

- **Boxes requesting information on the level/type of qualifying degree should be reorganized and the requested information should include further clarifications** – the proposed box requesting the student’s qualifying major and CIP classification should request additional information of the student. The student should be given a prompt with either boxes that he/she can check/fill in to convey to the government that the qualifying degree for the extension was a) the same degree on which their current period of standard OPT is based; b) another degree obtained at the same college/university, or c) another degree obtained at a different college or university. This type of information would be very useful to the federal government if DHS ever decides to institute a regulatory review of the OPT program. Second, the form should specifically request the level of the qualifying degree for the extension, which lays out clearly for the student to either circle the proper word or check the appropriate box to determine if the qualifying degree was a) a bachelors degree, b) a masters degree, or c) a doctorate. Laying this out in a straightforward manner will save time for both the student filling out the form and the government adjudicator whose task it is to review the form.

SUGGESTED CHANGES RELATED TO THE EMPLOYER INFORMATION SECTIONS

Some of the fields in Sections 3, 4, and 5 of the proposed Form I-910 could benefit from additional clarifications that provide more specificity to the employer’s representative who is responsible for completing this section correctly. The suggested changes to this section of the proposed form are as follows:

- **Question 4d Attestation** – The language proposed by DHS for this question is very broad and will expose employers to potential liability for engaging in legitimate business practices. Chamber members believe that DHS is legitimately concerned about the OPT program being abused by certain employers who seek to replace Americans with STEM OPT recipients. The language we propose for this question strikes the proper balance between foreclosing the type of behavior that DHS wants to prevent, while still providing companies with the ability to make legitimate business decisions with regard to their labor needs. The Chamber requests that the language for question 4d be written as follows: “The employer is not providing the practical training opportunity for the purpose of, and with the intent to, directly lay off, or furlough, any full- or part-time, U.S. worker and replace that worker with the STEM OPT recipient.”
- **Number of Full-Time Employees** – while the proposed directions provide the clarification that the number in this box should reflect the number of the

employer's U.S. employees, that level of specificity is not included on the proposed form. Providing clarification on the form itself will help individuals filing out this form, especially if they are unfamiliar with this process. Most importantly, adding in the clarification will not create any issues with regard to spacing of the prompts on the form – the title could simply change to “Number of Full-Time U.S. Employees” and the individual completing this section will be apprised of exactly what information the government is requesting.

- **North American Industry Classification System (NAICS) Code** – this request should be followed by an explanation informing the employer that if they want further information with regard to their NAICS code, they can obtain that by visiting the U.S. Census Bureau website at <http://www.census.gov/eos/www/naics/>. This will be helpful to small businesses who do not have Human Resources Departments and the business owner is in charge of completing this form.
- **Small Entity Classification** – in asking for this information, the government should inform the employer that they can visit the SBA's website at <https://www.sba.gov/content/small-business-size-standards> to determine whether their business is classified as such. This will help small businesses unfamiliar with this process correctly complete the form.
- **48 Hour Termination Notice** – the NPRM seeks to require employers to notify the DSO within 48 hours of an OPT employee's termination.³ The U.S. Chamber's comments on the rule to DHS are clear that the 48 hour deadline is unrealistic for businesses of all sizes. We hope that the agency changes this deadline to 10 business days and this particular attestation should be amended to reflect the Chamber's desired change to this requirement.
- **Site Visits** – in a note right above the signature lines in Section 4, the Form states that DHS has the discretion to conduct site visits at the employer's place of business. While the Chamber understands that this authority is a necessary component to the federal government's oversight, there is a lack of consistency with regard to the requirements in the proposed regulatory text in the NPRM and the description of this requirement in the NPRM.⁴ It is the Chamber's position that since DHS proposed in the NPRM to clarify that ICE will be the agency with the responsibility and authority of conducting these site visits, DHS should specifically state that in the proposed Form I-910. Thus, the language in the note in Section 4 should reflect that ICE is the specific agency that may conduct these site visits.
- **Training Field** – this information in Section 5 is unnecessary because the employer is required to provide a detailed description of the type of training that

³ See proposed 8 C.F.R. § 214.2(f)(10)(C)(6) where this requirement is explicitly stated in the proposed regulatory text; 80 Fed. Reg. 63376, 63401 (Oct. 19, 2015).

⁴ Compare 80 Fed. Reg. 63776, 63390 (Oct. 19, 2015) where DHS proposes to clarify that ICE has the authority to conduct site visits, whereas the proposed regulatory text of 8 C.F.R. 214.2(f)(10)(C)(11) simply states that DHS, not necessarily ICE, has the discretion to conduct site visits.

will be provided to the OPT recipient. This box should be eliminated from the form.

- **Supervisor** – many of our member companies informed us throughout the process that their current mentoring and training program includes multiple employees who will serve as advisors to their new employees. In the four boxes that use the term “supervisor” we suggest replacing that term with “primary supervisor” to indicate the individual who will be the employer’s primary point of contact for the purposes of this program.
- **Need for Addendums to Section 5** – our member companies predict that some of the answers to the questions in Section 5 will be quite long. The form should indicate in these boxes that if extra space is needed, the employer may attach an addendum to the form to insure that the employer can provide what they believe is the necessary information to the government to ensure that their STEM OPT Mentoring and Training Program is compliant with the requirements set forth in the NPRM.

SUGGESTIONS FOR PERIODIC AND FINAL EVALUATIONS

The Student Evaluation sections in the proposed Form I-910 are not clear as to how the students are required to go about submitting their 6 month and final evaluations. All of these evaluations are contained within the proposed form and it stands to reason that DHS might want students to complete the first four pages of the form every time they complete their periodic evaluations. If this is going to be necessary moving forward, this would be an unfortunate waste of time for the students, as well as a misuse of employer and DSO resources if nothing material with the DSO or the employer has changed. While the Chamber would prefer that this evaluation process only require one final evaluation at the end of the STEM OPT Extension period, if DHS finds it necessary to impose periodic evaluations every six months as proposed, then DHS should explicitly state in the regulatory text of the NPRM, as well as the finalized Form I-910, that only the proposed evaluation sections, and not a whole new Form I-910, should be completed at those times.

In addition, the proposed regulatory text is not specific as to when an OPT student must submit their periodic evaluations to the DSO. Clarity with regard to this requirement, if there is one, would be much appreciated by our member companies and the students. The only concern our members have with this regard is the need to provide ample time for their students to complete the evaluation properly, obtain the signature of their supervisor, and forward this information to the DSO. Chamber members would prefer if their OPT employees were only required to submit this information one time when they have completed the full 24 month OPT period. However, it is likely that this was not DHS’s intent. As such, if OPT students are going to be required to submit their periodic evaluations to their DSO for every 6 month period, providing them and their employers with at least 10 business days from the end of that evaluation period should be sufficient to ensure the timely transfer of information without placing an undue burden on the students or the employers.

CONCLUSION

The Chamber appreciates the opportunity to comment on the proposed Form I-910 with OIRA. We thank you for your consideration of these views.

Sincerely,



Randel K. Johnson
Senior Vice President
Labor, Immigration and
Employee Benefits



Jonathan B. Baselice
Director
Immigration Policy