



ASSOCIATION OF AMERICAN UNIVERSITIES

President

June 9, 2008

Office of Policy
U.S. Immigration and Customs Enforcement
Department of Homeland Security
425 I Street, NW
Room 7257
Washington, D.C. 20536

Re: Department of Homeland Security docket number ICED-2008-0002

Dear Sir/Madam:

On behalf of the Association of the American Universities (AAU), the American Council on Education (ACE), and the National Association of State Universities and Land-Grant Colleges (NASULGC), we appreciate the opportunity to submit the following comments on the Department of Homeland Security's interim final rule extending Optional Practical Training by 17 months for F-1 non-immigrant students graduating with a degree in science, technology, engineering, and math.

Our three associations represent well over 2,000 American colleges and universities that attract hundreds of thousands of talented international students seeking the opportunity to study and conduct cutting-edge research. In addition to obtaining a world-class education, many of these students also seek the opportunity to gain valuable work experience related to their studies. International students contribute greatly to the academic environment on campuses and they make valuable contributions to our nation's workforce and economy when they remain in the U.S. after completing their degrees to gain practical work experience. International students identify Optional Practical Training (OPT) as an important and attractive element of the education and training that study in the U.S. offers compared to other nations. OPT not only helps to attract international students to the U.S. but it also helps our nation's employers to identify some of the top international talent that could continue to contribute to our nation's competitiveness.

The higher education community has consistently supported efforts to extend OPT beyond 12 months. We were very supportive of Secretary Chertoff's initial call in 2007 to extend OPT for international students from the traditional 12 months to 29 months.

It is precisely because of our consistent support for expansion of OPT that we have serious reservations about the interim final rule proposed by the Department of Homeland Security (DHS). Specifically, we are concerned that the rule: (1) limits the extension of OPT to only science, technology, engineering, and math (STEM) degree holders; (2) limits the extension to students employed by employers enrolled in the E-Verify system; and (3) imposes additional administrative and financial burdens on the university community to implement the program changes proposed in the rule.

Expand Eligibility to Participate in the 17-Month OPT Extension to Other Fields of Study

Prior to the release of the interim final rule, representatives from the higher education community met with DHS representatives to discuss the proposed rule. At that time, our community expressed our serious concerns about the impact of limiting the extension to STEM degrees only, omitting international students studying in other fields such as business, law, and the humanities and social sciences. As we said then, international students from all disciplines can benefit from the proposed extension and make valuable contributions to our nation's workforce. We were disappointed that the interim final rule limited the 17-month extension to STEM degrees only. We strongly encourage DHS to revise the interim final rule in order to accommodate all international students irrespective of their discipline.

Our concerns about limiting the extension to those students holding STEM degrees grew even stronger when we learned that many science and engineering degrees would not be considered STEM-designated degrees under the interim final rule. According to the proposed rule, the STEM Designated Degree Program list is based on the Classification of Instructional Programs (CIP) list developed by the U.S. Department of Education. The interim final rule clearly states that all degrees with a CIP code ending in "99" would not be considered STEM designated degrees. As a result, degrees in Civil Engineering (14.0899), Computer Engineering (14.0999), and Biochemistry, Biophysics, and Molecular Biology (26.0299) – to name only a few examples – would not be considered STEM Designated Degrees. In fact, many universities use CIP codes ending in "99" for their biological sciences programs, computer programming, general engineering, mathematics, and physical sciences programs. Many of these are among the very fields in which our nation faces significant shortages. The detrimental impact of this provision is clear. This is an issue that needs to be addressed.

We believe the extension should not apply only to STEM disciplines, but if DHS insists on limiting the extension to only STEM holders, we strongly recommend that the interim rule be revised to allow all STEM degree graduates to be eligible to participate in the OPT extension, regardless of their CIP classification.

The E-Verify Requirement is Unnecessary and Duplicative

We disagree with DHS's decision to limit the extension to students employed by employers enrolled and in good standing in the E-Verify program. In our view, this requirement limits the pool of international students able to take advantage of the extension. All international students

must clear a background check prior to receiving a visa to enter the United States; this means that they have already been subject to identity verification. Moreover, we question the need or the likely success of attempting to force employers to adopt E-verify for the entire company for the sole purpose of continuing to employ one or a few OPT students, particularly when the employers realize that the E-Verify rules forbid them to subject these OPT students to E-Verify checks. Per the FAQs on the DHS web site “[t]he program may not be used to ... re-verify employees who have temporary work authorization.” As we understand it, employers are permitted to use E-verify only for new hires, not continuing employees such as these OPT students. Regardless of whether an employer has E-Verify in place, that employer will have to use the standard paper process for re-verification of these OPT students and will have to see new and currently valid work permission documents.

Additional Reporting Requirements for Universities

We are also concerned that DHS appears not to have taken fully into account the administrative and financial burdens that implementation of this rule will impose on the higher education community. Under the interim final rule, Designated School Officials (DSOs) will have to undertake additional reporting requirements for OPT students granted the 17-month STEM extension as well as OPT students granted an extension under the new cap gap provisions.

For STEM OPT students, DSOs will have to report any changes in the student’s name, residential and mailing address, employer’s name, and employer’s mailing address to the Student Exchange Visitor Information Service (SEVIS) every six months, as well as periods of employment and unemployment. Currently, DSOs are encouraged to update the student record only once in SEVIS. With the new reporting requirements, DSOs will have to update and report any changes in this information to SEVIS for *a minimum of* five reporting periods. DSOs will also have to report immediately to SEVIS any changes in the student’s employment status. For many of our colleges and universities, these additional reporting requirements will place significant time pressures on DSOs as well as financially burden campus international affairs offices. Furthermore, the reporting requirement of employment and unemployment is not full-proof. It requires that the campus obtain second-hand and self-reported information. The additional bureaucratic and unverifiable nature of this process is not only unnecessarily time-consuming, it includes a 90-day unemployment tracking rule, which opens up the international students (now employees) to inadvertently falling out of status.

The reporting requirements for cap gap OPT represents an unnecessary burden on higher education. Under the rule, DSOs are required to investigate and collect information from: (1) the student; (2) the employer; (3) the USCIS CLAIMS database. Then they must work through a lengthy manual process with the SEVIS Help Desk. In fact, the CLAIMS database already interfaces with SEVIS; the information could be retrieved directly from one DHS database and input directly into another, without involving labor-intensive processes and parallel manual tracking.

Additional reporting requirements are not the only challenge currently being faced by campus DSOs. The new E-Verify requirement creates added responsibility for students and DSOs, and has resulted in a level of uncertainty amongst the business and higher education communities on how best to complete the I-765 form. According to the interim final rule, it is the responsibility of the student to complete and properly file the I-765 form with DHS. However, the newly revised I-765 form requires the student to provide the employer's "E-Verify Company Identification Number." Given the confidential nature of the E-Verify Company Identification Number, it is unlikely that most businesses would share this identification number with a student or a DSO. Yet, before a DSO can recommend a student for an extended OPT, the DSO must certify the student's degree level (bachelors, masters, or doctoral); confirm that the student received a degree in STEM Designated field; is currently on an unexpired period of OPT; *and that the student is or will be employed by a business enrolled in the E-Verify program.* So the following questions have been raised by many within the higher education community: Can a DSO recommend a student for the 17 month extension without the E-Verify Company Identification Number on the I-765 form? How can a DSO confirm that the student is employed by a business currently enrolled and in good standing with the E-Verify program without the E-Verify ID Number? These issues must be addressed by DHS, if enrollment in the E-Verify program is to remain one of the criteria for eligibility of the OPT extension.

Thus far, we have addressed specific challenges that our campus international affairs offices and DSOs will have to face in order to comply with this interim final rule. However, there is a bigger issue that must be addressed by DHS, Members of Congress, and the business community: At what point should the reporting burden shift from DSOs to those who actually employ OPT students? This interim final rule is a perfect example of additional burdens and reporting requirements being placed on higher education institutions, when some of these burdens should be shifting to employers. For example, why place the burden on the DSO of collecting information and updating a student's SEVIS record to include an employer's name and address, when it is the employees' responsibility to currently complete the Form AR-11, the Alien's Change of Address Card, to directly report their updated information to DHS?

This information contains both the employer's name and address. The AR-11 process is an already-existing DHS function that provides DHS the information it is requesting, and does not interfere with the integrity of the existing SEVIS system whereby colleges and universities can adequately verify information that is being reported through their DSOs. The premise of the SEVIS system is for higher education to report verifiable information. Adding an unnecessary level of bureaucracy, as well as reporting self-reported data is not only inefficient, it establishes a new precedent whereby non-verifiable information is sent through a system intended for verifiable information. Schools should be required to report only those data elements required by statute and/or known/owned directly by the school, such as academic information. DHS should modify its existing tools, such as the AR-11 and CLAIMS, to collect other data from the owners of that data.

While this interim final rule attempts to provide some relief for international students interested in working in the United States, as currently drafted, the perceived benefits of this rule do not

outweigh the additional burdens that will be borne by higher education institutions. We urge DHS to: (1) Amend the interim rule to make the 17-month extension available to all international students; (2) Eliminate the E-Verify requirement for OPT employers; and, (3) Modify the reporting requirements for the 17-month extension and the CAP GAP so that they are less burdensome on DSOs and international affairs offices.

Thank you for the opportunity to submit comments on this interim final rule. If you have any questions, please do not hesitate to contact us.

With best regards,

A handwritten signature in black ink, appearing to read "Robert M. Berdahl", with a stylized, flowing script.

Robert M. Berdahl