Dissecting the Proposed Rule for STEM OPT Extension

Yuqing Cui, Daniel Curtis, Connie Gao

MIT is home to a large number of international students on F-1 student visas. In the 2014-2015 academic year, 42% of the graduate student body is composed of international students. Most of these students apply for the Optional Practical Training (OPT) program after graduation in order to work in the U.S. in their field of study. Every international student who completes a post-secondary (bachelor’s or higher) degree in the U.S. on an F-1 visa is eligible for 12 months of OPT. Since 2008, those who complete a degree in a STEM (science, technology, engineering, mathematics) field may also qualify for a one-time 17-month extension of OPT. This extension, however, was recently challenged in court by the Washington Alliance of Technology Workers, and this August, the District Court for the District of Columbia vacated the STEM OPT extension on the grounds of procedural deficiency. The court order is set to take effect in February 2016.

In order to remedy the procedural deficiencies of the original STEM OPT Extension rule, ensure that the extensions can continue beyond February 2016, and make several additional changes to the rules and procedures, the Department of Homeland Security (DHS) published the Notice of Proposed Rulemaking (NPRM) on Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students (referred to as “the Proposed Rule” below) on October 19, 2015. This Proposed Rule is open for public comment until November 18 of this year.

1 Author names appear in alphabetical order of last names. All authors contributed equally to this article. The views and opinions expressed in this article are those of the Graduate Student Council Legislative Action Subcommittee’s and do not constitute any legal interpretation or recommendation.
The Proposed Rule contains many changes compared to the previous STEM extension rules. In order to help international students understand the important changes, the Legislative Action Subcommittee (LASC) of the MIT Graduate Student Council (GSC) has analyzed and summarized the changes in an info-graphic accompanying this article. Most importantly among these changes, the new rule proposes to lengthen the STEM OPT extension from 17 months to 24 months. We are excited to see this change, which brings the total duration of OPT for STEM majors to 3 years. This should be sufficient for F-1 students to secure a great deal of very valuable experience and practical training and make very meaningful contributions to U.S. research, technology development, and product development.

The Proposed Rule also specifies that a STEM extension can now be based on a previous STEM degree from an accredited U.S. institution and the number of allowed extensions is increased to two. This provision is extremely relevant for STEM students pursuing additional higher degrees such as M.B.A, M.D., or J.D., making them even more valuable to the U.S. economy for their interdisciplinary skills, advanced technical training, and knowledge in broader topics such as business administration and public policy.

The Proposed Rule contains a new requirement that each student on OPT create an individual Mentoring and Training Plan (MTP), which must be approved by the employer and presented to the university International Student Office prior to the OPT extension. The MTP must explain the learning opportunity, specific goals, relevance to the STEM field, compensation, and etc. Employers must attest on the MTP that they have sufficient resources to provide training, that compensation is commensurate with U.S. workers, and that no U.S. workers are displaced because of the OPT students. With the extra administrative burdens placed on employers through MTP, it may potentially deter employment of F-1 STEM students. While a
formal mentoring plan is to be welcomed, the strict attestation requirement from employers may have serious negative effect on STEM student employment, especially by small companies that lack legal and administrative resources.

LASC is also concerned that the ability of students to make use of the STEM OPT Extension might be disrupted by upcoming court actions and delays in this rulemaking process. We commend DHS for responding quickly to recent developments, and it is important for them to continue working quickly to ensure students on STEM OPT Extensions can keep working as we approach and pass the court’s February 12, 2016 deadline.

Overall, LASC strongly supports the OPT program and the STEM OPT Extension. We also applaud the implementation of Cap-Gap Relief for smoothing the transition between F-1 and H-1B visa status. We encourage individual international students to submit their own comment letter to DHS through the Federal Register, since it is particularly valuable that DHS receive a large volume of personalized messages from many individuals that support this program.