

# United States Senate

WASHINGTON, DC 20510

February 17, 2022

## VIA ELECTRONIC TRANSMISSION

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security

Dear Secretary Mayorkas:

I am writing to request information about the manner in which U.S. Immigration and Customs Enforcement (ICE) has been administering the Optional Practical Training (OPT) program for foreign students. More specifically, I am concerned about the extension of OPT status available to students in science, technology, engineering, or mathematics (STEM) degree programs and how ICE designates qualifying STEM programs for purposes of such extensions.

In April, 2008, the Department of Homeland Security (DHS) published an interim final rule extending the maximum period of OPT from 12 months to 29 months – i.e. allowing a 17-month extension – for students in F-1 visa status who have completed a STEM degree and accept employment with employers enrolled in the E-Verify employment verification program.<sup>1</sup> In March, 2016, DHS published a regulation increasing the maximum OPT extension period for STEM graduates from 17 months to 24 months, thereby allowing STEM graduates to have a total of 3 years of post-graduation OPT employment.<sup>2</sup>

The STEM OPT program was initially created to address concerns by U.S. high-tech companies that their inability to secure H-1B status for many of their OPT workers was adversely affecting their ability to recruit and retain skilled workers and was creating a competitive disadvantage for U.S. companies.<sup>3</sup> “U.S. *high-tech* employers,” according to the rule, “are particularly concerned about the H-1B cap because of the critical shortage of domestic *science and engineering* talent and the degree to which *high-tech* employers are as a consequence necessarily far more dependent on foreign workers than other industries.”<sup>4</sup> The rule described how, “with their large and growing populations of STEM-graduate scientists, high-tech industries in [China, India, and Russia] and others in the OECD now compete much more effectively against the U.S. high technology industry.”<sup>5</sup> The STEM OPT program was, in short, originally intended to address “the immediate competitive disadvantage faced by U.S. *high-tech* industries....”<sup>6</sup>

To qualify for the STEM OPT extension, an F-1 student must hold a bachelor's degree or a higher degree in an eligible STEM field from an ICE Student and Exchange Visitor Program

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<sup>1</sup> Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B Petitions, Interim Final Rule, U.S. Department of Homeland Security, 68 Fed. Reg. 18944, April 8, 2008, <https://www.govinfo.gov/content/pkg/FR-2008-04-08/pdf/E8-7427.pdf> (hereinafter “2008 OPT STEM Regulation”).

<sup>2</sup> Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students, Final Rule, U.S. Department of Homeland Security, 81 Fed. Reg. 13040, March 11, 2016, <https://www.govinfo.gov/content/pkg/FR-2016-03-11/pdf/2016-04828.pdf>.

<sup>3</sup> 2008 OPT STEM Regulation, *supra* note 1, at 18946.

<sup>4</sup> *Id.* at 18947 (emphasis added).

<sup>5</sup> *Id.* at 18946.

<sup>6</sup> *Id.* at 18947 (citing The National Science Foundation, *Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future* (2007), pp. 78–83 (describing alleged critical shortages of science, math, and engineering talent in the United States)) (emphasis added).

(SEVP)-certified school that is accredited (by an accrediting agency recognized by the U.S. Department of Education) at the time the student submits their STEM OPT extension application to USCIS.<sup>7</sup> DHS maintains a complete list of fields that fall within the regulatory definition of “STEM field” for purposes of the OPT extension.<sup>8</sup> This list is known as the STEM Designated Degree Program list (“STEM OPT List”).<sup>9</sup> The fields on the STEM OPT list are listed according to their corresponding codes from the Department of Education’s Classification of Instructional Program (CIP) system: if a degree program’s CIP code appears on the STEM OPT List then students who have graduated from that degree program are eligible for a STEM OPT extension upon conclusion of their initial one-year OPT period.

According to the STEM OPT List, a STEM field of study is one “within the two-digit series [of CIP codes] containing engineering, biological sciences, mathematics, and physical sciences,” or “a related field.”<sup>10</sup> In general, “related fields will include fields involving research, innovation, or development of new technologies using engineering, mathematics, computer science, or natural sciences (including physical, biological, and agricultural sciences).”<sup>11</sup>

Despite ICE’s relatively clear guidance on what constitutes a STEM field of study for purposes of the STEM OPT extension, there have been a number of reports over the years of colleges reclassifying as STEM degree programs certain degree programs that are plainly not in STEM fields in a transparent attempt to make the STEM OPT extension available to more of their foreign student population:

- Numerous Master of Business Administration (MBA) programs across the country have somehow been redesignated by schools as STEM programs.<sup>12</sup> Typical of such announcements is the one from the Haas School of Business at the University of California, Berkeley:

Berkeley Haas is among the first business schools to receive STEM (Science, Technology, Engineering, and Math) designation for MBAs. The designation makes all international students who graduate eligible to apply for an additional 24-month visa extension during post-MBA employment....

The MBA programs received the STEM designation after a campus review of how the programs are categorized by the National Center for Education Statistics under a Classification of Instructional Programs (CIP) code.

The new code defines the Berkeley Haas MBA as “a general program that focuses on the application of statistical modeling, data warehousing, data mining,

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<sup>7</sup> STEM OPT Hub: Students: Determining STEM OPT Extension Eligibility, U.S. Immigration and Customs Enforcement, Student and Exchange Visitor Program, <https://studyinthestates.dhs.gov/stem-opt-hub/students-determining-stem-opt-extension-eligibility>.

<sup>8</sup> STEM OPT Hub: Eligible CIP Codes for the STEM OPT Extension, U.S. Immigration and Customs Enforcement, Student and Exchange Visitor Program, <https://studyinthestates.dhs.gov/stem-opt-hub/additional-resources/eligible-cip-codes-for-the-stem-opt-extension>.

<sup>9</sup> DHS STEM Designated Degree Program List, U.S. Immigration and Customs Enforcement, Student and Exchange Visitor Program, <https://www.ice.gov/sites/default/files/documents/stem-list.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., “Top MBA Programs Get STEM-Certified to Attract Int’l Students,” Accepted Blog, June 30, 2020, <https://blog.accepted.com/mba-programs-go-stem-certified/>.

programming, forecasting and operations research techniques to the analysis of problems of business organization and performance.” After the review, the Haas MBA degree programs were changed from “Business Administration and Management, General,” to “Management Science,” which is considered a STEM program.<sup>13</sup>

- Georgia State University has announced on its website that its M.A. Economics degree “has been reclassified as a STEM degree.”<sup>14</sup> The university adds that the reclassification of the M.A. Economics program will “benefit international students starting the program in fall 2020 or later who can, upon graduation, apply for a STEM Optional Practical Training (OPT) visa extension” despite the fact that the field of economics, which falls under the *social sciences*, is, correctly, nowhere to be found on the STEM OPT List.<sup>15</sup>
- New York University (NYU) maintains a lengthy list of degree programs that it asserts fall within CIP codes on the STEM OPT List.<sup>16</sup> Incredibly, NYU’s STEM degree program list includes the following degree programs:
  - Classical Civilization;
  - Classics and Art History;
  - Economics;
  - Journalism; and
  - Drama Therapy.
- The University of California at Berkeley states in a letter to DHS adjudicators that its Master and Bachelor of *Journalism* programs should be considered STEM degree programs for purposes of the STEM OPT extension because, in the opinion of U.C. Berkeley, those degree programs are appropriately classified under the CIP code for Digital Communication and Media/Multimedia, which is on the STEM OPT List.<sup>17</sup>

The tricks these schools are using to get their non-STEM degree programs onto the STEM OPT List seem to involve either creatively repackaging their degree program to fit the description of a qualifying CIP code or just adding a few courses from legitimate STEM fields into the curriculum for the non-STEM degree program. The former is apparently how U.C. Berkeley is claiming that its bachelor and master degree programs in journalism qualify as STEM degree programs under the CIP code for “Digital Communication and

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<sup>13</sup> “Berkeley Haas receives STEM designation for MBAs,” BerkeleyHaas Newsroom, Haas School of Business at the University of California, Berkeley, November 14, 2019, <https://newsroom.haas.berkeley.edu/berkeley-haas-receives-stem-designation-in-all-three-mba-programs/#>.

<sup>14</sup> Exciting News Starting Fall 2020, Georgia State University, Andrew Young School of Policy Studies Programs, <https://aysps.gsu.edu/program/economics-ma/>; Georgia State’s Advanced Economics Degrees Attain STEM Designation, Georgia State News Hub, May 26, 2020, <https://news.gsu.edu/2020/05/26/georgia-states-advanced-economics-degrees-attain-stem-designation/>.

<sup>15</sup> Exciting News Starting Fall 2020, *supra* note 14.

<sup>16</sup> NYU STEM Designated Programs for F-1 Students, New York University, <https://www.nyu.edu/students/student-information-and-resources/student-visa-and-immigration/alumni/extend-your-opt/stem-opt/nyu-stem-designated-programs-for-f-1-students.html#STEMSTEINHARDTUNDERGRADUATE>.

<sup>17</sup> Memo re CIP Code for UC Berkeley Journalism Masters (M.J.) or Bachelors (B.A.) 09.0702— Digital Communication and Media/Multimedia, University of California at Berkeley International Office, January 2019, [https://internationaloffice.berkeley.edu/sites/default/files/journalism\\_stem\\_letter\\_generic.pdf](https://internationaloffice.berkeley.edu/sites/default/files/journalism_stem_letter_generic.pdf).

Media/Multimedia.” The latter appears to be how it’s being done in the other examples listed above.

Furthermore, DHS recently published a notice in the Federal Register announcing the addition of 22 new fields of study to the STEM OPT List.<sup>18</sup> In evaluating fields of study nominated by members of the public for potential inclusion on the STEM OPT List, DHS claims that it (1) “evaluates submissions to assess whether the degree is generally considered to be a STEM degree by recognized authorities,” including educational institutions, non-governmental entities, and governmental entities and (2) “reviews the NCES definition of the CIP code and any supporting material submitted by the nominator,” including degree requirements and curriculum.<sup>19</sup> DHS further states that “degree requirements and curriculum may be assessed across academic institutions to ensure that the core aspects of the degree are sufficiently consistent among educational institutions.”<sup>20</sup>

With respect to the first prong of DHS’ analysis of potential additions to the STEM OPT List, I’m concerned by the fact that, in the recent Federal Register notice, DHS either could not or did not point to any other “recognized authorities” that actually classified the vast majority of the 22 new STEM OPT List additions as STEM degrees. This was the case for a number of questionable additions to the STEM OPT List such as anthrozoology, industrial and organizational psychology, and data visualization. With respect to the second prong of DHS’ analysis, the agency’s reliance, at least in part, on degree requirements and curriculum across academic institutions further highlights the importance of educational and academic institutions acting with propriety regarding STEM degree classifications.

I have long had my concerns about the legality of the STEM OPT extension program. It sets up a de facto new employment-based visa program for tens of thousands of foreign workers that serves as a shadow H-1B program, for the same length as the H-1B program, but without any of the protections for U.S. and foreign workers found in the actual H-1B program (e.g., cap and prevailing wage) created by Congress. It has also been subject to extensive fraud and abuse by bad actors seeking to game the system and circumvent U.S. immigration laws.<sup>21</sup> Today, though, my concern is with the way this program, already problematic, is being abused by colleges and universities and unjustifiably expanded by DHS to make it even more harmful and to completely undermine whatever minimal integrity the program had to begin with.

There is no way, under any common-sense understanding of what fields are considered STEM fields, that degree programs in economics, business, journalism, anthrozoology, industrial and organizational psychology – much less drama therapy and classics – should be considered degrees in STEM fields. Such fields are also certainly not science and engineering fields in

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<sup>18</sup> Update to the Department of Homeland Security STEM Designated Degree Program List, U.S. Immigration and Customs Enforcement and Department of Homeland Security, 87 Fed. Reg. 3317, January 21, 2022, <https://www.federalregister.gov/documents/2022/01/21/2022-01188/update-to-the-department-of-homeland-security-stem-designated-degree-program-list>.

<sup>19</sup> *Id.* at 3318.

<sup>20</sup> *Id.*

<sup>21</sup> Hon. Charles E. Grassley, Chairman, Sen. Comm. on the Judiciary, to Hon. Kirstjen Nielsen, Secretary, U.S. Dep’t. of Homeland Security (Mar. 22, 2018), available at: [https://www.judiciary.senate.gov/imo/media/doc/2018-3-22%20CEG%20to%20DHS%20\(SEVP%20and%20Student%20Visas\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2018-3-22%20CEG%20to%20DHS%20(SEVP%20and%20Student%20Visas).pdf); Hon. Charles E. Grassley, Chairman, Sen. Comm. on the Judiciary, to Hon. Chad Wolf, Acting Secretary, U.S. Dep’t. of Homeland Security (May 21, 2020), available at: [https://www.judiciary.senate.gov/imo/media/doc/2018-3-22%20CEG%20to%20DHS%20\(SEVP%20and%20Student%20Visas\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2018-3-22%20CEG%20to%20DHS%20(SEVP%20and%20Student%20Visas).pdf).

which there is an alleged critical shortage of workers adversely affecting the international competitiveness of the high-tech industry.

To that end, I would appreciate answers to the following questions no later than March 10, 2022:

1. Please describe the process by which a USCIS officer adjudicates an application for an Employment Authorization Document submitted by an F-1 student seeking a STEM-based extension of the Optional Practical Training period.
2. Does USCIS or ICE/SEVP determine, for every OPT STEM extension/EAD application, whether the CIP code alleged by the school or EAD applicant actually corresponds to the student's degree program, or is the applicant's/school's proffered CIP code just accepted without question?
3. What is the standard according to which USCIS and/or SEVP determines whether a degree program is described by a CIP code proffered by the school and/or EAD applicant?
4. The U.S. Department of Education states on its CIP code website:

In some cases, instructional programs may be found in one or more [CIP code] series. For example, a person can receive a degree in Statistics from a program that focuses on mathematical models; this program would be coded under code 27.0501 Statistics, General. On the other hand, a person can receive a degree in Statistics from a program which focuses on the applications of statistical methods to the description, analysis, and forecasting of business data; this degree would be coded under code 52.1302 Business Statistics.<sup>22</sup>

This would appear to be the loophole that U.C. Berkeley has used to assert that the CIP code for its MBA degree programs should be changed from “Business Administration and Management, General,” which is definitely not on the STEM OPT List, to “Management Science,” which is on the OPT STEM List. U.C. Berkeley claims this is appropriate because its MBA programs “focus[...] on the application of statistical modeling, data warehousing, data mining, programming, forecasting and operations research techniques to the analysis of problems of business organization and performance”; these are, of course, the exact words used to describe the Management Science CIP code.

- a. Do USCIS and SEVP agree with U.C. Berkeley that its MBA programs are described by a CIP code on the STEM OPT List?
- b. What, exactly, is the test or standard by which USCIS and/or SEVP assess whether a certain degree program “focuses” in a field of study to such an extent that it can be considered to be described by the CIP code corresponding to the field of study that is the subject of the “focus”?
5. In the examples above, the schools announce that they have “redesignated” or “reclassified” certain degree programs as “STEM” degree programs described by CIP codes on the STEM OPT List. Has USCIS or SEVP played any role in those redesignations/reclassifications, or in any way consulted with those or other schools on

<sup>22</sup> CIP: The Classification of Instructional Programs, National Center for Education Statistics, U.S. Department of Education, <https://nces.ed.gov/ipeds/cipcode/default.aspx?y=56>.

such redesignations/reclassifications *before* those redesignations/reclassifications were made?

6. Do USCIS and SEVP agree with U.C. Berkeley, per the 2019 letter to adjudicators referenced above, that its bachelor and master degree programs in journalism qualify as STEM degree programs under the CIP code for “Digital Communication and Media/Multimedia”?
7. Do USCIS and SEVP agree with Georgia State University that its M.A. Economics degree is described by a CIP code on the STEM OPT List?
8. Do USCIS and SEVP agree with New York University, per its announcement referenced above<sup>23</sup>, that the following degree programs at NYU are described by a CIP code on the STEM OPT List?
  - BA, Classical Civilization;
  - BA, Classics and Art History;
  - BA, Economics;
  - BA, Journalism; and
  - MA/MS, Drama Therapy.
9. Would DHS please provide a breakdown of STEM OPT extensions granted in FY2019, FY2020, and the current fiscal year to date, according to degree program title supplied by the applicant/university (e.g. M.A. Economics), and the CIP code under which it was classified?
10. As noted above, in the recent Federal Register notice announcing the addition of 22 new fields of study to the STEM OPT List, DHS discussed how it evaluates potential additions to the list, which includes assessing whether the degree is generally considered to be STEM by “recognized authorities” such as educational institutions, governmental entities, and non-governmental entities. As previously mentioned, DHS either could not or did not point to any other “recognized authorities” that actually classified the vast majority of the 22 new STEM OPT List additions as STEM degrees. For the few new additions where an official STEM classification was cited, DHS generally pointed to classification lists maintained by either the Department of Veterans Affairs or the National Science Foundation.
  - a. Assuming DHS undertook the same review process for each of the 22 new additions to the STEM OPT List, please provide the full list of governmental entities and non-governmental entities DHS considered, referenced, or consulted for purposes of assessing whether each of the proposed fields of study qualified as a STEM degree worthy of addition to the STEM OPT List.
  - b. Similarly, please provide the full list of educational institutions DHS considered, referenced, or consulted for purposes of assessing whether each of the 22 proposed fields of study qualified as a STEM degree worthy of addition to the STEM OPT List.
11. In the recent Federal Register notice, DHS also stated that, in assessing whether a degree is worthy of addition to the STEM OPT List, it analyzes the extent to which a degree “is comprised of core STEM disciplines as well as research, innovation, and development of

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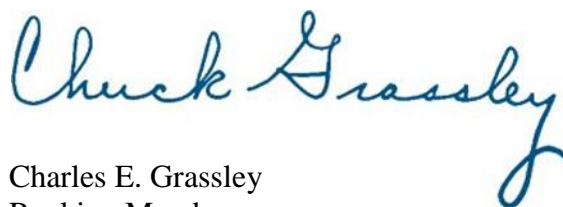
<sup>23</sup> NYU STEM Designated Programs for F-1 Students, *supra*, note 16.

new technologies using engineering, mathematics, computer science, or natural sciences (including physical, biological, and agricultural sciences).”<sup>24</sup>

- a. Please describe, in detail, how DHS determines that a given degree program is sufficiently comprised of core STEM disciplines or “research, innovation, and development of new technologies,” using mathematics, engineering, etc. to warrant inclusion on the STEM OPT List. As an example, do core STEM disciplines have to comprise a specified or minimum number of academic credit hours in the degree curriculum in order for the degree to qualify for the STEM OPT List?
  - b. Does DHS consult with any other authorities or entities when making such determinations?
12. Finally, in the recent Federal Register notice, DHS stated that degree and curriculum requirements “may be assessed across academic institutions to ensure that the core aspects of the degree are sufficiently consistent among educational institutions.”<sup>25</sup>
- a. For purposes of carrying out this assessment, how does DHS define “core aspects of the degree” and “sufficiently consistent?”
  - b. Did DHS carry out such an assessment on any of the 22 new additions to the STEM OPT List? If so, on which of the 22 new additions was such an assessment conducted?
  - c. For each of the 22 new degrees on which such an assessment was carried out, please list the academic and educational institutions DHS considered, referenced, or consulted.

Should you have questions, please contact Drew Robinson of Ranking Member Grassley’s staff at 202-224-5225. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley  
Ranking Member  
Senate Judiciary Committee

cc: The Honorable Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement

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<sup>24</sup> Update to the Department of Homeland Security STEM Designated Degree Program List, *supra* note 18, at 3318.

<sup>25</sup> *Id.*