



May 25, 2018

L. Francis Cissna
Director
U. S. Citizenship & Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

Dear Director Cissna:

I am writing you concerning a revision of the U. S. Citizenship and Immigration Services web site information on “Optional Practical Training Extension for STEM Students (STEM OPT)” at <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/stem-opt>. The revision, apparently posted in late January, 2018, imposes several specific restrictions on STEM OPT that are not found in the regulations governing the program. This is not an effective way to regulate the STEM OPT program, and it is certainly not an effective means for communicating significant changes to students engaged in STEM OPT and the employers who provide their training. I encourage you to consider the wide variety of training programs that would comply with the regulations, revise the web site information again so that it is accurate, and in the future communicate such significant changes more effectively.

I recognize that the preamble to the final rule creating the current STEM OPT program [[81 FR 13079 par. 521](#)] provides information on the employer-employee relationship the Department considers necessary, and references several training arrangements that the Department considers “not apt” for STEM OPT. However, neither the preamble nor the regulations governing the STEM OPT program prohibit some training arrangements that are deemed inappropriate in your web site information. For example, your web site states that “the training experience may not take place at the place of business or worksite of the employer’s clients or customers,” but it would be quite possible for an employer to provide the necessary training, supervision, and evaluation of a trainee at a client’s site. For example, a computer science graduate could train as part of a team, including his or her supervisor, and be located either short-term or long-term at a client’s site. Any

guidance USCIS issues on STEM OPT training arrangements would benefit from a fuller consideration of the wide variety of effective training strategies that employers utilize. Regulatory compliance is a joint effort of agencies, employers, students engaged in STEM OPT, and Designated School Officials, among others. The individuals and organizations striving to comply with the regulations should not encounter conflicting or varying guidance on a topic from DHS entities; therefore, I would encourage you to work with your counterparts within DHS to ensure consistency in guidance. New guidance should be implemented through appropriate vehicles, such as the USCIS Policy Manual or policy memoranda. Communication vehicles such as news releases, alerts, and the news section of your website should not be used to establish new USCIS guidance. Perhaps most important, I would strongly encourage you to avoid seeking to implement new restrictions or burdens on the regulated community through web site changes, announcements, or even new policy guidance. Rather, you should follow the Administrative Procedure Act and the notice and comment process.

I hope that you will consider these recommendations with the introduction to the administration's Fall 2017 Regulatory Plan in mind:

Moreover, the Administration has reinforced the importance of fair notice and due process. In particular, this means agencies should closely examine their use of sub-regulatory actions, such as guidance documents, enforcement manuals, interpretive rules, "FAQs," and the like. Such documents can serve an important role in explaining existing statutory or regulatory requirements; however, they should not be used to impose new or additional legal obligations or requirements . . . Limiting guidance to its intended purpose of clarifying existing law rather than making new law will provide greater transparency about the regulatory process and ensure that regulated entities and the public have notice and an opportunity to comment on significant changes in regulatory requirements.

<https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201710/VPStatement.pdf>

It is a useful reminder of the role of agency guidance and its limits.

Sincerely,

Esther D. Brimmer, Executive Director and CEO