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**MEMORANDUM**

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To: International Education Program Administrators

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1) H-1B USCIS Proposes Process Change for Certain Waivers of Inadmissibility

The long-awaited proposal for procedural changes to I-601 hardship waivers for certain overstays was posted by USCIS as a “Notice of proposed rulemaking” (NPRM) in the *Federal Register* on March 30, 2012. This proposal will only affect certain undocumented individuals.

Please note that as of this announcement nothing new has become effective and that we must wait for the “Final rule” to be published in the *Federal Register* before we know all of the details. Potential beneficiaries are advised to be aware of unscrupulous individuals who will use this announcement as an opportunity to take advantage of a vulnerable community. Further note, that this proposal is not an amnesty and will only affect a very limited number of individuals once it is published as a “Final rule.”

The entire proposed rule may be viewed [here](#).

The USCIS announcement with links to summaries may be found [here](#).

2) H-1B Filing Season

H-1B filing season is now upon us. USCIS is now accepting new H-1B petitions with a start date of October 1, 2012. F-1 students who are beneficiaries of petitions filed prior to the expiration date of their OPT cards will have their employment authorization extended to October 1 (although, without the right to travel outside the U.S. between the OPT expiration date and October 1).

Although, four and five years ago H-1B places ran out at the beginning of April, the last three years have seen availability into December and January, with last year seeing numbers run out just before Thanksgiving. For those optimists who see a stronger economy and greater H-1B activity, as we have seen, it is recommended that applicants file sooner rather than later. A USCIS “Update” from March 27, 2012 may be found [here](#).

3) E-Verify Connection Lists Employers

USCIS has released its latest “E-Verify Connection.” It contains several valuable goodies including a **list of the more than 345,000 employers** enrolled to use E-Verify, E-verify User Manuals, and the self check process. The publication may be accessed [here](#).

4) USIS Transformation? “Those Who Cannot Remember the Past Are Condemned to Repeat It”

An interesting article recently appeared in “Benders Immigration Bulletin” of February 15, 2012, the leading immigration law publication. The article discusses problems with recent “Transformation” efforts by USCIS, and notes that we have all been there before. The authors of the article are the erudite Michael, and Eugene Goldstein. The article may be found [here](#).

5) SEVP Matters

As noted in the “NAFSA.news” of March 13, there have been several items posted by SEVP.

♦ Spring, 2012 Updates

SEVP posted, in its Spring, 2012 Updates, a presentation which they will be using at Spring meetings. The Update covers such matters as: “Study in the States Initiative; SEVP’s 2012 Regulatory Agenda; Recertification Pointers; I-17 Update Adjudication Backlog; Staffing of the Field Representatives Unit, and Contacting SEVP.” The Update may be accessed [here](#).

♦ Release 6.10

The same issue of “NAFSA.news” carried a Notice of Anticipated System Changes in Release 6.10 planned to be implemented on March 30. The Release modifies several F/M functions, as well as J-1, and batch issues. The publication may be accessed [here](#).

♦ SEVIS II Transition Workshop: Summary Report

The same “NAFSA.news” carried a “Summary Report” of the SEVIS II User Transition Workshop conducted in August, 2011 between SEVP and the Department of State, as well as selected participants from various schools and sponsors. The “Summary Report” may be accessed [here](#).

6) DOS Increases Visa Fees

The “Federal Register” of March 29, 2012 carried an “Interim final rule” increasing consular nonimmigrant visa application processing fees, among other services. Non petition based non-immigrant visas (B,F,J) went from \$140.00 to \$160.00. Petition based visas (H,L,O,P,Q and R) increased from \$150.00 to \$190.00. Immigrant visa fees were also increased. The “Federal Register” notice may be found [here](#).

7) ICE Public Advocate

As announced in last month's [Memorandum](#), ICE has created and appointed a Public Advocate. ICE has now updated the Public Advocate website with contact information and an interactive map providing contact information for twenty four Public Advocate Liaisons around the country. The Public Advocate website may be accessed [here](#). Unfortunately, for international educators, the emphasis of the Public Advocate is on enforcement and detention issues. Again, SEVP is the step-child.

8) DHS "Inspector General's Report"

The Department of Homeland Security's Office of Inspector General issued a report in February, 2012 entitled "Information Sharing on Foreign Nationals: Border Security (Redacted)" under OIG-12-39. Within the report there were a couple of interesting items regarding the entry process. In regard to a prior report on overseas screening, it was noted that:

In our report, we determined that DHS has improved the evaluation of the admissibility of foreign nationals before they travel to the United States, and that the level of cooperation among DHS components that conduct overseas screening is high. However, we determined that DHS overseas screening initiatives face serious resource and technological challenges. Information is fragmented among more than 17 DHS data systems, and officers must conduct labor-intensive, system-by-system checks to verify or eliminate each possible match to terrorist watch lists and other derogatory information. Although DHS concurred with 17 of the 18 recommendations, 5 recommendations required resources that the programs do not currently have.

In regard to the current report it was noted that:

For officers who conduct immigration inspections, CBP has developed software programs that consolidate information from various DHS, Department of State, and Department of Justice data systems. Programs include the Traveler Primary Arrival Client, used for primary inspections at airports, and the Vehicle Primary Client, used for land border crossings. These programs enable the officer to make a timely determination whether a traveler should be admitted or referred for a secondary inspection.

9) CBP Checkpoint List

AILA has recently released a “CBP Checkpoint List.” It is noted that the list is not exhaustive and that due to the nature of temporary check points, locations may change over time. Entries for the Northeast are:

|                    |  |
|--------------------|--|
| New York (upstate) | Temporary CBP Roadblock/checkpoint on Route 3, about 7 miles west of Harrisville, NY.  |
| New York (upstate) | Anyone who is not a USC and travels near Long Lake or Tupper Lake in the Adirondacks must have immigration docs with them. CBP routinely (5-6 times a month) sets up a checkpoint, with assistance of NY State Police, just S of Tupper Lake on Route 3. |
| New York (upstate) | Semi-Permanent Checkpoint: I-87 Southbound, near Schroon Lake, NY – appears to be used for truck weighing or border patrol stops. Is less active than it used to be about 5-6 years ago.   |
| New York (upstate) | Checkpoint every couple months on the Northway (I-87) southbound after exit 30 and just before the rest stop.  |
| New York (upstate) | Checkpoint on NYS Thruway (on July 30, 2010) north of Lake George on Route 87. Only asked for immigration papers. CBP Checkpoint on Route 3 in the Adirondacks   |
| New York (upstate) | Checkpoint on 81 N of Syracuse; 281 between Cortland and Syracuse and Route 11 near Potsdam.   |
| New York (upstate) | Checkpoint reported by SUNY Potsdam and Clarkson administrators say there is a standing checkpoint near them, possibly on 68.  |
| Vermont            | Route 91 South in VT, just after the junction with route 89 (near White River Junction).   |

10) TPS

♦ Syria Designated

On March 23, 2012 the Secretary of Homeland Security, Janet Napolitano announced that Syria is being designated for Temporary Protected Status (TPS) for a period of eighteen months for those Syrians currently present in the United States. The designation was made because “Conditions in Syria had worsened to the point where Syrian nationals already in the United States would face serious threats to their personal safety if they were to return to their home country.” The “Federal Register Notice” appeared on March 29, 2012 and may be found [here](#).

◆ El Salvador Extended

On January 10, 2012 it was announced that TPS for Salvadorans is being extended for an additional eighteen months with a re-registration period which was open until March 12, 2012. The ending date for the extension is September 9, 2013.

11) NIV Interview Waiver Pilot Program Announced for New Delhi

Last months' ["Memorandum"](#) mentioned the introduction of the NIV interview waiver pilot program. On March 22, 2012 it was announced that the program was being implemented at the American Consulate in New Delhi, India. The pilot program permits consular officers to waive interviews for qualified NIV applicants who are renewing their B-1/B-2 visa within 48 months of the expiration of a previously held visa for the same classification.

12) DOL Permanent Labor Certification "Special Handling" Defines College and University Teachers

In order to obtain a green card, some individuals must be sponsored by an employer who must test the labor market for any able, willing, or qualified American workers who would accept the job at the prevailing wage rate. In the college or university context some, usually junior faculty members, may ask the institution to apply for them through the U.S. Department of Labor. For many years the Labor Department has made an accommodation for college and university faculty called "Special Handling." This practice permits the institution to test the labor market by holding a competitive recruitment process to determine the most qualified individual for the position. Use of "Special Handling" as the selection process allows the institution to use its own discretion in selecting the appropriate applicant. The problem has existed for many years, however, that there was no definition for the duties of a college or university teacher. The Board of Alien Labor Certification Appeals (BALCA) in a decision on March 6, 2012, *In the Matter of Mercer University on behalf of Stanislaw Trembach* effectively held that the beneficiary did not need to be a full time teacher in order to qualify. In this case the beneficiary was an assistant professor and faculty member in the university's division of library services who taught twenty four instruction class sessions to four hundred students, as well as designed and ran faculty workshops, created a great deal of teaching material and infrastructure, and conducted individual research sessions for students. BALCA held that these duties qualified for "Special Handling." Will the teaching of one or two courses in addition to administrative duties qualify as a teacher for "Special Handling?" Where the line is to be drawn appears to be an open matter and will be determined on a case to case basis. Time and future decisions will tell. The decision may be found [here](#).

13) NY Times Op Ed: “How Not to Attract Tourists”

The “New York Times” on March 15, 2012 carried an Op Ed piece by Mark Vanhoenacker entitled “How Not to Attract Tourists.” The piece discusses ESTA visa waiver entries both on paper and in practicality. The Op Ed is recommended reading.

*Many thanks for your comments, your suggestions and for referring your students, scholars and faculty members.*

*Please let me know if you have any questions, or if you would like copies of any of the materials covered.*

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