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MEMORANDUM

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To: International Education Program Administrators

As many of you know, our firm provides presentations at schools for international students without charge.

Please let us know, as soon as possible, if you would like us to come to your campus.

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1) “SEVP Bulletin” Announcements

A one page “Homeland Security Investigations SEVP Conference Bulletin” has just been released in time for the NAFSA conference season. The Bulletin discusses the new Field Representative Unit. The first class of fifteen Field Representatives began training in February, and is “scheduled to deploy in late April.”

The “Bulletin” also discusses the first round of SEVIS “enhancements” to be released this Spring with a subsequent release scheduled for Summer. Users can look forward to the following enhancements: “Form I-17...accreditations and school recognitions conversion project, improved list functionality, performance enhancements and new data input standards”. (More about SEVIS changes later.)

The “Bulletin” also mentions that in early April it will post a newly recorded presentation to the “Study in the United States Conferences and Outreach page that covers the latest programmatic updates and hot topics from SEVP....” including the ability to submit feedback on draft guidance. The “Bulletin” mentions that: “You will also learn more about process improvements for the I-901 SEVIS fee payment, compliance reminders for English as a second language schools, FRU [Field Representative Unit] training and scheduling, the ongoing process for recertification, the SEVIS Help Desk, and SEVIS enhancements.”

2) Lou Farrell Speaks to the Academic Community

SEVP Director Louis Farrell recently posted a message to the Academic Community about SEVIS developments. The 6 minute message (or written transcript) may be viewed [here](#).

In short, Mr. Farrell announced that SEVIS II modifications would, be partially implemented in SEVIS, as technological advances have permitted increased functionality in the original system. Over the next twelve months the following changes will happen:

- Improved system performance including increased system responsiveness during peak times;
- Improved searching capabilities;
- Improved alert lists where users can click on a nonimmigrant student name, take action on a record (e.g., registration, etc.), and then go back to the alert list directly without having to retrace their navigation to the student record;
- Flexible, responsive reports that allow users to refine the data and export the results to Excel or a comma-delimited file;

- Changes in how schools provide accreditation information; and
- Improvements too many Department of State (DOS) functionalities for J-1 exchange visitors.

SEVP advised that it will provide various forms of training with each release including on screen text, system help pages, and webinars. SEVIS II planned functionalities including an entirely new user interface, a completely paperless process, and user account for nonimmigrant students, exchange visitors and their dependents will not be implemented. (Even more SEVIS changes below).

3) SEVP Announces Timing of Second Round of School Recertification

On March 20, 2014 NAFSA posted a notice that, despite a statement made in the January, 2014 “SEVP Conference Bulletin” to the effect that a second round of school recertifications would begin in February, 2014, SEVP announced at a February 26, 2014 liaison meeting that the first 180 day notices “would more likely begin to be sent out in the latter part of March” in chronological order from when the school was last certified.

4) Homeland Security Advisory Council Meets

On March 19, 2014 the Homeland Security Academic Advisory Council met in Washington, DC. The Council is made up of college and university presidents from across the country and was formed to provide input into Homeland Security issues relevant to the academic community. Among its reports was a *Progress Report from the Homeland Security Academic Advisory Council's Subcommittee on International Students*. The Subcommittee “is charged with providing advice and recommendations... on...how DHS can improve its international student processes and outreach efforts.. [to] better communicate... [the agency's]... regulatory interpretation policies and procedures to the academic community...and accommodate and support emergent trends in international education.” The Subcommittee is co-chaired by NAFSA's Executive Director and CEO Marlene M. Johnson, and by NYU President Dr. John Sexton. The overall findings of the Subcommittee draft report noted that: 1) SEVP officers receive extensive basic training including immigration laws affecting international students, as well as receiving a two hour course on SEVIS and International student document requirements after they are on duty; 2) CBP does not publicize internal policies and procedures regarding operational guidance on the entry process and CBP decision making at ports of entry, and non-law enforcement sensitive internal policies and publication of procedures would be useful for travelers including international students; 3) DHS promotion of already existing customer service initiatives and programs would beneficially aid the public understanding and compliance of DHS policies; and 4) although SEVP has made significant progress in reducing school certification processing time and

increasing engagement with stakeholders, ICE SEVP staff increases are still needed to implement ongoing initiatives including the modernization of SEVIS. These findings are included in the Subcommittee's Draft Recommendations. NAFSA has posted all of the Committee's draft reports.

5) NAFSA Posts ITIN Application Procedures for Scholarship, Fellowship, and Grant Recipients

On March 18, 2014 NAFSA posted resources for obtaining Individual Taxpayer Identification Numbers (ITIN) from IRS "under a special exception that allows SEVIS schools and exchange visitor programs to certify and submit copies of an F, M or J ITIN applicant's passport, rather than sending the original passport to IRS". The NAFSA posting summarizes their engagement with IRS on this issue and may be found under "Find Resources" on the NAFSA website.

6) GAO Report "DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization"

In early February the General Accounting Office (GAO) published a "Report to the Ranking Member, Committee on the Judiciary U.S. Senate" [Charles E. Grassley, Republican, Iowa] entitled *Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization*. Mr. Grassley, in a statement on his website, reported on the study as revealing "extensive and alarming mismanagement of the OPT program, proving serious program integrity issues that bring to light potential risks to national security." He requested that the Secretary of Homeland Security "place an immediate moratorium on the program until the serious problems are fixed." Among his characterizations were that: "Foreign students, sometimes aided by school officials, are currently using the OPT program to acquire unauthorized employment in the United States; the federal government does not know where tens of thousands of foreign students in the OPT program are located, who they are working for, and what they are doing while staying in the United States; there is a lack of coordination within ICE, inconsistent collection of information by ICE, and inadequate monitoring mechanisms in place to ensure program compliance." A review of Senator Grassley's official website amply demonstrates his populist feelings and approach to immigration issues. The GAO Report may be found at <http://gao.gov/products/gao-14-356>.

The Report is approximately forty pages, including a response by DHS, in which may be found some interesting future SEVIS modifications.

The Report (in letter form to Mr. Grassley) notes that as of November, 2013 about one hundred thousand of the approximately one million international students were approved for OPT. The Report then goes on to state "The February, 1993 terrorist attack on the World Trade Center, which involved foreign students drew attention to the need to improve the monitoring of foreign

students...” The Report discusses prior GAO findings and criticizes certain aspects of ICE’s administration and regulations regarding OPT. It also criticizes SEVP for looking at OPT fraud as a low priority item because: “They believe foreign students under OPT do not have an incentive to jeopardize their foreign student visa status and future legal status to stay and work in the United States. However, SEVP has not developed a process to determine the extent to which schools that recommend foreign students approved for OPT may pose risks”. Apparently, that criticism is based, in part, upon interviews held by GAO with certain Counterterrorism and Criminal Exploitation Unit agents who stated that: “Non-immigrants are a vulnerable population that could be exploited by illegitimate companies or organizations that lure students to the United States with false promises of high paying jobs and potential ways to stay in the country.” The officials stated that a recruiter or a third party might offer to help foreign students find OPT work for a fee or for a percentage of their salary once work is performed under OPT. Unfortunately, this unsupported speculation is given credence, even though SEVP’s conclusions are criticized for not yet having developed specific fraud risk indicators. SEVP’s development of such indicators in related areas “apparently” didn’t count.

The Report also criticizes ICE for not providing guidance to DSOs to help them determine and document whether a student’s job is related to their area of study. Ignored, is the fact that SEVP has guidance recommending that students maintain evidence for how the job is related, although, with no requirement to report this information to DSOs, or for DSOs to enter this information into SEVIS, and despite the long understood concern that whether the work is “directly related” is a subjective process which is difficult to regulate. The Report is also critical of SEVP in failing to provide instruction on how students and DSOs may report and record dates of employment or unemployment, as these are not required by regulations for entry into SEVIS.

Further, the Report notes that ICE regulations and policies do not define, and SEVP has not provided, specific guidance to DSOs on how to calculate a full academic year for SEVP certified schools, despite the fact that SEVP had advised that various types of programs have different academic schedules and that specific guidance may not apply universally to all schools, and that they do use a Department of Education definition which, in effect, defaults the definition to the individual institution.

The Report admits that its recommendations are made on insufficient sampling, but makes recommendations never the less. The changes that GAO would like to see are viewed by GAO as pure internal administrative changes, although, ICE would appear to have wanted regulatory changes made with Notice and Comment in accordance with the Administrative Procedure Act. This latter manner of proceeding would allow for public input which might impact Senator Grassley’s alarmist conclusions, considering the fact that the GAO admits that ICE has undergone sufficient risk assessment and development allowing it to create a watch list of potentially non-compliant programs. It may reasonably be asked why general conclusions based on incomplete sampling are made which

would affect all schools when any problems found by the GAO, which may or may not actually exist, are very limited, and are identifiable to specific perpetrators.

Of particular interest is the Department of Homeland Security's response to the GAO report. The Department stated that as part of ICE's ongoing efforts, SEVP is developing an overall risk management program focusing on schools which may pose a risk, and that SEVP would work with CTCEU (Counterterrorism and Criminal Exploitation Unit) to develop risk factors for schools and students relating to OPT. This program is to be completed by September 30, 2014. Further, the Department advised that it already had the functionality to track OPT employment information, including the employer's name and address, dates of employment, and any periods of unemployment, and advised that the software that uses these data fields, is scheduled for release in 2014, with an estimated compliance date of January 31, 2015.

The Department also noted that SEVP would develop and distribute guidance on how a DSO is to determine whether a job is related to the student's area of study, and to demonstrate that they took steps based on SEVP guidance. The guidance is estimated for completion on September 30, 2014.

As to the requirement that DSOs record the student's initial date of employment and any dates of unemployment in SEVIS, SEVP will issue guidance to clarify the importance of the reporting obligations in order for students to maintain lawful nonimmigrant status. This guidance is expected to be issued by January 31, 2015.

As to the issue of how much time constitutes one full academic year, SEVP will provide guidance regarding periods of enrollment, by September 30, 2014.

SEVP will also implement operational procedures to conduct "periodic queries" to identify F-1 students who may have exceeded their OPT time period eligibility and, thereafter, SEVP will coordinate this information with USCIS to follow up on individual student cases. This process is to be implemented by September 30, 2014.

It would appear that interested institutions and individuals have their work cut out for them in making an impact on ICE and SEVP in their development of "guidance", on both existent and nonexistent issues. "Guidance" does not require any public input.

7) Latest DACA Statistics

From August 15, 2012 through December, 2013 USCIS has received 674,363 DACA applications, of which it has accepted 641,367. 569,470 were approved and 20,745 were denied. USCIS projects a processing time goal of 6 months.

Mexico continues to be the top country of origin with 467,982 applications. By comparison, El Salvador is next with 23,074 applications.

California had 174,241 applicants, Texas 100,061, and New York 32,086. New Jersey had 17,495, all within the top ten.

It would appear that fewer individuals are signing up for DACA, although a very substantial number of individuals from the potential pool of applicants are still out there.

8) Haiti Developments

❖ ICE Extends Employment Authorization for Haitian F-1 Students

The “Federal Register” of March 3, 2014 carried a “Notice” for an “extension of employment authorization for Haitian F-1 nonimmigrant students experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti”. The “Notice” is effective March 3, 2014 and will remain in effect until January 22, 2016. This “Notice” extends the suspension of certain requirements for on campus and off campus employment for F-1 students who are Haitian citizens and who are experiencing severe economic hardship as a result of the January 12, 2010 earthquake. The rules were originally suspended beginning September 15, 2010. The student must be enrolled in an SEVP certified institution, and currently be maintaining F-1 status, and experiencing severe economic hardship as a direct result of the earthquake. The “Notice” applies to students from elementary school to graduate programs.

❖ USCIS Extends TPS

The “Federal Register” of March 3, 2014 contained a “Notice” extending the designation of Haiti for Temporary Protected Status for 18 months from July 23, 2014 through January 22, 2016 as a result of the substantial, but temporary disruption of living conditions in Haiti resulting from the earthquake. The extension is limited to those previously registered for TPS. The 60 day reregistration period runs from March 3, 2014 through May 2, 2014. EAD’s with an expiration date of January 22, 2016 will be issued, although a present EADs validity is automatically extended for six months through January 22, 2015.

9) DHS Designates Chile for Visa Waiver Program

On February 28, 2014, the Department of Homeland Security announced that Chile was being designated for the Visa Waiver Program effective May 1, 2014. Chile will join 37 other VWP participants whose citizens are allowed visa free travel to the US for stays of up to 90 days for business or tourism. In fiscal year 2013 the program accounted for approximately 19.6 million visitors to the US for individuals entering by air. Similar to other visa waiver program travelers, applicants’ are required to apply for advanced travel authorization through ESTA.

10) NYS Senate Rejects Tuition Aid for Undocumented Students

On March 17, 2014 the “New York Times” reported that the New York State Senate rejected a bill designed to grant tuition assistance undocumented immigrant students. The bill was narrowly defeated in a surprise vote with virtually no advanced notice. All Republicans voted against, as well as two democrats. The Democratic controlled State Assembly had passed the legislation last month, although Governor Cuomo had not been a vocal supporter. It was noted that more than a dozen states offer reduced in-state tuition rates to the undocumented, as does New York, and that an estimated 8,300 undocumented immigrants were attending public institutions of higher education in the state. California, New Mexico, Texas and Washington offer state financial aid to undocumented students. The entire story may be found at: http://www.nytimes.com/2014/03/18/nyregion/new-york-senate-rejects-measure-to-give-illegal-immigrants-state-tuition-aid.html?_r=0

11) “NY Times” Columnist Nicholas Kristof: “Go West, Young People! And East!

The “New York Times” columnist Nicholas Kristof published a column on Sunday, March 16, 2014 which strongly advocates international education for American students, and notes that the State of Utah may be the most cosmopolitan state in America as vast numbers of young Mormons spend a couple of years abroad as missionaries and return speaking foreign languages and carrying a wealth of international experience. He notes that Utah is a center for trade and for international global companies. He also mentions that: “If someone who speaks three languages is trilingual, and a person who speaks four languages is quadrilingual, what is a person called who speaks no foreign language at all? An American!” The article may be found [here](#):

Many thanks for your comments, your suggestions and your confidence in 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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