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**MEMORANDUM**

Jacqueline Singh  
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To: International Education Program Administrators

We are very happy to announce that we have successfully relocated to 80 Maiden Lane, Suite 1008, New York, NY 10038.

We are also happy to announce that we have reinvented ourselves as: Goldstein and Cheung LLP. All Goldsteins remain present.

- 1) DHS Asks Court for STEM OPT Stay Extension until May 10, 2016.
- 2) SEVP Releases "Stakeholder Issues Response Report"
- 3) Final Class of SEVP Field Reps Deployed
- 4) SEVP Issues Quarterly "SEVIS by the Numbers"
- 5) DHS Awards Software Contracts for SEVIS Support
- 6) ICE Publishes Information Collection Notice for I-20s
- 7) NSC to Hold Teleconference on "Students and School, and Other Issues" on January 14.
- 8) BALCA Permits Higher Education Institutions to Utilize Own Wage Surveys
- 9) Congress Restores 50% Workforce L-1/H-1B Fees
- 10) Visa Waiver Program Changes

1) DHS Asks Court for STEM OPT Stay Extension Until May 10, 2016.

As previously reported in this Memo, and extensively elsewhere, the Federal District Court in Washington, DC stayed the 2008 DHS Interim Final Rule which created the 17 month STEM Extension (Washington Alliance of Technology Workers v. U.S. Department of Homeland Security 8/12/15) until February 12, 2016 so that DHS could submit the regulation for proper notice and comment in accordance with the Administrative Procedure Act. DHS published the Notice of Proposed Rulemaking on October 19, 2015. Approximately 50,500 comments were received. DHS has now requested that the Court extend the stay through May 10, 2016 which would provide for an additional 30 days to complete the rulemaking, and sixty days during which DHS could develop guidance and train its personnel, as well as provide guidance to the international education community. We must await the court's decision. There was no analysis of the context or nature of the comments received, although the high number of comments makes it appear that at least some were boilerplate and repetitive responses resulting from lobbying efforts by the plaintiff Washington Alliance.

At this moment, the only thing advisors can tell their students is to be patient.

2) SEVP Releases "Stakeholder Issues Response Report"

SEVP has published "Stakeholder Issues Response Report." The Report is a response to comments and criticisms made to SEVP at the national NAFSA conference, as well as from other venues. The 12 page report begins with an interesting message from Director Lou Farrell. Director Farrell makes his major point that the tight timeframe for the agency's response to the STEM litigation:

...has required us to pull every available resource to ensure minimal negative impacts on the academic and international student community. However, SEVP remains committed to developing guidance on all items discussed in this report. While we may not provide a specific deadline for a certain policy guidance or regulatory change, we continuously discuss numerous topics at an internal level through working groups and meetings with our government partners. In the end, SEVP will strive to address each topic identified in this report and provide our stakeholders with regular updates on our progress through our established outreach efforts.

With the foregoing in mind, the report addresses many issues including:

- ◆ I-17 processing times generally.
- ◆ I-17 specific program amendments triggering artificial deadlines causing one year program delays.
- ◆ SEVIS functionality including ability to export data to spreadsheets, reduced course load history, and error messages, among other issues.
- ◆ Upgraded and more consistent SRC support.

♦ Updating regulations to comply with nontraditional methodology such as online and distance courses. Of interest regarding this issue is the Hobson's choice SEVP faces. As the report states:

Although SEVP does not have immediate plans to make major changes to its governing regulations due to other current priorities, the program is aware of its regulatory limitations. To address these items, SEVP developed internal working groups that regularly discuss ideas on what can feasibly be done to better align with ongoing changes in the academic community. SEVP working groups are consistently discussing guidance at an internal level on topics such as online courses, distance learning and grade. SEVP plans to release guidance addressing specific areas or types of nontraditional programs individually over time.

That being said, when should the agency release "Guidance" or "Interim rules", and when must it follow the regulatory notice and comment process of the Administrative Procedure Act? The risk of not guessing properly is another Washington Alliance case, and the need to delay all other agency priorities.

Continuing with other issues raised:

- ♦ The 30 day OPT signature trap (SEVP will ask USCIS to publish a regulatory change).
- ♦ CPT guidance.
- ♦ The STEM/OPT Proposed regulation.
- ♦ Temporary absence progress adjustments.
- ♦ Reduced courseload changes for which USCIS does not have the "staffing resources" to publish a change in regulations.
- ♦ Pathway Programs – New final guidance in process, although of low priority.
- ♦ Field Representative utilization commitment to visit schools needing "additional assistance" more than twice each year. Apparently, schools not needing "additional assistance" will continue to be visited twice each year based on "national security concerns". More about the visit requirement in item (3) below.
- ♦ Final guidance for F-3 border commuters, although other nonimmigrant visa categories have actual regulations.
- ♦ Use of current F-2 FAQs to respond to F-2 questions.
- ♦ A substantive response (which appears to be the only existing interpretation) on the question of: What do I do when another school refuses to transfer the SEVIS and/or the academic student record?

Student and Exchange Visitor Information System (SEVIS) records are government property and must reflect the school where the student is currently located. Designated school officials cannot refuse to transfer a student's SEVIS record for financial or business reasons. If a student owes the transfer-out school additional fees or is noncompliant with school policies, the dispute is a civil matter between the school and student, and must be separate from SEVIS. Schools are able to amend their administrative and business practices to address these situations; however, it is up to the school to make such changes. Since academic records, such as student transcripts, are not government property, the decision to transfer academic information is strictly a matter of school policy.

It would be hoped that this policy will find its way into more formal guidance.

The report is a useful response to many concerns, and although it would be wished that in some places it could have been more explicit and elucidative, it is very welcome. It should be mandatory reading for everyone in the field. It may be found [here](#).

3) Final Class of SEVP Field Reps Deployed

On September 14, SEVP announced that its final class of 16 Field Representatives had been deployed. There are now 58 Field Representatives deployed across the US. The total staffing will be 60. The Field Representative is tasked with meeting with each active SEVP school in their territory twice each year, regardless of the school's size or need. The ICE news release may be found [here](#).

4) SEVP Issues Quarterly "SEVIS by the Numbers"

The latest quarterly "SEVIS by the Numbers" has some interesting trends. J-1 exchange visitors have decreased by 17.55%. As the J-1 subcategories are not noted, it is assumed that this figure is only for students. F/M students increased 13.3%. India and China showed some of the largest hard number increases. Could these changes indicate an avoidance of the 2 year home residence requirement for J-1 status?

NYU, for the first time, has the largest international student population, followed by USC, Columbia, Northeastern, and the University of Illinois, with Purdue having the most STEM students. The report may be found [here](#).

5) DHS Awards Software Contracts for SEVIS Support

On December 1, 2015, Sevatec, a private software provider catering to government agencies, announced that it had been awarded two contracts:

Under the terms of the SEVP OPT Support Services contract, Sevatec will deliver design, development, and operations support to the OPT Portal, providing a common interface to allow eligible students with F-1 status to maintain and update information, obtain temporary employment, and gain experience in degree

programs related to their primary area of study. Our support for the SEVP Engineering Services contract includes critical application development and systems engineering services to facilitate employment and educational opportunities for nonimmigrant students, exchange visitors (EVs), and their dependents.

The announcement may be found [here](#).

6) ICE Publishes Information Collection Notice for I-20s

On November 27, 2015, the Federal Register carried a “Revision Notice” by ICE for form I-20. According to the Notice:

The Forms I–20 is being modified to reflect current DHS branding, remove obsolete information, and modernize the forms’ layout to improve readability. The old Forms I–20 sunset on July 1, 2016; after that date, they will no longer be accepted at ports-of-entry, nor suffice for any other nonimmigrant benefit application by either F–1 and M–1 students or their F–2 and M–2 accompanying dependents.

In compliance with the notice, all existing I-20s must be replaced no later than June 30, 2016. After that date, USCBP will no longer recognize the present I-20s for admission.

7) NSC to Hold Teleconference on “Students and Schools, and Other Issues” on January 14.

On January 14, 2016 at 10 am (Central) the Nebraska Service Center will hold its next teleconference for “Students and School, and other Issues”. Although the deadline for submission of questions has already passed, no RSVP is needed to participate. Call-in information will be provided the week of January 11. You can be added to the notification list at: [ceo.nsc2@uscis.dhs.gov](mailto:ceo.nsc2@uscis.dhs.gov).

8) BALCA Permits Higher Education Institutions to Utilize Own Wage Surveys

For those who work with labor certifications with the US Department of Labor, which are needed to obtain employment based green cards for some employees, the Board of Alien Labor Certification Appeals (BALCA) recently issued a very important decision. In Matter of University of Michigan, 2015-PWD-00006 (November 18, 2015) BALCA permitted the University to rely on a wage survey which focused solely on wage rates for employees of institutions of higher education in determining the prevailing wage required to be paid for the offered job.

The Labor Department had also wanted to factor in wages for affiliated or related nonprofit entities, nonprofit research organizations or government research organizations.

BALCA drew a line in the sand that favors higher education. A wage survey permitting these other categories of employers would have increased the prevailing wage significantly and, practically, would have foreclosed the hiring by the university of the green card beneficiary.

9) Congress Restores 50% Workforce L-1/H-1B Fees

The Omnibus Appropriations Act passed by Congress, and signed by the President on December 18 contains an extension of supplemental fees for L-1 and H-1B petitions for companies which employ 50 or more employees in the U.S., and have more than 50% of their US workforce in H-1B, L-1A or L-1B nonimmigrant status. The previous L-1 fee increases from \$2,250.00 to \$4,500.00, and the H-1B petition fee increases from \$2,000.00 to \$4,000.00. These fees are both for initial and extension petitions. Congress had allowed these fees to lapse for a short period, but they are now back with a vengeance. Perhaps, Congress would have been better advised to make STEM programs more desirable for US students, rather than penalize US employers for hiring workers unavailable in the U.S.

10) Visa Waiver Program Changes

Both the White House and Congress have been active on the subject of Visa Waivers for tourists.

The White House announced on November 30, 2015 that it had: added additional data fields to the ESTA application (used for clearance for visa waiver entry); introduced new traveler screening and information sharing requirements for visa waiver countries, apparently, to address dual citizenship issues for individuals with previous travel to certain countries “constituting a terrorist safe haven” (especially Syria & Iraq); for better assessing collection of biometrics; and for better assessing other VWP countries deficiencies in security cooperation, among other items.

As part of the Omnibus Appropriations Act, Congress was also busy modifying the Visa Waiver Program. Individuals from visa waiver countries (now 38) will require actual visas if the individual has traveled to Syria, Iraq, Iran, Sudan, or other countries designated by DHS as supporting terrorism or “of concern”. All dual citizens of those countries are also affected, even if the individual has never resided in or traveled to the specific country denoted, or “of concern”.

The Act also included new conditions for participating countries such as passport security requirements, screening protocols and information sharing. There are also revocation provisions for “noncompliant countries”. How State and DHS will comply with these provisions will be a work in process.

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

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

*Note (After all, we are lawyers!): The information provided in this Memorandum is not legal advice. Transmission of this information is not intended to create, and receipt by you does not constitute, an attorney-client relationship. Readers must not act upon any information without first seeking advice from a qualified attorney. Neither the publisher, nor any contributor is responsible for any damages resulting from any error, inaccuracy, or omission contained herein.*