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**MEMORANDUM**

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To: International Education Program Administrators

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1) CBP Inspections Will Have Access to SEVIS

As a direct result of the Boston Marathon bombings, CBP has been ordered to have entry inspectors verify that every international student entering the US have a valid student visa in addition to an active SEVIS record. When a friend of one of the bombers returned to the US last January, he was permitted to enter, even though his SEVIS record had been terminated and he had been dismissed from his university. The inspecting officer was not able to access the SEVIS screen which, at the time, could only be done in secondary inspection. Procedures have been modified so that student status can be verified while the individual is in flight, based on information provided in flight manifests.

Not missing an enforcement opportunity, Senator Grassley introduced an amendment to S.744 during the Judiciary Committee markup on May 21, which was passed. The amendment (Grassley 77) requires the Secretary of Homeland Security to implement the transmission of data from SEVIS to databases accessed by CBP.

2) Senate Judiciary Committee Completes Markup of “Border Security, Economic Opportunity, and Immigration Act” (S.744)

The Senate Judiciary Committee completed its markup of S.744, and passed the bill to the full Senate on a 13-5 bipartisan vote on May 21, 2013. Although, the markup session became an exercise in the Gang of 8 avoiding exclusionist torpedoes, Senator Grassley successfully introduced an amendment (Grassley 69) which requires institutions accepting F-1 students to be accredited; mandates suspension of F-1 authorization for certain institutional violations or loss of accreditation; mandates termination if a school owner/official is indicted for visa fraud; requires background checks for DSOs, and requires FAA certification of flight schools. An attempt by Senator Grassley to delay the F-1 dual intent reform failed (Grassley 68).

Senator Schumer was successful in introducing an amendment (Schumer 4) providing “J” status to individuals with skills in languages spoken in countries from which fewer than 5,000 immigrants are admitted per year (Schumer 4). A clarifying amendment will require the State Department to publish a list of the included countries. It has also been reported that at the final markup session the annual limit of H-1B’s was raised from 110,000 to 115,000 in a compromise with Senator Hatch.

Meanwhile, various groups and coalitions in the House of Representatives are preparing the choreography for their own legislative dance. There are many more steps to be taken before a final version of a new immigration act gradually takes shape.

The 19<sup>th</sup> century German Iron Chancellor, Otto von Bismarck has often been given credit (though probably inaccurately) for the metaphor that: “Law and sausages are both things one should not see being made.” Unfortunately, the statement may no longer, be accurate. In recent years sausage making has become much more hygienic.

3) ICE Testifies Before House Subcommittee on Border and Maritime Security

Much written testimony goes before Congressional committees and some folks are even condemned to read it. A recent submission of written testimony released on May 21, 2013 by ICE, Homeland Security Investigations Executive Associate Director James Dinkins of the CBP Office of Field Operations Acting Deputy Assistant Commissioner John Wagner, and NPPD Office of Biometric Identity Management Deputy Director Shonnie Lyon was presented to the House Committee on Homeland Security, Subcommittee on Border and Maritime Security for a hearing entitled “Visa Security and Overstays: How Secure is America?”

Among other items were several paragraphs regarding SEVP. The following paragraph relates to the latest SEVP Developments.

*Over the past several months, DHS has taken steps to upgrade SEVIS. Earlier this month, DHS implemented a technological solution that ensures that CBP inspectors at our ports of entry have the most current information regarding a student visa holder's status at the time of their entry and exit from the United States. On a daily basis CBP's TECS database will be updated with a record of individual status changes to an individual's I-20. Thus, if that individual presents themselves for inspection before a CBP Officer, the officer would see that there was a status indication change and the I-20 should be checked / validated via SEVIS to assist in a proper admissibility decision. These improvements will be supplemented later this*

*month through a system upgrade that improves SEVIS's interface with ADIS (Arrival Departure Information System), which displays critical travel data such as the I-94 Admission Number, Passport Expiration Date and Visa Expiration Date data. This upgrade will automate the lookout for SEVIS violators and improve communication between the two systems in order to better identify overstays using internal reporting capabilities and security control remediation*

*for authorized users including CBP Inspectors. An additional upgrade allows DOS to also access and record information in SEVIS records, which further enhances our situational awareness of foreign students.*

The entire transcript of written testimony may be found [here](#).

4) I-94 Automation Issues

Following the recent I-94 automation process, CBP released a Q&A (which may be found [here](#)), as well as an I-94 “Quick Reference Guide for Local, State and Federal Agencies” which may be found at:

[http://studyinthestates.dhs.gov/assets/webinars/download.php?file=I-94\\_Quick\\_Reference\\_Guide\\_Flyer\\_0812\\_FINAL.PDF](http://studyinthestates.dhs.gov/assets/webinars/download.php?file=I-94_Quick_Reference_Guide_Flyer_0812_FINAL.PDF).

Although there is no requirement that the entrant print a copy of the I-94 data, it is strongly recommended in order to prove lawful admission and maintenance of status. Once the individual leaves the US, the beneficiary will no longer be able to access the record on the CBP website. Having a paper printout may help future applications, as well as assist in obtaining a driver's license or a social security number, among other benefits.

NAFSA is collecting examples of I-94 automation issues. These may be reported to:

[http://www.nafsa.org/Resource\\_Library\\_Assets/Regulatory\\_Information/Updates\\_On\\_Electronic\\_Form\\_I-94\\_Process/](http://www.nafsa.org/Resource_Library_Assets/Regulatory_Information/Updates_On_Electronic_Form_I-94_Process/).

5) DACA Developments

Between August 1, 2012 through April 30, 2013 USCIS received 515,922 DACA applications, of which it accepted 497,960. USCIS approved 291,859 and 2,352 were denied. USCIS projects a processing time goal of 6 months.

Mexico continues to be the top country of origin with 375,568 applications. By comparison, El Salvador is next with 19,701 applications.

California had 141,367 applicants, Texas 81,111, and New York 27,399. New Jersey had 14,928, still within the top ten.

It appears that the number of DACA applicants continues to diminish, even though the current total is far below the number of estimated potential applicants. Whether this diminishing interest results from distrust of government, hope for comprehensive immigration reform, the high cost of filing fees, confidentiality

concerns, or insufficient records is yet to be seen. It has also become known that some DACA applications have been transferred to local USCIS field offices for review. These transferred cases may be randomly selected for quality control, or for eligibility issues.

A survey of actual application processing has indicated that approximately half of the applications are receiving Requests For Evidence (RFEs). All eligibility criteria are cited, though a majority of RFEs requested proof of continuous residence from June 15, 2007 to the present. A large number of RFEs concerned education requirements and criminal history. The survey also confirmed that the denial rate is very low.

6) USDOS/AILA Meeting on April 10, 2013

◆ Security Advisory Opinion (SAO) Processing

At a recent liaison meeting between the US Department of State and AILA held on April 10, 2013 there were several items of interest to the education community. An ongoing problem has been the significant delay of individual visa applicants because of security clearances. DOS emphasizes that it "...constantly seeks to refine its screening and adjudication processes to ensure security, increase efficiency and reduce the impact of such measures on the legitimate travelling public." DOS also noted in regard to Security Advisory Opinions (SAOs) that: "Ongoing and upcoming improvements to our visa screening and adjudication process should reduce the impact of SAOs on the legitimate travelling public. The Department constantly seeks to refine its SAO process. Given the nature of this process we are unable to provide details." The Latin for statements of this nature is *non sequitor*. The plain English is something else.

◆ FNU vs. LNU

Concerning the ongoing administrative issue of individuals without first or last names, the usual practice is for the US consular post to issue a visa with the first name as FNU (First Name Unavailable/Unknown), or LNU (Last Name Unavailable or Unknown) as appropriate. It was noted that there is no DOS internal instruction for the use of LNU, which has caused some confusion. Upon entering the US, CBP generally instructs applicants to complete the I-94 to match the visa and not the passport. Considering I-94 automation, the mix-up becomes a little bit more "curiouser." DOS advised that consular officers are not permitted to enter LNU even if that is how the name appears in an applicant's passport. In most situations, the name will be moved to the surname field and FNU be made in the given name field. I recently received a call from a young woman who gave her name as FNU. I did not ask if immigration had changed her name at Ellis Island.

◆ J-1 Waiver Review Office Structure

In response to a question regarding the J-1 Waiver Review Division of DOS, the following information was provided.

*The Waiver Review Division (WRD) is one of four divisions in the Office of Legal Affairs in the Office of Visa Services. The division is staffed by a Division Chief, Deputy Chief, eight waiver review officers, four waiver assistants, and one data*

*entry clerk. The Deputy Chief assists with the day-to-day management of the division and the staff reports to the Division Chief who reports to the Director of Legal Affairs.*

*Waiver review officers are assigned cases for adjudication according to the waiver basis under which the exchange visitor applies. Four officers in the WRD process “no objection” waivers; two process exceptional hardship, persecution, and interested government agency (IGA) waivers; one processes Conrad waivers; and, one issues advisory opinions as to whether an exchange visitor is subject to the two-year home residency requirement.*

◆ J-1 Waiver Process Explained

A question was also asked regarding how and when data is transmitted between the St. Louis P.O. Box where DS 3035 applications for waivers are initially filed, and the Waiver Review Division in Washington, DC. DOS answered that it takes approximately two weeks for the St. Louis P.O. Box to record the fee and then forward the form to Washington as a hard copy together with all supporting documents. If there are questions, the Public Inquiries Division may be contacted at 202-663-1225. DOS advised that it is intending to adapt an online version of Form DS3035 which may be saved as a draft and edited prior to submission, and will advise when the new form is operative.

7) USCIS Delays “Customer Identity Verifications”

Our Memorandum from last month noted that USCIS field offices would be fingerprinting and photographing certain individuals entering the building for certain types of appointments. On May 6, USCIS announced that, because of technical difficulties at several USCIS field offices, the nationwide rollout of the Customer Identity Verification (CIV) process has been delayed. No new date for the rollout has been provided.

8) USCIS Completes H-1B Data Entry

The H-1B season for filing cap subject petitions lasted for one week, and closed on April 5. On May 15, USCIS announced that as of May 10, all data entry had been completed and receipt notices had been sent to those individuals who had won a place in the H-1B lottery. Return notices have now been received. USCIS had requested that petitioners allow until the end of May for delivery of receipts or return notices.

9) DV-14 Lottery Winners Notified

On May 1, DOS announced the winners of the 2014 lottery. Applicants may check the status of their entries through the “Entrant Status Check” (ESC) on the E-DV website. There are no notifications by mail or email. Only the official DOS website should be checked.

It should be noted that the comprehensive immigration reform bill, as reported out of the Senate Judiciary Committee, will eliminate the DV lottery. However, 2014 winning entries will be honored.

10) DOS Increases Program Designation and Individual Program Services Fees

The “Federal Register” of May 14, 2013 carried a “Final rule” from the Department of State’s Exchange Visitor Program regarding fees and charges. The “Final rule” sets forth that, effective June 13, 2013, the application fee charged to US corporate entities will change to \$3,982.00 for program designation and redesignation. The individual program service fee paid by foreign nationals will increase to \$367.00 for services such as change of program category, program extensions and reinstatements.

11) TPS Extended for El Salvador

On May 30, 2013, USCIS announced that TPS has been extended for an additional 18 months beginning September 10, 2013 and ending March 9, 2015. Registration must be done between May 30, 2013 and July 29, 2013. New EAD cards with a March 9, 2015 expiration date will be issued. The USCIS announcement may be found [here](#).

*Please let me 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.*