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MEMORANDUM

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To: International Education Program Administrators

Autumn is here—and many of your students are looking forward to life after F-1. 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.

- 1) Hurricane Sandy
- 2) USCIS/ELIS Presentations
- 3) ICE Publishes FAQs for English Language Training Act
- 4) ICE Publishes Memorandum on “Enforcement Actions at or Focused on Sensitive Locations”
- 5) Another Federal Appeals Court Rules Against DOMA
- 6) DOS Describes Waiver Review Division
- 7) Congress Extends E-Verify, EB-5 Investor Pilot Program, Non Minister Religious Worker, and J-1 Conrad 30 Programs
- 8) Taiwan Designated for Visa Waiver Program

1) Hurricane Sandy

We hope that all of you who were affected by Sandy are back and running-or will be shortly.

The hurricane managed to shut down all local U.S. government offices in the New York-New Jersey metropolitan areas. As of this date, the New York City USCIS District Office at 26 Federal Plaza remains closed due to lack of heat.

2) USCIS/ELIS Presentations

According to the NAFSA.news of October 16, USCIS is conducting meetings on campuses regarding the Electronic Immigration System (ELIS). Three meetings with DSO's had been scheduled. The New York area meeting was scheduled to be at NYU on November 1, 2012. Because of Hurricane Sandy these sessions were cancelled, and, as of this date, have not been rescheduled.

An additional performance was to be done at the New York City USCIS District Office. This meeting was also cancelled without a future date.

3) ICE Publishes FAQs for English Language Training Act

On October 1, 2012 ICE released an FAQ regarding the Accreditation of English Language Training Programs Act which was signed by the President on December 14, 2010. This Act requires that F-1 students may only be permitted to attend an ESL Program which has been accredited by a regional or national accrediting agency recognized by the DOE. In short, a program which is wholly owned, operated, and governed by another institution must demonstrate that the institution has the appropriate accreditation. The accrediting body must specify that the ESL program is recognized within the institution. A free standing ESL program must be individually accredited. The FAQ may be found [here](#).

3) ICE Publishes Memorandum on "Enforcement Actions at or Focused on Sensitive Locations"

On October 24, 2011, ICE released new guidance regarding "Enforcement Actions at or Focused on Sensitive Locations". This Memorandum supersedes the last Memorandum of July 3, 2008 issued under the Bush administration. The sensitive locations covered include schools, including colleges and universities, among others. It also includes hospitals, institutions of worship, sites of weddings, funerals or religious ceremonies and "a site during the occurrence of a public demonstration, such as a march, rally, or parade", among other venues. Any enforcement action focused on a sensitive location must have certain prior approvals from high level personnel. However, there is an exception for "an immediate need for enforcement action" which includes, "...an

imminent risk of death, violence, or physical harm to any person or property”, immediate arrest or pursuit of a dangerous felon, terrorist suspect or any other individuals that present an imminent danger to public safety, or where there is an imminent risk of destruction of evidence material to an ongoing criminal case. Therefore, the exception may eat the rule The Memorandum may be found [here](#)

4) Another Federal Appeals Court Rules Against DOMA

The United States Court of Appeals for the 2nd Circuit which oversees Federal District Courts in New York and New Jersey ruled on October 18, 2012 that the Defense of

Marriage Act (DOMA), which defines marriage as a union between a man and a woman unconstitutionally denied federal benefits to lawfully married same sex couples. DOMA has now been overruled in the 2nd Circuit and in the 1st Circuit which covers the New England states. Several other lawsuits challenging the constitutionality of DOMA are presently pending before the US Supreme Court, which could take up the issue in the present term.

5) DOS Describes Waiver Review Division

The minutes of a meeting held on October 17, 2012 between AILA and the Department of State contain a request for a description of the Waiver Review Division and its placement within the agency. The Waiver Review Division processed J-1 2 year home residency requirement waivers under Section 212(2) of the Immigration Act. The DOS reply stated:

The 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 waiver ground. 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.

6) Congress Extends E-Verify, EB-5 Investor Pilot Program, Non Minister Religious Worker, and J-1 Conrad 30 Programs

On September 28, 2012 the President signed a Bill with several immigration provisions under Public Law 112-176. The signed law extends the EB-5 Regional Center Greencard Investment Program, the federal E-Verify Program, the Special Immigrant Non-Minister Religious Worker Program, and the Conrad State 30 J-1 Visa Waiver Program (for physicians). Program details of this law may be found [here](#).

7) Taiwan Designated for Visa Waiver Program

On October 2, the DHS announced the designation of Taiwan in the Visa Waiver Program. Taiwan will join 36 other participants in the program which permits three month visa free entry into the United States as tourists for business, and/or tourism. In fiscal year 2011 the Visa Waiver Program accounted for 18.3 million visits to the United States which comprises more than 60 percent of entries for business or tourism. As with other visa waiver entrants, Taiwanese will be required to apply for advanced authorization through ESTA. The program commences for entries on November 1, 2012.

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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