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June 19, 2008

Office of Policy
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
425 I Street, NW, Room 7257
Washington, DC 20536

Re: **DHS Docket Number ICEB-2008-0004**; Adjusting Program Fees and Establishing Procedures for Out-of-Cycle Review and Recertification of Schools Certified by the Student and Exchange Visitor Program To Enroll F or M Nonimmigrant Students, Proposed Rule

To Whom It May Concern:

On behalf of NAFSA: Association of International Educators, the world's largest association of international educators with more than 10,000 members, I write to you in response to the proposed rule increasing the SEVIS fee and establishing procedures for SEVIS out-of-cycle reviews and school recertification.

Under normal circumstances, this rule would have been split into two separate proposed rules: one that addresses a possible SEVIS fee adjustment and another that establishes procedures for out-of-cycle review and recertification of schools. However, it is not surprising that DHS chose to publish one combined rule instead, as it is clear that what is driving the SEVIS fees higher is the unreasonable increases in reporting requirements placed on schools and designated school officials that, in turn, create more unnecessary work for SEVP.

Unreasonable increases in SEVIS requirements fuel the need for additional SEVP staff to explain the complicated system, to conduct more reviews triggered by even the most minor changes, and for enforcement officers to sift through large amounts of data to identify those who violate data entry requirements versus those who may be of interest to DHS for other more important reasons. And the rule proposes to do all of this with drastic fee increases. The proposed rule includes a 100% increase from \$100 to \$200 for F international students, an increase from \$100 to \$180 for some exchange visitors, and a 639% increase in the school certification fee. All of these increased costs are incurred on SEVIS users, the system, and SEVP without actually advancing homeland security.

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NAFSA's comments address the two parts of the proposed rule separately, first addressing the out-of-cycle review and recertification, and then the proposed fee increases.

I. Out-of-Cycle Reviews and Recertification

The new international student record keeping requirements are unnecessary.

The new record keeping requirements regarding student activities are excessive, going far beyond the current reporting requirements in SEVIS of degree program, field of study, and the number of credits/clock hours completed each semester. Without sufficient justification, the rule proposes to add the requirement of keeping records of course titles, course identification codes, dates of withdrawal from courses (if any), grade point averages each term, cumulative credits/clock hours, and cumulative GPAs. Equally concerning, the rule proposes that this data must be maintained for three years after the student leaves the school as opposed to the current one year requirement.

To what end is all this data required? The proposed rule states that it is to "articulate the intent of existing regulation and enable SEVP to better monitor student progress in his or her program, as well as participation." (73 Fed.Reg. 21260, 21276) Is this information *really* necessary for our national interests? It is inappropriate to expect that requiring government-paid SEVP officers to review course titles and GPAs will contribute in any significant way to better compliance with our nation's immigration laws. And, if the stated goal is to monitor participation in the student's program, it is difficult to understand the need to maintain data three years after completion of the program.

Higher education institutions have their own internal policies regarding the recording of classes taken, grades conferred, and the other information requested. Requiring this level of information outside of the normal institutional policies places an undue burden on DSOs without adding to our homeland security. SEVP should focus on the data they are now collecting with a view toward identifying the critical pieces of information needed, not identifying new, unnecessary bits of data that may be collected simply because SEVIS exists. The current record keeping requirements should not be expanded as proposed in the rule.

The most unreasonable data requested is already in DHS's own databases.

It does not make sense to require DSOs to maintain data that DHS already has, including a student's date of last entry to the United States, the most recent Form I-94 entry document, and the date of issue. DHS *already has* this data through Customs and Border Protection, a Bureau within DHS; the CBP database should automatically update SEVIS with this information without requiring DSO intervention. DHS must use its own databases more efficiently before burdening DSOs with extra reporting requirements.

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The out-of-cycle review and recertification reporting requirements must be narrowly tailored.

The proposed rule endeavors to create a process for what it refers to as an “out-of-cycle” review in between formal recertifications. In theory, this is not unreasonable for schools that have had a material change in circumstances. Unfortunately, the parameters provided in the rule for changes that may trigger an out-of cycle review are overly broad and ill-defined.

Under the proposed rule, an out-of-cycle review of a school’s SEVIS certification may be triggered if there are *any* changes to the Form I-17, Petition for Approval of School for Attendance by Nonimmigrant Students. The use of the word “any” creates a situation in which even a change in the most basic of information could trigger an out-of cycle review.

These overly broad criteria must be abandoned in favor of the existing concept that only material changes in limited, clearly identified data points are important enough to warrant a review outside of the regular recertification process.

Additionally, because this new out-of-cycle review negates the need for recertification every two years, the certification period should be extended to five years. If there is a material change in circumstances for an institution, SEVP will be alerted, and may conduct a review as it sees fit. It would be a better use of SEVP’s time to focus on schools that require attention than to saddle the program with repetitive recertifications for schools that remain in compliance.

It is inappropriate for SEVP to request information that is not required by law or regulation.

NAFSA members spend countless hours updating information in SEVIS, keeping up-to-date on regulations, and providing information to SEVP. They do not have a problem with following the rules. However, what they do have a problem with is when SEVP evades its own rules by announcing “notification requests” on information not required by current regulation or law.

The SEVIS regulations include a provision that requires schools to respond to, "Any other notification request made by SEVIS with respect to the current status of the student." (8 CFR 214.3(g)(3)(ii)(E)) NAFSA has expressed concerns in the past about this provision being overly broad. Unfortunately, the current proposed rule contains even broader language requiring schools to respond to “Any other notification request not covered by paragraph (g)(1) [student records section] of this section made by **DHS** with respect to the current status of the student” (emphasis added). (8 CFR 214.3(g)(2)(ii)(E)) No longer is it just SEVP through SEVIS that can make requests for extra-regulatory and non-statutory requirements; now it is being opened up to the entire Department as well.

SEVIS is under SEVP’s regulatory authority. If SEVP wishes schools to report information additional to that set forth in regulation, it should request that information through the rulemaking process. Opening SEVIS schools to possible requests from all of DHS is unreasonable. Additionally, this section should not be used to obtain information on groups of

students or for information collections under thinly veiled “validation projects.” The current regulatory language says “student” not “students or groups of students.” By its own drafting, SEVP limits itself to the individual student.

II. Fee Increases

Reduced fees should be expanded to other short-term programs.

In 2000, representatives of exchange organizations that conduct au pair, summer camp counselor, and summer work/travel programs succeeded in amending the SEVIS fee legislation to provide a reduced fee for their program participants. This is entirely appropriate; NAFSA supports this reduced fee. However, a reduced fee would be equally appropriate for other short-term programs including, in particular, short-term intensive English programs. We repeat our recommendation that the \$35 fee limit be extended to include these other short-term programs.

The United States has a strong interest in attracting international students to this country to study English. Not only do we derive the benefits of educational exchange from these programs, but the programs also enhance longer-term educational exchanges by serving as gateways to two- and four-year academic programs. It may be fair to argue that the \$100 fee increase is unlikely to deter a prospective international student who plans to spend tens of thousands of dollars on a four-year U.S. degree. But a \$200 fee looks quite different, for example, to a student contemplating studying English in Seattle for two weeks, when the student can study English in Vancouver instead without paying such a fee. Short-term students, by definition, will require no monitoring after the initial report of the enrolling institution, because they will depart the country shortly thereafter.

The same is true for short-term scholars, who enrich U.S. higher education through short-term exchanges with U.S. professors. The proposed rule raises the J SEVIS fee from \$100 to \$180 even though there is no reason for different SEVIS fees to apply to different short-term programs. The governing criterion should be that short-term programs—which are less expensive to monitor and for which a higher fee is a greater disincentive—should require a lower fee.

Because the law authorizes the DHS to determine the amount of the fee, there is nothing in the law to preclude DHS from setting the fee at different levels for different applicants, so long as the cost of the program is covered. We understand that DHS has argued that if Congress had intended to reduce the fee for such programs, it would have done so. As participants in the discussions of the amendments in 2000, however, both NAFSA and legacy INS know what the actual legislative intent was in this case: It was Congress’s intent to be responsive to the parties that were at the table. Nothing in the legislative history suggests that Congress would be hostile to DHS exercising its discretion to extend comparable treatment to comparable programs, so long as the costs are covered. We ask that it do so.

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Frequent fee increases hamper our competitiveness in attracting international students and scholars.

In the proposed rule, the Department asserts its authority to revisit the fee every two years, sending a chill through the international educational community. There is serious concern that the proposed drastic and sweeping fee increases will be seen every two years in the future.

The problem is that SEVP is not alone in raising its fees. USCIS recently increased its fees. The State Department raised the visa fee. Each agency states its reasons, but the totality of the situation is borne by the international student and scholar community. At a time when we are in a global competition for talent like never before, it is short sighted to place such burdens on this group of internationals that we purport as a nation to want to encourage to study and work in the United States.

SEVIS should be publicly financed.

As stated in previous comments, it remains NAFSA's position that the benefit SEVIS purports to provide is a public good – and therefore SEVIS should be publicly financed, as is US-VISIT, which serves the same purpose of tracking international visitors. The fee-paying population under the proposed rule will derive no benefit from the program, beyond that which might accrue generally to the nation in which they will reside while in F, J, or M status. We recognize, however, that Congress has provided otherwise.

That said, the argument that SEVIS is an antiterrorist tool mischaracterizes the actual use of the database. SEVIS is a database that is used to “track” three percent of the nonimmigrant population in this country - a population that is no more prone to acts of terrorism than the 97% of all the other nonimmigrants here. The specter of terrorism is all too often hung over international education whenever DHS asserts its power to make changes to SEVIS, including raising the fee. There is no doubt that DHS has authority over SEVIS fee increases. SEVP's language of “apprehending violators before they can potentially endanger the national security of the United States” (73 Fed.Reg. 21260, 21262) is unnecessarily inflammatory and does not address the role SEVIS plays in “apprehending” violators identified through SEVIS data. International students identified through SEVIS are those who may have violated immigration status, not those who pose active threats to national security. Violations of immigration status are simply not a predictor of the potential to commit acts of terrorism.

The fee increase subsidizes inefficiencies.

SEVP had promised a more streamlined, efficient system in SEVIS II, a newer version of the current tracking system that was to focus solely on the most critical data aiding seamless communication between government agencies. NAFSA remains eager to work with SEVP in creating SEVIS II, to move us toward a system that maintains the highest levels of data integrity while providing effective service to various government agencies and the user community.

Our concern is that this proposed rule moves us farther away from these goals. The additional SEVIS requirement for student records and school certification are not tailored to meet SEVIS II

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goals. Instead, they expand the universe of information gathered seemingly without regard to the actual usefulness of the information. The rule also fuels DHS's request to hire the 155 new positions in the Compliance Enforcement Unit in addition to funding the equivalent to 64 brand-new Liaison Officer positions. SEVP is certainly working to make the SEVIS requirements so cumbersome and complicated, there will be need for a cadre of Liaison Officers to explain it all, though it is difficult to predict how they will hire and maintain staff with such wide-ranging areas of expertise.

This rule is yet another case study in the impact of the absence of an international education policy.

In NAFSA's comment on the April 8, 2008, interim final rule extending optional practical training for a limited number of international students, I stated that the rule was a case study of the impact of the absence of an international education policy. The same is true of this proposed rule. NAFSA has argued for nearly a decade that if the United States is to have any hope of maximizing—or even minimally achieving—the public policy benefits of international education, it requires an international education policy for doing so. This rule is yet another example of the effects of the absence of such a policy. In a policy vacuum, all restrictions are good restrictions. Any information that can be gathered on an international student *should* be gathered. In the absence of policy, there are no criteria, procedures, or mechanisms by which decision makers can weigh the relative costs and benefits of their proposals to implement controls and impose obligations on international students and the schools that enroll them.

Reiterating the point I made in the April 8 comment letter, this policy vacuum is particularly acute because it intersects with the lack of a functioning national immigration policy. In the current fervor over illegal immigration, which both contributes to and is spawned by the failure of comprehensive immigration reform and the consequent absence of strong federal policy direction in the immigration area, it is all too easy to load up measures with provisions that create an illusion of immigration enforcement.

Again, these two issues meet in SEVIS because it monitors the immigration status of a group of internationals: the three percent who happen to be students or exchange visitors. It is the only tracking system of its kind, so it is quickly becoming the answer to every question about the possibility of tracking nonimmigrants. SEVIS fits the old saying that when all you have is a hammer, everything begins to look like a nail. When all you have is SEVIS, there will be attempts to use it in every situation, whether or not it should be used. And, unfortunately, the damage accrues to international education and exchange.

Regulators do not have to use SEVIS for extraneous purposes. They do not have to require DSOs to do unnecessary, duplicative reporting. They do so because it is the course of least resistance and, in a policy vacuum, there is no reason not to. But there are costs, they are substantial, and if there were an international education policy, they would be clear. The rule—and myriad measures like it that preceded it and will follow it—imposes unnecessary restrictions on our nation's ability to attract international talent to our universities. And the rule further

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erodes DSOs' fast-dwindling time to be the foreign student advisers that they signed up to be, helping international students have successful experiences in our colleges, our universities, our communities, and our country, and returning them to their home countries knowing and appreciating America and Americans.

Thank you for the opportunity to comment. If you have any questions, please do not hesitate to contact me.

Sincerely,

Marlene M. Johnson
Executive Director and CEO