NAFSA Annual Conference and Expo

Government Agencies in the F and M International Student Process

Pre-submitted Questions and Answers

June 1, 2017

Note: This document provides answers that interpret U.S. government regulation, but does not serve as a replacement for federal regulation or official U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), U.S. Department of State, or Student and Exchange Visitor Program (SEVP) policy guidance. Questions have been edited for grammar and style.

Data system interfacing issues

1. **With effective interface of complex data systems becoming more essential, are the agencies working together to ensure data integrity and effective interface among systems that manage international student information, such as the Student and Exchange Visitor Information System (SEVIS), the Computer Linked Application Information Management System (CLAIMS), the Consular Consolidated Database (CCD), etc.?**

   A. **CBP:** Yes, at ports of entry (POE) CBP uses all systems related to F and M visitors. If any initial automatic system query returns with any type of possible negative, a student will be referred to immigration secondary at the POE for a more thorough check of all systems.

   Department of State: The Department of State uses SEVIS case data to carry out the adjudication of student visas. Additional information on students' changes of status and optional practical training (OPT) is also available to consular officers. Ensuring visa data integrity and evolving interagency interfaces continues to be a top priority for the department.

   SEVP: Yes, SEVP works closely with its partner agencies to improve the data interfaces between systems. SEVP hosts monthly conference calls with partner agencies to discuss the data feeds.

USCIS: Yes, the agencies are working together. There are several teams that meet regularly to collectively ensure that we are staying connected. There are teams for the specific interfaces for SEVIS and CLAIMS, and teams within USCIS, the Department of State and CBP that work on this issue. While the various agencies may have different focuses, the overall objective is to ensure data integrity and that all agencies are sharing the right data in the most effective and efficient manner.

SEVIS and CLAIMS interfacing issues

2. **From time to time, we see instances when SEVIS and CLAIMS may not reflect the same information in a record. Many students returning from a trip abroad have been told by an inspecting CBP officer that their SEVIS record does not indicate they are approved for OPT—even when the student has an Employment Authorization Document (EAD) and approval notice in hand—nor indicate a transfer or change in level of education completed, even when the student possesses a Form I-20, "Certificate of Eligibility for Nonimmigrant Student Status," indicating this.**

   Is this a system glitch that the agencies are aware of and working on?

   A. **USCIS:** USCIS continually works with the SEVIS team to improve the interface between SEVIS and CLAIMS. As part of USCIS' CLAIMS 3 Mainframe Decommissioning project, USCIS will completely rewrite the interface to provide more consistent data. This project is scheduled to begin in mid-June and should be completed by mid-September, depending upon testing support from the SEVIS team.

   CBP: Students are often reminded that, as an applicant for admission in the nonimmigrant classification they are seeking, the burden of proof of eligibility for that class is on them. CBP officers do their due diligence during inspections to the extent of requesting transcripts, emails, letters from designated school officials (DSOs), etc., to give students the opportunity to prove their eligibility for admission as a student, despite what systems reflect.

SEVP: Yes; SEVP is working with USCIS to resolve the interface problems between SEVIS and CLAIMS. DSOs should continue to report problems to the SEVIS Help Desk and to submit correction requests in order to change the status of students with OPT requests.

3. **Students with two SEVIS records have encountered problems when an entry to the United States is attached to an inactive SEVIS record, rather than the student's active SEVIS record. Is it possible to make the distinction between the two records more obvious to government staff using the records? Or is the only resolution for these cases a SEVIS data fix?**

   A. **SEVP:** This issue will be addressed in SEVIS Modernization when SEVP implements a one person, one record system. Until then, SEVP asks DSOs to continue submitting a data fix request to address this issue.

4. **We see examples of SEVIS records terminating on the date a change of status is approved by USCIS, rather than on the day the new status takes effect. Is this a systems glitch that the agencies are aware of and working on? Is the only resolution for these cases a SEVIS data fix?**

   A. **SEVP:** SEVP is working with USCIS to resolve these types of interface problems. Until the current problems are resolved, the only fix is for DSOs to submit correction requests.

H-1B cap gap issues

5. **The H-1B cap gap gives rise to SEVIS record complications, since the H-1B petition beneficiary is involved in a USCIS adjudication process while needing to maintain their F-1 status until the adjudication process concludes. When a cap gap H-1B petition is approved, the SEVIS record should auto-terminate for the reason "change of status approved," on the date H-1B status begins, October 1. What happens to the SEVIS record when a pending petition is withdrawn or denied?**

   A. **SEVP:** This depends on the student's program end date and/or any post-completion OPT or STEM OPT end date. The record remains Active if

neither the end date nor the grace period has passed. In these cases, the record will complete after the grace period ends. If the end dates have passed when the petition is withdrawn or denied, the student is given a 60-day grace period to leave the United States, and the record is completed.

6. **The H-1B cap gap gives rise to SEVIS record complications, since the H-1B petition beneficiary is involved in a USCIS adjudication process while needing to maintain their F-1 status until the adjudication process concludes. If the SEVIS record is terminated erroneously, and the student maintained their status while on OPT, is the only resolution a SEVIS data fix?**

   A. **SEVP:** Yes, the only way to restore the SEVIS record to Active is to submit a correction request with supporting documentation to change the record.

7. **Given unusually slow H-1B processing, many students on OPT and their DSOs worry that cap gap petitions might not be adjudicated by October 1. Are the agencies aware of the problems that may occur if this happens? Will USCIS expedite cap gap petitions to ensure adjudication by October1?**

   A. **USCIS:** USCIS is aware of the time sensitivity with cap gap petitions and we will monitor the workload. Petitioners may request expedited processing while premium processing is temporarily unavailable. Please see the Expedite Criteria webpage for more information.

Temporary Protected Status and nonimmigrant students

8. **Many questions arise about how students granted Temporary Protected Status (TPS) may return to F-1 status to continue their studies when their TPS ends. Can SEVP and USCIS confirm that a student whose SEVIS record is in Active status, indicating the student maintained the terms and conditions of their F-1 status at the time their TPS ended, does not need to do more than continue to maintain valid F-1 status?**

   A. **SEVP:** Yes; in this scenario, since the student maintained F-1 status throughout their TPS, nothing needs to be done in SEVIS. To facilitate accountability, the DSO may wish to maintain a memo of the student's

record verifying that the student has maintained F-1 status through the period of TPS.

USCIS: USCIS adjudicators can view the student record in SEVIS. If the student has been maintaining F-1 status and continues to do so after his or her TPS ends, the student may continue his or her studies. It is the F-1 student's responsibility to maintain any other status outside of TPS, to be familiar with all eligibility requirements for that non-TPS status and to work with the DSO to ensure the SEVIS records are up to date and accurate.

9. **Many questions arise about how students granted TPS may return to F-1 status to continue their status when TPS ends. Can SEVP and USCIS describe what procedure should be used to return a student to F-1 status after TPS ends and when a student's SEVIS record is already changed to Completed or Terminated? For example, three possibilities might be:**
   - **Filing an application for change of status to F-1 status**
   - **Filing an application for reinstatement to F-1 status**
   - **Requesting a data fix to change the student's SEVIS status to Active**

   A. **SEVP:** A student who relinquishes their F-1 status upon being approved for TPS is out of nonimmigrant status upon completion of TPS. The student may depart the United States or should consult with USCIS regarding reinstatement or change of status.

   USCIS: Generally, for the purposes of requesting a change of status during the period of TPS, an individual is considered to be in and maintaining lawful status as a nonimmigrant. Therefore the individual may be eligible to change status to F-1 when TPS ends. To seek reinstatement, the individual needs to demonstrate eligibility for reinstatement as any other former F-1 student would need to do.

Working on a Temporary Protected Status Employment Authorization Document while concurrently maintaining F-1 status

10. On Aug. 12, 2015, USCIS sent NAFSA a set of frequently asked questions (FAQ) titled, "Statelessness and the Ability to Work for Joint F-1/TPS," that addressed the effect of using "TPS-issued EAD on a concurrently-held nonimmigrant status." In the FAQ, USCIS recommended that "[b]efore someone holding both nonimmigrant status and TPS chooses to work using a TPS-related EAD, he or she should carefully consider whether that employment could violate the terms of the nonimmigrant status, potentially resulting in violation of the nonimmigrant status. F-1 students who are considering working on a TPS-related EAD may want to talk with their DSO and/or an immigration attorney to discuss how employment could affect their F-1 status."

8 CFR 214.1(e), however, provides that a "nonimmigrant in the United States may not engage in any employment unless he has been accorded a nonimmigrant classification which authorizes employment *or he has been granted permission to engage in employment in accordance with the provisions of this chapter* [emphasis added]. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of Section 241(a)(C)(i) of the Act."

Given that TPS employment authorization is granted "in accordance with" DHS regulations, why would using a TPS EAD be considered a violation of status for an F-1 student granted TPS, even if it were used for off-campus employment not related to the student's course of study?

Answer from USCIS.

A. **USCIS:** As specifically mentioned in the FAQs for Statelessness and the Ability to Work for Joint F-1/TPS, the same information remains in effect. Before someone holding both nonimmigrant status and TPS chooses to

work using a TPS-related EAD, they should carefully consider whether that employment could violate the terms of the nonimmigrant status, potentially resulting in violation of the nonimmigrant status. F-1 students who are considering working on a TPS-related EAD may want to talk with their DSO and/or an immigration attorney to discuss how employment could affect their F-1 status.

Unreasonable M-1 extension of stay window

11. M-1 students who apply for an extension of stay face a difficult situation. 8 CFR 214.2(m)(10)(iv) states that, "The student must submit the application to the service center having jurisdiction over the school the student is currently authorized to attend, at least 15 days but not more than 60 days before the program end date on the student's Form I-20." Since SEVIS is programmed to allow a DSO to recommend an M-1 extension only during the 45-day regulatory window, the student has less than 45 days to file the Form I-539, "Application to Extend/Change Nonimmigrant Student Status," with USCIS.

Can the agencies work together to change this antiquated 45-day filing window? Other statuses allow applications to apply for an extension of stay up to 120 days before their end date, and allow USCIS to receive the application up to the applicant's end date.

In the interim, would USCIS consider accepting a "late" extension of stay application under 8 CFR 214.1(c)(4), in cases where the extension recommendation in SEVIS did not allow a reasonable amount of time for the Form I-539 to be delivered to USCIS, as described in the second situation above?

A. **USCIS:** The Form I-539 application filing time frames are set by regulations. It is critical that students work with their DSO to make timely updates in SEVIS with the recommended extension of stay. Students and DSOs should make every attempt to follow the regulations.

Full visa validity for subsequent entries to the United States

12. Would the agencies please issue uniform guidance clarifying that an entry visa is presumed valid for the duration of status and number of entries for which it was issued? Can the entry visa also be used to apply for future admission to the United States in the same nonimmigrant category during the period of validity, given that the student's SEVIS documentation is valid, even after a transfer to a new academic or exchange visitor program? For example:

- **The Department of State's Foreign Affairs Manual (9FAM 402.5-6(I)(7)) states that, "An exchange visitor must not use any single J visa for a program other than that specified on the annotation, even if that J visa has not yet expired."**
    - **What is the regulatory source of this policy?**
    - **Even if the Department of State insists on this policy, should it not apply in cases where the exchange visitor has transferred program sponsorship under 22 CFR 62.42, since such transfers are fully tracked in SEVIS?**
- **Should re-entry on a new F-1 SEVIS record after a leave of absence of more than five months be permissible on a previously-issued and still valid F-1 visa, even when the student is returning to a different academic program or to a different institution, if the visa holder has a valid record in SEVIS and a Form I-20 from the new institution?**

A. **Department of State:** The Department of State generally issues F-1 student visas for the full validity and number of entries in accordance with the reciprocity schedule for the student's country of nationality. Unless the F-1 visa has been canceled or revoked, a visa holder may apply for entry from CBP at a U.S. port of entry for the duration of the F-1 visa's validity. A multiple-entry visa allows the visa holder to seek entry as many times as he or she wishes prior to the visa's expiration date, while holders of single-entry visas will need to renew their F-1 visas in order to re-enter. An F-1

visa holder's initial entry to the United States must be for attendance at an educational institution that is annotated on the visa. The name of the educational institution and SEVIS ID annotated on the F-1 visa must match the Form I-20. The student may use a still-valid F-1 visa for subsequent entries for the purpose of attending an educational institution other than the one annotated on the F-1 visa if the student presents to CBP a Form I-20 issued by the institution that he or she currently will attend. The Form I-20 must be based on a valid SEVIS record matching the information on the form.

J-1 visa validity is limited to the exchange visitor program end date because, in qualifying for a J-1 visa, the applicant is demonstrating qualification for the specific exchange visitor program and category listed on his or her Form DS-2019. As an example, an applicant found to qualify for a J-1 visa to participate in the International Visitor category may not qualify for participation in the Research Scholar category. J-1 exchange visitors who transfer to another program sponsor while in the United States will continue to be under duration of status. But in this situation, if the exchange visitor departs the United States and wishes to re-enter, he or she will need to apply for a new J-1 visa with a new Form DS-2019 reflecting the current program information.

The Department of State's position is that a still-valid F-1 visa may be used to seek re-entry to the United States after a leave of absence of any length of time. The F-1 visa holder will need to demonstrate admissibility as a student to CBP at the port of entry. To do this, the visa holder must have a valid SEVIS record, and the data on his or her Form I-20 must match in SEVIS.

Use of visitor categories for limited educational activities

13. Would the agencies please consider issuing guidance permitting B-1/B-2 (and travel waiver/business waiver) nonimmigrants to participate in certain limited educational activities that would not be considered a sustained course of study, which we understand is prohibited by statute? Such activities might include a cultural program with an educational component (such as a non-intensive English as a Second Language program), completion of an examination, dissertation defense, or meeting with a graduate committee or advisor.

A. **Department of State:** An F-1 visa is generally required to engage in academic study. Study and education-related purposes of travel that lead to a conferred degree or certificate from a U.S. or foreign educational institution are not permitted on a B-2 nonimmigrant, even if the planned travel is for a short duration. A visitor who plans to engage in a short course of study which is avocational or recreational, and will not earn academic credit, is appropriately classified as a B-2 nonimmigrant. The B-2 nonimmigrant classification may be appropriate for other education-related purposes of travel, depending on the facts of the applicant's specific purpose of travel.