NAFSA Comments on SEVP Draft Policy Guidance 1308-07: F-1 Emergent Circumstances

[24 September, 2015]

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Recommendations

1. Include acronyms in Definitions section to unclutter the guidance

There are numerous places where SEVP follows the standard editing protocol of writing out in full a term which will subsequently be abbreviated with an acronym. Since the text is so sparse in most sentences, this can interfere with the flow of the guidance. Since most readers (both SEVP and DSOs) will be familiar with these terms, NAFSA suggests including a set of these common acronyms in the

Definitions section of each guidance piece, or perhaps on a separately maintained webpage, to improve the flow.

2. Conditions for an RCL under SSR

How RCL relates to work and work authorization

NAFSA recommends that the policy guidance make clear that the regulations link eligibility for a reduced course load (RCL) to work *authorization*, rather than work itself.

8 CFR 214.2(f)(5)(v), within the paragraph defining "duration of status," refers to "an affected student who needs to reduce his or her full course of study as a result of accepting employment authorized by such notice," but NAFSA believes this is better read as a general descriptive paragraph that should yield to the more specific paragraph at 8 CFR 214.2(f)(6)(i)(F), the "full course of study" paragraph, which establishes the SSR reduced course load benefit for a student "who has been granted employment authorization pursuant to the terms of" an SSR notice of suspension published in the Federal Register, "for the validity period of such employment authorization." That is to say, the eligibility "trigger" is the receipt of employment authorization under the Federal Register notice, not the acquisition and retention of a job itself using that authorization. This reading would yield the following type of revision to the draft policy guidance and to the attached Fact Sheet:

Policy 3.1, Bullet 1 and Policy 3.2, Bullet 1:

- A postsecondary F-1 student who is eligible for special student relief automatically receives authorization for an RCL if he or she has been properly authorized to be employed under the terms of a special student relief notice in the Federal Register.

Along the same lines, the paragraph following the first set of bullet points in Policy 3.1 should be amended to read:

> The student must otherwise maintain status and make progress toward completing the program of study. The student will remain in status **during the period in which employment is authorized**, if registered for a course load at or above the level specified in the applicable Federal Register notice…

Finally, in Fact Sheet PG 1309A, process 2.4, the third sub-bullet of the first bullet should be amended to read:

  - The student must receive employment authorization under these provisions before beginning RCL.

Not only is this interpretation and application consistent with the regulatory wording, it also makes more practical sense. The regulations do not require students to report employer information, and indeed, the nature of the employment engaged in may be sporadic or uneven, since students will be engaged in making ends meet.

Clarify the eligibility of English language students to benefit from the RCL benefit

Policy 3.1, bullet 1

This section lists being a "Postsecondary F-1 student" as one of the eligibility conditions for an SSR RCL. NAFSA suggests that this condition be revised to read, "Postsecondary F-1 students and students enrolled in intensive English language programs." There is precedent for this: On June 16, 2011, SEVP sent to SEVIS users **Broadcast Message 1106-01A**, which stated, "*F-1 Libyan students who attend English as a Second Language (ESL) programs are eligible for this relief*." This was an update to SEVP's original June 9, 2011 Broadcast Message 1106-01, which had originally stated that Libyan ESL students were not eligible for special student relief.

3. General conditions of eligibility for F-1 special student relief

Conditions at the time of the emergent circumstances event

In Policy 4.1, the second bullet and its sub-bullets might be read to exclude F-1 students from SSR benefits if they had only recently arrived in the United States or their enrollment status is otherwise in a transitional state. This can be remedied by recognizing the various stages of the F-1 nonimmigrant process, distinguishing between F-1 nonimmigrant status and SEVIS status, and avoiding words like "enrolled" to cover situations where the student might happen to be on an authorized summer vacation and not required to be enrolled. A term like "maintaining all terms and conditions of F-1 status" would be just as effective and reduce ambiguity. For example, the second bullet and its sub-bullets could be revised to read:

- Establish lawful presence in the United States in F-1 status at the time of the emergent circumstances event (as specified in the Federal Register notice) by meeting all of the following requirements:
    - Was in F-1 nonimmigrant status at the time of the emergent circumstances event
    - Is in *Active* SEVIS status at the time special student relief is requested
    - Is maintaining all terms and conditions of F-1 status

4. Regarding SEVP Fact Sheet 1308-07A: F-1 Emergent Circumstances Processes

Make projected income in the funding section optional where the student has not secured employment

The first bullet point under 1.1 in the fact sheet would require the DSO to "enter the projected income from the employment" in Field 23 of the financial information screen in the student's SEVIS record. However, the special student relief benefit does not require a job offer in order to seek SSR employment authorization, and the employment authorization will always have to precede the start of employment. In fact, in many cases employers want to know that a prospective employee can start immediately, which requires employment authorization in-hand before the employment begins. In addition, many students will be exploring various opportunities to make ends meet within the bounds of the law, and will not know what kind of income they can expect to receive. Because of this, NAFSA recommends that this bullet point be revised to read:

- Field 23, *Funding*, enter the projected income from the employment, *if known*.

The recommendation language exceeds the character limits in the OCE recommendation box

The policy guidance requires DSOs to place specific recommendations in the "remarks" or "recommendation" field of the SEVIS function related to the benefit being requested or granted.

The on-campus employment recommendation is to be placed in the "remarks" box (field 4) of the financial information screen. That box has a 1,000 character limit, so it can easily accommodate the on-campus authorization approval language.

The policy guidance directs DSOs to use the "recommendation" box (field 4) of the off-campus employment screen to recommend new off-campus authorization or to annotate a current off-campus authorization. That field, however, is limited to 250 characters. Using an end date of December 31, 2015 for illustration purposes, we found that the language exceeds 250 characters:

> Language in item 2.1: "Recommended for off-campus employment authorization of more than 20 hours per week and a reduced course load under the special student relief authorization from the date of the USCIS authorization noted on the Form I-766, "Employment Authorization Document" (EAD), until December 31, 2016." **Character count with spaces = 289, without spaces = 247**
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> Language in item 3.1, item 4.1, and item 4.2: "Approved for off-campus employment authorization of more than 20 hours per week and a reduced course load under the special student relief authorization from the date of the current USCIS authorization noted in SEVIS and on the Form I-766, "Employment Authorization Document" (EAD), until December 31, 2016." **Character count with spaces = 307, without spaces = 267**

To properly implement this guidance, either the capacity of the "recommendation" box (field 4) on the OCE screen in SEVIS must be expanded to accommodate additional characters, or the recommendation language should be streamlined to fit within the 250 character limit, otherwise the expiration date of the recommendation/approval will not fit.

Procedural issues regarding Process 2, off-campus employment, new authorization

30-day filing requirement not applicable to off-campus employment applications

The first bullet of Fact Sheet process 2.3 states that "USCIS must receive the application within 30 days of the date the DSO enters the recommendation in SEVIS or USCIS may deny the application…" NAFSA believes that this 30-day window applies only to Forms I-765 requesting post-completion OPT [8 C.F.R. § 214.2(f)(11)(i)(B)(2)]. That regulatory requirement is unique to post-completion OPT applications, and is applied to no other type work authorization. Requiring this rule to be applied to non-post-completion OPT applications would require a regulatory change.

If SEVP is interested in limiting the filing timeframe through policy, NAFSA suggests that they collaborate with USCIS to update their instructions to Form I-765 to state that the accompanying Form I-20 bearing the campus employment recommendation be "endorsed by the Designated School Official within the past 30 days," as the I-765 instructions currently state for other kinds of F-1 work authorization. The point of reference here is the date that the Form I-20 was signed by the DSO on page 1, which adequately reflects the recentness of the form and recommendation.

Reference to a mailing address on Form I-20

The second bullet of Fact Sheet process 2.3 states that the "mailing address in the student's SEVIS record and on the Form I-20 should be identical to ensure correct delivery of the EAD."

The student's mailing address, however, does not print out on Form I-20. This may be a typographical error that could be fixed by revising the bullet to reference Form I-765 rather than Form I-20:

- The mailing address in the student's SEVIS record and on the **Form I-765** should be identical to ensure correct delivery of the EAD."

Suggestion to add guidance on properly identifying Form I-765 as an SSR application

NAFSA suggests that SEVP work with USCIS to add a fourth bullet to Fact Sheet process 2.3, to describe how DSOs should properly identify Form I-765 as a special student relief employment authorization request.

Currently, Form I-765 instructions do not have a special code for SSR employment, and DSOs have recommended using the standard code for off-campus employment [(c)(3)(iii)] plus writing in hand at the top of the I-765 a notation like "special student relief application," to flag the application for USCIS as being not an ordinary off-campus employment application.

Ideally, there would be a dedicated code (e.g., (c)(3)(iv)) which would specifically identify an SSR employment authorization application. Alternatively, SEVP and USCIS could devise another way to consistently flag these applications. In either case, the proper method should be described in both SEVP's policy guidance and the instructions to Form I-765.

Revise policy on school oversight of SSR employment

In Fact Sheet process 5, SEVP suggests that a DSO "should document a student's special student relief based employment and oversee the impact of on-campus or off-campus employment upon the hardship." While schools should properly be concerned about the well-being of their students, NAFSA believe that this introduces a school obligation that can only be done proposed through the regulatory process, not implemented in a Fact Sheet accompanying an internal policy guidance document. As such, it should be removed from the guidance. Since the SSR benefits are inherently temporary, we believe that a review of continued eligibility at the time of benefit renewal (which requires a new DSO determination and recommendation) satisfactorily covers compliance concerns.