



## U.S. Immigration and Customs Enforcement

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#### Student and Exchange Visitor Program

#### SEVP Draft Policy Guidance for Adjudicators 1406-05: Conditional Admission

**Issue Date:** (date signed)

**Effective Date:** (date implemented)

**Supersedes:** N/A

- 1. Purpose/Background.** Regulations at 8 *CFR* 214.3(k)(3) and (4) state that a designated school official (DSO) may issue a Form I-20, “Certificate of Eligibility for Nonimmigrant Student Status,” to a prospective F-1 or M-1 student only after “the appropriate school authority has determined that the prospective student’s qualifications meet all standards for admission” and “the official responsible for admission at the school has accepted the prospective student for enrollment in a full course of study.”

Questions related to the appropriate issuance of the Form I-20 where international students have issues meeting school qualifications have existed since the mid-1970s, as noted in past U.S. Government Accountability Office (GAO) reports.<sup>1</sup> In 1983, due to concerns about “questionable practices,” the U.S. Immigration and Naturalization Service (INS) clarified and amended the regulatory language regarding Form I-20 issuance at 8 *CFR* 214.3(k), including that the “prospective student’s qualifications meet all standards for admission.”<sup>2</sup> These concerns were also reflected in INS Operating Instructions regarding the “issuance of provisional Forms I-20.”<sup>3</sup>

The guidance contained in this document clarifies these previously issued regulations and guidance and ensures uniformity of interpretation.

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<sup>1</sup> An adjudicator interested in learning more about these historical issues can read the following reports from the [GAO](#) (previously known as the U.S. General Accounting Office): “Better Controls Needed to Prevent Foreign Students from Violating the Conditions of their Entry and Stay while in the United States” ([General Government Division \(GGD\)-75-9](#), February 4, 1975); “Controls Over Nonimmigrant Aliens Remain Ineffective” ([GGD-80-87](#), September 11, 1980); “Controls Over Foreign Students in U.S. Postsecondary Institutions Are Still Ineffective” ([Human Resources Division \(HRD\)-83-27](#), March 10, 1983).

<sup>2</sup> See 47 *FR* 23465 and 48 *FR* 14591.

<sup>3</sup> INS Operating Instructions 214.3(n)(4), which states: “Issuance of provisional Forms I-20. The provisional issuance of Forms I-20 is a violation of 8 *CFR* 214.3(k). According to that regulation, a designated school official may not issue a Form I-20 until the appropriate school authority has determined that the prospective student’s qualifications meet all standards for admission at the school which has accepted the prospective student for enrollment in a full course of study.”

## 2. Definitions.

**2.1 Standards for admission.** A set of established criteria that a prospective student must meet in order to be admitted to a program of study at a school. These admission requirements are listed in field 18 on the Form I-17, “Petition for Approval of School for Attendance by Nonimmigrant Student.”<sup>4</sup>

**2.2 Conditional admission.** An agreement between a school and a student to admit the student into a program of study for which the student does not meet all standards for admission. This agreement is contingent upon the student successfully meeting a school-specified set of conditions that will fully qualify the student for the program. The student may begin the program upon meeting the required conditions.

**3. Policy.** Student and Exchange Visitor Program (SEVP) regulations at *8 CFR 214.3(k)(3) and (4)* prohibit Form I-20 issuance on the basis of conditional admission.

## 4. Procedures/Requirements.

**4.1 General requirements.** *8 CFR 214.3(k)(3) and (4)* require a DSO to issue Forms I-20 only to a prospective F-1 or M-1 student who has met all standards for admission, including any English proficiency requirements, for the program of study for which the student has been admitted and been accepted for enrollment in a full course of study.<sup>5</sup>

**4.2 Form I-20 issuance.** DSOs must correctly issue Forms I-20. *8 CFR 214.3(k)* requires a DSO to sign a completed Form I-20.<sup>6</sup> In doing so, the DSO certifies under penalty of perjury that the form is true and correct. In order to ensure legal issuance of the form and to remain in compliance with SEVP regulatory requirements, a DSO must issue the Form I-20 for a program for which the student has met all standards for admission.<sup>7</sup>

Note: Adjudicators may wish to remind schools that DSOs must issue the Form I-20 for the instructional site at which the student will be studying.

**4.3 Recordkeeping.** Evidence that the student met the school’s standards for admission and has met the requirements of *8 CFR 214.3(k)(2)* must be maintained within the student’s record.

## 5. Adjudicator responsibilities.

**5.1 Review.** An adjudicator must ensure that a DSO only issues a Form I-20 to an F-1 or M-1 student who meets all standards for admission into a program of study. Adjudicators must also ensure that schools reflect their current admission requirements in field 18 on the Form I-17. An adjudicator may take adverse action against any schools who have issued

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<sup>4</sup> This is field 16 in the school’s Student and Exchange Visitor Information System (SEVIS) record.

<sup>5</sup> *8 CFR 214.3(k)(2)-(4)*.

<sup>6</sup> This is field 10 on the Form I-20.

<sup>7</sup> *8 CFR 214.3(k); 8 CFR 214.4(a)(2)(v), (vi) and (viii)*.

Forms I-20 contrary to applicable statutes, regulations, policy guidance, or the school's Form I-17 petition, up to and including withdrawal of SEVP certification or denial of recertification.

**5.2 Evidence.** Adjudicators may request evidence of admission policies and recordkeeping compliance of any school, whether accredited or unaccredited, including but not limited to school catalogues.<sup>8</sup>

**6. Authorities/References.**

*8 CFR 214.3(h)(3)(ii)*

*8 CFR 214.3(k)*

*8 CFR 214.4(a)(2)(v), (vi) and (xviii)*

**7. Attachments.** None.

**8. Limits of use – no private right of action.** This SEVP Draft Policy Guidance for Adjudicators applies to and is binding on all SEVP employees unless specifically exempt. Its intention is solely for the guidance of SEVP personnel in the performance of their official duties. It is not intended to, does not and may not be relied upon to create or confer any right or benefit, substantive or procedural, enforceable at law or in equity by any person, individual or other party, public or private, in any administrative, civil or criminal matter. Until issued in final form, this SEVP Draft Policy Guidance for Adjudicators does not constitute SEVP policy in any way or for any purpose.

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<sup>8</sup> *8 CFR 214.3(h)(3)(ii)*.