NAFSA Comments on SEVP Draft Policy Guidance for Adjudicators 1210-03: Pathway Programs

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NAFSA is the world's largest nonprofit association for international education professionals, with nearly 10,000 members at approximately 3,500 colleges and universities throughout the United States and around the world. Our membership includes many professionals at U.S. institutions of higher education who serve as Designated School Officials (DSOs), manage international student programs, and advise international students. For this reason, NAFSA is well situated to comment on this draft guidance.

Effective Date and Requirement to Update Form I-17 for Pathway Programs Already Approved

The draft guidance, at section 5.5, requires a school with an approved pathway program on its Form I-17 to update its Form I-17 "consistent with this guidance." SEVP provides no indication of why it sees a need for approved programs to be re-approved. Many schools have approved pathway programs, and some have been approved for nearly a decade. Rather than burdening schools and further increasing SEVP's Form I-17 processing backlog by requiring re-approval of each program, SEVP should require updates only for programs that do not substantially meet the criteria set forth in the guidance.

The draft guidance also requires, at section 5.5, schools with pathway programs that are not currently on their Form I-17 to submit an update and "immediately cease such participation in the program." While this may seem reasonable on its face to those who are not familiar with Form I-17, DSOs and others familiar with the form know that its acute limits allow users to provide on the form only summary information and links to more detailed information. Therefore, some schools that have acted in good faith and apprised SEVP of their pathway programs may wonder if they have met the requirements in the draft guidance or not. Many others will have acted in good faith but, facing a lack of specific instruction from SEVP on how to report on new programs and even what constitutes a new program, may not have met the requirements. In any case, providing a grace period for compliance is a more reasonable approach. Requiring a school to cease a program during a school session would disrupt students' education and disadvantage them unfairly.

We would also reiterate our suggestion that SEVP set a single effective date for all of its guidance related to conditional admission and pathway and bridge programs at the time all components of the guidance have been finalized, and provide a one-year grace period for compliance from that effective date.

Develop Separate Guidance on Concurrent Enrollment

Attempting to track too much information in the current and limited version of SEVIS is counter-productive. SEVP should consider developing separate draft guidance on the topic of concurrent enrollment rather than embedding partial guidance on that topic into the two fact sheets connected to this guidance. Furthermore, the regulations at 8 CFR 214.2(f)(6)(iv) authorize concurrent enrollment but do not require that information to be reported on a blanket basis at 8 CFR 214.3. Requiring schools to update their Form I-17 with the School ID of concurrent enrollment partners creates a new substantive requirement that is beyond the scope of what can be accomplished through policy guidance and should instead be pursued through the regulatory process.

Distinguish Regular Non-degree and Certificate Programs from Pathway Programs

SEVP should also clarify that this guidance applies only to bridge and bridged degree programs as defined in the guidance and does not apply to other non-degree and certificate programs in general, which will continue to be processed under other current guidance.

Distinguish the Use of "Reduced Course Load"

In some cases a student has met all requirements for a degree program, but after arrival at the school is found to need supplemental English as a Second Language (ESL) work. In this circumstance the student may be required to take ESL alongside academic coursework or otherwise to reduce his or her academic course load due to challenges with the English language. This situation can normally be handled by invoking the reduced course load provisions of 8 CFR 214.2(f)(6)(iii)(A), which allow a reduction in course load "on account of a student's initial difficulty with the English language or reading requirements, unfamiliarity with U.S. teaching methods, or improper course level placement." This situation differs significantly from pathway program scenarios because the student has been found to be fully qualified and has been fully admitted to the degree program. Given the similarity of the activity during the terms of reduced course load to the activity described in the draft guidance, however, we suggest that the final guidance distinguish the reduced course load scenario from the bridge program or conditional admission scenarios.

Per-Session Course Requirements

The draft guidance requires, at section 4.3, that a pathway program must contain at least one nonremedial course per session. While the apparent goal of the guidance—ensuring that a pathway program contains nonremedial course work—is valid, this an unnecessarily specific and restrictive requirement that may eliminate valid programs. For example, a valid multiple-session program might include an initial session of entirely remedial course work as a foundation for the following sessions that would include substantial nonremedial course work. Also, it is possible that students in a pathway program might finish all nonremedial coursework prior to the final session of the program but be required to complete remedial work in the final session. For these reasons, we suggest that you evaluate only the pathway program's remedial and nonremedial course work requirements rather than the per-session mix of courses. At a minimum, SEVP should include language in the final guidance that would allow the final term to include any course work in furtherance of completing the program.

Characterization of ESL Components

We understand that one of SEVP's goals is to identify programs that are principally ESL-related, both for data reporting purposes and to ensure that ESL students do not appear to be eligible for practical training in violation of 8 CFR 214.2(f)(10), which provides that "Students in English language training programs are ineligible for practical training." However, referring to students in a pathway program with even a relatively small ESL component as "students in English language training programs" may result in a misrepresentation of their actual activities. In the bridge program context, "students in English language training programs" should be construed to refer only to students who are issued an I-20 with CIP code 32.0109, *Second Language Learning*. That code should be applied only when a segment of the bridge program is comprised of either completely ESL or predominantly (50% or more) ESL.

The requirement in the bridged degree programs fact sheet that the Form I-20 for a program with any ESL component must indicate as "Primary Major Code" a "32.XXXX" CIP code (Basic Skills and Development/Remedial Education) may also result in the misrepresentation of the actual program of study. In order to ensure the accurate representations of a program of study on the Form I-20, SEVP should reverse its approach in the draft guidance to listing primary and secondary major CIP codes. The CIP code for the degree program should be used as the "Primary Major Code," and programs with an ESL component should use a "32.XXXX" CIP code for the "Secondary Major Code." SEVP should also revise Form I-20 so that both majors appear on the form.

Instructional Sites and "Main Instructional Site"

Adjudicators should be specifically directed to SEVP Policy Guidance for Adjudicators 1003-03: Reporting Instructional Sites, when defining or using the terms "Instructional Site," "Main Instructional Site," and "School."

Level of Detail to be Required on Form I-17

The fact sheets attached to the draft guidance require schools to engage in labyrinthine updates to their Form I-17 and to provide exhaustive information and documentation about each individual pathway or bridge program for which they plan to issue a Form I-20. NAFSA suggests that SEVP reconsider the level of granular detail needed on Form I-17 to ensure proper oversight and compliance. Although documenting that a school has been authorized to issue Form I-20s for bridge and bridged degree programs is clearly important, the complex work-arounds proposed in the draft fact sheets would stretch the current version of SEVIS beyond its practical limits.

Depending on the type of program being added, up to six fields on Form I-17 would have to be updated and maintained. Moreover, some of those fields have acute character limits. For example, Field 17, *Courses of Study and Time Necessary to Complete Each*, a field that must be used to describe all of a school's courses of study, is currently limited to only 500 characters. That presents logistical challenges, especially for larger institutions or institutions with a large variety of offerings. SEVP should at the very least consider greatly expanding the character limits of this and other key Form I-17 fields before implementing this guidance.

NAFSA believes that SEVP's concerns could be met more efficiently by requiring schools to update their Form I-17 at Item 17 with a basic description of the program. For example:

- Bridge Program-ESL; 12-18 months
- Bridge Program-Academic Prerequisites; 12-24 months
- Bridged Bachelor's Degree Program-ESL; 3-4 years
- Bridged Master's Degree Program-Academic Prerequisites; 3-4 years
- Etc.

This would clearly indicate that a school has been authorized to engage in bridge program activity while maintaining the school's prerogative to develop variations within those structures without having to update its Form I-17 to reflect each variation. Requiring a school also to update other fields with very similar information is unnecessarily complicated.

Processing Form I-17 Updates

We reiterate our comment concerning the initial draft guidance that SEVP must anticipate a significant increase in the volume of Form I-17 updates, plan accordingly, and deploy the necessary staff and resources to process the updates. In fact, if the final guidance requires the re-

submission of a Form I-17 update for each previously approved pathway program, as the draft guidance does, it is difficult to imagine that the current Form I-17 update processing backlog will not increase dramatically and processing times slow even further.

Slow and burdensome Form I-17 update processes often have serious detrimental impacts on schools. We therefore reiterate our recommendation that SEVP consider provisional approvals and streamlined adjudication processes for certain kinds of programs. For example, when an institution decides to offer a pathway program that simply combines elements (such as classes) of other programs of study already listed on the institution's Form I-17, the institution should be allowed to begin issuing Forms I-20 for the new combination program immediately while SEVP processes the update. SEVP has already approved the offering of the other programs, so the offering of a combination of them should require only a notification update rather than a lengthy de novo analysis and adjudication process. SEVP should also develop standard models of common pathway programs and related criteria so that it can quickly process the vast majority of Form I-17 updates, which should be quite straightforward, and more thoroughly process only less standard updates.

We are also concerned about the criteria, beyond those described in this draft guidance, that may be applied to pathway program Form I-17 updates. In recent months several members have brought to our attention denials of Form I-17 updates for otherwise approvable new programs based on the fact that the school is not yet offering instruction in the program that it is seeking to add to its Form I-17. We acknowledge the eligibility requirement at 8 CFR 214.3(a)(3)(i)(D) for initial school certification that the school "is, in fact, engaged in instruction in those courses" that it intends to offer to international students. However, we believe that a blanket application of this initial certification eligibility requirement to any new program that an already certified school plans to offer is simply a mistaken application of the regulation. Such overbroad application would eliminate the possibility of offering most new pathway and bridge programs, which are generally created for international students. It would also eliminate many other kinds of programs created specifically for international students, such as L.L.M. programs for law graduates from other countries. The boilerplate request for evidence that adjudicators often send schools in response to a Form I-17 update concerning a new program should be revised to eliminate any indication that instruction must already be underway. If SEVP requires proof that the schools has established the program for which approval is sought, many other kinds of evidence—such as listing it in an online program catalog—should suffice.

Interagency Cooperation and Stakeholder Communication

NAFSA strongly encourages SEVP to coordinate implementation of this guidance within DHS and with the Department of State. As we noted in our comments on the initial draft guidance, a widely-held impression is that student visa applicants who present a Form I-20 for a degree program to a consular officer are much more likely to be issued a visa than those who present a Form I-20 for an English as a Second Language (ESL) program or a bridge or pathway program. Many DSOs and other officials of educational institutions fear that a prohibition on issuing one Form I-20 to cover a full degree program plus an ESL or bridge or pathway component will result in increased visa denials. They are concerned that this will place U.S. educational

institutions at a competitive disadvantage with educational institutions in other countries and lead students to consider studying in countries with more facilitative visa and immigration policies. They also fear that sponsoring agencies and governments, many of whom clearly favor funding students who can obtain a Form I-20 and visa for a full degree program rather than an ESL, bridge, or pathway program, will begin to consider the U.S. a less attractive destination for students. In short, they are concerned that this policy guidance may result in a less robust international student population in the U.S.

NAFSA encourages SEVP to work within the Department of Homeland Security (DHS) and with the Department of State (DOS) to encourage a policy that clearly and explicitly recognizes the validity of ESL programs and bridge and pathway programs. SEVP should, as will NAFSA, request that DOS issue policy guidance to this effect for consular officers. The guidance should also encourage consular officers to give the same consideration to conditional admission letters from educational institutions that they may have in the past given Forms I-20 indicating conditional admission. SEVP should assist DOS in formulating the guidance immediately. SEVP should also work within DHS to ensure that inspectors at the ports of entry do not disadvantage prospective students of ESL and bridge and pathway programs.

NAFSA also encourages SEVP to engage in outreach to sponsoring agencies and governments, to hear their concerns about this policy guidance and to inform them about measures to ensure that it will not impede visa issuance and study in the U.S.

Thank you for this opportunity to comment on your draft guidance.