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U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

Submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>

Re: U.S. Immigration and Customs Enforcement Proposed Adjustment of Fees for the Student and Exchange Visitor Program; DHS Docket Number ICEB-2017-0003

Dear Ms. Snyder:

NAFSA: Association of International Educators submits this comment letter in response to the notice at 83 *Fed. Reg.* 137, 33762-33794 (July 17, 2018) concerning the United States Immigration and Customs Enforcement's (ICE) proposed adjustment of the program fees for the Student and Exchange Visitor Program. NAFSA is the world's largest association of international education professionals with over 10,000 members, many of whom work with international students and exchange visitors subject to the fees and manage programs subject to the fees. We offer several specific recommendations on the proposed fee rule: reduce the SEVIS fee for short-term study, implement smart enforcement, eliminate site visit fee for new instructional sites, and improve and modernize SEVIS.

NAFSA offers these recommendations because of the immense contribution of international students and scholars to the United States, our campuses, and communities. NAFSA's latest analysis finds that the 1,078,822 international students studying at U.S. colleges and universities contributed \$36.9 billion and supported more than 450,000 jobs to the U.S. economy during the 2016-2017 academic year. That's three jobs created or supported for every 7 international students who choose to pursue their academic goals in the United States. These economic contributions are in addition to the immeasurable academic, cultural, and national security value these students bring to our campuses and our nation. Generations of foreign policy leaders have often said that the presence of international students in the United States is our nation's greatest foreign policy asset, as these students become America's best ambassadors and partners and counteract stereotypes about the United States. In many cases, future U.S. and international leaders will have studied together, creating even more direct diplomatic ties.

The United States is currently at risk of losing its position as the most attractive country for international students and scholars. In January 2018, the Council of Graduate Schools reported a decline in international graduate student applications and enrollment for Fall 2017, the first such decline in more than a decade. First-time overall enrollments also dropped 3.3%, according to the Institute of International Education's most recent *Open Doors* report sponsored by the U.S. State Department, a trend that will likely have long-term consequences¹.

Students and scholars across the world are increasingly uncertain about their status in our country, and many are reconsidering their choice to study, teach, and conduct research in the United States. Many are carefully watching to see whether the United States will further restrict access to educational, experiential, work, and research opportunities through regulation or policy; such changes could further diminish the ability of the United States to remain attractive to international students. Meanwhile, other nations around the world are actively competing for these students by making their policies and procedures more welcoming and attractive.

Many international educators are deeply concerned about the drastic nature of the proposed increases, including a 75% increase of the F-1 and M-1 SEVIS fee and a 76% increase in the school certification petition fee. They are also concerned about the proposed implementation of steep new fees, particularly the \$1,250.00 recertification petition fee, a recurring fee that schools would be required to pay every two years. These dramatic increases come at a particularly inopportune time, as higher education institutions face significant funding challenges, and international education programs are experiencing declining new enrollments for the first time in more than a decade. We anticipate that vigorous competition for international students from other countries that are currently expanding their enrollments will continue to exacerbate the early declines programs are currently experiencing. Burdening students and exchange visitors with drastically increased fees may further contribute to declining enrollment, particularly in short-term programs, and increased fees and steep new recurring fees may place some programs in financial jeopardy. Given the bipartisan agreement on the importance of international students to our nation's interests, U.S. immigration policies should be carefully crafted to avoid fueling the perception that the United States no longer welcomes international students or other international visitors.

Reduce I-901 fee for short-term programs

Students participating in a short-term program of study in the United States require use of SEVP resources for a shorter duration than most degree-seeking students, and because the I-901 fee may constitute a disproportionately significant portion of a student's costs for a short-

¹ Open Doors 2017 Fall Enrollment Snapshot Report <https://www.iie.org/Research-and-Insights/Open-Doors/Data/Fall-International-Enrollments-Snapshot-Reports>; Open Doors 2017 report (<https://www.iie.org/Why-IIE/Announcements/2017-11-13-Open-Doors-Data>): "While the overall number of international students studying in the United States has increased, the number of new international students—those enrolled at a U.S. institution for the first time in fall 2016, declined by nearly 10,000 students to about 291,000, a three percent decrease from the previous year. This is the first time that these numbers have declined in the twelve years since Open Doors has reported new enrollments."

term program, we recommend reducing the I-901 fee for short-term programs. This reduced fee should be implemented for programs of shorter duration than one academic year, as defined by SEVP in [SEVP Policy Guidance for Adjudicators 1408-01: Academic Year](#).

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. The argument made that a fee increase alone is unlikely to deter a prospective international student who plans to spend tens of thousands of dollars on a four-year U.S. degree does not hold up when the new proposed \$350 fee is applied to shorter-term programs. For example, the fee increase is far more significant for 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 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 ask that it do so.

Smart enforcement through risk-based analysis

Adjudications of initial certifications and recertifications are tremendously backlogged in large part because SEVP has opted to fully adjudicate nearly every change to Form I-17 that a school submits in SEVIS pursuant to 8 CFR 214.3(g)(2). Not only has this generated a sheer volume of requests ("on average, 350 weekly updates from schools," [p. 33768] some of which contain updates to multiple I-17 fields), but the detail of supporting documentation that SEVP requires schools to submit often results in an RFE back-and-forth that is both confusing to schools and which delays adjudication of the update.

SEVP states [p. 33768] that it "is required to adjudicate such changes." But for changes to key fields on Form I-17, 8 CFR 214.3(h)(3)(i) requires SEVP only to "determine if out-of-cycle review is required" for an individual school. It is not a directive to institute a blanket policy that requires SEVP to adjudicate every update as if were a USCIS benefit request. Instead of adjudicating every update, SEVP could fully accomplish its obligation to determine if an out-of-cycle review is required for a specific school by developing risk-based criteria and then requiring a school with a profile or updates that relate to those risk factors to undergo a more thorough "out-of-cycle" review more akin to an adjudication.

We recommend, as we have before, that SEVP create a streamlined approach to Form I-17 updates by accepting them as attestations from schools and auditing or investigating them if necessary. We also repeat our recommendation that, as an alternative, SEVP accept minor program adjustments such as a new major within an already approved area of study as a report from the school and audit as necessary. Adjudicating every update from every school is unnecessary and is burdensome for schools and, as SEVP describes, resource intensive for

SEVP. Implementing these “smart enforcement” changes to the I-17 update process could avoid unnecessary expenditure of SEVP resources and funds and allow, for example, a reduction in the I-901 fee for short-term programs without reducing SEVP’s overall funding.

SEVP’s processes should not hinder schools in offering innovative programs in a timely manner. NAFSA supports, in general, SEVP’s goal of adding personnel to support adjudications with the goal of a more efficient adjudication process. NAFSA recommends that SEVP control costs through actions such as:

- Reserve resource-intensive adjudications to those that are clearly required by the regulations or that correlate with specific risk-based criteria
- Continue to develop up-front instructional material, guidelines, and eligibility and documentation criteria that schools and their DSOs can rely on to determine exactly what needs to be submitted with initial certification and recertification applications, and Form I-17 updates
- Set and publish target processing time goals, and publish monthly processing time data, so that schools can plan accordingly

In addition, DHS must remove any obstacles in agency administrative and budgetary processes so that fee proceeds can be expeditiously used to hire and on-board adjudicators and support personnel.

Eliminate site visit fee for new instructional sites

In the preamble to this 2018 proposed SEVIS fee rule [p. 33771], SEVP states, “the preamble to the 2008 Fee Rule made clear that these provisions require the imposition of a site visit fee for each location listed on the initial SEVP certification, **as well as each location added as part of an initial event**” (emphasis added).

The fact that SEVP asserted in the 2008 preamble that site visit fees must be assessed as part of “an initial event” does not make it so. The regulations require site visits only in the context of initial school certification under 8 CFR 214.3(h)(1). Site visits are not mentioned in the context of recertification (8 CFR 214.3(h)(2)) and out-of-cycle reviews (8 CFR 214.3(h)(3)). Those provisions refer to “on-site reviews,” not to site visits. Although similar sounding, site visits and on-site reviews are different, and SEVP does not incur the same kinds of costs. The addition of a new campus or instructional site to the I-17 of a school that has already been certified is an event that triggers an “out-of-cycle review,” which may necessitate an “on-site review,” but not a “site visit.”

The site visit fee should be applied only in the case of initial school certification and not be extended via a federal register preamble to “initial events” not defined in the regulations.

SEVIS modernization and SEVIS data

NAFSA supports SEVP's goal of improving and modernizing SEVIS. For example, SEVP states [p. 33769] that it would like to develop an automated SEVIS data tracking functionality that would provide SEVP and DOS with "enhanced abilities to track and monitor compliance."

SEVP also notes [p. 33765] that "SEVIS shares information with other agencies' and components' systems—DoS, USCIS, CBP, Transportation Security Administration (TSA), and others—to better monitor the status of student or exchange visitors throughout their stays in the United States."

The accuracy of SEVIS data is paramount for that to work. NAFSA recommends that sufficient funds be allocated so that SEVP and USCIS finally resolve the issues with the CLAIMS-SEVIS interface that result in USCIS benefits applications not being properly updated in SEVIS. There should be no delay in the status of a USCIS benefit application being quickly and accurately reflected in SEVIS. For example, the status of an application for Optional Practical Training should smoothly move in SEVIS from "requested" to "pending" to "approved" with the proper dates, based on information shared between USCIS' CLAIMS system and SEVIS. Additional resources should also be dedicated to SEVIS interfaces with other government data systems such as SAVE, and CBP, and DOS systems. This should not wait for the modernized Information Sharing module referenced in the proposed rule preamble [p. 33769]; it should be done now in the current version of SEVIS before other functionalities are developed.

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 Office of Biometric Identity Management (the successor to US-VISIT) which serves the same purpose for DHS for other nonimmigrants seeking entry to the U.S. or an immigration benefit. The fee-paying population to whom the proposed rule will apply 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 five percent of the nonimmigrant population in this country, a population that is no more prone to acts of terrorism than the 95% of all the other nonimmigrants here, and as stated earlier, is in fact a population that contributes to our national security. There is no doubt that DHS has authority over SEVIS fee increases; however, SEVP's choice of language of apprehending violators before they can potentially endanger the national security of the United States (83 Fed.Reg. 33767) is unnecessarily inflammatory and does not address the actual role SEVIS plays in immigration enforcement. 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, and we encourage SEVP to avoid misrepresentation of international students and scholars. Other intelligence databases that monitor truly suspicious activity are more reliable for identifying threats to national security than a database designed to track academic activity.

Thank you for the opportunity to comment. Please do not hesitate to contact me if you have any questions.

Sincerely,

Jill Welch
Deputy Executive Director of Public Policy
NAFSA: Association of International Educators