

NAFSA: Association of
International Educators

1307 New York Avenue NW
Eighth Floor
Washington, DC 20005-4701
Telephone: 1.202.737.3699
Fax: 1.202.737.3657
E-mail: inbox@nafsa.org
<http://www.nafsa.org>

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January 25, 2010

Mary Ellen Callahan
Chief Privacy Officer
Privacy Office
Department of Homeland Security
Washington, DC 20528

Re: Docket No. DHS-2009-0104, Privacy Act of 1974; Student and Exchange Visitor Information System (SEVIS) System of Records

I write on behalf of NAFSA: Association of International Educators, the world's largest association of international education professionals with 10,000 members at approximately 3,500 colleges and universities throughout the United States and abroad in response to the [SEVIS II system of records notice](#) (SORN) published on January 5, 2010, at 75 Fed. Reg. 412.

NAFSA appreciates the opportunity to comment on this system of records notice. Our collective membership includes school and program officials who will be required to establish a SEVIS II customer account, and who will manage SEVIS II data for F, M, and J students and exchange visitors and their dependents. As such, our members play a key role in ensuring the success of the SEVIS endeavor. Since the January 5, 2010 SORN also refers to a December 4, 2009, [SEVIS II Privacy Impact Assessment](#) (PIA), our comments may also incorporate references to that PIA where relevant.

Characterization of the SEVIS system

The January 5, 2010 notice states (p. 416),

“The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system.”

NAFSA believes that the characterization of SEVIS as “a law enforcement system” is overly broad, since the maintenance of immigration status is predominantly a matter of civil administrative law, not criminal law. The fact that the data in SEVIS can be of use in the enforcement of laws should not be seen to make SEVIS “a law enforcement system.” Additionally, oversimplifying the purpose of SEVIS can negatively impact how international students and scholars perceive their welcome to the United States. Given the importance of

international education to the U.S. economy and U.S. competitiveness, DHS should consider using more precise language. For example, the rule that underlies DHS's characterization [[73 Fed. Reg. 63057](#)] (Oct 23, 2008)] describes the purpose of SEVIS more accurately:

“Because the purpose of the SEVIS system is to collect and maintain pertinent information on nonimmigrant students and exchange visitors and the schools and exchange visitor program sponsors that host them while in the United States in order to ensure that these individuals comply with the requirements of their admission, it is possible that the information in the record system may pertain to national security or law enforcement matters.”

SEVIS has multiple purposes, and policies regarding the use of the system should reflect this reality.

Expansion of routine uses of SEVIS information

The January 5, 2010 SORN (pp. 415-416) updates the 2005 SEVIS I SORN by adding 16 new "routine uses" of SEVIS records, including paragraphs E, G, I, J, L, M, N, O, P, Q, R, S, T, and U. A "routine use" allows information contained in the system to "be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3)." NAFSA recognizes the challenge of balancing the privacy of individuals and institutions with the need for information that assists in carrying out national security, law enforcement, immigration, intelligence, or other important government functions, but cautions against an overuse of SEVIS data for purposes not directly related to the goals of SEVIS or in support of the international education experience of F/M/J nonimmigrants.

NAFSA also asks DHS to specify restrictions on “rediscovery” of SEVIS data released to parties under this notice. Restrictions on rediscovery are a recognized way of further ensuring privacy. For example, laws that protect the privacy of students (such as FERPA, the Family Educational Rights and Privacy Act) disallow a party to whom information is disclosed from rediscovering the data to another party, unless specific conditions are met.

Finally, NAFSA believes that the grounds described at paragraph “X” (p. 416) for authorizing release of SEVIS information to “the news media and the public” are overbroad, particularly since there is no mechanism described for determining when “specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.” SEVIS information is used by so many different agencies – within DHS and outside of the agency – in ways that will inform decisions made by those agencies, that it is critical that there be clear guidelines regarding routine use of the information in the system.

Expansion of individuals covered by the system

The January 5, 2010 SORN expands the categories of individuals covered by the SEVIS system to include:

- “a proxy, parent or guardian of an F/M/J nonimmigrant”

- “officials, owners, chief executives, and legal counsel of Student and Exchange Visitor Program (SEVP)-certified schools and designated exchange visitor sponsors.”

The biographical information collected on these individuals should consist only of information absolutely necessary for the system to work as intended. For example, the notice includes “passport information” and “U.S. domestic address” in the list of items possibly kept on such individuals. NAFSA believes that information such as passport data and U.S. domestic address should only be required data elements for F/M/J nonimmigrants, and not SEVIS users such as school officials and University presidents. Such individuals are regular employees of entities that have been certified by the Department of Homeland Security or designated by the Department of State to use the SEVIS system, and their interactions with the system take place in their institutional capacities.

Categories of records in the system and system-to-system data sharing

SEVIS records include personal information and information owned and maintained by government agencies. To maintain the highest level of data integrity, it is important that SEVIS be developed to ensure system-to-system data sharing. Data “owned” by the government should populate SEVIS to the greatest extent possible. The January 5, 2010 SORN (p. 414) lists a number of data items “owned” by the government, such as:

- I-901 fee payment information;
- The DHS-assigned Fingerprint Identification Number (for individuals 14 years of age and older);
- U.S. visa number,
- issuing country,
- expiration date;
- class of admission;
- immigrant benefit application information (primarily reinstatement, employment authorization, 212e waiver, etc.); and
- arrival and departure information (port of entry, date of entry/exit).

NAFSA believes that data “owned” by the government should be supplied directly to SEVIS by the government, through an efficient system-to-system data interchange. Leveraging data that is already in other U.S. government data systems will avoid duplicative data entry and improve the quality of data in SEVIS.

A number of other federal agencies rely on the information in SEVIS and SEVIS data that is pushed to other databases. These databases often serve as gateways not only to immigration benefits such as visas and entry to the United States, but to other essential benefits of being in the United States, such as driver’s licenses and Social Security Numbers (if otherwise authorized to work). Data dependencies between SEVIS II and other government systems must be defined, and system interfaces must be adequate to support new SEVIS II processes and regulatory requirement.

In addition, NAFSA's position is that no adverse regulatory, practice, or SEVIS system consequences should be based on data that is inadequately exchanged between SEVIS and other government systems, nor should the school community be required to enter data into SEVIS that should be available in U.S. government databases.

The December 4, 2009 SEVIS II PIA (sections 1.2, 4.1, and 5.1) also describes other data systems with which SEVIS II shares or exchanges F/M/J information. Although perhaps outside the scope of the January 5, 2010 SORN, the systems that interface with SEVIS II should be revised to include or otherwise be able to recognize the SEVIS II "individual immigration number" (IIN), to ensure accurate data sharing and to take advantage of SEVIS II's person-centric data architecture.

Lastly, NAFSA applauds the measures the department is taking to reduce the risk of identity theft, by removing Social Security Number and driver's license data from the SEVIS system itself, since those data items are already contained in other secure government databases.

Correction of data in the system

The December 4, 2009 SEVIS II PIA (section 2.4) mentions that an F/M/J nonimmigrant who believes that a decision regarding employability was made in error, "may file an appeal through SEVIS II per the SEVIS SORN..." However, the January 5, 2010 SORN does not adequately describe such an appeal process through SEVIS II.

The only procedure contained in the January 5, 2010 SORN that is connected to correction of data in the system relates to "seeking notification of and access to any record contained in this system, or seeking to contest its content" through the Freedom of Information Act (FOIA) process (p. 416).

NAFSA believes that the January 5, 2010 SORN should be updated to include more details of how an individual can request changes to any SEVIS II data that he or she believes is inaccurate., and an appropriate time frame for the correction to take place. This is particularly important for data that other agencies or other parts of DHS rely on in making benefits or enforcement decisions.

Information provided by schools and sponsors

The December 4, 2009 SEVIS II PIA (section 1.4) lists the forms used to collect information about schools and sponsors, including Form I-17, Form DS-3036, Form DS-3037, and Form DS-3097. Although these forms are listed by their OMB control number, the SEVIS II collection vehicle has not been made available for public inspection. It is anticipated that these forms will collect other information (such as institutional information) in addition to the personally identifiable information described in the January 5, 2010 SORN and the December 4, 2009 PIA. NAFSA reserves the right to comment on those additional fields when those information collections are revised to support SEVIS II. Likewise, NAFSA would like to comment on SEVIS

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II fields added to the other forms listed in PIA section 1.4, once those forms are revised to support SEVIS II.

NAFSA appreciates the opportunity to comment on the department's development of the SEVIS system, and we encourage the department to continue the development of measures to protect the privacy of individuals. At the same time, more effort must be taken to accurately describe the role SEVIS plays, and to ensure that SEVIS includes only data that is narrowly tailored to meet specific national needs and to support the international education experience of F/M/J nonimmigrants.

Sincerely,

A handwritten signature in black ink, appearing to read "Marlene M. Johnson". The signature is fluid and cursive, with the first name being the most prominent.

Marlene M. Johnson
Executive Director and CEO