

NAFSA's DHS Regulatory Practice Liaison and Advocacy Priorities

NAFSA has on-going liaison with the Department of Homeland Security (DHS) in which NAFSA staff and the [International Student and Scholar Regulatory Practice Committee \(ISS-RP\)](#) communicate your concerns (gathered through [IssueNet](#) and other vehicles), make recommendations and requests for improvements and other actions, and provide information to DHS. We have a new opportunity, through NAFSA CEO Marlene Johnson's participation on DHS Secretary Napolitano's [Homeland Security Academic Advisory Council \(HSAAC\)](#), to bring the broader concerns and recommendations to the attention of top DHS leadership.

The list of regulatory practice priorities below, gathered from a variety of sources, including NAFSA's recent formal and informal comments to DHS and IssueNet, will inform NAFSA's participation on HSAAC. Since HSAAC was established to address broad topics, our priorities are stated accordingly. This list is organized according to the three focus areas identified by the HSAAC Subcommittee on International Students, on which Marlene Johnson serves.

NAFSA welcomes your continuing input concerning the burdens and barriers that DHS creates and recommendations for removing them. Submit your ideas about NAFSA's DHS regulatory practice priorities through [IssueNet](#). Also, NAFSA staff and the ISS-RP are always interested in hearing about your regulatory problems and concerns, and we review [IssueNet](#) every week, so let us know.

1. How can DHS improve its international student processes and outreach efforts?

a. Improving International Student Processes

1) Reduce the SEVP-imposed burdens and barriers faced by schools hosting international students by shifting away from "blunt instrument" compliance and enforcement measures to more effective and efficient "smart compliance and enforcement," using the systems you have created and data you already collect.

- a) Stop creating new roadblocks that prevent institutions from being nimble and competitive, such as slow and uninformed I-17 adjudications of additional programs of study and addition of staff members.
- b) If you will not discontinue the new adjudications (which worked better as SEVIS updates), then set informed and clear adjudication standards, train SEVP staff to apply them properly, and communicate the standards to Designated School Officials (DSOs). For example, in setting informed standards concerning accreditation, SEVP must consult the Department of Education (DOE) and regional accrediting bodies to gain an understanding of accreditation.
- c) Identify reliable risk factors and utilize them in analyzing the data that you already collect through SEVIS to determine necessary enforcement and compliance measures. This will enable you to stop instituting blanket "one size fits all" measures and treating the most well-established higher education institutions in the country that are proven compliers the same as you treat, for example, a new proprietary school.

d) Streamline recertification so that it is a biannual compliance review (as required by statute) and not a complicated, burdensome, and slow application process through which SEVP approaches certified schools as if it is a “first impression.”

i) For example, review a school’s SEVIS records biannually and do not require further documentation from schools who regularly update their Form I-17.

ii) Rely on DOE information (as suggested by the statute) in the process when possible rather than requesting difficult or impossible to obtain documentation from schools.

2) Enable rather than hinder institutions to attract and retain “the best and brightest” students from around the world.

a) Revise the regulations, which envision only a long-gone narrow mode of education, to recognize the modern programs we offer, and ensure that the regulations do not impede innovation in higher education and our ability to compete with other countries.

--Note: this item also fits under “supporting emerging trends”

b) Recognize that students are attracted to the U.S. by the potential for developing professional qualifications, and revise the regulations to allow a wider range of experiential learning. For example, expand the regulations to allow off-campus employment separate from curricular and optional practical training.

c) Revise the regulations to make higher education in the U.S. more attractive to students with spouses by allowing spouses to engage in a wide range of part-time educational activities and employment that will allow them to maintain or develop educational and professional qualifications.

d) Recognize that students travel, often in furtherance of their education in the U.S. (such as to conduct field work, etc.), and revise the regulations or issue policy guidance to eliminate the restrictive “five month leave of absence” provision so that they are not penalized for doing so.

e) Recognize that some of the “best and brightest” may have disabilities and chronic medical conditions, and revise the restrictive “full course of study” regulations that may currently prevent them from studying in the U.S.

f) Revise the regulations and policy guidance to allow explicitly certain limited educational activities in B-1/B-2 and other nonimmigrant statuses.

3) Expand practical training and employment authorization mechanisms for STEM students and graduates and entrepreneurs.

a) Expand significantly the CIP (Department of Education “Classification of Instruction”) codes that provide eligibility for a STEM extension of Optional Practical Training (OPT) to recognize the much broader common understanding of STEM than DHS now utilizes.

i) For example, recognize the increasing technological components of programs not previously considered STEM such as architecture and nursing.

ii) Expand eligibility to cover CIP Codes ending in “.99.”

iii) Approach STEM needs from an integrated, national needs perspective rather than simply applying a narrow definition of “STEM” in developing a restrictive list of “STEM majors.”

b) Expand the eligibility for a STEM extension of OPT to allow a prior course of study to establish eligibility (for example, an MBA who previously earned a bachelor’s in Computer Science should be eligible).

c) Expand the eligibility for a STEM extension of OPT to include minor fields of study since STEM minors often apply STEM knowledge and work in support of STEM industries.

d) Either through regulation or policy guidance expand the ability for entrepreneur-graduates to form small or sole-owner business entities and allow them to self petition for H-1B and permanent residence.

(4) Pursuant to the Border Commuter Student Act of 2002. [Pub.L. 107-274 (November 2, 2002), issue regulations to implement the F-3 and M-3 categories. The Department of State promulgated such regulations in 2003 and, despite DHS assurances that it should not, began issuing visas. The lack of corresponding DHS regulations leads to many issues, problems, questions and concerns about the F-3 and M-3 classifications.

b. Improving Outreach Efforts

1) We applaud DHS’s creation of the *Study in the States* web site (<http://studyinthestates.dhs.gov/>) and encourage DHS to continue developing it so that it provides accurate, timely, and useful information. Recognize, though, that education institutions are better situated to provide specific information about courses of study, requirements, and procedures, and recognize that many institutions actively recruit qualified students. With that in mind, focus your outreach efforts on educational institutions, your stakeholders, rather than on potential students. Develop your regulations, policies, and procedures with input from your stakeholders, and support their ability to attract and host international students by reducing DHS-instituted burdens and barriers.

2) Eliminate current regulations and policies that work against outreach and attracting students. For example, enable rather than hinder potential students who are in the U.S. for another legitimate purpose to transition to student status.

a) Revise the regulations or issue policy guidance to allow prospective students to begin their course of study while their application for change of nonimmigrant status from B to F-1 is pending. With the implementation of SEVIS, the restriction on beginning studies is no longer sensible. Long USCIS processing times introduce uncertainty into the process, often delay a potential student’s enrollment, and may dissuade qualified potential students.

b) Revise the regulations or issue policy guidance to allow explicitly a change of status applicant to remain in the United States while an application for change of status is pending, so long as the applicant was in status at the time the change of status application was submitted. This seems to be DHS policy, but the lack of clear regulations or guidance introduce much uncertainty into the process.

c) Discontinue any reliance on the “preconceived intent” notion (primarily an outdated DOS concept) that may arise in adjudicating a potential student’s change of status application. Modern life is complicated, and individuals usually have multiple intents. Change of status applications should be granted as a matter of course, absent a showing of fraud.

2. How can we better communicate our regulatory interpretations, policies and procedures to the academic community?

- a. First, ensure that your interpretations are careful and informed, and ensure that policies and procedures are actually based on regulations.
- b. Require SEVP to publish thorough policy guidance rather than simply issue new instructions, often unclear and lacking an apparent regulatory basis, as SEVIS Broadcast Messages.
- c. Encourage SEVP to publish draft policy guidance for public comment. Receiving stakeholder feedback prior to implementation of the guidance is crucial, as indicated by SEVP’s need to retract faulty guidance in the past. USCIS provides a good model for SEVP and seems to have benefited greatly from stakeholder input.
- d. While we applaud SEVP’s extensive participation in education-related conferences, we would encourage SEVP to follow the model of USCIS in creating its own mechanism for engaging with stakeholders regularly to receive specific and detailed stakeholder feedback.
- e. Require SEVP to regulate through the implementation of regulations and required notice and public comment process rather than through the creation of new adjudication processes which it seems ill-prepared to execute effectively and in a timely manner.
 - 1) Require SEVP to issue clear standards and procedures for all current and future adjudications.
 - 2) Require SEVP to publish its processing times so that institutions can plan accordingly.

3. How can we accommodate and support emerging trends in international education?

- a. Revise the regulations, which envision only a long-gone narrow mode of education, to recognize the modern programs we offer, and ensure that the regulations do not impede innovation in higher education and our ability to compete with other countries.
 - 1) Recognize that higher education programs have varying “in-residence” requirements, and allow institutions to determine what constitutes a “full course of study,” as the regulations currently allow for graduate programs, for all programs.
 - 2) Recognize that online education is increasingly a key component of higher education and revise the “full course of study” requirement in the regulations to allow additional online courses.
- b. A NAFSA task force is currently preparing an issue briefing on this topic and can make it available to DHS for its consideration.