NAFSA Comments on SEVP Draft Policy Guidance for Adjudicators 1203-01: Bridge Programs and Conditional Admission

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The Issuance of Draft Guidance

NAFSA again applauds the Student and Exchange Visitor Program’s (SEVP) practice of issuing draft guidance for public comment. This helps ensure that SEVP guidance is well-informed and that its potential impacts have been considered. We recognize and appreciate the fact that SEVP has incorporated stakeholder input in arriving at its final guidance on several other topics. We also appreciate SEVP’s inclusion of the one-year adjustment period from the effective date of the guidance.

We would suggest that SEVP consider a 30-day comment period for future draft guidance. Many NAFSA members have indicated that they need more time to circulate the guidance to key components of their institutions, obtain input, and prepare comments to submit to SEVP. A longer comment period may result in more responses and more fully-developed responses from stakeholders.

Institutional Admission Practices and Issuance of Form I-20

Although the draft guidance does not imply otherwise, NAFSA suggests that SEVP explicitly confirm in the guidance that setting standards for school admissions remains entirely at the
discretion of the school or institution, and that the guidance is meant only to clarify how a school should update its Form I-17 and issue Forms I-20 for the programs it offers.

**Recommended Alternative Interpretation**

A reasonable alternative interpretation of 8 CFR 214.3(k)(3), the regulation which this guidance interprets, is that prospective students have met all standards for admission when they have been, for example, admitted into a degree program but required to complete a remedial or prerequisite step. Granted, completion of the remedial or prerequisite step is a condition to the student’s continuing to pursue the broader educational objective, but such conditions are inherent throughout most academic programs. An example of a common condition is that a student must complete English 101 before enrolling in English 102 or that a student must attain a certain grade point average in order to continue in a program. SEVP has created effective mechanisms for handling the failure to meet the conditions for continued enrollment. Relying on these to ensure that students continue enrollment or leave the country or pursue other means for remaining legally makes more sense than requiring institutions to issue multiple Forms I-20 and also avoids the potential negative impacts (described later) of this policy guidance.

**Form I-17 Updates**

SEVP must recognize that this policy guidance will lead to an increased volume of Form I-17 updates. NAFSA again encourages SEVP to discontinue the slow and often burdensome adjudication of Form I-17 updates, which unnecessarily impede the offering of new programs and addition of institutional staff, and return to the prior practice of allowing schools to notify DHS of updates through SEVIS. SEVIS collects information for SEVP on the programs that schools offer, and SEVP has established mechanisms for conducting any necessary integrity reviews. Adjudicating every change in an institution’s educational program or addition of a Designated School Official (DSO) is unnecessary, highly inefficient, burdensome for institutions, and often places institutions at a competitive disadvantage.

If SEVP continues the practice of adjudicating Form I-17 updates, it must publish clear and reasonable adjudication criteria or clarify those already established and publish estimated processing times so that educational institutions may plan accordingly. Publishing policy guidance for adjudicators is a step in the right direction, but institutions must know in advance all criteria to which they are subject in updating Form I-17. Institutions must also know how long it will take SEVP to adjudicate the update. Uncertainty about processing times and the precise criteria applied to adjudications will impede innovation and competitiveness. Before implementing this policy guidance, SEVP must be able to deploy the resources to manage effectively and efficiently the resulting increase in volume of Form I-17 updates.

NAFSA recommends that, if it continues to adjudicate Form I-17 updates, SEVP consider provisional approvals and streamlined adjudication processes for certain kinds of programs. For example, when an institution decides to offer a bridge or pathway program that is simply a combination of two 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
two programs, so the offering of a combination of them should require no lengthy analysis and adjudication process. SEVP should also develop models of common bridge and 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.

**Expand the Guidance to Include “Bridged Degree Programs”**

NAFSA recommends that the scope of an approvable bridge or pathways program be expanded to include a “bridged degree program” to which the student has been admitted. In these cases, the “full course of study” includes both remedial and academic components, with the attainment of the degree as the “specific educational or professional objective” contemplated by 8 CFR 214.2(f)(6)(i), and accordingly issue a single Form I-20 for such programs.

In these situations, the appropriate school authority will have determined that the prospective student’s qualifications meet all standards for admission to the special track that will result in the award of a degree, and the admissions office will have accepted the student for enrollment in that special track.

Although such a program would include a lower proportion of academic coursework at the beginning, that proportion will increase along a continuum as the student progresses through the course of study. In this sense, the “conditional” nature of the admission to the degree program should be viewed as a condition subsequent rather than a condition precedent. That is to say, the condition is to meet the requirements of the program to which the student has been admitted, much like any degree program would require a student to maintain a certain GPA or face dismissal from the program.

**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 it is determined that the student needs 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 ESL. 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 from the conditional admission or bridge program scenario because the student has been found to be fully qualified and admitted to the degree program. Given the similarity of the activity during the term 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.
Distinguish the Use of “Concurrent Enrollment”

The regulations at 8 CFR 214.2(f)(6)(iv) allow a student to be concurrently enrolled in two different DHS-approved schools as long as “the combined enrollment amounts to a full time course of study.” Although concurrent enrollment is addressed in the draft guidance at section 4.3.10 in the context of bridge programs, there are also circumstances in which concurrent enrollment is used outside the bridge program context. For example, a student might take a course not offered by his or her school when that course is offered by another school that is part of a consortium of schools. This occasional use of the concurrent enrollment provision should not be limited by the conditional admission/bridge program guidance. SEVP could clarify this by supplementing footnote 12 in section 4.1.4 to state that this guidance does not curtail the use of concurrent enrollment and refer to section 4.3.10.

English Proficiency Box on Form I-20 and Attachment to this Guidance

In section 4.1.3 the guidance instructs adjudicators to “refer to the attached fact sheet for more information (see section 7)” on the Form I-20 English proficiency box and indicates in a footnote that “this fact sheet is forthcoming [and] SEVP will release it at a later date.” NAFSA appreciates the fact that SEVP intends to clarify its position on when and how DSOs should use the box. It is not possible, though, to comment fully on this policy guidance without seeing the fact sheet. NAFSA therefore encourages SEVP to issue the fact sheet as soon as possible and then accept comments both about the fact sheet and about related provisions of the policy guidance.

Improve the Precision of Descriptive Language

There are several paragraphs in which the precision of the language used could be adjusted to enhance clarity and avoid potential misinterpretation. For example, in section 3, use of overbroad language such as “only an F student may participate,” could be read to institute a restriction beyond SEVP’s intended scope. Here is a suggested way to address that:

3. **Policy.** A DSO can only issue a Form I-20 to a student who meets all requirements for admission into a program of study.

An adjudicator may approve a bridge program that exists as a distinct program of study on the school’s Form I-17, “Petition for Approval of School for Attendance by Nonimmigrant Student,” and subject to the requirements of this policy guidance. Only an F student may participate in schools certified under INA 101(a)(15)(F) are eligible to have a bridge program approved on their Form I-17 and issue Forms I-20 for such a program. Schools certified under INA 101(a)(15)(M) are not eligible for bridge program approval.

Similar changes can be made as follows:

4.1.1 **Primary Intent.** A DSO cannot issue a Form I-20 for a course of study for which a to- any student who has not met all standards for admission” and has not received full acceptance for enrollment into a full course of study.
4.1.4 Form I-20 Issuance. 8 CFR 214.3(k)(3) requires that a student must meet all standards for admission before issuance of the Form I-20. A conditionally admitted student does not meet all standards for admission. Therefore, a DSO cannot issue a Form I-20 to a student for a program to which the student has been conditionally admitted.11

One-Year Discretionary Threshold for Bridge Program Length
NAFSA recommends deleting from section 4.3.6 of the guidance the “discretionary threshold of one year for the expected length” of bridge programs. No specific basis is stated for this one-year period, so it appears to be arbitrary. The guidance states that SEVP may ask for additional information about longer programs and approve them, but SEVP often asks for additional information in adjudicating Form I-17 updates, so this provision appears to have no specific purpose. A common problem with this kind of agency guidance provision, which seems not intended to be strictly proscriptive, is that adjudicators apply it strictly proscriptively. SEVP is likely to encounter a wide variety of legitimate bridge programs with varying lengths, and it should resist applying arbitrary standards, standards that are not clearly stated and substantiated, or other standards that unnecessarily infringe upon a school’s discretion to develop academic programs.

In addition, NAFSA suggests that SEVP amend the last sentence of section 4.3.6 of the draft guidance, which states that “a student unable to make normal academic progress or to meet the required prerequisites within the stated program length must transfer to a full-time program of study addressing the lacking proficiencies or otherwise take action to maintain nonimmigrant status.” This sentence should be amended to clarify that a student in a bridge program is eligible for an extension of stay under 8 CFR 214.3(f)(7) as are all F-1 students.

Interagency Cooperation and Stakeholder Communication
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 English as a Second Language (ESL) program or 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.