International education, the country’s fifth largest service sector export and a national treasure, is at risk. September 11, 2001 brought a “war” to our doorstep resulting in the hunt for possible terrorists on our campuses. Combined with the downturn in the U.S. economy, anti-foreign student sentiments in the U.S. seem to have hit an all-time high. Media worldwide have reported on the strict new laws and difficulties foreign students in the U.S. are facing. Added to perceived and real difficulties in getting student visas, many international students are increasingly frustrated in their attempts to study in the U.S.

Administrators dealing with these issues in international offices at colleges and universities across the country have been faced with unprecedented changes and challenges since 9/11. They have been scrambling to keep up with the almost daily onslaught of new federal regulations, policies, and directives involving F-1 international students and J-1 scholars already on their campuses and as well as new incoming students.

One of the biggest hurdles so far has been the August 1st, 2003 deadline for enrolling and entering information on all current students, scholars and their dependents in the new Student Exchange Visitor Information System (SEVIS). SEVIS is a government internet-based monitoring system administered by the new terrorism-focused and enforcement-oriented Department of Homeland Security.

Due to national security concerns one agency after another has announced changes in policies affecting international students and other foreigners.
New Social Security Administration policies, new consular processing procedures from the Department of State, new policies in applying for drivers licenses, and the dismantling/restructuring of the Immigration and Naturalization Service (INS) have all significantly affected international students and scholars and the university personnel who support them.

INS duties were spread between three new branches of the Department of Homeland Security (DHS), with: the U.S. Citizenship and Immigration Services (CIS) assigned responsibility for application and petition adjudications; the U.S. Customs and Border Protection (CBP) assigned responsibility for immigration inspections at the ports of entry and Customs; and the U.S. Immigration and Custom Enforcement (ICE) assigned responsibility for investigations, detention, removal, intelligence and SEVIS.

International students and scholars working on-campus and the universities who hire them face increased tax liability and audits by the Internal Revenue Service (IRS). There are also heightened concerns about institutional I-9 compliance; especially given the increased university contacts with various government agencies including the specter of DHS site visits for SEVIS recertification every 2 years.

With tighter regulations from many agencies, increased monitoring by DHS, the FBI and the IRS, and stiff and sometimes irreversible penalties and consequences for international students who fall out of status, the topic of international student advisor liability has raised increased concerns. The need for strong linkages between university legal counsel and the international office, and training and support for advisors has never been greater. International offices are often staffed by advisors who have no legal background but who are interpreting immigration laws and regulations, authorizing employment, and performing other legal functions on a daily basis in their roles as F-1 and M-1 Designated School Officials and J-1 Responsible Officers (referred to herein collectively as DSOs).

The recent seismic changes in international education have caused (or should cause) educational institutions to comprehensively reevaluate their policies, services and business practices involving international students and scholars on their campuses.
Growth and Significance to U.S. Education and Economy

A Brief Background

International students have long been a tradition in the U.S. Yale claims a South American as the first recorded international student in the U.S. in 1784. Numbers stayed low until the 20th century. In 1904, 2,673 foreign students from 74 countries were recorded studying in the U.S. One of the first Foreign Student Advisors (FSAs) was appointed at Oberlin College in 1910 (Glazier and Kenschaft 6). The Immigration Act of 1924 required supervision of certain foreign students. The number of students fluctuated due to varying economic and political factors up until World War II, increasing in 1946 to 15,000 students. In 1948, the National Association of Foreign Student Advisors (NAFSA) was founded to meet the needs of the growing number of FSAs. In 1956, the Immigration and Nationality Act (INA) was enacted. Though amended many times, it is the principle statute governing U.S. immigration and the basis for many of the student regulations (Bevis 13). Ease of travel, globalization, and recognized superiority of U.S. higher education contributed to the continued increase in numbers almost every year until the present. During the last decade, the end of the Cold War, the worldwide spread of the Internet and the United States leadership role in the world have led the U.S. to be the premier destination and the world’s leader in international education (Merkx 10).

Current Numbers

Currently, there are almost 600,000 international students studying in the U.S., about one-third of the world’s total students studying outside their own countries. Adding scholars (postdocs, visiting faculty and researchers), the count of foreign nationals or non-immigrant visa holders studying and working at U.S. institutions is over 1,000,000. The Institute of International Education (IIE) estimates international students contributed almost $12 billion to the U.S. economy last year. More than one-half of international students are undergraduate students. International graduate students make up a large percentage of enrollments in many disciplines. Students from Asia comprise more than one-half of the total of all international students. The top country sending students to the U.S. in 2003 was India (74,603, up 12%), followed by China (64,757, up 2%), Korea (51,519, up 5%), Japan (45,960, down 2%), and Taiwan (28,017, down 3%).
The most popular fields of study were business and management (20%) and engineering (17%). IIE’s Open Doors Report confirms that almost 75% of international student funding comes from personal and family sources outside of the U.S. Growth of international student numbers slowed dramatically last year to less than 1%, the smallest increase since 1995/96. Of note is Chinese student enrollment in Australia grew by 25% and in India by 31% during this same period (Zhao). Open Doors reports a dramatic decrease in numbers of students in ESL programs. “Many of the schools, still dealing with the effects of Sept. 11, 2001 on travel are now grappling with the fallout from SARS, stricter visa rules for incoming students and other effects of terrorism and the war in Iraq” (The Associated Press). Professional international educators surveyed attributed the overall decrease in growth to difficulties with the visa application processes, financial difficulties and competition by other host countries (Open Doors 2003).

Severe New Regulations After Terrorist Attacks

While international students comprise less than 2% of all foreign nationals coming to the U.S. each year, students were unfortunately involved in both World Trade Center attacks in 1993 and 2001. Only two terrorists actually entered the U.S. on student visas. One attended a university and belonged to a cell that committed the first attack and the other entered the U.S. on a student visa, but never attended school, and participated in the second attack. Two additional terrorists entered on B visas and applied for a change of status in the U.S. to F-1 student so they could attend flight school. Their change of status was approved after their deaths, creating an uproar, which was in part responsible for the end of the INS. After the first bombing, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996. In addition to many sweeping, and in several instances draconian, measures which still significantly impact U.S. immigration today, IIRIRA mandated that the government maintain up-to-date information on international students and exchange visitors in the U.S. The USA PATRIOT Act of 2001 amended section 641 of IIRIRA to require full implementation of SEVIS by 1/1/2003. The Enhanced Border Security and Visa Entry Reform Act of 2002 added the requirement that educational institutions report any failure of an international student to enroll no later than 30 days after the registration deadline to ensure that individuals that enter the U.S. on student visas actually report to their intended schools.
Roadblocks to Pursuing Study in the U.S.

Due to security concerns since 9/11, there have been numerous roadblocks to international students pursuing study in the U.S., including increased interviews, background checks, security clearances, additional fees, forms, new databases and other technological tools that DHS has implemented, often before they were completely ready. A more detailed explanation of some of these follows.

Visa Interviews Now Required of All Non-immigrants

As of August 1, 2003, virtually all foreigners were required to have personal face-to-face visa interviews, which greatly increased the waiting period for an interview appointment sometimes six to eight weeks or more (Economist.com). Student visa applicants have almost always required in-person interviews, but with tourist and other business visitors needing appointments the lines are exponentially longer. Consulates process 7.5 million non-immigrant visas each year, plus 500,000 immigrant visas and 7.8 million passports for American citizens (Meissner 4). The number of consular visa officers has not been increased in most U.S. consulates; so individual consular officers sometimes interview 100-200 applicants per day. Department of State Deputy Liaison with Consular Affairs, Tim Smith, speaking at the NAFSA: Association of International Educator’s National Conference in Salt Lake City in May, 2003, said that the average visa interview is about 1-2 minutes in length. Is that really long enough to make a fair determination? Many unsuccessful and frustrated students and their universities don’t think so.

University admissions offices and international offices are now spending a lot of time preparing individuals for their visa interviews. Assistance to prospective students might include suggesting documentation to bring to the visa interview or reviewing how to overcome the regulatory presumption that all non-immigrant visitors to the U.S. intend to settle here permanently. This presumption of immigrant intent is often referred to by
its regulation subsection, “214B”. Overcoming 214B, or non-immigrant intent, means presenting a plausible plan (with supporting documentation) that the individual plans to return home after completing his or her degree. Some consider such coaching an ethical dilemma, while others see it as part of a DSO’s duty to do “whatever it takes” to get the student here.

**Visa Delays, Security Clearance and Name Checks**

Delays, denials and frustrations accompanying the recent changes have been well documented by the world press. “Faculty representatives in the Federal Demonstration Partnership – an organization of 11 federal research agencies and 90 universities – say that the post-September 11 visa denials and delays have proved costly for graduate student recruitment, retention and departmental research” (Research Day). “The American Institute of Physics reported that nearly a quarter of foreign students who applied to study toward a Ph.D. in physics in the United States in 2002 were initially denied a visa” and three-quarters of all delayed students were in physical sciences, biological sciences or engineering (Brumfiel). Another article in the Wall Street Journal describes both the institutional and personal hardships for individual researchers and graduate students delayed abroad for months, unable to begin their new programs or return to their studies or research due to security clearance issues (Wysocki Jr.). Many institutions whose international students and scholars returned home for winter break in 2002 or summer break in 2003 were delayed from returning to the U.S. for two to five months due to security clearance issues. Students delayed overseas still had rent payments and other obligations to meet in the U.S., and academic departments had the dilemma of unfilled teaching assistant positions and interrupted research studies. Chinese students have been especially affected. “Scientists from China have borne the brunt of the new policy – even though its nationals have never been implicated in terrorism against U.S. targets. The Association of International Educators, for instance, found that more than one-third of all visiting students whose entry to the United States was delayed were from China.” Two other countries with significant visa delays and denials were India and Russia (Brumfiel).

The list of possible reasons for delays or visa denials includes: Security Advisory Opinions (SAOs), a positive match in the Consular Lookout and Support System
(CLASS), or because the citizenship, nationality or country of birth triggers additional screening, involvement in high-technology fields or Technology Alert List (TAL); along with the more familiar reasons, lack of ability to prove funding, lack of English ability or the inability to prove that they plan to return home upon completion of studies. These delays cause hardships and uncertainty for institutions, especially those that have invested significant time and effort admitting that student, and have caused many programs, especially at the graduate level, to reevaluate their international student admissions programs. International students, with the additional hurdles to manage before they can begin their studies in the U.S. (including increased visa fees and additional forms such as I-157 and I-158 requesting personal information on military service, membership or contributions to professional, charitable or social organizations, employment history, etc.) are increasingly considering higher education opportunities outside the U.S.

A recent article in Immigration Business News & Comment gave an outstanding summary of “the significant processing delays and changes in procedure at consulates and embassies” (Fragomen and Bell 222). DSOs are now advising students pursuing degrees in fields listed on the Technology Alert List to travel with detailed letters from their academic advisors outlining the specific (non-military) purposes of their programs and research. Some consular websites have requested that for all science, engineering and high technology fields of study, a detailed research proposal of study or research plan in the U.S. is required for the visa application.

Consulates and visa interviews are logically the first lines of national defense and integral to increased national security efforts. However, there needs to be a streamlined system that will allow for necessary checks without discouraging legitimate travelers and, potentially, “altering the global balance of scientific power” as other countries compete for the world’s brightest students and scholars who may perceive that U.S. visas are too difficult to get and that the U.S. is not such a welcome place (Brumfiel).

**SEVIS Fee**

Of concern are the many financial costs of SEVIS, to the U.S. government, to universities, and to each international student. A SEVIS fee was mandated by Congress to cover the costs to the government of monitoring international students and scholars in the U.S. The 1996 IIRIRA authorized the collection of a fee of up to $100, even though a
study by KPMG, hired by the former INS, determined $54 would be adequate. Of additional concern is how the fee will be collected from students and scholars. The proposed rule issued 10/27/2003 sets the fee at $100 and proposes collection before the applicant applies for a visa. If this proposal is adopted, students who apply for a visa will have to pay both the proposed $100 SEVIS fee and the $100 visa fee in advance. Neither is refundable if the visa is denied. While many have suggested that the best solution would be to have the fee collected at the same time as the visa fee, the Department of State has so far resisted proposals to add this burden to their processes. Students may apply online or by check and wait for a receipt to be sent by mail before applying, which causes concern due to “unreliable and theft-prone international postal systems” (Johnson). Overall, while benefiting the U.S. by providing funds to maintain SEVIS, the fee will also serve as an additional barrier to study in the U.S. The SEVIS fee will also be one more topic for DSOs to explain in their pre-arrival information for new students and scholars. There may also be the possibility of “bulk fee payments” if institutions choose to pay this fee for their sponsored students and scholars to expedite the visa process.

**Consolidated Consular Database (CCD) Problems**

Beginning 2/15/2003, all students and scholars were required to have SEVIS documents with bar codes, which are supposed to be accessible to the consulates through the Consolidated Consular Database (CCD). Frequently this past year, consulates have not been able to access this database, often resulting in a frantic call to the DSO from both prospective and returning students. DSOs are then required to take extra steps by notifying the SEVIS Help Desk who manually forwards the information to the consulate. This uses extra staff time and causes difficulties, and sometimes hardships and delays, for students who have to return to the consulate more than once.

**U.S. VISIT and Machine Readable Passports**

Beginning in January 2004, the Department of Homeland Security’s new U.S. VISIT (United States Visitor and Immigrant Status Indicator Technology) program requires fingerprints and photographs of all visitors to the U.S. in addition to the standard review of documents and routine questioning at the ports of entry and consulates. The
fingerprints and photographs will be compared to security databases and the visitors will either be admitted or sent to secondary screening. Canadians and visitors from 27 Visa Waiver countries will not have to go through this process, however, citizens from Visa Waiver countries will have to have new machine-readable passports with biometric indicators by 10/26/04 (Murthy). There is a fear that many countries cannot comply by that deadline and will, thereby, lose their Visa Waiver status resulting in visa requirements for visitors from those counties as well.

NSEERS

The National Security Entry Exit Registration System (NSEERS) has caused international students and scholars additional concerns and difficulties since it was first announced and implemented on 9/11/2002. Individuals from 25 (mostly) Arab and Muslim countries were subject to NSEERS inspection when they entered the U.S. at ports of entry. This included, in many cases, fingerprinting, photographs, an interrogation under oath and a three page written questionnaire. They were then required to report to their closest INS (now ICE) District Office for 30-day and one-year re-registrations (a hardship for many students whose schools were far away from the district office). NSEERS registrants are also required to leave the U.S. through designated ports of departure. On December 2, 2003, with the introduction of the new US VISIT system, the NSEERS requirement for 30 day and one-year re-registration was terminated, however, individuals subject to NSEERS registration will still have to leave through designated ports of departure. Advising students on NSEERS compliance, especially those who are out of status, has often resulted in complicated professional and ethical dilemmas for DSOs.

New Restrictions on Study for B Visitors, F-2 Spouses, Border Commuters Students and Travel to Canada

On April 12, 2002, INS issued a regulation that prohibits B visitors from “enrolling in a course of study”. If the B-2 visa is stamped “prospective student” it means they declared their intentions to study at the consulate before arriving in the U.S. Visitors in B status can now only take casual, short-term classes that do not teach a potential vocation until a change in status to F, J or M student status is officially approved. At
question is the institution’s responsibility for allowing visitors to enroll, if they choose to do so, and how aggressively they should enforce this new requirement, which ultimately is the individual’s immigration concern. Some institutions are allowing B visitors to study so long as they have signed a waiver stating they have been advised of the regulations prohibiting their study. Other schools expressly prohibit visitors in B status from attending school full-time or part-time beyond casual or recreational purposes, although the enforceability of such prohibitions depends on the enrollment and identification verification procedures in place.

Under the new F rules, F-2 spouses are not allowed to enroll in a full or part-time course of study until an official change to student status has been approved. Change of status applications are taking up to three months or more at CIS Service Centers, delaying the start of the academic program for these prospective students.

Because of the large number of border commuter students affected by the change in B rules, the F-3 visa was created. The F-3 visa status allows students within 75 miles of the U.S. border in Canada or Mexico (that maintain their citizenship and residence in those countries) to commute on a part-time basis to study in the U.S. New I-20s must be issued each semester for these students and they must be monitored through SEVIS.

While, historically, a weekend “road trip” for international students studying near our northern border was often routine, travel to Canada has become more difficult. Those who are landed immigrants of Canada from Commonwealth Countries now need a valid U.S. visa for entry to the U.S. International students whose student visas may have expired while in the U.S. are only allowed to reenter the U.S. after a brief visit to Canada (less than 30 days) and only if they had not applied for a new U.S. visa at a Consulate there.

**Emerging Issues (Hot Spots)**

Immigration law is a complicated and detailed field that can only be fully appreciated in its specific application to individual circumstances. Even the subsets of F-1 and J-1 rules with which DSOs are primarily concerned defy general overviews and summaries without getting an “alphabet soup” of acronyms and regulatory subsections. In addition, the pace and frequency of recent legislative changes make most summaries
obsolete before they are completed. With that disclaimer, a brief overview of emerging issues and areas of concern follows.

**New Immigration Regulations and SEVIS**

The NAFSA Advisor’s Manual, an indispensable resource for international student advisors, correctly states “SEVIS represents the biggest change in almost 40 years in how advisors practice their profession” (15-1). Almost 7,000 U.S. institutions admit international students and scholars; some have less than 10 students and some over 5,000. Most schools have had to reevaluate their international programs and services and their business practices to find ways to meet the SEVIS reporting requirements.

No later than 30 days after the start of classes each term, schools have to report to SEVIS whether each student has enrolled at the school, dropped below a full course of study without authorization by the DSO, or failed to enroll; they must also report the current address of each enrolled student and the start date of the student’s next term. Within 21 days of the following changes, schools are required to report any student who has failed to maintain status, completed their program when anticipated, changed their legal name or address, completed their program early, had disciplinary action taken against them by a school as a result of the student being convicted of a crime, and any other notification request made by SEVIS about a student’s status.

The new regulations require that all immigration documents must now be issued through, and approved by, SEVIS. Small schools with few international students find this reporting more manageable than large decentralized universities with hundreds or thousands of international students, studying at various degree levels with varying term start and end dates, spread over several campuses. Collecting and coordinating the required information for SEVIS from various offices across campuses has been a daunting task and many schools are still in the process of refining their flow of information to the international office so that it can be sent to SEVIS timely and accurately.

**Educating Students and University Administrators About SEVIS**

Educating international students about the new requirements, as well as faculty, staff and administration throughout the institution, presents a significant challenge, not
only in terms of logistics (especially at large, decentralized universities) but also in terms of accuracy of information and helping constituents appreciate the significance of the changes.

While most institutions try hard to treat all students the same, different rules do apply to international students and scholars. They do not enjoy all the same privileges that U.S. citizens and permanent residents do. International students cannot just “drop a class,” “take a semester off,” “work at McDonalds to earn a few extra dollars,” or “pop up to Canada for the weekend”. The consequences for doing the above without proper documents or advanced authorization from the DSO can range from status violations and reinstatement processes to detention and deportation.

Institutions who want to have international students on their campuses must make the commitment to have trained DSOs and support staff in their international offices. F-1 and J-1 regulations are a specialized area of immigration law and many DSOs are more knowledgeable and experienced in this area than even most immigration attorneys who tend to focus on employment, permanent residency and deportation issues.

Roles of the International Office Staff

One emerging concern in hiring new international office staff is whether to hire someone with counseling/advising experience or someone with stronger computer/systems expertise. The functions of the office have changed greatly. Historically, the DSO focused on his or her role as student advocate/advisor/counselor or program coordinator, whereas now the added roles of reporting and monitoring have created professional dilemmas for many in the field. Some DSOs have left the field because of this change in duties. Other DSOs are concerned that students who have been told the international office will be “reporting on them to the Department of Homeland Security” will not feel the trust needed to come to the international office as in the past, to talk about cultural adjustment, personal or academic issues. Assuring students that the DSO works for the university, not the government and that their primary role is to provide service to the international student and to look for ways to help the student out of difficulties is sometimes hard to explain. It also leads to daily professional and ethical judgments about what to report to SEVIS. For example, the regulations say that the student who needs to reduce his/her course load due to a medical reason must have the
DSO’s permission before dropping a class. If the student has dropped the class on the
day before seeing the DSO, due to confusion about procedures, should that be reported as
a status violation or, if it can be “fixed,” should the “no harm no foul” rule apply?

Daily Dilemma of Interpretation of Student Regulations

There is much room for interpretation of student-related regulations and there has
traditionally been great variety in how advisors interpret and apply the regulations. In
theory, SEVIS will help standardize procedures in a field where regulations have often
been unclear and imprecise. However, so far SEVIS has, if anything, added more
questions, complications and difficult judgment calls.

In the past, many of the “answers” were not written down but came from:
experienced colleagues, a consensus of opinions on one of several advisor list serves,
calls to the former INS (where the answer might vary depending on who answered), or
“what happened last time”. The NAFSA Advisor’s Manual, which is updated annually,
has traditionally been the best reference for constantly changing regulations and
procedures in the field of foreign student advising.

NAFSA recently compiled a summary of clarifying conference calls between
DHS and NAFSA’s designated liaisons. This NAFSA SEVIS Liaison Call Summary has
nine pages just in its table of contents outlining recent discussions between NAFSA, the
Department of State, and the various branches of the Department of Homeland Security
to clarify and try to get answers on a wide range of problems. The complete document is
110 pages and is available on the NAFSA website (www.NAFSA.org). Keeping up with
the recent changes has been a daunting task for DSOs although many appreciate the
potential of a long overdue overhaul, modernization, and clarification of the regulations.

One key concern that international educators have with SEVIS is its inflexibility
and the fact that the real-time nature of entering data leaves little time for correcting
errors. SEVIS gives Immigration and Customs Enforcement (ICE), who has been
charged with monitoring SEVIS immediate access to records of all international students.
Students who have been reported as studying less than full-time have been detained by
ICE and considered out of status even though they had permission from their DSO under
regulations, for part-time studies. Six Middle Eastern Students studying in Colorado
were actually jailed for enrolling less than 12 credit hours (“Middle Eastern Students”).
Advisors have been used to dealing with a local INS district office, which in many regions, has been staffed by student-friendly officials always willing to answer questions and try to find helpful solutions to problems. At a recent immigration workshop last fall at a neighboring university, we literally witnessed the “changing of the guard” from INS to ICE, which my boss, Cary Jensen, analogized to “high school hall monitors changing from PTA moms to armed police officers.” At this workshop, local CIS officials had come to talk about changes but were basically saying good-bye to their colleagues at area universities. These officials were changing roles and would not be responsible for most student transactions going forward. The new official from ICE, now responsible for SEVIS and student records, explained how he and his officers had been up early that morning leading the raids on local Wal-Marts’ illegal aliens as a part of a nationwide sting operation. ICE’s “enforcement” perspective is evidenced in their vision statement from their website:

“ICE Vision: To be the nation's preeminent law enforcement agency, dedicated to detecting vulnerabilities and preventing violations that threaten national security. Established to combat the criminal and national security threats emergent in a post 9/11 environment, ICE combines a new investigative approach with new resources to provide unparalleled investigation, interdiction, and security services to the public and to our law enforcement partners in the federal and local sectors” (ICE Vision).

This cultural shift from service to enforcement means a steep learning curve for the officers involved and a bumpy road ahead for the rest of us; some of which might be avoided if ICE would transfer over some of their colleagues from CIS who have long experience working with the complexities and sensitivities of student regulations, however, the current status of the INS/DHS reorganization has not yet allowed this in many districts. DSOs must now get to know, work with, and, in many cases, educate a new cadre of enforcement-minded immigration officials, many of whom have no background with international students and other higher education issues.

Privacy for International Students

With increasing requests for information by ICE, the FBI and other agencies, international student privacy is another growing area of concern. In accordance with section 641 (c) (2) of IIRIRA, the Asst. Undersecretary for ICE is permitted to waive the Family Education Rights and Privacy Act (FERPA) to the extent necessary to implement
SEVIS. The NAFSA Manual urges DSOs to become familiar with their own institution’s privacy policies. It is important to consult with institutional counsel in developing office procedures for giving out information to DHS and the more frequent requests of the FBI for student information. While FERPA does not distinguish between students based on their immigration status, in today’s environment, DSOs must be sure they have university backing on their decisions to give out more than directory information on their students and to whom. A comprehensive practice advisory of international student rights and FERPA is available on NAFSA’s website (www.nafsa.org).

When an international student receives the F-1 I-20, they must sign the form agreeing to abide by F-1 regulations including the following statement:

“I also authorize the name school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3 (g) to determine my nonimmigrant status.”

The J-1 student or scholar signs the DS-2019 that includes the following:

“For the purposes of 20 U.S.C. 1232g and 22 CFR 62, I authorize the U.S. Department of State-designated sponsor and any educational institution named on the Form DS-2019 to release information to the U.S. Department of State relating to compliance with Exchange Visitor Program regulations.”

The USA Patriot Act also expands the “lawfully issued subpoena” exception to FERPA for disclosures of education records pursuant to ex parte orders to the “Attorney General or his designee” for “investigation and prosecution of terrorism” [Pub.L.107-56 (October 26, 2001)].

DSOs have the ability to make some determinations on what information is reported to SEVIS. For example, SEVIS asks for information that is not required by regulation such as Social Security Numbers and drivers license numbers. Many DSOs are choosing to report only required information, a policy decision for each institution.

Liability Issues for Advisors

With new reporting requirements and increased responsibilities and obligations of DSOs, potential liability for advisors has become a growing area of concern. The bi-monthly NAFSA Newsletter recently featured an article entitled, “Individual Liability for Advisors: Protecting Yourself When ‘SEVIS Happens’,“ which noted that “despite one’s best efforts, something can go wrong - leading to the potential for a legal claim by a student or scholar, not only against the institution but potentially naming the DSO as
well.” (Franke, Geetter and Jensen, 3). DSOs should be aware of their institution’s indemnification and insurance polices and should regularly review business processes and scope of employment concerns with university legal counsel. For example, does the DSO, after recommending Optional Practical Training (OPT), assume the responsibility for mailing the application to CIS or does the DSO give the responsibility to mail the application back to the student? This author knows of at least one lawsuit filed because a DSO mislaid the OPT application. It was not mailed on time and a job offer was lost. Who assumes responsibility if a DSO offers to personally drive a student to the Social Security Office or local DHS and has an accident on the way? What if a DSO accidentally terminates a student in SEVIS, which prevents the student from attending an important conference or from finishing his or her degree?

At a recent NAFSA conference presentation on this topic, the following scenario was discussed:

“A new international student checks into the international office upon arrival. The pleasant international staff greets him and tells him that everything is in order. They promise to activate his record in the SEVIS system. In the chaos of the arrival season, 399 of the 400 new students are entered properly in SEVIS, except this student whose forms were lost in the shuffle. The student returns home 6 weeks later because of a family illness. He applies for a new visa but the consular official sees that he was never activated in SEVIS. The visa is denied. The student misses his return flight to the U.S. Eventually the matter is resolved, the student gets a new visa and makes new reservations. But, time has passed, and the student is not able to make up the work. He wants to hold the advisor liable for tuition charges, air fare costs for the changed ticket, living costs during the waiting period at home, pain and suffering. Is the DSO liable? (O’Brien).

International students, as “guests in our country,” have not often in the past been known to protest or speak out against injustices, and most do not come from countries where lawsuits are common. As international students continue to become more “Americanized,” attend U.S. law schools in greater numbers, absorb the litigious culture around them and react to the increased penalties of SEVIS, there may be an increase in lawsuits against both universities and DSOs, who, through inadvertence or lack of training, may jeopardize an international student’s immigration status and significantly alter that student’s future opportunities.
International Student Office Service Fees

Some schools with a smaller number of students (usually 100 or less) have been able to comply with SEVIS reporting requirements by sending daily information on individual students directly via “real-time-interactive” (RTI) on the web. Schools with larger international student populations are spending huge amounts of money for increased staff, new software, computers, IT assistance and training to use the “batch” system which processes large amounts of information at once and avoids the error-prone and time consuming need for double data entry. The government has estimated in the proposed SEVIS regulations that the total cost to an institution for SEVIS would only be $580, $230 to file an application to be a SEVIS school and $350 for a site visit. However, many schools, especially those with large numbers of international students, have had to spend thousands of dollars to manage the transition to SEVIS, the ongoing reporting requirements, additional software and personnel costs. Additionally, while some institutions have long had fees in place to cover the costs of running the international offices on campus, many more institutions are evaluating adding an international service fee to cover their additional expense for SEVIS.

While traditionally international students are not known for protesting and speaking out, that perception may be changing. An article in the Government Executive by Shane Harris described an angry throng of over 100 students at the University of Wisconsin at Madison. Harris reported that both American and international students protested before a panel of school administrators about a proposed fee to cover university costs (estimated at upwards of $300,000 per year) for complying with SEVIS. Protesters thought that the school should cover the cost and that international students should not have to individually pay a fee to be monitored by the U.S. government (Harris).

Social Security Number Issues

To enhance national security, the Social Security Administration has been tightening up its policies relating to international students. After June of 2002, Social Security numbers cannot be issued unless immigration documents are verified by DHS through a system called Systematic Alien Verification Enrollments (SAVE). This now often delays the issuing of Social Security numbers from eight to twelve weeks in some cases, especially if information was incorrectly entered in SAVE at the ports of entry.
Additionally, DSOs are now required to give each student an original letter (on letterhead) confirming that the student is in status, registered at the institution and eligible to work. Social Security has also started copying all immigration documents. This complicates the SSN sign-up which many institutions host on campus as part of international student orientation. A new proposed rule issued December 17, 2003 goes even further, requiring evidence that employment has been secured before a SSN application will be accepted. This will be an additional hurdle for international students to face in getting on campus jobs and getting paid for their stipends, fellowships and/or assistantships.

Schools, which use payroll software such as PeopleSoft, that require a SSN to issue paychecks are challenged with either not issuing paychecks until the student has a SSN or setting up special procedures. Many schools have had to change policies and allow graduate assistantship paychecks to be issued for a limited time without the SSN. This, of course, means much more work for the payroll office to accommodate international students. If the proposed rule becomes effective, requiring a job offer before employment can begin, it will be especially difficult for undergraduates who may have to wait several months before being able to accept an on-campus job. Additionally, new international students are frustrated upon arrival since banks, phone companies, insurance companies, landlords, etc., all ask for the SSN which the student will not have for several weeks. Even though the SSN is only supposed to be used for employment purposes, international students have a difficult time understanding or explaining this to various businesses as they go through the process of getting settled in the U.S.

**Illegal Aliens On Our Campuses**

One category not addressed by the new regulations is the illegal alien on campus. Many campuses have registered students who are out of status or undocumented. An article entitled, “They Can’t Go Home Again: Undocumented Aliens and Access to U.S. Higher Education” highlights some of the problems for these students and their colleges. The article states, “No federal law prohibits undocumented aliens from attending public colleges or universities.” SEVIS is costing the country millions to track “legal” international students and scholars on our campuses but blindly looks the other way at the numbers of illegal aliens attending school. This article expands on many of the ethical
problems for the DSO and other campus offices, such as financial aid and student employment (Badger, Yale-Loehr). DSOs may have a legitimate level of discomfort knowing that there are undocumented students attending their institutions from countries who are recognized “state sponsors of terrorism” for which they have no legal obligation to report. This is another area where university legal counsel should be consulted. A related policy issue that will face any institution attempting to deal with these concerns is the identification and verification process for all incoming students, not just the internationals on F-1, M-1 and J-1 visas.

**Employment and International Students**

In this era of change, employment regulations for international students have not changed dramatically, however, they continue to be a significant dimension of many students’ academic programs. DSOs spend a lot of their time advising on, recommending, or authorizing employment, and will spend even more time doing so in the post-SEVIS world. There are still many opportunities for international students to work in the U.S. Students are allowed to work on campus 20 hours per week during the academic year and full-time during breaks. Students who have unexpected economic hardship after being in the U.S. for one academic year can apply for permission to work off campus. F-1 Curricular Practical Training, Optional Practical Training and J-1 Academic Training are other options that students can use. One actual benefit is that the new regulations now allow an additional twelve months of F-1 Optional Practical Training (OPT) after each degree level.

**OPT Dilemmas**

DSOs must now process employment recommendations through SEVIS, after which the application is sent for authorization to the CIS Service Center. This has caused a few difficulties because the system is now less flexible and forgiving than it was in the past. For example, graduate students are allowed to apply for OPT up to ninety days before completion and most want to do so because it is taking three or more months to be authorized by the CIS Service Centers. To apply, however, a completion of studies date must be identified and sent to SEVIS and cannot easily be changed. If the student is not
finished by that date and needs more time, (for example, to make corrections on their thesis), it is a complicated and costly process to cancel the OPT and reapply which could delay the start of employment. The student can no longer work on campus once that completion date is passed until their CIS employment authorization document is issued, causing potential gaps in a student’s salary or support. There is also the possibility of falling out of status if a timely extension to finish the program is not done in SEVIS which could make the student ultimately ineligible for OPT altogether.

*New Students Employment Limited*

Another instance of inflexibility with the new regulations which affect employment is that students are only allowed into the U.S. up to 30 days before the start of their program at which time they are allowed to work on campus. Many schools in the past have brought in graduate students at the beginning of the summer to begin working with their professors before registering for fall (students before 1/1/2003 could enter the U.S. up to 90 days before the start of classes). In some cases, departments have had to change their admission policies or register their incoming students full-time for the summer in order for them to arrive and begin their paid summer graduate research.

*Change of Status to and from H1-B*

Because of the downturn in the economy after 9/11, some institutions found that students were being admitted for advanced degrees who were out of status after being layed off from their H1-B positions (the H1-B has no grace period); they were not eligible for reinstatement, and change of status to F-1 in the U.S. was not possible, so these individuals were, in many cases, forced to leave the U.S. to apply for a student visa abroad and attempt to reenter. DSO’s are assisting more change of status applications from H1-B back to F-1 during this slow job market.

Starting 10/1/03, the cap on the numbers of H1-B visas available each fiscal year has been decreased from 195,000 to 65,000. DSOs must be knowledgeable about advising graduating students on the proper timing for filing for this visa. In some cases, it would be better for the student who has a job offer after graduation to go directly to the H1-B without filing for OPT or to file for OPT but only use it as a safety net. Students planning to change status to H1-B or to pursue permanent residency after graduation pose
challenging advising issues, especially when anticipated travel may necessitate consular and/or border scrutiny of the student’s non-immigrant intent.

I-9 Issues

New scrutiny after 9/11 by employers, including on-campus employers affected many international students and scholars. Given the increased interface with government agencies (SEVIS reporting, bi-annual recertification visits, NSEERS and US VISIT tracking to name a few), many institutions have heightened concerns about I-9 audits and compliance. As institutions review their immigration business processes, they should also reevaluate how to best process the I-9’s for both internationals and U.S. citizens. It is especially tricky for the F-1 and J-1 status holders to verify on-campus employment eligibility with their current immigration documents since employment for those categories is incident to status. Most international students and scholars who work on campus do not have an “unexpired employment authorization document” issued by CIS, as listed in the I-9 requirements (NAFSA Manual 14-15). The need for a flexible standard and individual adjustments must be balanced against rigid, compliance-driven processes, which may not only frustrate those involved but also defeat the very purpose for which the I-9 rules were implemented.

Tax Audits and Compliance Issues for Non-resident Aliens

The IRS has announced that it is planning to audit at least 250 colleges for tax withholding compliance for non-resident aliens. Institutions could face millions of dollars in tax assessments and penalties. Schools with a large number of international students (as reported in Open Doors and other publications) who have not filed a corresponding number of 1042-S forms may be flagged for audit. Approximately 50 of the anticipated schools to be audited have already been contacted as part of the IRS’s “first wave” (Arnone). If the institution does not withhold the correct amount of taxes or an 8233 Tax Treaty form has not completed by an international student, both the institution and the individual face tax liability and potential penalties.

Tax laws for non-resident aliens are extremely complex and institutions are grappling with both institutional tax compliance issues and instructing their international employees and students about their individual responsibilities and liabilities, which are
difficult enough for Americans to understand without the language and cultural barriers. Internationals must file a tax statement, Form 8843 each year even if no income was earned. Tax treaties are very confusing and there is frequently disagreement on how they are interpreted and what the withholding should be. While tax compliance is normally centered in the institution’s payroll or finance office, because of the frequent questions, many international offices have become at least tangentially involved in facilitating if not providing tax advice. Tax issues for internationals will be of growing concern in the years ahead. Many institutions are purchasing tax software, sponsoring education programs or establishing IRS-sanctioned VITA Volunteer Programs to assist the students and scholars and the institution in tax compliance.

The Challenges Ahead

After 9/11, Senator Diane Feinstein from California introduced legislation imposing a moratorium on the issuance of all student visas until a monitoring mechanism was in place. She backed away from her initial stance after pressure from many organizations, but many Americans expressed anti-foreign student sentiments and seemed generally unaware or unconcerned that the pendulum might have swung too far, unfairly impacting the majority of students who were legitimately pursuing their studies in the U.S. (Larsen 13).

The SARS scare this past year, the tough economic times after 9/11, and the hunt for terrorists at consular interviews, ports of entry and on our campuses, overlaid with the misperception of the number of terrorists who entered the U.S. on student visas, all served to magnify the anti-foreign student sentiments in the media at home and abroad. Higher education was an easy target for the DHS since there were definitely several aspects to the student visa system that needed tightening.

Counterbalancing this are international educators who have championed Senator Fulbright’s long-range vision and believe that the best way to achieve world peace is through international understanding. Fulbright endorsed scholarly exchange and living and learning in another country. The most famous and enduring international scholar exchange program still bears his name (Larsen 11).
NAFSA: Association of International Educators just issued its new publication, “Internationalizing the Campus 2003: Profiles of Success at Colleges and Universities,” which highlights 16 institutions (out of 117 nominated). These institutions demonstrated a deep commitment to internationalization of the campus and the value of effective international education. Each institution demonstrated administrative support across divisions, through the curriculum, in research and exchanges, and in support of its international faculty, scholars and students. The timeliness of this publication cannot be understated. In the midst of unprecedented strains and stresses in campus international offices, of public opinion against foreigners in the U.S., and of numerous roadblocks to studying in the U.S., the rewards to the U.S. for welcoming internationals to our campuses are championed. The benefits that are brought to our American students who lack international experiences and to our communities to foster international understanding are highlighted. Encouraging Muslims from the Middle East to experience the U.S. firsthand, educating them in our schools, and building friendships, is certainly one of the best ways to change our perspectives and theirs about our two cultures rather than shutting the door to mutual understanding (Internationalizing the Campus 2003 1-4).

There are many issues facing universities ahead. Providing adequate support to DSOs at the front lines of campus international issues is critical. This author only documents some of the incredible changes that have occurred over the last two years. There are many others topics not discussed, including the personal toll on international office staff who feel the weight, the confusion, and strain of keeping up with these rapid changes, and have to develop systems to comply with reporting requirements but who, at the same time, also had personal concerns for their international students. They took seriously the responsibility to inform, counsel, and assist their students in dealing with the many confusing new rules and procedures with which they were being bombarded. The need for proper staffing, training, association with professional organizations such as NAFSA, professional development, and strengthening ties to both university legal counsel and experienced immigration attorneys will be crucial in the difficult days still to come. Most DSOs will agree that tighter regulations and closer monitoring of international students was long overdue, however, the current laws are overly restrictive and punitive against the majority of legitimate students who want to earn their degrees in this country. Educational institutions must rise to the challenges ahead by lobbying for
national policies and regulations that protect national security without diminishing access to U.S. higher education for international students from around the world.

Lee Hamilton, Director of the Woodrow Wilson Center and Vice Chairman of the National Commission on Terrorist Attacks upon the United States, at a recent policy forum at the National Press Club, “emphasized the value of international student exchanges to U.S. national security, calling them ‘one of the most effective tools in the American foreign-policy arsenal as we confront challenges around the world’” (Swift 32). The sobering alternative is that in the years ahead, many of these international students, their resources, and their potential contributions not only to the U.S. community of higher education but to the nation as a whole may go elsewhere.

References


“The Latest Victims of America’s Paranoia Are Those Who Want to Learn.” 


