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“Implementing the USA PATRIOT ACT: A Case Study of the Student and Exchange Visitor Information System (SEVIS)”

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**Implementing the USA PATRIOT ACT:
A Case Study of the Student and Exchange Visitor Information System (SEVIS)**

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ABSTRACT

On September 11, 2001, terrorists attacked America without warning, killing 2749 in New York City alone. 9/11 precipitated a renewed call for stricter monitoring of foreign visitors. Consequently, the Congress passed the USA PATRIOT ACT on October 26, 2001 mandating the establishment of the Student and Exchange Visitor Information System (SEVIS) by January 30, 2003. SEVIS was designed to track and monitor international students electronically while they are in the United States.

A cursory review of literature informs that there is no comprehensive and systematic study of the SEVIS related implementation problems and issues, especially from the university administration perspective. This is a first attempt to fill this inexplicable but critical literature gap. It seeks to answer the research question: what were the implementation problems and resulting impact of SEVIS on university administration, particularly at international offices of higher learning all over the nation.

The contribution of this study is in providing useful data to help with our understanding of problems and issues associated with the implementation of SEVIS. Specifically, it allows us to have a better understanding of the impact and implication of SEVIS on university administration. On a still larger compass, this research provides data and serves as context for critical analysis and objective assessment of the desirability of USA PATRIOT Act.

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A. *Introduction*

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Implementing the USA PATRIOT ACT: A Case Study of the Student and Exchange Visitor Information System (SEVIS)

As with any new program, especially one of this scale, and one involving a number of additional interim processes, it will take some time for every individual involved to be fully trained on and familiar with all new procedures.

INS (February 14, 2003)²

Last week I had a problem that was totally confusing
The stress I felt from SEVIS then was truly not amusing
The manual was clear as mud, I needed help much faster
So I called the Help Desk and I got 4 different answers.

“SEVIS Caused Psychosis” (2003)³

“I must say in all candor that we wish we could have been spared the SEVIS experience...”

Marlene M. Johnson
Executive Director and CEO (NAFSA) (2005)⁴

I Introduction

On September 11, 2001, terrorists attacked America without warning, killing 2749 in New York City alone.⁵ On the next day, September 12, 2001, the President declared war on terrorism, pledging: “United States of America will use all our resources to conquer this enemy.”⁶

² “NAFSA-INS February 14, 2003 Q and A.,” (February 14, 2003).

³ See “SEVIS Songs Song at C,” NAFSA New Orleans Conference, October 27-Nov. 1, 2003 <http://radio.weblogs.com/0103492/categories/sevis/2003/04/09.html> (Reprint) (last visited December 9, 2005)

⁴ “NAFSA Response to Department of Homeland (DHS) Security SEVIS Updates” Public Policy, NAFSA http://www.nafsa.org/public_policy.sec/international_student_1/iss_archive/nafsa_response_to_department_2 (last visited December 9, 2005)

⁵ See “Final WTC Death Toll Said Down to 2,749,” *AP*, Jan. 23, 2004.

http://www.voicesofsept11.org/medical_examiner/012304.html (last visited December 9, 2005)

⁶ “Remarks By The President In Photo Opportunity With The National Security Team,” The White House, Office of the Press Secretary September 12, 2001.

As it turned out two of the 9/11 terrorist pilots, Mohamed Atta and Marwan Alshehhi, were trained to fly at Huffman Aviation International in Venice, Florida, in September of 2000, after they entered the country with a visitor's visa. Their applications for change of visa status from "visitor" to that of "vocational student" were never processed by the INS until six months after 9/11, approved!⁷ Another 9/11 pilot, Hani Hanjour, 29, entered the United States on October 9, 2000 on an F-1 student visa to study English in Oakland California (ESL Language Centers). He never showed up and was not reported by the school.⁸ Legitimate questions were raised as to whether 9/11 could have been prevented if Atta,⁹ Alshehhi¹⁰ and Hanjour's¹¹ visas were properly screened and monitored.

9/11 precipitated a renew call for stricter monitoring of foreign visitors. In this regard, Senator Feinstein has called for a complete overhaul of the foreign students tracking system. Particularly, she proposed a six months moratorium on the issuance of foreign student visa to allow INS "time to remedy the many problems in the system," including the funding, development and deployment of an electronic foreign students tracking system.¹²

<http://www.whitehouse.gov/news/releases/2001/09/20010912-4.html>(last visited December 9, 2005)

⁷ See Office of the Inspector General, U.S. Department of Justice, "The Immigration and Naturalization Service's Contacts With Two September 11 Terrorists: A Review of the INS's Admissions of Mohamed Atta and Marwan Alshehhi, its Processing of their Change of Status Applications, and its Efforts to Track Foreign Students in the United States." (May 20, 2002) (last visited December 1, 2005) (OIG – May 20, 2002)

<http://justice.gov/oig/special/0205/fullreport.pdf>

⁸ Copy of "Nonimmigrant Visa Application: Hani Hanjour," *National Review* Oct. 9, 2002.

<http://www.nationalreview.com/document/document100902c.asp> Other terrorists have found to have overstayed their business visas also, e.g., Nawaf Alhazmi and Satam Al Suqami, overstayed their B-1/B-2 visas. CHITRA RAGAVAN, "Coming to American already overburdened immigration system faces the new demands of a post-9/11 world," *US News and World Report - Nation & World* February 17, 2002. (last visited December 1, 2005)

http://www.usnews.com/usnews/news/articles/020218/archive_020243.htm

⁹ "Complete 911 Timeline" The Center for Cooperative Research.

http://www.cooperativeresearch.org/timeline.jsp?timeline=complete_911_timeline&al-qaeda_members=mohamedAtta(visited December 9, 2005)

¹⁰ "Complete 911 Timeline: Marwan Alshehhi" The Center for Cooperative Research.

http://www.cooperativeresearch.org/timeline.jsp?timeline=complete_911_timeline&al-qaeda_members=marwanAlshehhi (visited December 9, 2005)

¹¹ "Complete 911 Timeline: Hani Hanjour" The Center for Cooperative Research.

http://www.cooperativeresearch.org/timeline.jsp?timeline=complete_911_timeline&al-qaeda_members=haniHanjour(visited December 9, 2005)

¹² After 9/11, Senator Feinstein was one of the very first Senators to call for adequate funding and immediate deployment of electronic tracing system for foreign students. See "Senator Feinstein Urges Major Changes in U.S. Student Visa Program," News from Senator Feinstein, September 27, 2001. (last visited December 1, 2005)

<http://www.senate.gov/~feinstein/releases01/stvisas1.htm>

The complete Feinstein legislation reform proposal included: First, requiring schools to take responsibility for tracking foreign students and file quarterly report on foreign student's academic status and progress to INS. Second, requiring INS to include biometric data in its student electronic data tracking system and share foreign students data with DOS and FBI. Third, requiring the INS Foreign Student Tracking System to be integrated with other electronic "lookout" and enforcement databases, i.e. the IDENT system of the INS; the Interagency Border Inspection System of the U.S. Customs Service; the IAFIS system of the FBI; and the Consular Lookout and Support System (CLASS) of the State Department. Fourth, requiring the INS to track electronically spouses and children of foreign students and requiring INS and Customs to deploy more inspectors to conduct secondary inspection of the coming and going of foreign students.

Consequently, the Congress passed the USA PATRIOT ACT on October 26, 2001¹³ mandating the establishment the Student and Exchange Visitor Information System (SEVIS)¹⁴ by January 30, 2003. SEVIS was designed to track and monitor international students electronically while they are in the United States.

The idea of an electronic student tracking system in a democratic society and within an open - university community has long attracted heated debates and generated passionate protests. SEVIS serves to renew the controversy.¹⁵ While all agreed that SEVIS is necessary after 9/11 environment, the government and schools are not in agreement as to its initial feasibility and ultimate utility.¹⁶

To the promoters, the SEVIS system is much needed and long overdue in keeping the United States border secure from illegal immigrants and domestic front safe from terrorists. It allows for real time, paperless, cost-effective, error free tracking and processing of foreign students and international visitors, for education as well as security reasons.¹⁷ If SEVIS was implemented earlier as called for in 1996, the nation might be spared the terrorism attack of 9/11.

¹³ For legislative process and issues, see Kam C. Wong, "The Making of the USA PATRIOT Act I: The Legislative Process and Dynamics" (September 19, 2005). ExpressO Preprint Series. Working Paper 793. <http://law.bepress.com/expresso/eps/793/>

¹⁴ See "A Glossary of SEVIS-related Terminology" *Educause* 2002 for abbreviations. <http://www.educause.edu/ir/library/pdf/EDU0212.pdf> (last visited December 9, 2005)

¹⁵ Mary Clarke-Pearson, "Federal agents tracking foreign students in U.S.: Hundreds of colleges have faced inquiries from the FBI and INS," *dailypennsylvanian.com* November 13, 2001 (Professor Jacques deLisle observed that international law does not require foreign visitors be given the same rights as American citizens. Professor Robert Vitalis considered such targeted investigation of foreigners as discriminatory.) http://www.dailypennsylvanian.com/vnews/display.v/ART/2001/11/13/3bf1028bf3636?in_archive=1 (last visited December 9, 2005)

¹⁶ Terry Hartley and James Burns, "Interconnecting Worlds," EDCAUSE Review September – October 2002: 88-9. <http://www.educause.edu/ir/library/pdf/erm0259.pdf> (last visited December 9, 2005)

¹⁷ Powerpoints: "SEVIS Presentation to GACRAO" October 23, 2003, Office of the International Education, University of Georgia, pp. 5 – 8 (SEVIS allows for centralized, real time, and up to

To the detractors, the implementation of SEVIS, as with the original idea of electronic tracking, is fraught with many unresolved, some say un-resolvable, financial, legal and technical problems. These charges were well documented in newspaper accounts, public commentaries, issues briefs, Congressional hearings, commissioned reports and NAFSA - DHS conferences summaries. School administrators and educators associations have expressed major misgivings and grave reservations with the unrealistic implementation deadlines, unavailable administrative regulations, unreliable agency guidance, unreasonable workload, unfunded legislative mandate, uncertified vocational schools, untested software programs, untrained INS staff, uninformed Help Desk and unresponsive DHS officials, particularly at ICE. The problems were best summed by Shirley M. Tilghman, president of Princeton University, in her testimony on March 26, 2003, before the Committee on Science of the U.S. House of Representatives:

“In order to comply with the requirements of SEVIS, Princeton has spent over \$38,000...SEVIS is far from being "plug-and-play" technology ... Eventually, we had to assign a technical expert from our Office of Information Technology to focus primarily on maintaining our SEVIS reporting system...SEVIS program was fraught with software bugs and glitches ...every time INS develops a new patch for its software, we have to wait for our batch processing software vendor to develop a corresponding patch that we must then install... For lack of a better word, the SEVIS system is "quirky," especially when the user volume is high (afternoons are the most difficult since both East Coast and West Coast institutions are using the system) ... SEVIS system can take up to thirty minutes per individual, especially on days when the program is running slowly. Sometimes, the system kicks the data entry person out just as he or she is about to complete the Web-based form, and all of the information is lost. At other times, the data entry person is interrupted by a phone call or a student while entering data and the system automatically logs the user out, requiring the user to log in again and re-enter all of the data. Other institutions have reported difficulties retrieving their institutional data from SEVIS, including sometimes receiving another institution's data during a retrieval attempt....Beyond system difficulties, SEVIS also has some substantive deficiencies in that it is missing fields and options that correspond to certain INS policies and regulations. ..Finally, there are some reporting functions that cannot be transmitted to INS as part of a batch data transmission due to gaps in the SEVIS software system... The help desk operates from 8 A.M. to 8 P.M. Eastern Standard Time, but since there are only thirty-two people staffing it, the wait time can exceed thirty minutes...Beyond that, the help desk can answer only technical

questions related to programming problems and cannot provide advice in the area of policy, regulations, or procedures...”¹⁸

A cursory review of literature informs that there is no comprehensive and systematic study of the SEVIS related implementation problems and issues,¹⁹ especially from the university administration perspective.²⁰ This is a first attempt to fill this inexplicable but critical literature gap.

This study has a limited scope and restricted focus. It seeks to answer the research question: what were the implementation problems and resulting impact of SEVIS on university administration, particularly at international offices of higher learning all over the nation. By all account, the SEVIS is a costly, burdensome, disruptive, demanding, and frustrating process for all concerned;²¹ DOS, DHS, universities, and students alike. This study is limited to documenting the experience of the universities alone.

The contribution of this study is in providing useful data²² to help with our understanding of problems and issues associated with the implementation of SEVIS.²³ Specifically, it

¹⁸ “International Access to American Higher Education,” *Academe*
<http://www.aaup.org/publications/Academe/2003/03so/03sointer.htm>

¹⁹ The only comprehensive study of AEVIS was by GAO: “HOMELAND SECURIT: Performance of Information System to Monitor Foreign Students and Exchange Visitors Has Improved, but Issues Remain,” GAO – 04 – 690, June 2004 and GAO – 05 – 440T. (See Table 4: “Examples of Performance Requires” (p. 11). Table 6: “SEVIS Problems Identified by Organization.” (p. 15).

²⁰ “There are to be exceptions. How SEVIS Has Changed Our Worklives,” PUBLICATIONS, NAFSA (A survey (2706 sample, 1,226 response 945%), 1168 usable) of International students and Scholars Advisors (ISSA) by NAFSA in Spring of 2005 showed: 91% have their workload increased; 86% reported changed on decision making authority; 70% reported clean up of data base and better maintenance of records; 86% spent more time on regulatory duties than advising; 62% experienced conflicts between SEVIS mandates and administrative practices; 56% satisfied with SEVIS troubleshooting support. Open ended questions elicited concerns with SEVIS unforgiving of ISSA mistakes), taking too long to data-fix, change role of ISSA, and an unjust policy. Overall, SEVIS has profound and lasting impact in morale and satisfaction of ISSA.).
http://www.nafsa.org/ /File/ /sevis_study_for_ie--final.pdf (last visited December 9, 2005).

²¹ The Services for International Students and Scholars Office at the University of California, Berkeley has created a web site called SEVIS@Berkeley (a.k.a Hurricane SEVIS). This final remark is instructive: “The content of this web site has served its purpose to get us through the planning and immediate response phases of SEVIS. Now that the leading edge and eye of the storm has passed, this web site has been archived and retired.”
<http://ias.berkeley.edu/siss/hurricane/>

²² DHS has challenged the validity of certain SEVIS comments as a result of lack of data. “Proposed Rule: Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104-208,” Federal Register: October 27, 2003, Volume 68, Number 20, Page 61148-61158, [ICE No. 2297-03]RIN 1653-AA23 (“Finally, no supporting documentation was provided by the commentators to demonstrate that the imposition of a fee will have the adverse effects suggested in the comments.”)

allows us to have a better understanding of the impact and implication of SEVIS on university administration.²⁴ On a still larger compass, this research provides data and serves as context for critical analysis and objective assessment of the desirability of USA PATRIOT Act.²⁵

This article is organized in the following ways. After this brief introduction, the article provides the context for this study with a brief excursion into the history and design on SEVIS (Section II: “Understanding SEVIS”). Section III (“Implementation Difficulties with SEVIS”) anchors the discussion by providing an overview of the implementations issues and problems to be critically examined and extensively discussed in Section IV to VI to follow. The three sections describes in detail and illustrate with cases different kinds of internal (Section IV) and external (Section V) implementation problems experienced by the universities and schools at the planning – launch – operational stages, including the varieties of managerial, legal and technical, implementation issues confronted by university international offices, nationally (Section VI). Section VII (“Conclusion: Taking Stock”) summarizes the findings and discusses the implications of SEVIS on American higher education system. While the SEVIS has been declared a total success by the Bush administration and its utilities demonstrated in many instances with end users, its process of implementation is an unmitigated failure, reflecting poorly on the Bush administration in leading, planning and executing nation wide security programs, such as that of SEVIS. It concludes by observing that SEVIS has fundamentally change international education administration in American, as we know it, for better and worse.

II

²³ See “Professor Gunn's approach to the problems of program implementation,” <http://www.uplink.com.au/lawlibrary/Documents/Docs/Doc53.html> (last visited December 9, 2005).

²⁴ See Jim Bloedel, “Academic Impact of September 11,”NASULGC 2002, esp. pp. 15-20. http://www.nasulgc.org/AM2002/presentations/AM2002_Bloedel.pdf (last visited December 9, 2005).

²⁵ The article is the result of a three years research project (2002 – 2005) entitled “The Impact and Implications of USA PATRIOT Act on American Society.” Research output to-date include: “The USA PATRIOT Act: Some Unanswered Questions,” Faculty Seminar, School of Law, City University of Hong Kong, November 21, 2005; Public seminar. Department of Sociology, Hong Kong University, Thursday, November 24, 2005; “The Impact and Implications of USA PATRIOT Act: A Preliminary Analysis” (Midwest Criminal Justice Association Annual Conference, October 2-4, 2004); “USA PATRIOT Act: Just the Facts” (“Patriot Act Forum,” League of Women Voters, Oshkosh, WI, Nov. 18, 2003); “The Impact and Implications of USA PATRIOT Act on American libraries” (Asian Association of Police Studies IV Annual Conference, Dec. 15-18, 2003) and “The Impact and Implications of USA PATRIOT Act on American Higher Education” (Academy of Criminal Justice Sciences Annual Conference, March 9-13, 2004). “The USA PATRIOT ACT: Some Unanswered Questions,” *Wisconsin Political Scientist* Vol. IX (3), Fall 2003, pp. 6-9.

Understanding SEVIS

A. *The legislative context*²⁶

Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (Public Law 104 – 208), 8 U.S.C. 1372, was signed into law on September 30, 1996.²⁷ IIRIRA requires the Attorney General, in consultation with the Department of State and Department of Education, to set up a program to collect current information from schools and exchange programs relating to non-immigrant foreign students and exchange visitors during the course of their stay in the United States by January 1, 1998. The law forms the foundation of the Student and Exchange Visitors Program (SEVP).

On October 26, 2001 and in response to 9/11, the USA PATRIOT ACT, amended section 641 of IIRIRA in requiring the development and implementation of SEVIS prior to January 30, 2003. The Enhanced Border Security and Visa Entry Reform Act of 2002 added to and clarified the information to be collected by SEVIS.

B. *The historical context*

In historical context, State Department, INS, DOJ, colleges and universities (“universities” or “schools”) have long struggled with the problem of how to keep track of the status and location of tens of thousands of international students and exchange scholars (“students and scholars”) coming to the United States every year to study and conduct research.²⁸ In 1983, the INS implemented a first of a kind foreign students monitoring system: the Student and School System (STSC). The STSC contained basic foreign information on students and academic visitors enrolled in certified schools in the U.S. Under STSC, the INS required the universities and institutes of higher education to document and keep track of foreign students and scholars in the U.S. They were to collect such information ON: application and admission, arrival and departure, academic disciplinary and termination actions, continuation of study and change of status of foreign students and scholars. The universities were required to use I-20 and I-66 forms to keep

²⁶ For a brief history of student monitoring system in the U.S. from WWII to now, see “Nonimmigrant Student Tracking: Implementation and Proposed Modifications” Submitted by: Thomas P. Fischer, Former INS District Director, Atlanta District (Retired), Testimony Before The Subcommittee on Immigration, Border Security, and Claims, April 2, 2003.

<http://www.house.gov/judiciary/fischer040203.htm>

²⁷ For a copy of the law, see <http://ias.berkeley.edu/siss/hurricane/regs/iiraira.pdf>

SEC. 641. PROGRAM TO COLLECT INFORMATION RELATING TO NONIMMIGRANT FOREIGN STUDENTS AND OTHER EXCHANGE PROGRAM PARTICIPANTS.(a)(1) The information to be collected under subsection Section 641(a) include: Section 641 (c)(1)(A) the identity and current address; (B) the nonimmigrant classification of the alien and any subsequent changes;(C) the current academic status of the alien; (D) any disciplinary action taken by the institution against the alien as a result of the alien's being convicted of a crime. The 641 information “shall be collected electronically, where practicable.” (Section 641 (a) (3).

²⁸ In Fiscal year 2004, 362,400 F-1 students and 312,400 J-1 exchange visitors were expected to enter the United States “Open Door” series, 1948 to 2005. Data from Open Doors 2004/05 was released on November 14, 2005 (visited December 1, 2005)

<http://opendoors.iienetwork.org/?p=69688>

track of and inform the INS about the coming, going and change of status of foreign students and scholars.

Procedurally, INS would send a computer printout containing information on all the F-1 students believed to be currently enrolled in a school. The school would then be required to verify the information and return the printout to the INS. The INS used the validated printout to update the Student/School (ST/SC) data base.²⁹ The STSC was a paper based recording and verification system to be maintained by the universities and colleges

By 1988, the INS determined that the STCS paper tracking system did not work. As one internal study observed then: “Historically, the INS devoted insufficient attention to foreign students attending United States schools, and its paper-based tracking system was inefficient, inaccurate, and unreliable.”³⁰ At one point, INS officials had openly acknowledged to Congress that they have no idea of how many schools were certified to issue 1-20s, how many foreign students were enrolled, obtained their visas by fraud, were out of status, and overstaying their visa. In effect, once in country, the foreign students/visitors were free to do whatever they want, with minimal hindrance, and still less monitoring.³¹ This has led Congressman ANTHONY D. WEINER (D-NY) to observe, critically:

“You know, there are many people who say it takes a great deal of creativity to game the system and to get into this country illegally to commit acts of terrorism. It's actually very simple. Just have to go on to the Internet, contact a university, apply for a student visa. You can even come here while the application's in play. You don't need to show up for class. You can apply to study English literature. You can actually take lessons in flying planes without having to learn how to land them. You can overstay your student visa as long as you want, and frankly, no one will catch you. And Lord knows, the educational institutions that we would hope would be supportive of this did quite the opposite. They fought us tooth and nail on even putting in a tracking system.”³²

The university community shares in this bleak assessment. As recent as 2001, a self study by the e-Berkley Steering Committee conceded that all you need to do to get registered at

²⁹ “Chronology of Significant Events,” Boston University, International Student and Scholars Office. <http://www.bu.edu/isso/sevis/background/chronology/> (last visited December 9, 2005)

³⁰ See “Executive Summary,” to Office of Inspector General, DOJ, *Follow-up Review on the Immigration and Naturalization Service's Efforts to Track Foreign Students in the United States through the Student and Exchange Visitor Information System* (Report Number I-2003-003, March 2003). (DOJ – OIG – Follow-up Review – March 2003)

³¹ INS's MARCH 2002 NOTIFICATION OF APPROVAL OF CHANGE OF STATUS FOR PILOT TRAINING FOR TERRORIST HIJACKERS MOHAMMED ATTA AND MARWAN AL-SHEHHI, HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION AND CLAIMS OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES, ONE HUNDRED SEVENTH CONGRESS, SECOND SESSION, MARCH 19, 2002, Serial No. 63. http://commdocs.house.gov/committees/judiciary/hju78298.000/hju78298_0.htm

³² *Id.*

University of Berkeley as a foreign student was by claiming to be one. There was no close inspection of documents or independent verification of status:

“Students, both UGs and Grads, self-report their intended (at the time of enrollment) immigration status on the application for admissions... There is no visual confirmation of immigration status by checking the I-94 card at the Office of the Registrar, although there was one required up until about five years ago. The Residence Office does require a visual inspection of documents to support immigration status claims related to claims of California residency. This feeds into the Reg system... The result is that there are few confirmed immigration statuses for international (non-immigrant) students at Berkeley, and there are a number (as high as 30%) whose immigration status as recorded in the campus Reg system is erroneous.”³³

After the 1993 terrorists bombing of the world trade center³⁴ there were renewed calls for immigration reform,³⁵ when it was found that many of the terrorism acts in the United States before and after 1993 were conducted by foreign students or non-immigrants. For example, Esyd Ismail, the driver of the van that blew up the World Trade Center, was a Jordanian who entered the United States as a Wichita State University foreign student in 1989 who have since dropped out.³⁶ This prompted Louis J. Freeh, then the director of the Federal Bureau of Investigation, to call for tighter monitoring of all who entered the country.³⁷

In 1995, the INS formed the Task Force on Foreign Students Control to look into how best to reform the foreign students tracking system. The final report - ***Control Governing Foreign Students and Schools That Admit Them*** (December 22, 1995) - became the

³³ See UC Berkeley’s SEVIS working group: Focus on students, Working Paper #1: “What we’ve been learning,” (revised May 2002) SEVIS @ Berkeley, Working Papers at Berkeley (SISS’s 12/6/01 Briefing Paper summarized these types of errors and concerns) (Contact: SEVIS Project Manager, 3-8305, dwalker@uclink)

³⁴ See “Issues Brief: Terrorism Chronology,” ***Federation for Immigration Reform*** for an overview of terrorism attacks on Americans and immigration reform.

³⁵ Senate Bryant statement, “REFORM OF OUR IMMIGRATION SYSTEM,” (May 27, 1993) Senate Congressional Records, Page: S6794. The 1993 incident led to the formation of multi-jurisdiction task force in June of 1995 to study the problems and issues with monitoring of foreign students and exchange visitors in the United States.

³⁶ For an analysis of immigration status of 48 suspected terrorists since 1993, see Steven A. Camarota, “The Open Door How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001,” ***Center for Immigration Study*** (The nation would be more secured against terrorists with improved visa screening, tighter border control and tracking of foreign students in the U.S. Most of the policy recommendations were eventually adopted by the Bush administration and pressed into legislation.)

<http://www.cis.org/articles/2002/Paper21/terrorism2.html>

³⁷ “KATE ZERNIKE and CHRISTOPHER DREW, “Efforts to Track Foreign Students Are Said to Lag,” ***New York Times***, January 28, 2002. <http://opendoors.iienetwork.org/?p=29471>

blueprint for a new kind of INS student tracking reform, with many of its recommendations adopted by the Clinton administration and incorporated into IIRIRA³⁸

The IIRIRA of 1996 amended the Immigration and Nationality Act (INA) to require the universities to report information on non-immigrant students and exchange scholars from selected countries by 1998.³⁹ The higher education institutions were required to collect fees and report the following information for all nonimmigrant foreign students with F, M, or J visas from five countries (as designated by the Attorney General)⁴⁰ beginning no later than January 1, 1998: (a) identity and address in the United States; (b) visa classification, dates visa issuance and/or extension/change; (c) current academic status; (d) for exchange visitor program (J scholar/student), whether exchange scholars satisfy the terms and conditions of the program; (e) whether alien was convicted of a crime and discipline.⁴¹

In June of 1997, INS started a pilot project called Coordinated Interagency Partnership regulating International Students (CIPRIS), later called the Student and Exchange Visitor Program,⁴² to test the feasibility of the electronic tracking and monitoring of foreign student in the U.S. The project was the brainchild of INS in partnership with the Department of State - Bureau of Consular Affairs, the Department of State Bureau of Educational and Cultural Affairs (formerly the United States Information Agency (USIA), the Department of Education, and members of the educational and exchange program communities.

The pilot project involved 21 institutions of higher learning in located in Georgia, Alabama, North Carolina, and South Carolina.⁴³ The foreign students tracking system did not materialize for lack of resources and vocal and persistent objections from the universities.⁴⁴ The CIPRIS was officially terminated in October 1999 by then INS

³⁸ Jennifer Bell, "Georgetown Initial CIPRIS Implementation Study," Fall, 1998, p. 2. http://64.233.161.104/search?q=cache:hJzdphjkvngJ:www.duc.auburn.edu/academic/other/international_education/cipris/GU_Study.pdf+Jennifer+Bell,+Georgetown+Initial+CIPRIS+Implementation+Study&hl=en&client=firefox-a

³⁹ Deborah Hebert, "ILLEGAL IMMIGRATION ACT UPDATE," *ASJA Newsletter* Spring, 1997. <http://www.uiowa.edu/~asjaleg/IIRIRA96analysis.html>

⁴⁰ Section 641 of IIRIRA (a) and (b).

⁴¹ See Section 641 of IIRIRA of 1996 at note 27, *supra*.

⁴² MEMORANDUM FOR MANAGEMENT TEAM, SUBJECT: Name change to Coordinated Interagency Partnership regulating International Students (CIPRIS) Project. HQ. 70/6.2.6. July 20, 2001. DOJ-INS. <http://uscis.gov/graphics/lawsregs/handbook/SEVPmemo.pdf>

⁴³ For a list of test schools and programs, see "CIPRIS Pilot School Document Background – 9/24/2002" Office of International Education, Auburn University http://web6.duc.auburn.edu/academic/other/international_education/sevp/letters/AU_cipris92402.pdf

⁴⁴ See "Letter to INS Expressing Opposition to CIPRIS Draft Regulations," February 22, 2000, to Mr. Richard Sloan, Director, Policy Directives and Instructions Branch INS from Stanley O. Ikenberry, President, American Council on Education. (Expressing strong opposition to the draft regulations issued by the INS on 21 December 1999, "Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104-208." The collection of fees

Deputy Commissioner Mary Ann Wyrsh.⁴⁵ Since then CIPRIS has been shelved awaiting federal funding and national deployment.

9/11 provided the necessary national will,⁴⁶ political impetus,⁴⁷ financial resources,⁴⁸ and institutional commitment⁴⁹ to revisit the electronic tracking idea, now called SEVIS,⁵⁰ as

was a federal unfunded mandate and a costly burden to the university administrators.)

http://www.acenet.edu/washington/letters/2000/02february/cipris_ins_ltr.cfm “NASULGC Criticizes Proposal for College to Collect INS Fees,” *NASULGC Newslines* Vol. 9(2) February 2000, p. 2. (It is inappropriate, inefficient, and costly for colleges and universities to collect \$95 fees and remit to INS for implementation of an electronic tracking system.)

<http://www.nasulgc.org/Whatsnew/Newslines/2000/NewsFeb00.pdf> For a rejoinder, see the opinion of 21 pilot schools “Pilot Program Participants Oppose CIPRIS Repeal,” AACRAO – Federal Relations (The CIPRIS project group members objected to the repeal of CIPRIS arguing that electronic tracking was the future and collection of fees is necessary. With or without CIPRIS schools were required by law to report data manually and charge fees for processing student applications. The introduction of CIPRIS does not mean ceding control to the federal government and perhaps enhance the authority of the school in granting OPT. The INS would not be mining the schools for information more so than they are doing now.)

http://www.aacrao.org/federal_relations/cipris/cipris_repeal.htm For related comments for or against CIPRIS, see “Comments Received in Response to the CIPRIS Pilot School Statements (as of 11/13/2000)” Auburn SEVIS.

⁴⁵ A an official account of the origin and development of CIPRIS, see INS memo “Name Change to the Coordinated Interagency Partnership regulating International Students (CIPRIS) Project” HQ 70.6.2.6 <http://uscis.gov/graphics/lawsregs/handbook/SEVPmemo.pdf>

⁴⁶ On September 18, 2002, the Immigration, Border Security, and Claims Subcommittee of the House Judiciary Committee held a hearing on the *Implementation of the Foreign Student Tracking Program by the Immigration and Naturalization Service*, and on September 24, 2002, the House Subcommittees on 21st Century Competitiveness and Select Education held a hearing on *Homeland Security: Tracking International Students in Higher Education - Progress & Issues Since 9-11*.

⁴⁷ *An Invitation to Terror: How Our Immigration System Still Leaves America At Risk* (Washington, D.C.: FAIR, 2003), pp. 9-10. <http://www.stoptheinvasion.com/pdfs/911report.pdf>

⁴⁸ Letter to President George W. Bush Regarding the Student and Exchange Visitor Information System (SEVIS) of October 12, 2001 from David Ward President, American Council on Education and on behalf of 45 educational associations. (“I write to urge you to designate \$36.8 million of the Emergency Supplemental appropriations package (P.L. 107-38) to the Immigration and Naturalization Service (INS). These funds would be used to implement the Student and Exchange Visitor Information System (SEVIS), as proposed by Sen. Dianne Feinstein.”) http://www.aacrao.org/federal_relations/cipris/bushletter.htm

⁴⁹ Testimony of Mr. Victor X. Cerda, Counsel to the Assistant Secretary U.S. Immigration and Customs Enforcement, Department of Homeland Security, Subcommittees on 21st Century Competitiveness & Select Education Committee on Education and the Workforce, Hearing on “Tracking International Students in Higher Education: A Progress Report” (March 17, 2005) http://www.house.gov/ed_workforce/hearings/109th/21st/jointhea031705/cerda.htm

⁵⁰ See internal INS memo of July 20, 2001 “Name Change to the Coordinated Interagency Partnership regulating International Students (CIPRIS) Project” from Michael Cronin, Acting Executive Commissioner of Programs, HQ 70.6.2.6 <http://uscis.gov/graphics/lawsregs/handbook/SEVPmemo.pdf>

of July of 2001.⁵¹ Right after 9/11, the Congress held a number of high profile hearings on the problems with and need for tracking of foreign students and visitors.

On October 12, 2001, the U.S. Senate Subcommittee on Technology, Terrorism and Government Information held a hearing on the monitoring of foreign students. Chairperson of the Committee, Senator Feinstein, called for a moratorium on foreign students and visitors so that the current non-functional monitoring international students monitoring systems in the United States could be fixed.⁵² On October 31, 2001, a joint hearing was held by the U.S. House Subcommittees on Education and 21st Century Competitiveness, co-chaired by Republican Representatives Peter Hoekstra and Howard P. "Buck" McKeon. The hearing likewise called for radical reform to student monitoring process and system.

In December 2001, Federal officials began a nation wide crackdown on foreign students who violated the terms of their visas. The crackdown campaign started in San Diego with the arrest of 10 Muslim students on December 12, 2001 based on foreign students' records supplied by local colleges and universities.⁵³ Finally, on November 30, 2001, Senators Edward Kennedy (D-MA) and Dianne Feinstein (D-CA), with strong bipartisan support,⁵⁴ introduced Enhanced Border Security and Visa Entry Reform Act of 2001 which called for the establishment of a foreign student electronic tracking and monitoring regime.⁵⁵

⁵¹ See Philip Martin and Susan Martin, "Immigration and Terrorism: Policy Reform Challenges," [http://www.gmfus.org/Apps/GMF/GMFWebFinal.nsf/D286B36BE806335685256BA4007293B0/\\$File/Immigration%20and%20Terrorism%20-%20Policy%20Reform%20Challenges.pdf](http://www.gmfus.org/Apps/GMF/GMFWebFinal.nsf/D286B36BE806335685256BA4007293B0/$File/Immigration%20and%20Terrorism%20-%20Policy%20Reform%20Challenges.pdf)

⁵² For an exchange and debate over Senator Feinstein's moratorium proposal, see "Discussion on CIPRIS/SEVP/NAFSA (10/8 – 10/10/01) Auburn SEVIS" ("The impression that universities have not been cooperative in supplying INS with necessary information, as implied by Feinstein, was erroneous." [Robin V. Catmur, Advisor to International Students & Scholars International Office, Dartmouth College, 10/8/01]. The perceptions and misperceptions resulted from NAFSA intransigent and vigorous opposition to CIPRIS, a system it helped designed was regrettable [Catheryn Cotten, Director, International Office, Duke University, Medical Center, and Health System, 10/9/01]. The international education community is very diverse and NAFSA's political stance does not represent all competing and conflicting opinions. [Scott Gillis, Writing Center, Director, International Student Advisor, Claremont School of Theology, 10/9/01]. The "INS should share culpability in the troublesome mire of CIPRIS/SEVIS" [Jan Sandor, Director, Graduate Admissions, The University of Georgia, 10/10/01] http://www.auburn.edu/academic/other/international_education/sevp/inter-1100801.htm

⁵³ Eric Niiler, "San Diego Cracks Down on Student Visa Violators," reports on *Morning Edition*. Dec. 13, 2001.

http://www.auburn.edu/academic/other/international_education/sevp/SEVPNEWS_pre31602.htm

⁵⁴ The Bill was cosponsored by: Senators Patrick Leahy (D-VT), Orrin Hatch (R-UT), Kay Bailey Hutchison (R-TX) Sam Brownback (R-KS), Jon Kyl (R-AZ), John Edwards (D-NC), Jesse Helms (R-NC), Richard Durbin (D-IL), Strom Thurmond (R-SC), Kent Conrad (D-ND), Kit Bond (R-MO), Hillary Rodham Clinton (D-NY), Jeff Sessions (R-AL), and Mike DeWine (R-OH).

⁵⁵ Michael McCarry, "Kennedy, Feinstein Introduce Compromise Border Security Bill," Alliance for International Exchange, 12/03/2001 (The bill amends Sections Section 641 of IIRAIRA of

The USA PATRIOT ACT provided the necessary funding (\$36.8 million) and renew mandate (implantation by January 30, 2003) to put SEVIS into effect.

In December 2001, beta testing of SEVIS formally launched at ten Boston area schools. On May 2002 the Enhanced border and Security and Visa Entry Reform Act of 2002. (Public Law 107 – 173) was enacted.⁵⁶ It required additional information to be captured by the electronic system, including issuance of I-20, issuance of visa, and enrollment of students. On May 16, 2003, the INS published proposed rule for the implementation for SEVIS to solicit public comments.⁵⁷ On June 13, 2002, the INS released the final Interface Control Document for third party vendors to facilitate the development of SEVIS supporting software.⁵⁸ On July 1, 2002, INS invited voluntary participation in SEVIS. The final regulations “Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)” was published on December 11, 2002”.⁵⁹

C. The design of SEVIS

SEVIS provides for a one stop shopping for the processing of international students and exchange scholars coming into the United States.⁶⁰ The Bureau of Immigration and Custom Enforcement (ICE) described SEVIS as: “an automated process to collect, maintain and manage information about international foreign students and exchange scholars during their stay in the United States.”⁶¹ As described by ICE, SEVIS tracks international students and scholars while they are in the United States: from visa application to POE documentation to reporting to school to changing of status to leaving

1996 and mandates the creation of a Student and Exchange Visitor Information System (SEVIS).
http://www.aacrao.org/transcript/index.cfm?fuseaction=show_view&doc_id=542

For a detail analysis of the bill, see “Analysis of Enhanced Border Security and Visa Entry Reform Act of 2001,” *AACRAO Online Transcripts*

http://www.aacrao.org/transcript/index.cfm?fuseaction=show_view&doc_id=531

⁵⁶ Enhanced Border Security and Visa Entry Reform Act Public Law 107-173 (2002). For a summary of key provisions, see “HR 3525 Enhanced Border Security and Visa Entry Reform Act,” *U.S. Senate Republican Committee - Legislative Notice*, April 11, 2002.

<http://rpc.senate.gov/files/L37IMMIGRATIONjj041102.pdf> For provisions of the law, see http://www.govinst.com/PDFFiles/HS/Border_Security_Visa_Entry_Act.pdf

⁵⁷ “Proposed Rule: Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)” DEPARTMENT OF JUSTICE, Immigration and Naturalization Service, 8 CFR Parts 103 and 214, [INS No. 2185-02]RIN 1115-AG55. Federal Register: May 16, 2002 (Volume 67, Number 95) Page 34862-34880.

⁵⁸ “PeopleSoft Student Administration and SEVIS: Statement of Direction and Update” July 2002. http://cms.calstate.edu/T6_Documents/NewsAndPublications/General/SEVIS%20Direction%207_26_02.pdf

⁵⁹ See “Final STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS): Final Rule Implementing SEVIS [INS 2185-02; RIN 1115-AF55],” Fact Sheet, DOJ – INS, December 22, 2002. http://uscis.gov/graphics/publicaffairs/factsheets/02.12FINALRU_FS.htm

⁶⁰ OIG – May 20, 2002, note 7, supra.

⁶¹ “SEVIS Background.” Specially, Section 641(c) “Information to be Collected” http://www.ice.gov/graphics/enforce/imm/sevis/SEVIS_Info_Packet.pdf

the country. In doing so, SEVIS provides an electronic information exchange system between DHS (ICS), ports of entry, State Department (Office of Exchange Coordination and Designation and the Bureau of Educational and Cultural Affairs), with U.S. embassies and consulates and every institutions of higher education that sponsors international students.⁶²

The SEVIS collects the following data on the students/scholars: student registration; local address; full-time student status; leave of absence; disciplinary action; termination of studies; dependents information; change in major or research specialty; change in title date of departure; change in funding or salary; change of name; program extension, school transfer, change in level of study, employment authorization, and reinstatement; failure to maintain status or complete program; prior approval to work or do research outside of university or to transfer to a different U.S. institution.⁶³

As revealed by “The Interface Control Document” (November 21, 2001), the SEVIS system has the following defining characteristics. (1) SEVIS adopts a 24 hours reporting window; (2) SEVIS is not driven by document (“Document-Centric”) but data change (“Data-Centric”); (3) SEVIS is initiated by the students/scholars, not the system (students driven); (4) SEVIS requires continue update (just in time reporting); (5) SEVIS forms are generated and controlled by INS (centrally controlled); (6) SEVIS provide for real time, interactive interface; (7) SEVIS provides for real time web base input and Batch input.⁶⁴

Figure 1: SEVIS tracking system at work⁶⁵

⁶² For step by step processing of foreign student visa with SEVIS, see Lawrence Marint, “SEVIS and International student admissions,” <http://www.cgsnet.org/pdf/Martin.pdf>

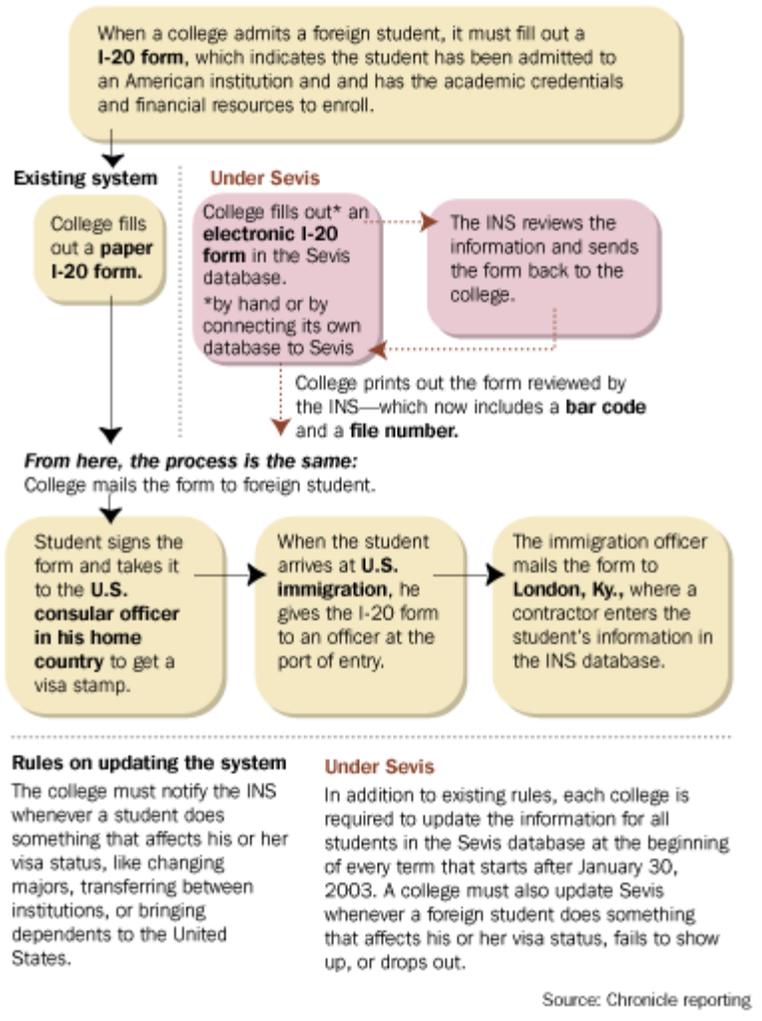
⁶³ Data Required to Send to SEVIS includes data specified in: 8 CFR 214.3(g); 22 CFR Part 62; IIRIRA Section 641; USA PATRIOT Act Section 416; Enhanced Border Security Act Section 501.

⁶⁴ Roadmap to SEVIS, April 24, 2002. Newfront Software.
<http://www.ias.berkeley.edu/siss/hurricane/newfront/Road%20Map%20from%20NewFront%204-24-02.pdf>

⁶⁵ For a techno – system perspective, see Sanjeev Kale, “Roadmap to SEVIS” (April 19, 2002) Newfront Software <http://newfrontsoftware.com/sevis/docs/fsaATLAS6RoadMapSEVIS.pdf>

Tracking Foreign Students

A new database to track foreign students, called the Student and Exchange Visitor Information System, or Sevis, will enable the U.S. Immigration and Naturalization Service to review visa applications by foreign students before they leave their home countries. Currently, the INS doesn't get the information until after the students arrive in the United States.



Source: Adopted from Chronicle of Higher Education: Section: Government & Politics, Volume 49, Issue 2, Page A33⁶⁶

D. How SEVIS works⁶⁷

⁶⁶ <http://chronicle.com>

⁶⁷ The substantive requirements and procedures for SEVIS have been promulgated in separate rule making proceedings. See 67 FR 34862 (May 16, 2002) (proposed rule implementing SEVIS); 67 FR 44343 (July 1, 2002) (interim rule for schools to apply for preliminary enrollment in SEVIS); 67 FR 60107 (Sept. 25, 2002) (interim rule for certification of schools applying for enrollment in SEVIS); 67 FR 76256 (Dec. 11, 2002) (DHS's final rule implementing SEVIS); 67 FR 76307 (Dec. 12, 2002) (DOS interim rule implementing SEVIS).

After admitting an international student or research scholar, the university notifies the Department of Homeland Security (DHS) via SEVIS. If DHS approves, it will issue an I-20 or DS-2019. The student or scholar will be issued with a bar-coded I-20 or DS-2019 form to confirm that he/she is accepted by an authorized university to pursue study or conduct research in the United States. The student or research scholar can then apply for a visa at the nearest U.S. consulate abroad. The consulate will confirm the student's I-20 or DS-2019 with the university and DHS via SEVIS. If everything is in order – valid I-20 or DS-2019 - and the student or scholar is not a security threat - the student or scholar will be issued a visa stamped on the passport. When the student/scholar arrives in the U.S. the DHS at the immigration desk will check the student/scholar's visa against SEVIS and confirms that the student/scholar has arrived in the U.S. The student/scholar has 15 days to report to the university. Failing timely appearance at the university will result in automatic termination of student or research scholar status, requiring voluntary departure or forced deportation. Upon arrival, the school promptly confirms with SEVIS the enrollment of the student or scholar enrolment at the school. The university continue to provide for regular and timely update on the status and progress – from being a full time student to being enrolled an approved discipline - of the student/scholar at the university via the SEVIS, for the duration of his/her academic career in the United States, until he/she departs the country.⁶⁸

Table 1: The obligation and impact on F and J visas at U.C. Berkeley

Who's affected	"Event"	Comments
Fs and Js	Admissions	Entry to the U.S. is limited to no more than 30 days before the program begin date (usually the first day of classes for students)
Js	Arrival	Must be reported to SEVIS within 30 days of the program begin date
Fs and Js	Address	Residential address and any changes must be reported to SEVIS
Fs	Registration	Must be registered; reported each semester, excluding summer
Fs	Full-time course of study	PRIOR approval from SISS is required (with very limited allowable reasons) to take less than a full-time course of study
Fs and J students	Change of major	New visa document issued
Fs and J students	Withdrawal	PRIOR approval from SISS is required, and then the student has 15 days to leave the U.S.; without prior approval, the student falls "out of status" and is subject to penalties
Fs and Js	Completion of program or departure	If there is any change in the program end date, that must be reported before the program end date

⁶⁸ See PUBLIC HEARING ON: "IMMIGRATION AND NATURALIZATION SERVICE'S (INS'S) IMPLEMENTATION OF THE FOREIGN STUDENT TRACKING PROGRAM," HEARING BEFORE THE HEARINBEFORE THE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED SEVENTH CONGRESS, SECOND SESSION SEPTEMBER 18, 2002. Serial No. 105, p. 20. Statement of STATEMENT OF JANIS SPOSATO, ASSISTANT DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER FOR THE IMMIGRATION SERVICES DIVISION, IMMIGRATION AND NATURALIZATION SERVICE.

III

Implementation Difficulties with SEVIS

A. Introduction

It is evident to all that after 9/11 and given the highly charged political environment against non-immigrants and foreign students, SEVIS was a feat accompli. It was no longer tenable to debate about the necessity, utility and effectiveness of SEVIS, as had been before, e.g. with CIRPRIS. Instead, the focus of the debate has shifted from policy issues to execution problems: who should be responsible for the funding, operation and control of SEVIS? The problems and difficulties with SEVIS must be viewed in this larger context, i.e. implementation issues were used as a pretext to debate the propriety and utility of SEVIS.

The kinds of implementation problems that attracted the most attention and repeated complaints were those that involved the feasibility, functionality and effectiveness of SEVIS in monitoring thousands of schools, tracking hundreds of thousands of students, and documenting millions of “events” each year. The schools were obsessed with operational - economic, legal, technical and managerial - issues. The INS was pre-occupied with compliance and enforcement concerns. Ultimately, the INS wanted SEVIS to be (technically) “available” in accordance with USA PATRIOT Act by January 30, 2003.⁷⁰ At the bottom line, the schools and universities wanted to fulfill SEVIS mandate, with least disruption and minimal resource outlay as possible.

The different in interest and concerns colored the way the INS vs. schools viewed SEVIS and related implementation process issues. The INS wanted a SEVIS that worked on paper in order to keep the public at ease and Congress at bay. The schools wanted a SEVIS that works in practice, to satisfy compliance needs, avoid criminal liabilities and with the least disruption to university culture and operations. Both, however, were less interested in making the system serve the educational objective and personal needs of the students, as much as they are pre-occupied with their respective institutional authority and political power. The welfare and interests of the consumers of international education was never seriously taken into account! This is the sub-text of the SEVIS high drama awaiting to be explored, and should be deplored.

⁶⁹ <http://ias.berkeley.edu/siss/immigration/sevis/eberkeley1-23-03.doc>

⁷⁰ At a hearing on March 7, 2003, Rep. Harold Rogers (R-KY), former chairman of the Commerce, Justice, State appropriations subcommittee, expressed concern with INS’s ability to use SEVIS to track and prosecute offending foreign students and exchange visitors holding F, J, and M visas. “Hill questions INS capacity to use SEVIS data,” March 8, 2002
http://www.auburn.edu/academic/other/international_education/sevp/31402/alliance30802.htm

In the following sections, the article discusses the difficulties, problems, issues and concerns confronted by university administrators in implementing the SEVIS program. The implementing difficulties can be classified as external (Section IV) vs. internal ones (Section V). External problems are problems without the university, e.g. liaison with DHS. Internal problems are problems within the university, e.g. coordination with various departments. Before we do, let us investigate into the history and context informing the SEVIS implementation debate. To this subject we now turn.

B. *The implementation process*

The implementation – development,⁷¹ deployment,⁷² employment⁷³ - of SEVIS is a huge undertaking, in terms of resources and manpower, for the government and universities alike. The USA PATRIOT ACT required noting less than the setting up of an entirely new⁷⁴ electronic monitoring and tracking system for each schools and programs admitting international students/exchanging scholars and every international students/visitors coming into the United States overnight, i.e. by January 30, 2003.⁷⁵ This was to be followed by a full accounting of all existing students and visitors in the United States by August 1, 2003.⁷⁶ All these were to be achieved within a tight time frame established by the Congress, last minute regulations imposed by INS/DHS,⁷⁷ unilateral rule making concocted by administrators;⁷⁸ all within a chaotic and uncertain regulatory regiment and complex and intricate technical environment.⁷⁹

⁷¹ Development is the conceptualization, planning and preparation stage, including CIRPRIS (1997) and Operational Prototype (1999).

⁷² Deployment is the first step of implementation, i.e. making SEVIS available for use. With the DHS it was to be “technical availability” and with the schools it meant “functional availability”.

⁷³ Employment is the actual use of SEVIS for processing foreign students.

⁷⁴ As observed in Section II (“Historical Context of SEVIS”), the idea of an international student tracking system was not new and has been experimented with since 1996. See note 42, *supra*.

⁷⁵ That date has been extended to Feb. 15, 2003 for technology reasons. “Immigration and Naturalization Service (INS) Announcement: SEVIS Grace Period Extended Until February 15, 2003,” January 29, 2003 <http://www.nasfaa.org/publications/2003/rsevisextend013103.html>

⁷⁶ “New SEVIS Rules Extend Deadline for Entering Student Information to August 1; Compliance Date of January 30 Remains,” Dec. 8, 2002.

<http://www.nasfaa.org/publications/2002/rsevisdeadlines121802.html>

⁷⁷ In the last six months to launch date, May 2002 to January 2003, DHS/DOS has promulgated no less than five sets of regulations to implement the SEVIS. See note 67, *supra*. For a discussion, see “IV. B.c. Problems with inadequate regulations” *infra*.

⁷⁸ Terry W. Hartles and James R. Burns, “Interconnecting World,” *Educause Review* September/October 2002, pp. 88-9 (The progress in the implementation of SEVIS to-date resulted from a unilateral imposition of the regulators, hoping that the schools would comply and could adjust.) <http://www.educause.edu/ir/library/pdf/ERM0259.pdf>

⁷⁹ NAFSA: Association of International Educators Letter of Comment to INS on the Service's proposed rule, published on May 16, 2002, entitled "Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)." June 12, 2002 (“Given that the Service does not realistically know at this time when the system will be fully available to schools, the reporting deadline should be set through a separate rulemaking once the system is fully tested and complete.”)

<http://www.nafsa.org/content/publicpolicy/NAFSAontheIssues/NAFSACOMMENTLETTERFINAL.HTM>

Without consultation with the universities and other afflicted agencies, the USA PATRIOT ACT set forth a January 30, 2003 dead line for the full implementation of SEVIS. On May 16, 2002, the INS published a proposed rule⁸⁰ to implement the electronic collection and reporting process mandated under section 641 of the IIRIRA Act of 1996 (IIRIRA). On June 13, 2002 The INS first released the final Interface Control Document to facilitate SEVIS software development by third party vendors.⁸¹ On July 1, 2002 INS invited voluntary participation in SEVIS. The final regulations “Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS); Final Rule” was published on December 11, 2002, only 50 days before “D Day”.⁸²

C. A fundamentally flawed process

As observed, from the very beginning,⁸³ school administrators and educators associations, not to mention foreign students and exchange scholars, have expressed grave reservations and major misgivings with the design, planning, funding and operability of SEVIS.⁸⁴ They variously complained of unrealistic operational deadline,⁸⁵ unavailable administrative regulations,⁸⁶ unreasonable workload,⁸⁷ unfunded legislative

⁸⁰ Federal Register at 64 FR 34862

⁸¹ “PeopleSoft Student Administration and SEVIS: Statement of Direction and Update” July 2002. http://cms.calstate.edu/T6_Documents/NewsAndPublications/General/SEVIS%20Direction%207_26_02.pdf

⁸² See “Final STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS): Final Rule Implementing SEVIS [INS 2185-02; RIN 1115-AF55],” Fact Sheet, DOJ – INS, December 22, 2002. http://uscis.gov/graphics/publicaffairs/factsheets/02.12FINALRU_FS.htm

⁸³ See text to note 18, supra.

⁸⁴ “Problems with SEVIS system: Visa & Visiting Scientists, Students, & Trainees” Texas A & M Research Foundation. (The Panel discussion focused on student recruitment problems, student/mentor relations and implementation and maintenance issues. In terms of implementation it cost \$26,000 to \$300,000 to set up, \$6,000 to \$60,000 to operate. There were many problems: design bugs, incompetent help desk, lack of communication between SEVIS and consulate officials, inability to correct entries, uneducated POE officials) http://thefdp.org/Present_2_May2003.pdf. See also “Testimony of CD Mote, Jr. President, University of Maryland,” Before the House Subcommittees on 21 Century Competitiveness and Select Education March 17, 2005. (After initial difficulties in implementation, the SEVIS was functioning relatively well. Some of the more prominent and enduring problems included: schools was not able to fix data entry problems; limited university resources have been devoted to maintaining SEVIS not servicing student education; SEVIS fees (\$100) have to be absorbed by the University (\$50,000) to avoid brain drain; lack of feedback from SEVIS on institutional performance; visa application fees prohibitive to new students; and complicated process disruptive for continuing students.) <http://www.president.umd.edu/testimony/2005/congressional/testimony031705.pdf>

⁸⁵ *Id.*

⁸⁶ Terry W. Hartle, senior vice president of the American Council on Education (ACE) told Subcommittee on Immigration, Border Security and Claims on September 18, 2002 that regulations governing SEVIS and international students (“F” and “M” visas) were not published. Regulations governing SEVIS and exchange visitors (“J” visas) have not been proposed.)

⁸⁷ At Office of International Student and Scholar Service (ISSS), Brigham Young University, e-mails were not being answered in 4 days in July 2003, See “Sending E-Mail Messages to the

mandate,⁸⁸ uncertified vocational schools,⁸⁹ untested software programs,⁹⁰ ill prepared INS⁹¹ and untrained university staff⁹² and uncommunicative⁹³ and non responsive DHS

ISSS,” *ISSS-BU News* July 14, 2003.

<http://iss.binghamton.edu/issbu2003/NewsJuly142003.htm>

Texas A & M University informed students that in order to have all foreign student records on line by August 1, 2003, many students’ applications, e.g. extension, study level change and OPT, have to be delayed. “Memo Subject: Update on Extensions, Degree Level Changes and OPT Applications” dated July 25, 2003, Texas A & M, International Student Services.

<http://international.tamu.edu/iss/ISSNEWS/viewnews.asp?listnews=175&page=4>

Many of workload problems resulted from starting up SEVIS with input of thousand of data field and millions of data entries. Whether some of these workload problems would subside once SEVIS is up and running remained to be seen.

⁸⁸ See Section IV.E.b. “SEVIS fees and charges”, *infra*.

⁸⁹ DOJ – OIG – Follow-up Review – March 2003, note 30, *supra*.

⁹⁰ Testimony of Dr. David Ward, President American Council before the U.S. House of Representatives Committee on Science in regard to "Dealing with Foreign Students and Scholars in the Age of Terrorism: Visa Backlogs and Tracking Systems." March 26, 2003. (According to Dr. Ward, SEVIS suffered from the following serious technology problems: “First, *SEVIS* is technologically flawed. Schools using *SEVIS* report that it frequently 'loses' data And batch processing ... works intermittently at best. Some schools have not been able to make batch processing work at all.... university discovered that, despite repeated efforts, it could not successfully reactivate the record of an international student ...incorrectly terminated by the INS ... Second, contrary to promises, *SEVIS* does not provide real-time access to data. ... For an extended period in February, no data was transmitted because the INS did not configure the system to transmit it and failed to do a manual transmission of the data for 10 days.”) Michael Hardy, “Tech snags delay INS student tracker INS, schools work on accessibility problems,” *Federal Computer Week*, Feb. 10, 2003. (Technical problems delayed full launch of SEVIS from Jan. 30, 2003 to Feb. 15, 2003.) <http://www.fcw.com/fcw/articles/2003/0210/tec-ins-02-10-03.asp> “Sevis tracking system is in action,” *Language Travel Magazine* (The SEVIS was designed for colleges and universities and not English language schools. The English language school did not operate like university English “language” or “literature” courses, which were much longer courses. <http://www.hothousemedia.com/ltn/ltnbackissues/may03web/may03news.htm>

⁹¹ DOJ Review (INS failed to trained contacted investigators and adjudicators on how to certify schools.)

⁹² By SARA HEBEL, “INS Drops Training Program on New Database for Tracking Foreign Students,” *Chronicle of Higher Education*, July 19, 2002. (INS has disbanded 33-member "implementation team" and cancelled face to face training sessions, so that they could devote more resources to deal with technical and programmatic aspects of SEVIS launch. Another sign that the government was short on resource and lacking in planning.)

http://www.auburn.edu/academic/other/international_education/sevp/70102/71902chronicle.htm

“ISSUE BRIEF: Monitoring International Students and Exchange Visitors,” NAFSA:

Association of International Educators of International Educators. January 2003.

<http://www.nafsa.org/content/publicpolicy/NAFSAontheIssues/monitoring03.htm> see Office of DOJ – OIG – Follow-up Review – March 2003, note 30, *supra* (“Recommendation 9: The INS must also develop a plan for training both INS employees and school employees on how to use SEVIS. “)

⁹³ MICHAEL ARNONE, “Colleges Expect the Worst in Preparing for New System to Track Foreign Students: INS officials say their deadlines aren't as difficult as campus officials think,” *Chronicle of Higher Education*, Jan. 6, 2002 (In August 2002, INS cancelled planned national

officials, particularly at ICE.⁹⁴ As a result students and visitors were subjected to denial of visa, delayed to study, deferral of graduation, interruption to research projects, and loss of funding opportunities.

The implementation problems with SEVIS were well documented in newspaper accounts,⁹⁵ public comments,⁹⁶ issues briefs,⁹⁷ journal articles,⁹⁸ Congressional hearings,⁹⁹

wide SEVIS training sessions on campuses with EDS experts without notice. The schools were asked to review pre-recorded training tape instead.)

⁹⁴ Statement of David Ward, President American Council on Education, Committee on House Judiciary Subcommittee on Immigration, Border Security, and Claims, April 2, 2003. (A student applied through SEVIS for Optional Practical Training. SEVIS lost the student's information. The DHS was informed, repeatedly, but did not fix the problem.)

⁹⁵ Nida Shoughry, "SEVIS causes problems for international students," *JSONS* (Journalism Students Online) Nov. 1, 2003. (Emerson College held up foreign students' registration to make sure they compiled with SEVIS. Six Middle Eastern students were arrested for carrying less than full-time load and have to spend one night in jail and posted \$5000 bond.) <http://jsons.collegepublisher.com/news/2003/11/01/CampusLife/Sevis.Causes.Problems.For.Inte.shtml>; Becky Oskin, "System to track student visas causing headaches," *Pasadena Star* April 11, 2003. (INS did not develop procedure to detect fraud. SEVIS was not ready for mass intake of information. Foreign students worried about going to conference or visiting family. Schools routinely lost data that had been input. Stanford University student's personal data and immigration forms were printed at Duke. FBI agents in Washington arrested a Southeastern University student from Thailand on March 12 after the school mistakenly reported that the Thai student had dropped out of school. Southeastern University found out too late but was not able to correct the record. This led to an unwarranted arrest, with the university looking on, helplessly.) <http://www.refuseandresist.org/detentions/art.php?aid=818>

⁹⁶ See a summary of public commentaries to proposed rule implementing SEVIS in "Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)," 8 CFR Parts 103, 214, 248 and 274a, [INS No. 2185-02], RIN 1115-AF55. Federal Register: December 11, 2002 (Volume 67, Number 238), specifically section on "Response to Public Comments on the Proposed Rule," <http://www.lianglaw.com/INS/law-data/sevis02.htm>

⁹⁷ "ISSUE BRIEF: Monitoring International Students and Exchange Visitors," NAFSA January 2003 (Recommendations: monitoring students according to needs, no penalty for technical glitches, ability to correct minor and inadvertent mistakes, provide for a sufficient back up system.)

⁹⁸ Patty Croom and Kathy Bellows, "Understanding the Student and Exchange Visitor Information System (SEVIS)," *EDUCAUSE Quarterly*, Vol. 25, No. 3, 2002.

⁹⁹ "National Commission on Terrorism Report: Impact on Foreign Students and Minorities," The American Association for the Advancement of Science (AAAS) (Catheryn Cotten, Director, International Office of Duke University, a CIPRIS participant, observed that the monitoring of foreign students was not the most effective way to deter terrorists. Terrorism gained more by getting applied technical knowledge and scientific information from business. Victor Johnson, Associate Executive Director for Public Policy at NAFSA: Association of International Educators, said monitoring students was counterproductive. There was no proof that terrorists were exploiting the student visa system to gain entry into the United States. Laws that sought to track foreign students deprived educational institutions of valuable resource to promote international education.) <http://www.aaas.org/news/releases/security2.shtml>

working conferences,¹⁰⁰ and commissioned reports.¹⁰¹ For example, it has led the International Student Office at Texas A & M to issue this disclaimer:

The SEVIS system is not operating at full efficiency as of today. The system has been slow and crashes continuously as more and more universities come online with the system. This is a nation-wide system and a nation-wide problem. We expect that this time delay will resolve itself as the computer bugs are worked through by INS. We have no idea how long this will take, but until it is repaired, no schools are able to issue new documents unless they just get into the system and get all their data in and submitted before the system crashes. At ISS we have not been successful, yet, in creating a document through SEVIS. INS has promised that these problems will be fixed, and we will keep you updated as we know more.”¹⁰²

Finally, in March 2003, a Department of Justice – Inspector General Office internal review of the implementation process found that the implementation process was fundamentally flawed to begin with and dead on arrival at launched:

“The INS did not complete certification reviews of all school applications...The INS's oversight of contractors is inadequate to ensure that schools are bona fide... The INS's review of schools' recordkeeping and internal controls is insufficient to ensure that schools are complying

¹⁰⁰ See American Council of Education, Regional INS Workshop on SEVIS Implementation, January 27, 2003 Boston Massachusetts (It was very difficult to develop and implement the SEVIS system. Part of the difficulty was in interfacing with multiple federal computer and IT systems with different architect and ownership.)

<http://www.immagic.com/eLibrary/INFOTECH/GENREF/IMM/IN030128.pdf>

“Conference Guide to SEVIST” Association of NAFSA, International Educators, 54th Annual Conference, San Antonia, TX, May 2002.

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevpsevisatconf.pdf> ; THE EUROPEAN ADVISERS NEWSLETTER SUMMER, 2003

NAFSA Conference Report By Lidewij Hesselink, Netherlands America Commission for Educational Exchange (NACEE) (SEVIS is not new, the electronic tracking is. “Problems with SEVIS are mainly due to technical issues and the lack of experience of its users (i.e. the international student advisers) and will hopefully soon be a thing of the past.”) http://www.bibl.u-szeged.hu/oseas/newsletter/03summer_hesselink.html

¹⁰¹ **In America's Interest: Welcoming International Students: A Report of the Strategic Task Force on International Student Access** (NAFSA: January 2003) (In the section on “Removing Governmentally Imposed Barriers” in the Executive Summary” the report make three recommendations: (1) amends 214(b) of Immigration and Nationality Act by removing historical “intending immigrant” test with functional “legitimate student” test; (2) visa screening to be conducted within “reasonable and predictable period”; (3) SEVIS to be maintained in such a way to be attractive to foreign students and visitors.) For detail discussion, see pp. 14-17. <http://www.nafsa.org/content/PublicPolicy/stf/InAmericasInterestWelcomingInternationalStudents.pdf>)

¹⁰² Re memo to study: “Date: 1/29/2003, From: Droleskey, Suzanne M, Subject: Texas A&M is a SEVIS school.” <http://international.tamu.edu/iss/ISSNEWS/viewnews.asp?listnews=135&page=8>

with SEVIS recordkeeping requirements or to identify internal control weaknesses that could allow fraud to occur undetected...The SEVIS database will not include information on all foreign students until August 1, 2003... The INS still has not provided adequate training and guidance to INS adjudicators or INS inspectors at ports of entry... The INS has not established procedures to use SEVIS to identify and refer potential fraud for enforcement action... The INS has not provided sufficient resources for enforcement activities...”¹⁰³

D. *The SEVIS challenge*

a. Enormity of challenge

From the perspective of the schools and programs, the task of implementing SEVIS was a daunting challenge and stressful experience. Challenges abound. As observed by Ms. Danley, Executive Director of Enrollment Services from Washington State University, observation:

“The January 30, 2003, implementation deadline seemed unrealistic and impossible. Further, the enormity of this unfunded mandate created serious concerns at institutions. Those with moderate to large international student and scholar populations, such as Washington State University, seemed particularly vulnerable. Washington State University enrolls 22,166 students, of whom 1255 are international students. Additionally, the University employs approximately 150 scholars at any given time.”¹⁰⁴

The enormity of the implementation task ahead can be gauged by looking at the total number of schools the government (DHS) inspected and certified between July 1, 2002 to January 30, 2003; the final months before the SEVIS program was supposed to be operational:

Table 2: SEVIS Certification Workload Statistics as of January 31, 2003

Application dates	Application	Approval	Denial	Pending
July 1 to September 24, 2002	1779	1418	361	0
September 25 to November 15, 2002	2856	1927	36	893
November 16, to January 30, 2003	1305	0	0	1305
Total	5940	3345	397	2199

Source: November 15, 2002

According to DHS data, as of Dec. 10, 2003, DHS has successfully certified and induced 8,795 schools and 1383 exchange programs into the SEVIS system. Depending on

¹⁰³ DOJ – OIG – Follow-up Review – March 2003, note 30, *supra*.

¹⁰⁴ Janet V. Danley, “SEVIS: One institution’s tale of implementation,” www.pacrao.org/docs/resources/writersteam/SEVIS.doc (last visited December 9, 2005)

sources consulted, there were between 8,000 to 74,000 SEVIS schools and programs in the United States at that time, many of them yet to be certified.

As SEVIS end users, international departments and exchange programs were responsible for the input, update and maintenance of *all* of incoming and continuing students and scholars found in the U.S. by January 30, 2003. In 2003, the total number of J-1 students and J-1 scholars (excluding dependents) that needed to be tracked were 869,118, with 353,342 being new students and 515,776 continuing ones.¹⁰⁵ This was an impossible task due to the sheer enormousness of the task involved. DOJ Inspector General of Glenn A. Fine testified before the Subcommittee on Immigration, Border Security and Claims on September 18, 2002 and observed that “full implementation of SEVIS is unlikely by January 30, 2003, based on the amount of work that remains to be accomplished.”¹⁰⁶

Furthermore, SEVIS required the schools to keep track of students and scholars in 150 data elements area. Any change of data must be reported within 24 hours. Since historically foreign students/scholars data were not routinely collected and centrally organized, and there were little communication between different data bases and no reporting relationship between university departments, international offices who found themselves “owing” the SEVIS system needed to find ways to create a centralized and integrated foreign students information administration system capable of meeting SEVIS data recording and reporting requirements. This was not an easy task.¹⁰⁷

b. Lack of support

In the months before the launch of SEVIS, almost all school administrators and international educators pleaded with the government to provide more, clearer and better guidance, accessible and competent help, available and helpful training and reasonable and adequate lead time before the implementation of SEVIS. Most requests were ignored. Many cautions were brushed aside. Everyone was frustrated. All were disappointed. No one was spared, not even private software developer. For example:

In April of 2002, Newfront one of the largest international student administration software developer responsible for developing SEVIS interface for the schools has cautioned against rushing towards implementation of SEVIS program, disregarding technology readiness issues:

¹⁰⁵ See NGLU 2003-12-a Summary of NAFSA's December 10, 2003 conference calls with DHS and DOS regarding SEVIS, “17. Update on SEVIS statistics”; <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200312a.pdf>

¹⁰⁶ See “Congress Learns INS Unlikely to Meet January SEVIS Deadline,” *Higher Education and National Affairs* Vol. 51 (17) 9/23/02 (Fine’s observation was echoed by Terry W. Hartle, senior vice president of the American Council on Education (ACE) who represented more than 75 education and exchange visitor organizations before the same hearing.) <http://www.acenet.edu/hena/issues/2002/09-23-02/SEVIS.cfm>

¹⁰⁷ See “Exploration of SEVIS Challenges,” Roadmap to SEVIS, April 24, 2002. Newfront Software, p. 7-10. <http://www.ias.berkeley.edu/siss/hurricane/newfront/Road%20Map%20from%20NewFront%204-24-02.pdf>

“No one had expected SEVIST would impose such drastic requirements on international offices. Specifically two aspects of SEVIS, the 24 - hour reporting window and the extensive data element, will have a huge impact on the international offices. Added this to the frustrating lack of information on the SEVP from the INS over the last two year. I persistently urged SEVP officials to deliver technical specification as early as possible so that Newfront would have adequate time to design and test fsaATLAS and SEVIS, and so that school could reevaluate their business processes, workload, data systems, and make financial arrangements.”¹⁰⁸

c. Signs of frustration

The friendly reminders and bitter objections all fell on deaf ears. The INS (later DHS) has decided to impose the SEVIS on the education community, on its own term and to its own timetable. This led frustrated administrators and anxious educators to vent their individual anger and collective grievance privately at conferences and publicly at hearings.¹⁰⁹ A satiric song prepared at a NAFSA conference reflected the level of frustration, providing insights into its cause:¹¹⁰

SEVIS Caused Psychosis¹¹¹

Chorus:

I've been diagnosed today with SEVIS caused psychosis
Even just the sound of it is something quite atrocious
If you have it long enough you just might need hypnosis
I've been diagnosed today with SEVIS caused psychosis.

Um-diddle-iddle-iddle-iddle, um-diddle-ay. B-b-b-b-b-b.

Verse 1:

We thought that we'd be really smart and get on SEVIS early
Even though the program seemed to be a little squirrely
We put all the I-20s in we thought that we could handle

¹⁰⁸ Roadmap to SEVIS, April 24, 2002. Newfront Software.

<http://www.ias.berkeley.edu/siss/hurricane/newfront/Road%20Map%20from%20NewFront%204-24-02.pdf>

¹⁰⁹ For a day by day account of how a UC administrator was frustrated by the INS and SEVIS, see Sheldon Zola's proposal for a Moratorium on SEVIS: "Documentation Section" to "Request for Moratorium on BCIS Requirement for Electronically-produced I-20 Forms and for Reversion of SEVIS to "Test & Development" Status." In Working Papers (a set) #18. A set of papers from Berkeley for and from the UC-wide SEVIS meeting, UC Irvine. March 25 and 26, 2003

<http://ias.berkeley.edu/siss/hurricane/sissworkingpapers/moratorium.doc>

¹¹⁰ See "SEVIS Songs Song at C," NAFSA New Orleans Conference, October 27-Nov. 1, 2003

<http://www.nafsa3.org/SEVIS1.doc>

¹¹¹ Words by Julie Sinclair – to the tune of "Supercalifrajelisticexpealidocious"

Then last week we learned all those I-20s had been cancelled.

Repeat Chorus

Verse 2:

Last week I had a problem that was totally confusing
The stress I felt from SEVIS then was truly not amusing
The manual was clear as mud, I needed help much faster
So I called the Help Desk and I got 4 different answers.

Repeat Chorus

Verse 3:

Whenever SEVIS kicks you off and doesn't seem to work right
When data entry's piled so high that it gives you a big fright
Remember this advice next time you find yourself in this plight
SEVIS works the best if you log on just after midnight

Repeat Chorus

c. Call for help

As early as June of 2002, ACE one of the largest and most prestigious higher education association in the United States has called for delayed compliance with SEVIS:

In lieu of picking a January 30, 2003 deadline at this point, we recommend that a compliance date be set at 180 days after the Inspector General certifies that, based on benchmarks similar to those outlined above, SEVIS is fully operational. Colleges and universities will work to meet the deadline INS ultimately sets for compliance. It is impossible, however, to make an estimate as to how long it will take institutions to comply with a system that does not yet exist. Certification by the Inspector General should follow expeditiously once that office ascertains that the steps outlined above have been completed.¹¹²

Even the DOJ's Inspector General of Glenn A. Fine concluded that the compliance date was an unrealistic one: "full implementation of SEVIS is unlikely by January 30, 2003, based on the amount of work that remains to be accomplished."¹¹³

¹¹² Letter to the INS Regarding SEVIS - RE: Comments on Proposed Rule: "Retention and Reporting of Information for F, J, And M Nonimmigrants: Student and Exchange Visitor Information System (SEVIS)" INS No. 2185-02 (RIN 115-AG55)" American Council on Education. June 14, 2002. (ACE recommended that SEVIS compliance deadline be set at 180 days after "Inspector General certifies that SEVIS is fully operational and software is available for purchase.") <http://www.acenet.edu/washington/letters/2002/06june/ins.sevis.cfm>

¹¹³ See "Congress Learns INS Unlikely to Meet January SEVIS Deadline," *Higher Education and National Affairs* Vol. 51 (17) 9/23/02 (Fine's observation was echoed by Terry W. Hartle,

IV Internal implementation difficulties

A. *Legal – technical requirements*

In order to meet with SEVIS statutory requirements, technological specifications and student administration needs, a university SEVIS information data system should preferably have the following features:

In terms of operating system and platform, it should be a web-based system that is accessible world wide via the Internet and capable of interfacing with other university IT systems, e.g. registrar, HR, student Information, payroll system, and tax systems. For schools which have a large foreign student/visitor contingent, batch data export/ import capabilities connected to INS is a necessity.¹¹⁴

In terms of functional capacity, the school's SEVIS system should be able to store and generate authorized forms, e.g. Form I-20, Form IAP-66, Form I-538, Form I-539, Form I-129, Form I-140, Form I-485, and Form I-765; keep track of critical events in a student's course of study; e.g. program enrollment, performance and extensions, adjustment and change of status petitions, reinstatement petitions, applications for Optional Practical Training (OPT) for students in F-1 visa classification, etc; generate a variety of standard reports for auditing purposes; "alert" users to major expiration dates, e.g. expiration of an international's employment authorization; have drop-down lists as required by law; meet legislative and regulatory requirements; protect the privacy of the information collected and stored with Multi-Level Security Access and finally highly integrated with other data bases in the university such that there is no duplication of efforts and waste of resources.¹¹⁵

The university has to take many steps to successfully deploy and effectively employ SEVIS with batch technology:¹¹⁶

senior vice president of the American Council on Education (ACE) who represented more than 75 education and exchange visitor organizations before the same hearing.)

¹¹⁴ As design, the INS – SEVIS system allowed for both interactive and batch mood in transporting data. INS however did not make batch transfer of data one of its "available" technology feature. The schools have to develop and deploy such a technology, at their own expense. This was an area of heated dispute: who was to provide for and fund the development of batch technology, i.e. to make it "available"? In essence, what did "availability" SEVIS meant?

¹¹⁵ David Clubb, "SEVIS COMPLIANCE: Project Scope Definition Document, Database Development Project," 6/05/02.

http://www.auburn.edu/academic/other/international_education/sevp/regs/SEVIS%20Project%20Scope%20Definition%20Document_NAFSA_generic.doc

¹¹⁶ An a look at a typical month by month/activity by activity SEVIS implementation plan at UWM, see "UWM Ensures SEVIS Compliance," UWM
<http://www.uwm.edu/IMT/Info/IOTOnline/FocusOctNov03/ensures.html>

First, review SEVIS related law, such as Section 641 of IIRIRA, regulations, e.g. the final regulations for F, J, and M non-immigrants, and technical documents, e.g. final Interface Control Document. These documents set forth the basic legal-technical-functional specifications/requirements of the SEVIS system.

Second, conduct a detail analysis of current data elements and processing routines in the university to determine what, how and where foreign students' data are being collected, stored and processed. This exploratory data mapping exercise provides critical information on current data structure and information process in the university, for SEVIS to interface.

Third, conduct a detailed analysis of the university's overall IT infrastructure, architecture and strategy to determine how to gather and transmit electronically SEVIS data via the batch interface mode. This helps to ascertain existing capacity and readiness of the university to implement SEVIS.

Fourth, compile a formal and comprehensive report describing and detailing the current data management process to ascertain and identify any deficiencies and inadequacies in meeting SEVIS legislative and technological requirements. There is a need to outline, in a check list form, what need to be done to make SEVIS operational and functional.

Fifth, based upon the above legal, system and process assessment, the university has to make critical decision as to whether to develop its own SEVIS compatible system or purchase off the self SEVIS application kit from the market. This decision requires the involvement of university senior administrators with input from mid level IT executive and front line computing staff, having due regard to balancing costs vs. benefits of using internal vs. external resources in the implementation process.

Sixth, if the school decides to purchase, the purchase decision must be coordinated with the university's purchasing office and in compliance with university policies and guidelines, e.g. product research, comparison testing, and purchase order.¹¹⁷

Seventh, the next step is to install the hardware and implement the software, which entails extensive, complex, and time consuming technical and managerial tasks. The whole SEVIS implementation process involves working with many people, e.g. financial controller, legal counsel, IT staff, integrating a large number of academic and business departments, e.g. international office and graduate schools, and interfacing a variety of different information systems within the university, e.g. Registrar and HR. These steps do not happen overnight, nor can they be imposed by fiat with on command and by demand. It takes much time and many trials and errors to fully and successfully integrate SEVIS with the existing university IT system.

As to initial costs and ultimate benefits of an electronic tracking system it is very difficult to ascertain and too early to tell. There are too many factors and contingencies to

¹¹⁷ Since no final SEVIS regulation was available by October 2002, it would delay vendor from offering software meeting legal and technical specifications before January 2003.

contemplate.¹¹⁸ There are initial migration as well as on going system costs. There are costs for hiring additional, specialized and dedicated international service personnel. There are some cost savings in improving existing structure, process and system in processing international students. There are benefits in reducing duplications, increasing reliability, improving efficiency and assuring timeliness to international student services. All these cost – benefit considerations do not include indirect, intangibles and long term calculus, e.g. mission of international office and role of foreign student advisors, relationship between international students and university, staff morale and foreign student/visitors welfare.

In this section, the article will document and discuss the varieties of in house problems and difficulties, legal and technical, encountered by the school administrators in developing and deploying the SEVIS. The issues covered include: legislative administrative burden, implementation problems, technical difficulties, and capitalization and maintenance costs,

B. *The SEVIS system and institutional barriers*

The building of a centralized, comprehensive and integrated foreign students and visitors IT system with tracking capabilities sufficient to meeting SEVIS legislative mandate and following existing university protocols is a daunting, transformational task:

First, the introduction of SEVIS into an existing IT system implicates the school's own IT vision and strategy. IT initiative (SEVIS) is not a one time investment or stand alone program. It is tied into the schools' core values,¹¹⁹ institutional mission,¹²⁰ strategic planning,¹²¹ governance structure,¹²² and communication networks.¹²³ In essence, SEVIS

¹¹⁸ Georgetown CIPRIS implementation report concluded by observing that it was too early to tell the net cost vs. benefits to the CIPRIS system.

¹¹⁹ For example, the core values of Bowling Green University, included: "Respect for one another; Cooperation; Intellectual and spiritual growth; Creative imaginings; Pride in a job well done." These values are not compatible with a draconian police state which SEVIS is build upon. "University Values, Vision and Goals" Bowling Green University
<http://www.bgsu.edu/colleges/gradcol/catalog03-04/University/univ9.htm>

¹²⁰ A university's primary mission is to provide educate not monitoring, foster free exchange of ideas not restrict offensive ideas. "Ramanda's US ban is ill conceived," *The Daily Star* September 4, 2004. (Swiss theologian Tariq Ramadan was not allowed to take up a Visiting Professor position at Notre Dame University after State Department denied a visa, ath the behest of Department of Homeland Security due to unarticulated security risk.)
http://www.jonathanlaurence.net/downloads/tarek_oped.pdf

¹²¹ Imposed SEVIS system has the effect of disturbing a university's strategic plan. For example, in 2002 – 2003 University of Pennsylvania has 3,856 foreign students, of which 24% (937) are undergraduate, 25% (969) are Ph.D.s and 33% (1259) are masters, 4% (160) are in English Language programs, and 14% (531) are in Practical Training. The stringent visa process affected the University's strategic plan in maintaining UPenn as the primer leader in international education. COUNCIL State of the University - Almanac, Vol. 50, No. 12 (11/11/03)
<http://www.upenn.edu/almanac/v50/n12/council.html>

¹²² In university governance, academic matters are in the hand of the professors, Chairs, Deans and Provost. With SEVIS, university academic governance has to take non-negotiable instruction

(as an IT initiative) must be aligned with what is on going in the school; in values, structure, process and culture. In this regard, understanding a university's education and IT vision, mission, values, environment and culture is critical for the successful implementation of SEVIS. This has been ignored, and was not achieved in the current SEVIS implementation process. The DHS has approached this as a purely legal, administrative and enforcement exercise. This approach reflected a large degree of ignorance and a certain amount of arrogance inside the beltway Washington D.C. mindset.

Second, the introduction of new SEVIS technology upset long established institutional arrangements, threatens deeply ingrained organizational culture and challenges broad personal interests.¹²⁴ As observed:

“Vermeer and Veth (1998) consider the problems of interorganizational data integration and the development of a common data model across many interdependent network participants. After a study of over 10 different central database initiatives they found that almost all of them suffered from lack of support. They concluded there were two important reasons for the lack of success; first, political reasons such as hidden agendas and disruption of the balance of power and second, the large number of data fields resulting in large data administration costs and lack of flexibility at a local level.”¹²⁵

and zero-tolerance enforcement from Department of Homeland Security, in the name of national security. President's Updates for the Faculty & Staff of Washington State University, NUMBER 16 - MARCH 7, 2003 (WSU will cooperate with the government on national security matters but will be vigilant in carrying out its function and responsibility as a free and just educational institution.)

<http://www.wsu.edu/president/update16.html>

¹²³ The university has many networks, usually not centralized. “Thomas Jefferson University faced the challenge of SEVIS compliance on many different levels. The university comprises an upper-division undergraduate health professions college, graduate school, medical college, and a teaching hospital. The information required for reporting to SEVIS was stored in different systems.” “SEVIS Implementation Challenges” BECAUSE Mid – Atlantic Conference, Poster sessions, Wednesday, January 14, 2004.

http://www.educause.edu/content.asp?page_id=1436&MODE=SESSIONS&Heading=Poster%20Sessions&Product_Code=marc04/PS%25&Meeting=marc04&bhcp=1

¹²⁴ Shirley Gregor, David Jones, Teresa Lynch, A. Alison Plummer, “Web Information Systems Development: Some neglected aspects,” Faculty of Informatics and Communication, Central Queensland University (28 Jan, 1999) (Abstract: “It is suggested that when developing WIS, particular attention should be paid to the social and political aspects of interorganizational systems, to human-computer- interaction issues and usability guidelines, and to issues associated with the development of hypermedia systems.”) http://cq-pan.cqu.edu.au/david-jones/Publications/Papers_and_Books/wis99/

¹²⁵ Shirley Gregor, David Jones, Teresa Lynch, A. Alison Plummer, Web Information Systems Development: Some neglected aspects, “Faculty of Informatics and Communication, Central Queensland University (28 Jan, 1999) http://cq-pan.cqu.edu.au/david-jones/Publications/Papers_and_Books/wis99/ Citing Vermeer, B. H. P. J., and Veth, T. F. L. (1998). “Interorganizational Data Integration: Theory and Practice.” Paper presented at the 11th International Bled Electronic Commerce Conference, Bled, Slovenia.

Theoretically speaking, SEVIS is an IOS (Inter Organization System), within and without the university. As such it raises traditional IOS problems, in the design and implementation phases. Developing and implementing IOS requires the cooperation and coordination of two or more information trading partners. This includes the adoption of standards for the external trading environment and educating trading partners about new technologies and procedures. The need to synchronize development effort among the trading partners, especially in shared standards and required updates, require lengthy negotiation and flexible compromise. The need to re-evaluate business practices to improve efficiency of operation among the organizations, for the betterment of collective while (here the US as a nation), is difficult, given vested interests, entrenched values and fortified connections. Most importantly, the discovering of relationship issues that are often more complex than technical issues that requires re-evaluation and readjustment of past practices by the trading partners.¹²⁶

Thus observed, any successful (organizational) change process must start with incorporating other university community members and integrating other academic/business units within the university. This requires educating the university community as to the needs for and benefits of having such a system on campus. Conversely, it entails pointing out the inadequacies and dysfunctional aspects – dated, inefficient, ineffective, costly – of the existing foreign student information system in addressing emerging security and administrative needs.

This can be achieved by keeping the university community members (executives, administrators, business managers, faculty) and other academic units (law school, business school, medical school) informed and abreast about latest SEVIS developments and requirements.¹²⁷

Having enlisted other university community units and members to the cause of change, the next step is to mobilize their resources and coordinate their efforts to achieve a common goal. This includes centralizing foreign student admission functions and process in one physical location to reduce redundancy, assure uniformity, and achieve efficiency;

¹²⁶ Sprague, R. H. and McNurlin, B. C. (1993). *Information Systems Management Practice* (3rd ed.). (Englewood Cliffs: New Jersey, 1993)

¹²⁷ One of the very few universities which had studied the implication of student electronic monitoring system was that of Georgetown University. In the summer of 1998, the English as a Foreign Language Program and the International Students and Scholars Services conducted a study to assess the implications of introduction of CIPRIS for Georgetown University. (As part of the study, the researcher interviewed Duke University, one of the first CIPRIS (21 university testers) pilot project group. Duke was picked because it was considered similar to GT in terms of mission, size, structure and international student environment. The report concluded by observing that it was too early to tell the net cost vs. benefits to the CIPRIS system, but certain observations could be safely made.) The report further observed that the successful implementation of electronic tracking entailed complicated tasking, complex coordination and delicate negotiation within (and without) the university. It required a committed reformer, dedicated administrator, seasoned manager and shrewd politician, willing to invest untold hours of efforts and tens of thousands of resources.)

purchasing hardware and software to produce I-20s from one central office; upgrading existing hardware to facilitate software program adaptation and reduce application errors; negotiating with the Registrar to include J visitors on Student Information System; appointing and training specialized and dedicated staff (DSO) to handle data input and forms production; building up organization expertise in SEVIS system maintenance and operations; standardizing the policies and process in foreign students between DSO from different schools, e.g. law vs. business vs. medicine; integrating and reconciling different foreign student data bases within the university IT systems, e.g. Registrar's office (enrollment, degree pursued, course taken, drop/add) with Housing Office (arrival date, on campus address); providing for real time interoperability between university student information systems and international student data base; and finally providing for interoperability between university student information system and DHS SEVIS without disrupting existing university information processing protocol and computer system design.¹²⁸

The business end of the technology conversion requires elaborate planning and precision execution. First, one must determine the institutional ownership of SEVIS, particularly its organizational structure and reporting line. Without ownership the change process would not materialized. Lacking reporting protocol, there would be no control. Second, decide upon whether to buy or upgrade computer and software and seek the necessary approval. Third, identify vendor, purchase, install, and test software and hardware. Fourth, implement interface with other related data base. Train university staff from other departments: admissions, international services, registrar, payroll, human services, IT etc on SEVIS functions and use. They must speak the same language, function at the same level and operation on the same page. Fifth, realign academic advising process: designing internal forms, train academic deans and staff on SEVIS requirements. Sixth, design SEVIS data collection forms. Finally, perform initial data conversion.¹²⁹

C. The SEVIS is costly to install

As SEVIS end users, international departments and exchange programs were responsible for the input, update and maintenance of *all* incoming students and scholars found in the U.S. by January 30, 2003. In 2003, the total number of J-1 students and J-1 scholars (excluding dependents) that needed to be tracked were 869,118, with 353,342 being new students and 515,776 continuing ones.¹³⁰ According to some schools, it

¹²⁸ See "Short term recommendations," p. 23, and "Long term recommendations," pp. 24-25. For an actual implementation plan, see "Planning and Implementation Design Student and Exchange Visitor Program (SEVP)" at Boston University, SEVIS Readiness Workshop, Feb. 22, 2002. <http://www.newfrontsoftware.com/sevis/docs/Planning%20and%20Implementation%20Design.pdf>

¹²⁹ Letter to INS –Director Regulations and Forms Services Divisions, June 17 2002. NACUBO http://www.nacubo.org/public_policy/comment_letters/2002/06172002.pdf

¹³⁰ See NGLU 2003-12-a Summary of NAFSA's December 10, 2003 conference calls with DHS and DOS regarding SEVIS, "17. Update on SEVIS statistics"; <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200312a.pdf>

usually takes 30 to 60 minutes to input one student record.¹³¹ At that rate it would require 434, 559 man hour or 54,319 man day (8 hour shift), excluding computer down time and staff human error, to input all the student records into the SEVIS system. Take the example of USC in the year 2003. In that year USC has 6,270 international students and 1,214 visiting scholars. This made for 7,484 international students/scholars to be processed and monitored. In order for USC to be in compliance with the USA PATRIOT ACT, it has to spend 3,717 DOS hours (assuming 30 minutes per record) to input 7,487 student/scholar records into SEVIS by August 2003. This amounted to 92.9 students per five DOS working days (assuming an 8 hrs. day). This assumed that the DOS has no other assignment to do for the international office he/she attached, e.g. processing application and counseling students, a most unrealistic scenario, especially during enrollment seasons, e.g. August of 2003 when all foreign students and visitors were required to be entered. The estimate also does not take into SEVIS shut off or computer down time.

The estimated extra workload for the nations' university to come into compliance with the SEVIS program can be summarized in the following two tables (Table 3 & 4).

Table 3: Estimated SEVIS Data Input Time for International Students: TOP 40 RESEARCH INSTITUTIONS, 2002/03

Rank	Institution	City	State	Total Int'l Students*	Total SEVIS DSO Hours (Days)**
1	University of Southern California	Los Angeles	CA	6,270	3,135 (78.4)
2	New York University	New York	NY	5,454	2,727 (68.2)
3	Columbia University	New York	NY	5,148	2,574 (64.3)
4	Purdue University Main Campus	West Lafayette	IN	5,105	2,554 (63.8)
5	University of Texas at Austin	Austin	TX	4,926	2,464 (61.6)
6	University of Michigan – Ann Arbor	Ann Arbor	MI	4,601	2,300 (57.5)
7	University of Illinois at Urbana-Champaign	Champaign	IL	4,555	2,277 (56.9)
8	Boston University	Boston	MA	4,518	2,258 (56.4)
9	University of Wisconsin – Madison	Madison	WI	4,396	2,198 (54.95)
10	The Ohio State University Main Campus	Columbus	OH	4,334	2,167 (54.2)

¹³¹ The time it took to process SEVIS record and papers differed from institution to institution. The different depended as much on sophistication and maturity of technology, as it was on the experience and competence of the input staff. The INS cost estimate was based on 31 minutes (or 0.52 hours) for each student record. The University of Georgia reported 30 minutes in processing one document. Kate Carter, "Implementing tracking system frustrating: UGA's foreign exchange students," Online Athens April 8, 2003. (Published in the Athens Banner-Herald on Wednesday, April 9, 2003)

http://www.onlineathens.com/stories/040903/uga_20030409041.shtml

11	University of California – Los Angeles	Los Angeles	CA	3,927	1,963 (79.1)
12	University of Pennsylvania	Philadelphia	PA	3,856	2,928 (73.2)
13	University of Maryland College Park	College Park	MD	3,734	1,867 (46.7)
14	Texas A&M University	College Station	TX	3,702	1,851 (46.27)
15	Penn State University Park	University Park	PA	3,681	1,840 (46.0)
16	SUNY at Buffalo	Buffalo	NY	3,628	1,814 (43.3)
17	University of Florida	Gainesville	FL	3,547	1,773 (44.3)
18	Indiana University at Bloomington	Bloomington	IN	3,495	1,747 (43.7)
19	Harvard University	Cambridge	MA	3,459	1,729 (43.2)
20	University of Houston	Houston	TX	3,358	1,679 (42.0)
21	University of Minnesota – Twin Cities	Minneapolis	MN	3,351	1,675 (41.9)
22	Arizona State University Main	Tempe	AZ	3,268	1,634 (40.8)
23	Wayne State University	Detroit	MI	3,224	1,612 (40.3)
24	Michigan State University	East Lansing	MI	3,202	1,601 (40.0)
25	Cornell University	Ithaca	NY	3,096	1,548 (38.7)
26	University of Arizona	Tucson	AZ	3,011	1,505 (37.6)
27	Stanford University	Stanford	CA	2,991	1,495 (37.4)
28	University of Illinois at Chicago	Chicago	IL	2,950	1,475 (36.9)
29	University of Washington	Seattle	WA	2,908	1,454 (36.3)
30	Rutgers University - New Brunswick Campus	New Brunswick	NJ	2,906	1,453 (36.3)
31	Massachusetts Institute of Technology	Cambridge	MA	2,819	1,409 (35.2)
32	Georgia Institute of Technology	Atlanta	GA	2,798	1,354 (33.9)
33	University of California – Berkeley	Berkeley	CA	2,739	1,369 (34.2)
34	University of Chicago	Chicago	IL	2,554	1,277 (31.9)
35	Carnegie Mellon University	Pittsburgh	PA	2,534	1,267 (31.7)
36	Iowa State University	Ames	IA	2,387	1,193 (29.8)
37	Oklahoma State University Main Campus	Stillwater	OK	2,321	1,160 (29.0)
38	Northeastern University	Boston	MA	2,282	1,141 (28.5)
39	SUNY at Stony Brook	Stony Brook	NY	2,233	1,116 (27.9)
40	University of South Florida	Tampa	FL	2,197	1,098 (27.4)

Source: Foreign student enrollment data extracted from IIE Open Doors – “Table 40: FOREIGN STUDENT AND TOTAL U.S. ENROLLMENT 2002/2003”¹³²

* Does not include exchange visitors/scholars

** DOS Day = 8 hrs. x 5 DSO = 40 DSO day

Table 4: Estimated SEVIS Data Input Time for International Scholars: INSTITUTIONS HOSTING THE MOST INTERNATIONAL SCHOLARS,* 2002/03

Rank	Institution	City	State	2002/03	DSO Hours	DOS Days **
1	Harvard University	Cambridge	MA	2,403	1,201	30.0
2	University of California – Berkeley	Berkeley	CA	2,365	1,182	29.6
3	University of California – Los Angeles	Los Angeles	CA	2,098	1,049	16.22
4	University of Pennsylvania	Philadelphia	PA	2,082	1,041	26.0
5	Columbia University	New York	NY	1,890	945	23.6
6	University of California - San Diego	La Jolla	CA	1,817	908	22.7
7	University of Illinois at Urbana-Champaign	Champaign	IL	1,694	847	21.2

¹³² <http://opendoors.iienetwork.org/?p=35931>

8	Yale University	New Haven	CT	1,637	818	20.5
9	University of California - San Francisco	San Francisco	CA	1,600	800	20
10	Massachusetts Institute of Technology	Cambridge	MA	1,573	786	19.7
11	University of Washington	Seattle	WA	1,556	778	19.4
12	The Ohio State University Main Campus	Columbus	OH	1,423	711	17.8
13	University of Michigan - Ann Arbor	Ann Arbor	MI	1,342	671	16.77
14	University of Florida	Gainesville	FL	1,335	667	16.7
15	University of Minnesota - Twin Cities	Minneapolis	MN	1,252	626	15.6
16	Washington University	St. Louis	MO	1,246	623	15.6
17	Cornell University	Ithaca	NY	1,236	618	15.4
18	University of Southern California	Los Angeles	CA	1,214	607	15.2
19	University of Wisconsin – Madison	Madison	WI	1,131	565	14.1
20	Duke U., Medical Center, & Health System	Durham	NC	1,117	558	14.0
21	University of California – Davis	Davis	CA	1,109	554	13.9
22	Penn State University Park	University Park	PA	1,080	540	13.5
23	University of North Carolina at Chapel Hill	Chapel Hill	NC	1,024	512	12.8
24	University of Texas at Austin	Austin	TX	1,013	506	12.6
25	Boston University	Boston	MA	975	487	12.2
26	Michigan State University	East Lansing	MI	910	455	11.4
27	University of Illinois at Chicago	Chicago	IL	900	450	11.2
28	Emory University	Atlanta	GA	868	434	10.8
29	University of Iowa	Iowa City	IA	865	432	10.8
30	University of Maryland College Park	College Park	MD	861	430	10.7

Source: Foreign student enrollment data extracted from IIE Open Doors – “Table 40: INSTITUTIONS HOSTING THE MOST INTERNATIONAL SCHOLARS, 2001/02 & 2002/03”

* Does not include international students.

** DOS Day = 8 hrs. x 5 DSO = 40 DSO day

The INS does not challenge the above work load calculation. After public consultation, it has estimated that the one time SEVIS compliance cost to be \$4,680,000 computed as followed

Table 4.1: Continuing student reporting burden

Activities	Cost calculation
Number of Continuing Students	625,000
Number of Responses per Respondent	1
Number of Continuing Exchange Visitors	275,000
Hours per Response	0.52*
Total Public Cost	\$4,680,000**

Source: Adapted from Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS); Final Rule

* Time for processing one SEVIS record

** Staff cost at \$10.00/hour

* Time for processing SEVIS records:

Activities	Time (Minutes)
Learning about the Law and the Program	1
Data Collection and Input	30
Total Hours per Response	.52

As it turned out the INS on paper estimations did not come close to the actual time spent by universities in setting up the SEVIS system. The estimations failed for a number of reasons. First and foremost the estimation was based on “time and motion” kind of analytical exercise. It failed to take into account real life conditions in field. Universities are not all alike in experiences, resources and capacities in dealing with SEVIS. Each student recording process is different. .

Universities are more or less endowed in capacity, i.e. experience, resource and capacity in dealing with SEVIS tasking. The INS estimates did not made explicit the kinds of schools for which the estimation was meant to apply. As an aggregate and average, the estimation “appears” to have some face validity. The validity and usefulness of the estimates, i.e. 30 minutes per record and \$4.68 millions for all schools, depended on variations amongst schools, e.g. big vs. small schools, differences between records, e.g. old vs. recent records, and disparity in all sort of situations, e.g. summer vs. fall terms. The estimation has few predictive values and was not useful for the schools in planning their activities.

First of all as a methodological proposition, the INS failed to specific the range and differences between each student entry. If the range is great, for example from 5 minutes to 60 minutes, again contingent on specific school or particular student, or even unique situation and circumstances, the average is of very little use, except perhaps for aggregate level policy analysis, i.e. how much it costs to move from a paper based system to an electronic one.

Second, the INS has failed to articulate its underlying assumptions in estimating the time and cost for per student record processed. Specifically, it failed to make clear what the average school or average record looked like. Without this key information, the estimation was of little use for planning purpose, individually or collectively. For example, if the average time of 30 minutes is for record entry in a major university with 3000 foreign students/visitors, the smaller schools with few foreign students have little reason to use the estimate as their own. The 30 minutes research I school estimate also should not be used as a base to calculate the total time for all school involved.

The time it takes to process a student record hinges on a number of factors: (1) existence of paper records; (2) completeness of paper records; (3) accessibility of paper records; (4) familiarity with university data bases; (5) familiarity with university IT technology; (6) familiarity with INS – SEVIS technology; (7) familiarity with INS laws and regulations; (8) stability university SEVIS technology; (9) reliable of SEVIS technology at INS; (10) availability of SEVIS work station; (11) competency of SEVIS staff. If one or more of these conditions are not being met, substantial delay might occur, and did!

D. SEVIS is costly to operate

The SEVIS system was not only burdensome to set up. It is also costly to operate and maintain. The Congress allotted a one time funding of \$36.8 millions for setting up the SEVIS system. The seed funding however does not include support for ongoing maintenance and routine operations costs at the universities. The USA APTRIT Act

called for the students and visitors to pay a SEVIS fees before they were ever granted a visa. The SEVIS community users are responsible for its upkeep and administration. In order to be certified SEVIS schools have to pay \$580, i.e. \$230 for the review of the I-17 application and the \$350 for on-site review before a school can accept F-1 students.¹³³ In order to set up SEVIS each school is required to paid out \$30, 000 to \$50,000 to buy software and hardware to hook up to the system.¹³⁴

The cost of implementing and operating SEVIS differed in terms of kinds of schools and programs: universities vs. vocational colleges, EMBA vs. distance learning, and the size of student bodies. The basic implementation cost items included software, hardware, dedicated SEVIS IT staff and DSOs. As Table 5 below shows, the costs of implementing SEVIS differed from institutions to institutions and is dependent on the size of foreign students population. With campuses of 100 students or less, the estimated cost of implementing SEVIS is between \$5000 and \$100,000 for 73% of the participating schools.. However, when there are more than 2,500 foreign students, the majority (56.2%) estimated that they will have to spend between \$100,000 to \$249,999 in make SEVIS operational on campus. Only 6% reported that they will spend less than \$5000 in meeting implementation needs.

Ultimately both the campus with little foreign students (e.g. small research universities, large teaching colleges, ELS and vocational programs) and those with many research students and exchange scholars (research I universities), have a critical decision to make: Could they still afford to accept foreign students or sponsor exchange scholars anymore, given the SEVIS “surcharge”? The SEVIS costs hit profit driven vocational schools particularly hard. It is more difficult to justify the initial capital outlay and continue maintenance cost when your foreign student enrollment is less than 10. Since foreign students are not a major income stream for these schools, they might choose to opt out of international education altogether. This is particularly so when the price of non-compliance is potential criminal liabilities.

Table 5: Estimated cost of SEVIS implementation as a function of seize of campus foreign students population

Estimated cost of SEVIS implementation	Campus foreign students population				
	Less than 100	100 – 499	500 – 999	1,000 – 2,499	More than 2,500
Less than \$5000	73%	30%	8.7%	3.8%	6.0%
\$5000 - \$24,000	23.4%	50%	17.3%	19.2%	
\$24,000 -	3.1%	16.6%	56.5%	57.7%	18.7%

¹³³ Federal guidelines require that the full cost of providing immigration and naturalization services must be recovered through fees and cannot be supported by tax dollars. “Adjustment of Certain Fees of the Immigration Examinations Fee Account” Immigration and Naturalization Service, 8 CFR Part 103, INS No. 2072-00; AG Order No. 2540-2001.

¹³⁴ Comments on SEVIS Compliance Dates and Costs,” MSU 2002
<http://ias.berkeley.edu/siss/hurricane/sissworkingpapers/workingpapersixbycroom5-23-02.pdf>

\$99,999						
\$100,000	-	NA	3.3%	17.4%	15.4%	56.2%
\$249,999						
\$250,000	-	NA	NA	NA	3.8%	6.0%
\$499,999						
More than \$499,999		NA	NA	NA	NA	12.5%

Source: National Association of College and University Business Officers (NACUBO)¹³⁵

Different universities dealt with the funding of SEVIS differently. University of Chicago proposed to charge all foreign students \$25 to enroll.¹³⁶ University of Georgia charged \$50 to offset \$150,000 SEVIS costs as of April 2002.¹³⁷ Iowa State decided to absorb the SEVIS costs. UW-Madison first imposed a SEVIS fees on foreign student only to back down when confronted with student protests and City Council objection.

More specifically, at Iowa State University, according to Dennis Peterson, director of International Education Services, the cost of implementing the SEVIS system was \$24,000, i.e. \$10,800 for the software and \$7,000 for the computer server that holds the information. Iowa has a good system to track foreign students before 9/11. This saved the need for a brand new tracking software, which cost \$40,000. There was a \$5,000 fee for the use of a commercial software database. Administrative Technology Services also hired four SEVIS technicians. The University decided to absorb the costs.¹³⁸

The charging of students was often met with protests, resistance, and legal actions nation wide. Take the example of University of Wisconsin – Madison campus. On April 1, 2003 the university proposed to charge international students a \$100 to 125 SEVIS fees.¹³⁹ The students protested.¹⁴⁰ Teaching Assistants' Association at the University of

¹³⁵ Letter to INS –Director Regulations and Forms Services Divisions, June 17 2002. NACUBO http://www.nacubo.org/public_policy/comment_letters/2002/06172002.pdf

¹³⁶ “A letter to the administration of the University of Chicago regarding the \$25 foreign student fee,” (A blanket fee is against University ideal of equality; the fee is a violation of University’s non-discrimination policy; the fee is not a special service fee but a surveillance fee.) <http://studentwww.uchicago.edu/~esjewett/atp/Letter%20on%20Foreign%20Student%20Fee%20%28one%20page%29.doc>

¹³⁷ Kimberly Bowers, “New SEVIS fees anger intl. students,” *redandblack.com* November 26, 2002.

¹³⁸ Eric Rowley, “ISU ahead of game -- no SEVIS fees for international students Looming budget cuts could prompt tracking fee,” *Iowa State Daily* October 28, 2003. <http://www.iowastatedaily.com/vnews/display.v/ART/2003/10/28/3f9de4a277a23>

¹³⁹ “Chancellor's statement regarding SEVIS funding,” University of Wisconsin Chancellor’s Page. (In April UW-Madison announced a plan to charge foreign students \$50 a semester (\$25 summer) to support the SEVIS operational cost, projected to be \$330,000 per year. The decision was based on the fact the university could not fund the \$330,000 and that considered best for end-users of SEVIS to pay.) <http://www.chancellor.wisc.edu/sevis.html>

¹⁴⁰ Rachek Alkon, “Students Oppose SEVIS Cost,” *Bader Herald*, April 30, 2003. (Teaching Assistants Associations organized a protest against UW charging \$100 to \$125 SEVIS fees. The fees were considered to be discriminatory.) http://www.badgerherald.com/vnews/display.v/ART/2003/04/30/3eaf2f4076ad1?in_archive=1

Wisconsin-Madison worked with the students, faculty, administrative staff, and departments to challenge the appropriateness of the fees on equity ground, i.e. foreign students should not be singled out.¹⁴¹ On May 7, 2003 the administration decided to temporarily suspend the SEVIS fees of \$125 to further study the issue. On May 16, 2003 The Madison (WI) City Council passed a resolution objecting to charging a SEVIS fees on international students.¹⁴² The chancellor's SEVIS Fee Advisory Committee recommended against charging the foreign students:

"The committee therefore respectfully recommends to the chancellor that the administrative costs of SEVIS be absorbed as part of the necessary institutional costs of fulfilling our academic mission, and as such, should therefore ideally be covered by the usual sources of funding for administrative costs, namely [general public revenue] and tuition."¹⁴³

On September 9, 2003, UW-M chancellor Wiley decided to adopt the recommendation of the Advisory Committee and absorbed the SEVIS costs as a general administration charge.¹⁴⁴

At University of Binghamton, GSO decided to file suit against the university for charging the SEVIS fees on foreign students as discriminatory.¹⁴⁵ The Graduate Student Organization has filed a lawsuit against Binghamton University because they believe a fee imposed on only international students is discriminatory.

The INS has estimated the annual operational costs to be:

Table 6: INS estimated SEVIS reporting cost burden

Activities	Time (Minutes)
Learning about the Law and the Program	10
Data collection and Updates	5
Adjudication, notification, reports	5
Total Hours per Response	20
Total Public Cost.	\$14,985,000

Source: Adapted from Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS); Final Rule

¹⁴¹ "TAA Persuades UW-Madison To Withdraw SEVIS Fee," May 27, 2003. AFT Higher Education. http://www.aft.org/higher_ed/TAA_Withdraw.html

¹⁴² "Madison City Council denounces SEVIS fee," *The Daily Cardinal* (University of Wisconsin) May 7, 2003. (The Madison City Council voted on May 16, 2003 to "defend the equal protection of international students" and denounced the proposed imposition of SEVIS fees on international students.) <http://www.dailycardinal.com/news/2003/05/07/News/Madison.City.Council.Denounces.Sevis.Fee-433374.shtml>

¹⁴³ Matthew Dolbey, "Chancellor rules on SEVIS fee," *Badger Herald Online*, August 29, 2003.

¹⁴⁴ "University to cover future SEVIS costs," News@UW-Madison. <http://www.news.wisc.edu/8886.html>

¹⁴⁵ Liza Schwartz, "Administration is sued for foreign-student fee," *Pipe Dream*, October 17, 2003. <http://www.bupipedream.com/101703/news/n2.htm>

E. SEVIS fees disputes

The IIRIRA of 1996 authorized the schools to collect fees, as determined by the Attorney General, of not more than \$100 to implement IIRIRA mandate.¹⁴⁶ In February 2000, the INS has proposed to set the fees at \$95, but experienced strong oppositions from universities¹⁴⁷ and lawmakers alike.¹⁴⁸ On October 31, 2000, the President signed H.R. 3767, the Visa Waiver Permanent Program Act. Section 404 of this law amended § 641(d)-(h) of IIRIRA, by requiring the Attorney General (rather than the colleges and universities) to collect a CIPRIS fee from students in the F, J, or M visa categories. The Attorney General has since set the fees at \$100.¹⁴⁹ This proposed fee was earmarked to be for CIPRIS related personnel, operations, maintenance, training, and other program costs. It would also support 61 SEVIS liaison officers and 182 other ICE officers in the field.¹⁵⁰

The collection of SEVIS student fees raised two concerns with higher education administrators and educators:¹⁵¹ the reasonableness of the fees amount collected¹⁵² and appropriateness of the fee collection process.¹⁵³

¹⁴⁶ Section 641 (e) (4) (A). On December 21, 1999, a fee of \$95 was proposed in the Federal Register to support SEVIS implementation, maintenance and operations.(64 FR 71323). See Draft Regulation, Immigration and Naturalization Service (INS. "Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104-208." (21 December 1999).

¹⁴⁷ "Letter to INS Expressing Opposition to CIPRIS Draft Regulations," dated February 22, 2000, to Mr. Richard Sloan, Director Policy Directives and Instructions Branch Immigration and Naturalization Service from Stanley O. Ikenberry, President, American Council on Education, on behalf of 21 associations of higher learning. (opposing fees collection procedure under then under the Coordinated Interagency Partnership Regulating International Students (CIPRIS) program as being "substantial and costly workload burden on all colleges and universities and exchange visitor programs." http://www.acenet.edu/washington/letters/2000/02february/cipris_ins_ltr.cfm

¹⁴⁸ In a letter from Ashcroft, then a senator, and 20 other senators, including Edward M. Kennedy (D-Mass.), Trent Lott (R-Miss.) and Patrick J. Leahy (D-Vt.), among others, objected to "requiring U.S. institutions to collect fees to fund a federal program is an inappropriate role for higher education institutions." Dan Eggen and Cheryl W. Thompson, "INS to Monitor Foreign Students Ashcroft Reverses Stance on System," *Washington Post*, Saturday, May 11, 2002; Page A10

¹⁴⁹ DHS, Proposed rule, "Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104-208, Federal Register, October 27, 2003, Page 61148. http://www.nacubo.org/public_policy/federal_register_update/2003/10272003.asp

¹⁵⁰ See "Was a Previous Proposed Rule Published Prior to the Issuance of This Proposed Rule?" In Proposed rule, DEPARTMENT OF HOMELAND SECURITY, "Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104-208," 8 CFR Parts 103, 214, and 299 [ICE No. 2297-03], RIN 1653-AA23; Page 61151 http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2003_register&docid=03-26970-filed

¹⁵¹ See Letter to Secretaries Ridge and Powell: Re: SEVIS Fee from Rep. Betty McCollum (D - Minn.) and 27 members of the House of Representatives, dated December 19, 2003 (expressing concerns with the SEVIS fee amount and process. The \$100 fees and collection process would

a. Legislative mandate

On December 21, 1999, INS published proposed rule “Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104-208” seeking public consultation.¹⁵⁴ The rule called for the collection and remission of \$95 visa applications fees for F-1,¹⁵⁵ J-1,¹⁵⁶ or M-1¹⁵⁷ non-immigrants who first register or enroll in school or first commence exchange program in the United States. The proposed rule implemented the mandate set forth in Section 641 of IIRIRA of 1996.¹⁵⁸ Section 641(a)(1) of the IIRIRA directed the Attorney General, in consultation with the Secretaries of State and Education, to develop and conduct a program to collect information on nonimmigrant foreign students and exchange visitors. Section 641(e) of the IIRIRA authorized the INS to collect a fee of no more than \$100 from each F-1, M-1 and J-1 visa applicant to fund the information collection process. The proposed rule was

have an adverse impact on student enrollment.)

<http://www.nafsa.org/content/publicpolicy/NAFSAontheIssues/McCollumltr121903lowres.pdf>

¹⁵² 4,617 comments were received regarding the 1999 proposed Section 641 SEVIS fees collection rule. Many suggested that the fee of \$95 was excessive, especially for short term visitors and third world students. Discussion of “Comments Received Regarding the 1999 Proposed Rule,” DEPARTMENT OF HOMELAND SECURITY, “Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104-208,” 8 CFR Parts 103, 214, and 299 [ICE No. 2297-03], RIN 1653-AA23; Page 61151

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2003_register&docid=03-26970-filed

¹⁵³ See the “Letter to the Department of Homeland Security Regarding SEVIS Fees” dated September 2, 2003 by President of American Council on Education David Ward, and on behalf of 7 other higher education associations to Under Secretary of Homeland Security Hutchinson, (SEVIS fees should be collected just like any other visa fees, i.e. with the Department of State. This makes the SEVIS a truly paperless “integrated, all-electronic system”).

¹⁵⁴ DEPARTMENT OF JUSTICE, Immigration and Naturalization Service, 8 CFR Parts 103, 214, and 299, [INS No. 1991-99]RIN 1115-AF56, “Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104-208 - Proposed rule,” Federal Register: December 21, 1999 (Volume 64, Number 244, Page 71323-71331).

¹⁵⁵ The F-1 nonimmigrants are foreign nationals enrolled as students in Service-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, and in language training programs in the United States. An F-2 nonimmigrant is a foreign national who is the spouse or qualifying child of an F-1 student.

¹⁵⁶ The J-1 nonimmigrants are foreign nationals who have been selected by a United States Information Agency (USIA) designated sponsor to participate in an exchange visitor program in the United States. A J-2 nonimmigrant is a foreign national who is the spouse or qualifying child of a J-1 exchange visitor.

¹⁵⁷ The M-1 nonimmigrants are foreign nationals enrolled as students in Service-approved vocational or other recognized nonacademic institutions, other than in language training programs in the United States. An M-2 nonimmigrant is a foreign national who is the spouse

¹⁵⁸ On September 30, 1996 IIRIRA, Pub. L. 104-208 was signed into law. Section 641(a)(1) of the IIRIRA, in particular, directed the Attorney General, in consultation with the Secretary of State and the Secretary of Education, to develop and conduct a program to collect information on nonimmigrant foreign students and exchange visitors from approved institutions of higher education and designated exchange visitor programs.

also authorized by 31 U.S.C. 9701, which required all federal agencies to recover costs and benefits conferred by federal actions, here the execution of Sections 103 and 214 of the Immigration and Naturalization Act.¹⁵⁹ Under Section Sec. 9701, the fees and charges were to be calculated based on “the costs to the Government” or “the value of the service or thing to the recipient” or “public policy or interest served.” As applied:

“The proposed fee was calculated based on the program and system costs and the estimated population base of covered fee payers. The calculated costs include those expenses incurred by the Government to develop, produce, deploy, operate, and maintain the program and system. In addition, the proposed fee will cover the costs associated with the creation and population of new positions required to support this program. The revenue from the proposed fee will also cover the costs of technical and program support that the Government needs to administer benefits and to monitor schools, program sponsors, students, and exchange visitors solely for the purpose of this reporting program. In addition, a portion of the revenue from the proposed fee will be used for the direct support of Service operations relating to student and exchange visitor-related activities.”

b. SEVIS fees and charges

The fees and charges under the proposed rule include two kinds of costs, i.e. “Nonrecurring Costs” and “Recurring Costs.”

“Nonrecurring Costs” were assessed at \$12.3 million. This covered development and deployment costs. Development costs included those associated with the design and development of an Internet-based, electronic information data collection system, including system design, development, integration, testing, verification and validation. Deployment costs included installation of the new electronic system in INS and DOS HQ and field offices.

“Recurring Costs” were estimated to be \$31 million from October 1, 1999 through September 30, 2001. They were to pay for personnel costs of supportive staff at INS, DOS, such as Service field offices, and Help Desk staff. It also paid for system operations and maintenance (O&M) costs, such as server maintenance and Beta testing. Finally, it paid for management and administrative (M&A) costs, e.g. planning and administration support. The user base for cost and fees calculation was estimated at 251,000 in both FY 2000 and FY 2001. The total projected population for these 2-year period was estimated at 501,000 paying students and exchange visitors.

c. Universities and schools’ objections

¹⁵⁹ Sec. 9701 (b): “Fees and charges for Government services and things of value” provides in pertinent part: “The head of each agency ... may prescribe regulations establishing the charge for a service or thing of value provided by the agency.” The fees and charges are to be calculated based on “the costs to the Government”; “the value of the service or thing to the recipient”; or public policy or interest served”.

The proposal was strongly objected to by university administrators. The comments received were universally negative ones. There were a total of 4,617 comments received. Three types of comments were most prominent, i.e. the fee should not be charged at all; the fee was too excessive; the fee should not be collected by the schools. For example:

Association of State Universities and Land-Grant Colleges (NASULGC) strongly opposed the fee collection process as proposed by the INS on the following grounds. The fee collection system imposed extra legal responsibilities on the schools. It made school administrators de facto designated federal regulators, enforcers and collection agents. Such a fee collection system was inefficient and at odd with the origin letters and spirit of Paperwork Reduction Act. The electronic information collection system was also an unfunded mandate contrary to Unfunded Mandates Reform Act of 1995 and an illegal infringement of state laws and regulations.¹⁶⁰

AACRAO while supporting of the goals of the CIPRIS project, was nevertheless objecting to the proposed federal regulation on substantive and technical grounds.

Substantively, first, the proposed rule set a bad precedent in allowing federal agencies to shift regulatory duties and responsibilities onto universities and colleges, e.g. making them in effect collection agent for the federal government. Second, it compromised the role of international educational advisors by making them a hated federal law enforcer, instead of a trusted educational counselor. Third, a decentralized college based fee collection system was not the most efficient way to collect fees. Fourth, the operational costs and compliance burden associated with fee collections on behalf of the INS was an unfunded federal mandate prohibited by law. It also compromised university's major mission and function, i.e. from being educator to being a collector. Finally, the proposed fee collection process would create significant financial and legal liabilities for institutions, e.g. mistakes in the handling of student fees might attract law suits.

Technically, INS violated the SEVIS enabling legislation, Section 641 IIRIRA in a number of ways: First, Sec. 641(e)(1)(A) of IIRIRA clearly requires F-1 and M-1 students to pay a fee "when the alien first registers with the institution or program after entering the United States." Proposed Regulatory Amendments to 8 CFR 214.2 (f)(17)(iv) and (m)(18)(iv) however imposes a fee on F-1 and M-1 nonimmigrants who begins a new programs at the same institution. This is illegal and was not intended by the law and within the contemplation of the legislators.

¹⁶⁰ Letter on behalf of NASULGC to Director, Policy Directives and Instructions Branch Immigration and Naturalization Service, Re: Proposed Rule (INS No. 1991-99), Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104-208" dated January 24, 2000.
http://www.nasulgc.org/Washington_Watch/Letters2000/FR_Coord._Interagency_Partnership_regulat._Int'l.Stud..htm

Second, 641(e)(4)(A) of IIRIRA requires the Attorney General to set the fee on the basis of estimated cost for collecting information. In as much as the INS has proposed the fee amount of \$95 based on erroneous computation which included foreign students transfer within the same institution, the fee estimating was erroneous.

Third, Section 641(e)(4)(B) of IIRIRA limits the use of the fees for international student and exchange visitor tracking system activities, only. It does not allow INS to charge fees for "operations relating to student and exchange visitor-related activities" in general.

Fourth, proposed regulation requires F-1, J-1 and M-1 nonimmigrants to pay a fee for entering a program of study "on or after August 1, 1999." This retroactive collection of fees is not allowed by Section 641 of IIRIRA.

Fifth, the proposed regulatory provided that "Failure by the school to impose, collect and remit the fee is conduct that does not comply with Service regulations" Sec. 641 of IIRIRA required the school to impose and collect a fees. It did not require the schools to remit the fees when international students failed to do so. The university administrators and educators associations should not be made responsible for the students/visitors mistakes.

The public comments and political pressure resulted in substantial modification to the original proposal particularly with respect the fee collection and remittance process. American Council on Education (ACE) was also supportive of the SEVIS but objected to its implementations.¹⁶¹ Particularly

On October 27, 2003, the DHS published a new proposed rule: "Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104-208" for public comment.

The new proposed rule was required as a result of the establishment of the DHS and merging of INS functions into BCI and ICE. The new regulations proposed addressed many of the concerns raised by the comments to the original INS regulations. There were significant differences between the INS Proposed Rule (1999) and the DHS Proposed Rule (2003):

(1) DHS proposed to charge \$100,¹⁶² instead of \$95 for operating and maintaining SEVIS, except for au pairs, camp counselors, or participants in a summer work/travel program when the fee would be \$35.

¹⁶¹ SEVIS F

¹⁶² DHS undertook to retain KPMG to conduct a new fee review for full compliance with federal law and fee guideline. The fee review was based on the recovery of costs over the FY 2003/2004 time period, having regard to the USA PATRIOT Act SEVIS appropriation of \$38.6 million. It include costs incurred for increase DHS staffing and training dedicated to SEVIS related functions in DHS HQ, field offices and Help Desks.

(2) DHS would be charging the fees directly, instead of being handed by the schools.

(3) DHS exempted from fee payment those aliens who initially paid a SEVIS fee and applied for an F-1, F-3, J-1, M-1, or M-3 visa, but was denied by DOS overseas. These applicants could apply within nine months without paying a new SEVIS fee.

The new DHS was not without controversies.

The American Immigration Lawyers Association objected to the new fees regulations on a number of grounds.¹⁶³

First, the fee was set higher than permitted by enabling statutes. Section 641 of IIRIRA of 1996 (Public Law 104-208), Visa Waiver Permanent Program Act of 2000 (Public Law 106-396), or USA PATRIOT Act (Public Law 107-56) only provided authority for charging fees for the collection of student/visitor information. DHS was charging the visa applications 60% for cost of enforcement and monitoring of foreign students and visiting scholars.

Second, the fee was set higher than necessary. The initial 1999 CIPRIS (predecessor of SEVIS) fee study set the fee at \$95. This included all direct and indirect program costs. This fee level of \$95 was considered too high. In 2002, an INS sponsored KPMG fee study recommended a \$54 SEVIS fee. One year later, the DHS proposed a fee of \$100 and the hiring of 240 staff.

Third, secondary (high school) students should not have to be charged a SEVIS fee. Neither IIRIRA or USA PATRIOT Act authorized such a fee.

Fourth, short term students, e.g. English language students, should not be charged \$100 SEVIS fees. They would not come to the U.S. for a short course if the fees are high.

Fifth, the SEVIS fee should be paid together with the visa application fees, both at the US Embassy, not separately.

Sixth, the fees should only be paid once per alien student per program, not when the students transferred to another program.

Seventh, CDHS should clarify when duplicate fee is required, e.g. "when an individual begins a new course of study or new program." Does this include a change in major at the same sponsoring institution? change in degree level at the same sponsoring institution? or change in category at the same sponsoring institution?

Eight, SEVIS fee collection should be as simple as possible to promote and facilitate international educational exchange.

¹⁶³ "AILA's Comments on DHS Proposed Regulation on SEVIS Fees - Posted on AILA InfoNet at Doc. No. 03122915 (Dec. 29, 2003)"

<http://www.aila.org/contentViewer.aspx?bc=9,3232,3133,4358>

V

External implementation difficulties with SEVIS

A. Introduction

In this section, we will look at the varieties of external implementation difficulties, problems, and issues confronted by the schools in working with SEVIS and DHS. For purposes of organization and analysis, implementation problems and operational difficulties with SEVIS can be classified into those before the legal deadlines of January 31, 2003 (including the extensions of February 15 and August of 2003) and those coming after. Each deadlines raised a new set of problems and concerns, e.g. with January 30, 2003 the concern was whether SEVIS would be make operational by August 2003, e.g. how to handle thousands of records and millions of transactions at the same time? After February 15, 2003 the concern was with getting SEVIS to work properly, e.g. how to make POEs notify the schools of I-20 landings? After August 2003 the concern was in fine tuning the SEVIS process in the most effective and efficient manner, e.g. how to interpret and apply ambiguous SEVIS regulations in a timely and sensible manner.

The implementation of SEVIS posed challenging and complicated process, technology, relationship, management and political issues:

Process issues included: how to deal with shifting SEVIS legislative and regulatory requirements? how to keep track of key foreign student events? how to adjust to new reporting regiment?

Technology issues included: how to interface with the electronic tracking system? how to coordinate data feeds from multiple sources? how to make batch technology work with limited pilot testing? how to develop and deploy new SEVIS IT under cost and time constrains?

Relationship issues included: how to re-orient relationship with other university communal members, e.g. Registrar, HR, Graduate School? how to adjust the relationship between university and INS? how to build relationship between international office and university IT community?

Management issues included: how to shift priority at international education officers from advocacy to regulation? how to accommodate continuity and change in foreign students/visitors management process?

Political issues included: how to re-establish university's traditional authority and control over the direction and process of international education? how to delineate the relative

role, functions, rights and responsibilities of university vs. federal government vs. administrative agencies in the implementation of SEVIS.¹⁶⁴

Alternatively and for analytical purpose, SEVIS implementation problems can be classified as technical, managerial and legal ones. Technical problems were those that relate to SEVIS software and hardware malfunctioning, commonly reported as “glitches”, such as bleeding or lock out. Managerial problems were those that related to organizing, coordinating, accounting, monitoring of the system, e.g. funding and technical support. Lastly, legal problems dealt with interpretative and application of SEVIS laws, rules and regulations issues. How law and regulations should be interpreted and applied in a given case or context? It should be remembered that most of the legal or technical problems have associated management dimensions, e.g. both delay in fixing of a computer bug or lack of legal training for Help Desk staff suggested management lapse.

B. Data set

The data set for analysis come from “NAFSA – SEVIS - Government Communication and Liaison Archive”¹⁶⁵ NAFSA consulted DHS weekly to resolve SEVIS implementations difficulties, problems and issues. A summary of the notice and issues was published in weekly or biweekly newsletter, electronically, as “Government Liaison Updates (NGLUs).” Each NGLU dealt with 10 to 20 items of business. Most of them consisted of NAFSA inquiry and DHS responses. Occasional, DHS would made an announcement of new procedures or provide advise to a recurring problems. The report of problems and issues to NAHSA by members were all voluntary in nature. What issues NAFSA decided to discussion with DHS were mostly driven by practical needs. The answers and responses by DHS reflected the best knowledge it has on the issues in point of time. It is assumed that problems brought to the attention of DHS were representative and typical of those confronted by NAFSA members, as a whole. All told there were 34 conference summaries from week of June 5, 2001 to Week of January 17, 2005, upon which this study is based. Other supporting data came from news accounts, congressional hearings and expert testimonials.

C. Problems before January 31, 2003 vs. problems after January 31, 2003

As a general observation, problems confronted before January 30, 2003 deadline were mostly technical-general and managerial-policy issues. After January 30, 2003, the issues were mostly case specific legal issues and applied technical problems.

From table 7 below we can see that the number of SEVIS implementation issues raised before (June 5, 2002 to February 14, 2002) and after February 14, 2003 (February 15, 2003 to August 6, 2003) were very close, i.e. 85 (before) vs. 91 (after). However, if we

¹⁶⁴ Powerpoint presentation: Patty Croom and Jim Ellis, “Exchanging Data with INS: Update on SEVIS and Its Impact on Campus” September 30, 2002, pp. 14-19.

http://www.auburn.edu/academic/other/international_education/sevp/educause/educausefinal2002_0930_files/frame.htm

¹⁶⁵ <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevpgovcomindex.htm>

were to examine the distribution of the cases, we see that the nature of the cases before and after February was quite different.

First, before Feb. 14 most of issues were concerned with general management policy issues, i.e. 37/85 or 43%. Applied legal issues come next at 17/85 or 20%. But this was as a result of one time NAFSA conference in anticipation of the upcoming January 30, 2003 deadline. This can easily be explained by the fact that at this stage of implementation, INS was very much engaged in planning activities, i.e. setting directions and putting out policies. Conversely, the schools were interested to find out what policies and directives the INS has or about to promulgate.

Second, after February 15, 2003 most of the issues being discussed were applied legal (31/91 or 34%) and concrete technical issues (30/91 or 33%). This is in line with our original expectation. At this stage, the SEVIS system was up and running and most of the regulations have been promulgated. The schools, with the help of DHS, have to work through the legal ambiguities and technical glitches.

Third, while most of the issues dealt with before February 15, 2003 were general in nature; general management (37), general law (16) and general technical (9) issues made up of 62/85 or 72% of the cases, a majority of those after the implementation date (2/15/03) were applied ones – applied management (11), applied law (31), and applied technical (30), i.e. 71/91 or 78% of the cases.

Table 7: Break down of SEVIS implementation - management, legal, technical - issues from June 6, 2002 to August 6, 2003

Week	Issues	Man. Policy	Man. Applied	Legal Rule	Legal Applied	Technical General	Technical Applied	Total
6/5/02	9	5	0	4	0	0	0	18
6/27/02	14	8	0	0	0	6	0	14
6/20/02	2	2	0	0	0	0	0	2
10/9/02	19	9	0	8	0	2	0	19
10/22/02	5	4	0	0	0	1	0	5
12/16/02	5	5	0	0	0	0	0	5
12/19/02	21	2	0	2	17	0	0	21
1/30/03	USA PATRIOT ACT Implementation Date							
2/15/03	INS Implementation Grace Period							
2/14/03	10	2	2	2	0	1	3	10
3/20/03	6	0	0	0	0	6	0	6
3/26/03	9	0	4	0	0	5	0	9
4/2,9,10/03	18	1	1	0	6	0	10	18
6/18, 25/03	25	0	2	0	14	0	9	25
7/2,9/03								
7/16/03	7	0	1	1	1	3	1	7
7/18/03	5	5	0	0	0	0	0	5
7/23/03	6	0	1	0	4	0	1	6
7/28/03	3	0	1	0	2	0	0	3

8/6/03	12	1	1	0	4	0	6	12
Total	176	44	13	17	48	24	30	176

Source: Reconstructed from Government Liaison Updates (NGLUs)¹⁶⁶

Note:

Management Policy: General direction of a non-legal and non-technical nature, e.g. training provided.

Management Applied: Specific direction of a non-legal and non-technical nature bearing on a specific issue, e.g. better coordination between DHS and DOS

Legal rule: General discussion of certain legal rule or policy, e.g. discussion of Transitional procedures mandated by the Border Security Act

Legal applied: Specific analysis of conflicting interpretation of rules

Technical general: General discussion of technical issues, e.g. new version of SEVIS

Technical applied: Specific analysis of technical problems, e.g. data bleeding

D. Problems at planning vs. launch vs. operational stage

Next, we investigated the kinds of problems and issues that confronted the schools in the preliminary - planning stage (Table 8) vs. before operational launch stage (Table 9) vs. full operational stage (Table 10).

a. Planning problems and issues

In the preliminary – planning stage and with a fast approaching January 30, 2003 deadline, barely six months away, the schools were trying to seek clarification from INS about the implementation process, so that they could plan ahead. There were concerns with lack of final implementation regulations, e.g. over J visa processing. There were concerns with inadequate and unclear implementation regulations, e.g. lack of provision for student dependents. There were concerns with certification requirements and enrollment process. There were concerns with lack of training for INS officers. There were concerns with lack of contingency planning. In essence, SEVIS schools were laboring under great uncertainty and suffered from grave anxiety as a result of INS’s lack of a well conceived plan to implement the SEVIS.¹⁶⁷ At this stage, the schools would have a chance of giving feedback on managerial, legal and technical issues.

¹⁶⁶ Summary of NAFSA's conference call with DHS and DOS regarding SEVIS: NGLU 2003-08-a (August 6, 2003); NGLU 2003-07-d (July 28, 2003); NGLU 2003-07-c (July 23, 2003); July 18, 2003 Update from DHS; NGLU 2003-07-b (July 16, 2003); NGLU 2003-07-a (June 18, June 25, July 2, and July 9, 2003); NGLU 2003-06-a (June 4 and June 11, 2003); SLC SEVIS Session Summary (May, 2003 SEVIS); NGLU 2003-04-c (April 30 and May 5, 2003); NGLU 2003-04-b (April 16 and 23, 2003); NGLU 2003-04-a (April 2, 9, and 10, 2003); NGLU 2003-03-26 (March 26, 2003); NGLU 2003-03-20 (March 20, 2003); NAFSA-INS February 14, 2003 Q and A. (February 14, 2003. INS responded to a series of SEVIS questions posed by NAFSA); NGLU 2002-12-19 (December 19, 2002); SEVIS Resource 2002-f (December 16, 2002); NGLU 2002-10-22 (October 22, 2002); NGLU 2002-10-09 (October 9, 2002); NGLU 2002-06-20 (June 20, 2002); NGLU 2002-06-13 (June 13, 2002); NGLU 2002-06-05 (June 5, 2002)

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevpgovcomindex.htm>

¹⁶⁷ The INS did have a plan for step by step SEVIS implementation, but the plan was abruptly cut short by 9/11. See “Deployment Phases”, “2001 Deployment Timeline” and “4 Year Deployment Timeline.” In “Student and Exchange Visitor Program Development Plan – Past, present and Future,” US INS, Feb.26. 2002, pp. 23 – 25. (Deployment started with small colleges in Boston in 2001 before reaching out to other major foreign student educational institutions nation wide, including big cities of Chicago, Denver, Dallas.)

Table 8: SEVIS Implementations problems at the preliminary – planning stage – six months before launch - June 2002

Date	Technical	Legal	Managerial	Summary
June 2002 ¹⁶⁸	NAFSA inquired about the existence of contingency planning for SEVIS failure. ¹⁶⁹	INS informed NAFSA on status of SEVIS regulations ¹⁷⁰	NAFSA requested permission to pose Electronic forms on web. ¹⁷¹	The schools were seeking clarifications (inquiry) on procedure matters; technical, legal and managerial.
	None	NAFSA informed INS of the inadequacy with I-20 rules. ¹⁷²	NAFSA provided feedback on the kind of training to be provided to INS officers. ¹⁷³	The attention of the schools were focused on providing feedback (consultation) on procedure matters; technical, legal and managerial.
	INS provided general information on discovery procedure. ¹⁷⁴	N/A	INS clarified enrollment ¹⁷⁵ and registration plan. ¹⁷⁶	The exchanges between schools and DHS were concerned with general rules, not applied rule or specific case information.

¹⁶⁸ All reference in the table comes from See NGLU 2002-06-05. Summary of June 5, 2002 NAFSA conference calls with INS.

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/NGLU20020605.htm>

¹⁶⁹ “Issue: SEVIS back-up systems” (NAFSA request information on contingency planning – backed up, redundancy – in case SEVIS fails? For example, existence of “mirror site” and losing “batch” data transmitted.)

¹⁷⁰ “Issue: Transitional procedures mandated by the Border Security Act” (Section 501(c)(1)(B) of the Border Security Act requires the Department of State (DOS) to transmit to INS notification that an F or M visa has been issued. INS said that they are working with DOS on this data sharing requirement.”

¹⁷¹ “Issue: Sample SEVIS screens and forms” (NAFSA requested electronic copies of SEVIS screens and forms to post on the NAFSA Web site.)

¹⁷² “Issue: I-20’s for F-2 dependents” (I-20 issuance regulations do not made reference to dependents.)

¹⁷³ “Issue: SEVIS Training for INS officials” (“What is the scope, nature, and intent of INS’ plans to train its field officers in SEVIS systems, procedures, and forms?...NAFSA emphasized the importance of giving training and clear field guidance to both POE and Service Center personnel.”)

¹⁷⁴ “Issue: SEVIS back-up system” (“If the primary system in the DC area goes down, INS will switch to a disaster recovery site that mirrors that primary system.”)

¹⁷⁵ “Issue: I-17s, SEVIS, and recertification issues (INS informed NAFSA on stages of enrollment in SEVIS and where to look for “regular” and “preliminary” enrollment rules and regulations.)

INS provided basic information on data loss in batch transfer. ¹⁷⁷	INS informed NAFSA on the need for and timing of compliance review of J and M schools. ¹⁷⁸	INS clarified its intention to gather information on how to collect SEVIS fees. ¹⁷⁹	Inquiry and feedback concerns mostly preliminary, fundamental, basic, threshold and tentative matters.
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b. Launch problems and issues

In the middle stage, i.e. before operational launch, the schools were confronted with SEVIS right at the doorstep. The schools have to content legally with ill defined regulations and operationally with untested INS software. The questions raised were more pointed and practical kind, e.g. how to communicate with the SEVIS system users when the system is inaccessible?

Table 9: SEVIS Implementation problems before operational launch date – December 19, 2002 and February 15, 2003

Date	Technical	Legal	Managerial	Summary
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¹⁷⁶ Issue: SEVIS back-up system” (“If a school using the “batch” option lost data kept on-campus in a batch solution software, INS would be open to downloading (data dumping) files to the schools.”) See NGLU 2002-06-05. Summary of June 5, 2002 NAFSA conference call with INS.

¹⁷⁷ “Issue: SEVIS back-up system” (“If a school using the “batch” option lost data kept on-campus in a batch solution software, INS would be open to downloading (data dumping) files to the schools.”) See NGLU 2002-06-05. Summary of June 5, 2002 NAFSA conference call with INS.

¹⁷⁸ “Issue: I-17s, SEVIS, and recertification issues”(Border Security Act (Section 502) (BSA) requires INS to conduct regular compliance review of F and M schools every two years, beginning no later than May 2004, two years after promulgation of BSA) See NGLU 2002-06-05. Summary of June 5, 2002 NAFSA conference call with INS.

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/NGLU20020605.htm>

¹⁷⁹ “Issue: SEVIS fee” (INS was studying ways of making SEVIS payment and clearly define the role of DOS in the process.) Summary of June 5, 2002 NAFSA conference call with INS.

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/NGLU20020605.htm>

Feb. 14 2003 ¹⁸⁰ Dec. 19, 2002 ¹⁸¹	INS: "request users register for batch from the server they intend to use to post and get files from batch so their server will have both the SEVIS site certificate in their certificate store and their ".pem" client certificate in a location where their automated application can use their certificate to establish an SSL connection."	DHS provided step by step: "Guidance from INS on STUDENT ENTRIES AT INS POE - SEVIS I-20 PROCESSING" ¹⁸²	"Q: SEVIS system inaccessibility. How does the Service plan to communicate information to system users when the system is inaccessible?" ¹⁸³ "However, in the case ... the system is inaccessible or abnormally slow for a period that may impact the business process of schools, the Service is developing a contingency plan to allow schools to carry out their normal processes despite system problems... the Service would contact each school in such circumstances and advise them of any temporary processes. This contact would most likely be via e-mail." ¹⁸⁴	At this stage, the problems and issues raised were mainly practical in nature and operational in kind.
			"Service personnel ... are unfamiliar with SEVIS documents and procedures. What steps is the Service taking to educate its personnel about SEVIS?" (2/14/03) ¹⁸⁵	The questions asked were more confrontational and demanding.

¹⁸⁰ NAFSA-INS February 14, 2003 Q and A. *Posted:* February 14, 2003. INS responded to a series of SEVIS questions posed by NAFSA. Issues addressed include: effective date of restrictions on duration of reduced course load authorizations; SEVIS training for INS field officers; SEVIS system accessibility; processing of SEVIS I-20s at ports of entry; vendor certification and customer agreements for use of Batch functionality; and more.
<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevisQA20030214.htm>

¹⁸¹ [NGLU 2002-12-19](http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu20021219.htm). Summary of NAFSA's December 19, 2002 conference call with INS and DOS regarding the new SEVIS regulations.
<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu20021219.htm>

¹⁸² NAFSA-INS February 14, 2003 Q and A. *Posted:* February 14, 2003. INS responded to a series of SEVIS questions posed by NAFSA. Issues addressed included: "effective date of restrictions on duration of reduced course load authorizations; SEVIS training for INS field officers; SEVIS system accessibility; processing of SEVIS I-20s at ports of entry; vendor certification and customer agreements for use of Batch functionality; and more."
<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevisQA20030214.htm>

¹⁸³ *Id.*

¹⁸⁴ NAFSA-INS February 14, 2003 Q and A. *Posted:* February 14, 2003. INS responded to a *Id.*

¹⁸⁵ NAFSA-INS February 14, 2003 Q and A. *Posted:* February 14, 2003. INS responded to a series of SEVIS questions posed by NAFSA. "SEVIS training for INS field officers"

¹⁸⁶ NGLU 2002-06-05 Summary of June 5, 2002 NAFSA conference call with INS.

vs.

“What is the scope, nature, and intent of INS’ plans to train its field officers in SEVIS systems, procedures, and forms?”

(6/5/2002)¹⁸⁶

“The Service has already carried out a number of extensive training sessions ...As with any new program ... it will take some time for every individual involved to be fully trained ... Service is working with schools that make inadvertent mistakes in the system, we will work with schools that are experiencing problems due to unfamiliarity on the part of Service entities ...”

(2/14/03)¹⁸⁷

The answers given are more defensive.

Vs.

“INS assured NAFSA that service center personnel are and will continue to receive training and guidance.” (6/5/2002)¹⁸⁸

“How does the Service plan to communicate information to system users when the system is inaccessible?”¹⁸⁹

The three kinds of questions most often asked are: access, corrections, and communication/help.

c. Operational problems and issues

Finally, when SEVIS was fully operational, the schools and programs were confronted with case specific operational issues or application problems. These problems ran from ambiguous SEVIS regulations to unresolved legal issues to mismatch between SEVIS regulations and SEVIS technology. The defining characteristics of the issues and problems posed during this period were that they were increasingly concrete and sophisticated.

Table 10: SEVIS Implementation problems at the full - operational stage, during six months after launch to January 2004

Date	Technical	Legal	Managerial	Summary
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¹⁸⁷ NAFSA-INS February 14, 2003 Q and A. *Posted:* February 14, 2003. INS responded to a series of SEVIS questions posed by NAFSA. “SEVIS training for INS field officers”

¹⁸⁸ NGLU 2002-06-05. Summary of June 5, 2002 NAFSA conference call with INS.

¹⁸⁹ NAFSA-INS February 14, 2003 Q and A. *Posted:* February 14, 2003. INS responded to a series of SEVIS questions posed by NAFSA. “SEVIS system accessibility”

Jan. 2004 ¹⁹⁰	The SEVIS program did not have extension of stay for more than 12 months. DHS promised to change it in SEVIS 4.8 version. ¹⁹¹	J-1 was departing from the country, leaving his J-2 dependent behind with his spouse who was also a J-1. The issue was what would be the legal status of J-1 dependent?	Schools complained of students entering U.S. without a record of POE data. INS asked for more data to investigate the problem. ¹⁹³	At the full – operational stage the problems and issues were all operational ones and driven by particular and specific case based concerns.
		The DHS did not know and have to research the issue. ¹⁹²		
	DSO has been trying to enter OPT date beyond program end day and was denied. According to guideline: Interface Control Document (Dec. 20, 2002 version p. 50). Program end day is: “date student’s program will be completed. Full program include Optional Practical Training the student will undertake after	The question was whether an OPT student was considered to be engaging in another level of education after the initial education program has completed and the student has to take a required academic course that was deemed incidental to his OPT employment, e.g. accounting courses for a CPA? ¹⁹⁵	DSO reported that he made a mistake of authorizing OPT for student 1 in the name of student 2, who has a identical name but similar SEVIS #. The Texas Service center corrected the record and student 1 was afforded a correct OPT. Meanwhile student 2 wanted to apply for OPT but could not because of the earlier recorded of student # 1 incorrect recommendation. ¹⁹⁶	Inquiries and concerns are directed at solving/ correcting specific problems on hands.

¹⁹⁰ All reference in table refers to NGLU 2004-01-a. Summary of NAFSA's January 10 and 17, 2004 conference calls with DHS and DOS regarding SEVIS.

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200401a.pdf>

¹⁹¹ NGLU 2003-11-b. Summary of NAFSA's November 19, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered include: “3. When will F SEVIS allow extensions of stay over 12 months?”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200311b.pdf>

¹⁹² NGLU 2003-09-b. Summary of NAFSA's September 10, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered include: Topics addressed included: “4. How should an A/RO switch the dependents of J-1 parents?”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200309b.pdf>

¹⁹³ All reference in table refers to NGLU 2004-01-a. Summary of NAFSA's January 10 and 17, 2004 conference calls with DHS and DOS regarding SEVIS. “3. Records of students and Exchange Visitors without POE data”

coursework.”¹⁹⁴

SEVIS 4.9.2 introduced on Feb. 6, 04 allowing batch users to submit “create” requests of F., M., J’s who will be beginning new program and who have had a SEVIS record in the same classification before.¹⁹⁷

Legal counsel at DHS – CIS advised that OPT I-765 must be received on or before Program End Date;¹⁹⁸

The SEVIS required students who take more than 18 hrs. a week of school work to apply for a F-1 visa, subject to SEVIS fees and lengthy interviews.¹⁹⁹ Consulates have been giving B-1 visa when students asked for F-1 to study for short courses. DHS insisted that F-1 was the proper way to go.

The discussion of and solution to problems and issues at this stage were engaged at a legal-technical level, with correct answers.

VI.

Varieties of Implementation Problems: Summary and Discussion

A. Varieties of managerial problems

Most of the difficulties throughout the SEVIS implementation process resulted from poor project planning and management. The successful implementation of SEVIS

¹⁹⁴ NGLU 2003-09-a. Summary of NAFSA's September 5, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered include: “5. Banner software and recommending OPT. (Banner software).”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200309a.pdf>

¹⁹⁵ NGLU 2003-09-a. Summary of NAFSA's September 5, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered include: “2. OPT and incidental study.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200309a.pdf>

¹⁹⁶ NGLU 2003-10-a. Summary of NAFSA's October 1, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered include: “7. OPT errors; 8. POE List and deferred attendance.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevpgovcomindex.htm>

¹⁹⁷ All reference in table refers to NGLU 2004-01-a. Summary of NAFSA's January 10 and 17, 2004 conference calls with DHS and DOS regarding SEVIS. “4. SEVIS 4.9.2 implementation: automatic record terminations and conversions to go into effect.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200401a.pdf>

¹⁹⁸ All reference in table refers to NGLU 2004-01-a. Summary of NAFSA's January 10 and 17, 2004 conference calls with DHS and DOS regarding SEVIS. “5. CIS says OPT I-765 must be received on or before Program End Date.”

¹⁹⁹ NGLU 2003-10-b. Summary of NAFSA's October 8, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered include: “7. Short academic programs.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200310b.pdf>

requires good management, adequate resource, sound technology and clear legal guidelines. Good management is required to provide leadership, planning, organizing, staffing, directing, controlling. Adequate resource is required to support the establishment, maintenance and operations of the project. Clear and unambiguous legal and regulatory guidelines allow people to stay focus and work within well defined limits. Seemingly, none of these managerial issues have been attended to.

a. Problems with planning

The implementation of SEVIS suffered from a lack of overall, detail and long term planning. The objectives, role and responsibilities, steps, activities, timeline and deadline were not well thought out and articulated in advance. More damningly, the universities were left entirely out of this planning phase, i.e. they were not consulted. This resulted in schools having to adopt a "wait and see" or "play it by ear" approach to program management.²⁰⁰ This has generated substantial amount of uncertainty, frustration and anxiety, and in the end animosity, complaints and antagonism. For example, Stanford's Bechtel International Center has put up this public notice:

“As of April 2002 much is still unclear. The Immigration Service is currently developing regulations that will clarify the system to both monitor and collect data on foreign students and scholars. We have no clear date as to when these regulations will be published.”²⁰¹

As a result, some universities were not able to comply with SEVIS in time, .e.g. University of Nevada, Las Vegas has been planning for a year only to miss the deadline because the INS failed to supply computer specifications until December 2002.²⁰²

“First, we should jointly establish a timetable for the implementation of SEVIS with interim deadlines for specific activities. It is, for example, important for campuses to know the precise date by which EDS will have written all the programming for real time and batch entry, and the date by which a test file will be available on a web site to permit schools to practice with the system. Having such a timetable will provide a framework for implementation, allow all parties to measure progress against a clear benchmark, and enable campus officials to better plan the changes that will be necessary at their institution. If delays occur,

²⁰⁰ Gaston Lacombe, Public Service Language Center -Educational Advising Center, Riga, Latvia, “SEVIS Implementation,” THE EUROPEAN ADVISERS NEWSLETTER, SUMMER, 2002.

http://www.bibl.u-szeged.hu/oseas/newsletter/02summer_lacombe.html

²⁰¹ “SEVIS, Tracking Systems and other Recent Legislation and Regulations: April 2002,”

Bechtel International Center http://www.stanford.edu/dept/icenter/new/sevis/sevis_1.html

²⁰² Jennifer Knight, “Nevada sees deadline pass for student database,” *LAS VEGAS SUN*, February 27, 2003 (UVLV failed to meet SEVIS compliance because of INS has failed to organized the implementation of SEVIS in a comprehensive and systematic manner.)

<http://www.lasvegassun.com/sunbin/stories/text/2003/feb/27/514723089.html>

resources can be shifted and the schedule can be adjusted appropriately by both federal and campus officials.”²⁰³

b. Problems with training

INS/DHS has not offer formal SEVIS implementation training for its own agency employees. Nor were SEVIS training and certification required of DSO and other school officials who were front line operatives responsible for complying, operating and maintaining SEVIS. For example, it was not clear to school officials what was required by SEVIS, how to keep records and when to report events. The school officials have to learn through trial and error and by means of sharing of experience.

Originally, INS intended to offer face to face training to schools’ officials.²⁰⁴ Later all scheduled training sessions for the use of SEVIS database were cancelled due to the elimination of the INS implementation team. INS offered to send training video and organized informational seminars at higher educational conferences. Additionally it offered 800 Help Desk assistants to assist with implementation and use of SEVIS. In retrospect, this fighting “bush fire” approach to SEVIS launch accounted for much of the problems confronted by the DHS and schools in the SEVIS implementing and operational stage.

University officials have to rely on school associations, in house trainers or third party vendors²⁰⁵ to provide for the missing SEVIS training. A blind leading the leading syndrome occurred. As a result many schools employees who have to deal with SEVIS were inexperienced and not educated about INS – SEVIS requirements. This was particularly a problem with small schools or vocational institutions, who have little resources and not well connected.

Likewise, INS officials who were assigned to approve and monitor schools were not adequately trained, nor were the Help Desk staff properly briefed. As a result they were uncertain as to the exact legal requirement and detail operation procedures of the SEVIS.²⁰⁶

²⁰³ *Id.*

²⁰⁴ Immigration and Naturalization Service, Student & Exchange Visitor Information System Implementation Seminar, Oklahoma State University-Oklahoma City, June 7, 2002. (The seminar prepared DSO, RO, ARO for the summer release of SEVIS – 1. It addressed issues of system functionality, program history, and user access. There was no technical discussion or presentation on the batch file transfer functionality. <http://nafsa3.okstate.edu/oknafsa/Docs/sevis-training.doc>

²⁰⁵ Amy Rogers, “EDS Among Solution Providers Seizing Opportunity In Foreign-Student Tracking,” CRN Washington, Jan. 14, 2003 (EDS and Drake Certivo developed the SEVIS interactive training course based on comments gathered from 2000 school officials. See also course advertisement at “SEVIS Training” offered by EDS and Drake Certivo, http://www.edscrmppractice.com/services_offerings/off_briefs/ob_sevis.pdf

²⁰⁶ Statement of Glenn A. Fine, Inspector General, “Hearing on “Homeland Security: Tracking International Students in Higher Education - Progress & Issues Since 9-11,” U.S. Department of Justice before the U.S. House of Representatives, Committee on Education and the Workforce,

c. Problems with coordination

The success of SEVIS required the cooperation and coordination of different government agencies (DOS, DHS – Custom, DHS – Immigration, DEA, Help Desk) and participating schools. These agencies did not usually function in a lock step or unison fashion, in policy stance, rules interpretation, technical sophistication, and SEVIS integration. Schools were frustrated when government agencies in charge of key SEVIS process were not performing as expected, and sometimes in accordance with the law, e.g. in order for schools to monitor the arrival time of F-1 and J-1 students the schools must be informed by the POEs of their arrival in the U.S. Sometimes this was not done. In September 17, 2003, schools reported that relatively few EV and students appeared on the POE list. The DHS explained that the problem was due in part to different POE code adopted by INS vs. Custom. In order not to reject all files, the mismatch of code forced the transfer of data to an “unknown” category.²⁰⁷

Table 11: Implementation difficulties confronted by users as a result of poor SEVIS project management:

Management functions	Implementation problems	Manifestations of problems at the operational level
Planning	<p>There was no or inadequate planning for the effective implementation of SEVIS, particularly:</p> <p>Procedurally, university administrators and educator associations were not involved with the formulation the implementation plan.</p> <p>Substantively, INS SEVIS implementation plan failed to take into account the shortage of time, limitation of resources, volume of work, complexity of tasks, degree of difficulties, multiplicity of parties and uniqueness of universities.</p>	<p>Schools were not consulted on implementation deadlines.</p> <p>INS and SEVIS imposed deadlines at odd with university calendar.</p> <p>INS and SEVIS imposed mandate, requirements and process at odd with university philosophy, mission, culture and routines.</p> <p>INS provided competing opinion and wrong information, e.g. regulations and guidelines, missed critical path dateline for meeting compliance.</p> <p>INS did not provide for the timely and adequate training of change agents, INS agents and school officials alike.</p> <p>Many school applications were still not processed days before January 30, 2003.</p> <p>SEVIS program was not fully debugged before launched.</p> <p>SEVIS lacked capacity to handle sudden surge</p>

Subcommittee on 21st Century Competitiveness, Subcommittee on Select Education, September 24, 2002. Printed Hearing: [Serial No. 107-79 \(PDF, 3.2M\)](#)

²⁰⁷ NGLU 2003-09-c. Summary of NAFSA's September 17, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered include: “4. POE Entry Records in SEVIS”
<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevpgovcomindex.htm>

		of workloads.
		SEVIS soft ware program and attending INS guidelines and procedures did not reflect university operational reality, interests or needs.
Organizing	There was a gross lack of integration and coordination of functions and efforts between and within DHS and DOS charged with implementing SEVIS. Particularly:	DOS did not have access to SEVIS data real time. There were problem of lost and delay of data in SEVIS data transmission.
	DHS and DOS did not share in the same organizational mission, structure process and culture.	DHS and DOS interpreted SEVIS differently. In some cases, DOS worked at cross-purpose from DHS.
	DHS and EDS have yet to develop a smooth working relationship.	There was a lack of coordination between EDS (private contractor) and DHS.
	DHS has not fully integrated INS and Customs into a coherent organizational framework, creating unresolved jurisdiction, identity, role and functions problems.	
Staffing	There was inadequate staff placement, insufficient staff training, and poor staff support to meet SEVIS implementation needs.	DHS did not have sufficient staff to service SEVIS.
		There was not enough staff to provide for research.
		There was not enough staff to man Help Desk.
		There was not enough training for DHS SEVIS officials and inspector.
Directing	There was a gross lack of leadership, motivation, communication in achieving SEVIS goals and objectives.	The INS has not been forthcoming on the readiness and availability of SEVIS. This affected the confidence of schools in DHS judgment.
		The DHS has failed to work with schools as equal partners. It has failed to kept faith with the schools. It has failed to inform the school of problems and issues afflicting SEVIS. It has failed to consider SEVIS impact on schools. It has failed to listen to schools.
		The DHS has not been solicitous of schools welfare by anticipating their needs and protective of their welfare.
Controlling	There was a total lack of process and outcome evaluative measures pointing to success.	INS/DHS define success implementation, e.g. availability of SEVIS, differently than universities and schools.
		Except for limited SEVIS functions, e.g. Help Desk response time, there was no attempt to measure the performance of SEVIS as a system or process.

No one knew whether the SEVIS was functioning as design. DHS testified at hearings of success. Schools complained of shortcomings. Students were not coming to study.

B. *Varieties of legal problems*

a. Problems with clear legislative mandate

Successful implementation of SEVIS required a clear understanding of roles and responsibilities of all parties involved. From the very beginning, there was a debate as to who was legally responsible for the development, funding and deployment of SEVIS.

According to Section 641(a) of the IIRIRA of 1996 the Attorney General is legally responsible "to develop and conduct a program to collect from institutions of higher education and designated exchange visitor programs" certain specified information. Under Section 416 of the USA PATRIOT ACT the Attorney General is further charged with the responsibility to "fully implement" the section 641(a) of IIRIRA program "prior to January 1, 2003." Finally, Section 501(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002, re-enforcing Section 641(a) of IIRIRA and Section 416 of the USA PATRIOT ACT provides that "the Attorney General . . . shall establish an electronic means to monitor and verify" certain enumerated events pertaining to international students."

The central issue when dividing SEVIS responsibilities between the government (as provider) and universities (as end users), during the implementation phase of the SEVIS project was how to give force and effect to the phrase "to develop and conduct a program to collect from institutions of higher education and designated exchange visitor programs" necessary data and adequate information for efficient and effective electronic tracking of students and scholars. More specifically, who is responsible for implementing - developing, deploying and operating - the SEVIS program? More critically, when is SEVIS program deemed fully implemented? Does this mean that the government - INS/DHS is only required to make SEVIS "technically available" via interactive mode to some users by January 30, 2003? Or does it mean that the INS/DHS is also responsible for making SEVIS "functionally available" via batch transmission to all users? Whatever the definition of "full implementation" or "functional availability" what is the respective contribution in resource and funding in making the SEVIS function as intended, at various implementation stages and life course of SEVIS?

The government (INS/DHS) argued for a restrictive definition of "full implementation. SEVIS is "fully implemented" when it is technically available for service, i.e. a INS-SEVIS web site ready for interactive input and output on a case by case basis.

The schools argued for a broad definition of "full implementation": Thus

“Full implementation of the monitoring program necessarily includes the process by which schools develop or acquire the technology necessary to accomplish the reporting required under the program in accordance with technical specifications provided by the Service. It is inherently impossible for schools to meet the program's reporting requirements without this stage of the implementation of the process having taken place.”²⁰⁸

More fundamentally, “full implementation” should include fully beta tested SEVIS technology as operated and supported by well trained DSOs and competent and supportive INS officials.

The DOJ-IGO adopted a still broader definition of “full implementation”.

“Full deployment requires that all elements of the program be functional to ensure the integrity of SEVIS. Our finding that SEVIS was not fully implemented as of January 1, 2003, was not based solely on the INS's deployment of a phased-in schedule. Instead, as stated in our testimony in September 2002 and in this report, we believe full implementation includes not only the technical availability of SEVIS, but also: ensuring that sufficient resources are devoted to the foreign student program; ensuring that only bona fide schools are provided access to SEVIS; adequately training DHS employees and school representatives; ensuring that schools are completely and accurately entering information on their foreign students into SEVIS in a timely manner; and establishing procedures for using SEVIS data to identify noncompliant and fraudulent operations as well as following up when SEVIS data indicates fraud in a school's program.”²⁰⁹

Based on the above criteria, DOJ-IGO found that the SEVIS implementation not complete, specifically: the INS did not complete certification reviews of all school applications; the INS's oversight of contractors was inadequate to ensure that schools were bona fide; the INS's review of schools' procedures were insufficient to ensure that schools were complying with SEVIS recordkeeping requirements or to identify internal control weaknesses that could detect fraud; INS adjudicators and INS inspectors at ports of entry have not been given adequate training and guidance; the INS has not established procedures to use SEVIS to detect fraud and to follow-up on potential fraud and the INS has not provided sufficient resources for enforcement activities.²¹⁰

²⁰⁸ See “APPENDIX III - OIG ANALYSIS OF MANAGEMENT'S RESPONSE”, DOJ – DOJ – OIG – Follow-up Review – March 2003, note 30, *supra*

²⁰⁹ *Id.*

²¹⁰ *Id.* See also Statement of Glenn A. Fine, Inspector General, U.S. Department of Justice before the House Judiciary Committee Subcommittee on Immigration, Border Security, and Claims concerning, "Implementation of the Student and Exchange Visitor Information System (SEVIS)" April 2, 2003. USDOJ/OIG – Congressional Testimony.

<http://www.usdoj.gov/oig/testimony/040203.htm>

Table 12: Interpretations of “full implementation” of SEVIS

School/Agency Universities	Interpretation	Ready by January 30, 2003?
	(1) SEVIS system meeting legislative requirements?	No tracking for J - 1 visitors No tracking for J – 1 dependents (J-2)
	(2) SEVIS system technically available?	Too slow Too many flaws
	(3) Batch system technically available?	Final regulations for F visa not timely issued Final regulations for J visa not issued Technical specifications not timely released to vendor No beta testing for batch system
	(4) SEVIS system functional available?	Lack of timely school certifications Lack of training for DSOs Lack of training for INS officials Lack of coordination with DOS Lack of timely and competent help-support Unfunded mandates
	SEVIS full implementation?	No
	(1) + (2) + (3) + (4)	
DOJ – IGO²¹¹	(1) SEVIS system meeting legislative requirements?	No comment.
	(2) SEVIS system technically available?	No comment.
	(3) Batch system technically available?	No comment
	(4) SEVIS system functional available?	Schools not approved for timely access Compliance audits not properly performed Need additional training and guidance for adjudicators and inspectors Need sufficient resources needed for enforcement procedures
	SEVIS full implementation?	No
INS – DHS	(1) SEVIS system meeting legislative requirements?	Yes. SEVIS Technically available as of January 30, 2003.
	(2) SEVIS system technically available?	Yes.
	(3) Batch system technically available?	Yes.
	(4) SEVIS system functional available?	Yes.
	SEVIS full implementation?	Yes.

b. Problems with lack of timely regulations

The implementation of SEVIS suffered from a lack of timely, comprehensive and clear regulations. In the last six months to launch date, May 2002 to January 2003,

²¹¹ See “APPENDIX III - OIG ANALYSIS OF MANAGEMENT'S RESPONSE”, DOJ – OIG – Follow-up Review – March 2003, note 30, *supra*

DHS/DOS has promulgated no less than five sets of regulations to implement the SEVIS. See 67 FR 34862 (May 16, 2002) (proposed rule implementing SEVIS); 67 FR 44343 (July 1, 2002) (interim rule for schools to apply for preliminary enrollment in SEVIS); 67 FR 60107 (Sept. 25, 2002) (interim rule for certification of schools applying for enrollment in SEVIS); 67 FR 76256 (Dec. 11, 2002) (DHS's final rule implementing SEVIS); 67 FR 76307 (Dec. 12, 2002) (DOS interim rule implementing SEVIS). It is clear that these administrative regulations were promulgated to meet the SEVIS deadline of January 30, 2003. Very little thought has been expended on whether such rules could or would be complied with given the shortage of time, complexity of rules, and difficulties of compliance. The mentality seemed to be, rules are self executing; perfect rules would result in perfect compliance. Not much has been said about timely promulgation of regulations.

As earlier as January 28, 2002, the AARAO has raised the alarm:

“Since no formal regulations regarding implementation of SEVIS have been issued by the INS, many higher education advocates are colleges and universities will have inadequate time to test and implement the SEVIS system on their campus and comply with the January 2003 implementation deadline.”²¹²

By March 20, 2002, the INS and DOS were openly discussing the possibility of issuing six more SEVIS related implementations regulations:

- . regulation on a shorter default period for visitor’s visa (including students)
- . regulation preventing students from taking classes before visa approval
- . regulations governing recertification of schools authorized to issue I-20
- . regulations governing implementation of SEVIS for F and M visas
- . regulations governing implementation of SEVIS for J visa
- . regulations governing the collection of SEVIS fees²¹³

But such regulations were not forthcoming, until the final compliance date of January 30, 2003. Throughout the implementation period, i.e. from October 26, 2001 to January 2003, the INS/DHS has failed in providing the schools, administrators, students, visitors and vendors with necessary and timely regulations/guidelines to put SEVIS into place before January 30, 2003.

The USA PATRIOT ACT set forth a January 30, 2001 dead line. On May 16, 2002, the Service published a proposed rule²¹⁴ to implement the foreign student data electronic collection, reporting and tracking process as mandated under section 641 of the IIRIRA of 1996. On June 13, 2002 The INS first released the final Interface Control Document

²¹²“Colleges, Universities Consider SEVIS Implementation,” AARAO, January 28, 2002. http://www.immagic.com/TOC/elibrary/TOC/ITS/downloads/SEVIS_Implementation.pdf

²¹³ “Possibly Six SEVIS Regulations Outstanding” AARAO Transcript, March 20, 2002. http://www.aacrao.org/transcript/index.cfm?fuseaction=show_print&doc_id=684

²¹⁴ Federal Register at 64 FR 34862

for third party vendors to facilitate SEVIS software development.²¹⁵ On July 1, 2002 INS invited voluntary participation in SEVIS. The final regulations “Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS); Final Rule” was finally published on December 11, 2002, only 50 days before “D Day”.²¹⁶

By September 24, 2002, 125 days from the final compliance day, a number of key regulations have yet to be finalized and published.²¹⁷ These included SEVIS regulations governing international student visas (“F” and “M”) to be issued by DHS;²¹⁸ SEVIS regulations governing exchange visitor visas (“J”) to be the State Department;²¹⁹ SEVIS regulations governing recertification of schools authorized to issue I-20s to be issued by the INS.

c. Problems with inadequate regulations

Not only were there a lack of implementing regulations to put SEVIS into practice, the regulations that were promulgated were often incomplete and imprecise. This caused much anxiety when the deadline for SEVIS approached. For example, no one at the school or the DHS knew how to deal with the following case scenario:

J-1 parents of J-1 with a J – 2 dependent. One of the parents of the J-2 dependent child was graduating. Should J-2 dependent record be amended to shift the dependency status to the non-graduating J-1 parent? Or should the J-2 student dependent now “graduate” with the graduating J-1? Or, a new and independent J-2 file be created for the child? The schools suggested the first. The DHS recommended the third. The DHS conceded that there was no current procedure at DHS applicable to this situation.²²⁰

²¹⁵ “PeopleSoft Student Administration and SEVIS: Statement of Direction and Update” July 2002.

http://cms.calstate.edu/T6_Documents/NewsAndPublications/General/SEVIS%20Direction%20726_02.pdf

²¹⁶ See “Final STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS): *Final Rule Implementing SEVIS* [INS 2185-02; RIN 1115-AF55],” Fact Sheet, DOJ – INS, December 22, 2002. http://uscis.gov/graphics/publicaffairs/factsheets/02.12FINALRU_FS.htm

²¹⁷ Testimony of Dr. David Ward, President, ACE, In regard to: “Homeland Security: Tracking International Students in Higher Education—Progress & Issues Since 9-11” before the U.S. House of Representatives Committee on Education and the Workforce, Subcommittees on 21st Century Competitiveness and Select Education, September 24, 2002.

http://www.acenet.edu/news/press_release/2002/09september/tracking.testimony.html

²¹⁸ They must still be reviewed and cleared by both the Justice Department and the Office of Management and Budget (OMB).

²¹⁹ The draft regulations, under review at OMB for more than 100 days, have yet to receive public comments and published in final form. It was not expected to be published in final form by January 2003.

²²⁰ NGLU 2003-11-b. Summary of NAFSA's November 19, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered include: “1. J-2 and F-2 dependents moving from one parent record to other, where both parents are principal aliens.” <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200311b.pdf>

Similarly, the INS was not ready to deal with OPT issues without a clear guideline:

Schools were complaining about the “absence of post-completion OPT language from the proposed F regulation”. NAFSA pointed out that post F-1 schooling optional practical training (OPT) after the completion of original studies (paragraphs 3 and 4 of 8 CFR 214.2(f)(10)(2)(A) was not included in the INS proposed rule, although post-completion OPT was alluded to in other INS literature. INS agreed to look into the problem.²²¹

Proposed INS regulations did not provide of for F-2 dependents. In the proposed regulations for implementation SEVIS, the case of I-20’s for F-2 dependents was not included in the proposed regulation. INS promised to investigate. .²²²

d. Problems with conflicting regulations

There were often conflicts between the INS rule and the DOS rule. For example, in December 2003, language in the supplementary text of the J SEVIS rule (page 73612), indicated that J-2s must change status in order to pursue a course of study “other than avocational or recreational”. However, there was no corresponding language in the Fed. Regulatory rule text. The F SEVIS rule, at 248.3(e)(2) suggested that dependents of a J-1 may attend school, provided the principal maintains status. NAFSA asks that INS/DOS clarify this issue.²²³

DOS confirmed that full time students were not permitted in J-2 status, except for J-2 dependents enrolling in K-12 programs. However, the intention of this rule was expressed only in the preamble to the J regulations, and not in the language of the SEVIS rule itself. In order to legally prohibit J-2 dependents from studying, the SEVIS regulations would have to be changed. DOS stated that they intended to change the language in their final SEVIS regulations. Such a correction would also have to be coordinated, however, with a corresponding change to INS regulations at 8 CFR 248.3(e)(2), which on its face permit full time study by J-2 dependents. Until these corrections to the regulations are made, there is no restriction on study for J-2 dependents.

e. Problems with unclear regulations

Many of the regulations were ambiguous and unclear. A case in point involved the reporting of timely participation of exchange visitors in designated programs. As NAFSA understood it, J program sponsors were required to report an exchange visitor’s

²²¹ NGLU 2002-06-05. Summary of June 5, 2002 NAFSA conference call with INS.

²²² NGLU 2002-06-05. Summary of June 5, 2002 NAFSA conference call with INS.

²²³ Memo of Jim Ellis, Director and Derek Yu, Assistant Director on “INS and Department of State F, M, and J SEVIS rule changes,” December 16, 2002, to All international students and scholars enrolled at Auburn University. (“10. DEPENDENTS: Dependents in E, H, I, L and Q status may attend school [248.3(e)(2)]...At this time there is conflicting information in the regulations on whether J-2 dependents may study full time – to be safe assume that J-2’s are NOT allowed to pursue full time study...)

http://www.auburn.edu/academic/other/international_education/office/advisories/newregs121602.htm

participation within 30 days of the program start date. However, what should be done if the exchange visitor enters the country late, for example, two months after the program start date? NAFSA requested the DOS to clarify in writing that “sponsors are required to report exchange visitor’s participation within 30 dates of the start date on the DS-2019; or, if the exchange visitor enters after the DS-2019 start date, the sponsor is required to report participation within 30 days of inspection at the POE.” The INS responded: If the EV arrives after the start date on the DS-2019, INS would most likely be given an I-515 upon admission. When an EVP knew, or has reason to suspect, that an exchange visitor would not arrive by the start date on the DS-2019, the EVP could go into SEVIS and amend the program start before the EV’s initial entry. Ideally a new DS-2019 should be sent to the EV. This complicated response was confusing and confounding to the EV participating programs. Any good faith misunderstanding of such an unclear provision might result in the EV being declared as out of status and rejected by DHS-INS officials at the POE.

f. Problems with inconsistent interpretation and application of regulations

Schools were very much concerned with inconsistent interpretation and differential application of SEVIS regulations. It became clear that different schools and government agencies, e.g. school vs. DOS vs. DHS, interpreted SEVIS legal requirements differently. Different officials within the same agency have a different understanding of the rules, e.g. DHS HQ vs. Service Center vs. Help Desk, and applied them differently. This resulted in conflicting guidance and contradictory instructions. The following examples illustrate the nature and magnitude of the problem:

DHS vs. DOS: There were sometimes a conflict between Federal regulations, SEVIS rules and DOS policy. The case in point is with the conversion of status between professors and researchers. Federal regulations provided that change of status between professor and research scholars did not require approval of DOS. But the SEVIS rules did not allow for such a change of status without a formal request for change of category. DHS has taken the position that SEVIS was correct, notwithstanding the enabling Federal Regulation.²²⁴ The schools who relied on Federal Regulations might find their visitors rejected by the SEVIS.

DHS vs. Help Desk: What happened if a J-1 student came to the U.S. without J-2 dependent, while J-1 and J-2 visa were both validated and activated? The Help Desk recommended that the J-2 visa be cancelled, pending future re-application on a new set of DS 2019. The DHS disagreed and wanted the J-2 visa kept current, until J-2 was ready to travel with the original DS 2019.²²⁵

²²⁴ NGLU 2003-11-b. Summary of NAFSA's November 19, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “10. Changing from J Professor to J Research Scholar.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sepgovcomindex.htm>

²²⁵ NGLU 2003-10-a. Summary of NAFSA's October 1, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “10. J-2 Visas and Validations (actually item 9 in text)

Help Desk told schools that if OPT was not adjudicated within 60 days upon student's graduation, the visa would lapse. However, DHS suggested that the student's status would not be terminated even if OPT was not approved within 60 days.²²⁶

DHS vs. Schools: A school raised the issue of whether an approved OPT student was considered to be engaging in another level of education when he took a OTP job related course, e.g. an accounting course as a CPA intern. The existing rule was against further coursework during OTP training. DHS was of the opinion that the student could take a OTP related course if and as required by OTP employment. However, NAFSA wanted reassurance that the DHS interpretation was shared by other agencies – Service Centers, district offices, enforcement units, POEs. It demanded a formal and specific policy guideline issued to that effect.²²⁷

The F SEVIS regulation provided that: “optional practical training must be requested prior to the completion of the course of study.” [8 CFR 214.2 (f) (10) (ii) (A) (3)] The school's DSOs have interpreted this as requiring DOS approval of OPT before termination of academic program [8 CFR 214.2 (f) (10) (ii) (A)] However, the DHS insisted that EAD application must arrive UISCIS before academic program ends and OPT starts,²²⁸

School (DOS) vs. Help Desk: One of the typical problem was with the Help Desk giving out erroneous information based on SEVIS requirement or Help Desk working practice not conforming with the law or Federal Regulations: “NASFA remained concern that Help Desk staff do not distinguish between the law, the regulations and what SEVIS system dictate.” In one case, the Help Desk informed the schools that they must register F-1 students within 30 days of program start. In another case the Help Desk advised school to change program start day to correspond with registration day. In still another case, Help Desk suggested that the school was at fault if they did not register students on time. In a last and final case, the schools rushed to finish hundreds of registration to avoid penalty, only to find that the rush was not necessary. In this instance, the DHS

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200310a.pdf>

²²⁶ NGLU 2003-04-a. Summary of NAFSA's April 2, 9, and 10, 2003 conference calls with DHS and DOS regarding SEVIS. “OPT Adjudication Status”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/NGLU200304a.pdf>

²²⁷ NGLU 2003-09-a. Summary of NAFSA's September 5, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “2. OPT and incidental study.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200309a.pdf>

²²⁸ NGLU 2004-01-a. Summary of NAFSA's January 10, 2004 conference calls with DHS and DOS regarding SEVIS. Topics covered included: “5. CIS says OPT I-765 must be received on or before Program End.”

Date <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200401a.pdf>

acknowledged that the Help Desk was not supposed to anticipate the legal opinion of DHS – BCI which was due out November 2003, but the Help Desk did anyway.²²⁹

Most of the time DHS did not have the answer, or did not know what to do. For example, in one case a J-1 student was leaving the country, leaving a J-2 dependent behind, with his spouse who was also a J-1. The DHS confessed ignorant and have to research the issue.²³⁰

g. Problems with regulations of the book and rule of practice

There was often a disparity between law on the book and practice with the DHS. For example, Help Desk informed DSO to print a new I-20 when a student first registered. This was not required by law nor fixed by guidelines. DHS confirmed that Help Desk has made an optional practice into a administrative (legal) requirement.²³¹

In another case, a Help Desk and district officer informed DSO that the end date of I-20 should be extended to match the end date of OPT. This advise did not conform to existing policy guidelines. Only Interim OPT rules required the extension of students who have authorized OPT before SEVIS was in service.²³²

h. Problems of lack of fit between SEVIS regulations and technology

In many instances the SEVIS regulations did not match the technology operating requirements. Otherwise, SEVIS technology did not support SEVIS laws and regulations. For example, Help Desk asked DSO to register all students (transfer, initial, active) within 30 days of program start day. The SEVIS has been programmed to take action when students were not registered within 60 days or (for active) students next session registration cycle. The DHS acknowledged the mismatch and confirmed that the General Counsel of BCI was working on the issue. Until the guideline on registration was published, the 60 days rule applied. School would not be penalized for the coming (Fall)

²²⁹ NGLU 2003-09-c. Summary of NAFSA's September 17, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: "2. Status of General Counsel Guidance on F-2 study."

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200310a.pdf>

²³⁰ NGLU 2003-09-b. Summary of NAFSA's September 10, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: Topics addressed include: "4. How should an A/RO switch the dependents of J-1 parents?"

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200309b.pdf>

²³¹ NGLU 2003-09-a. Summary of NAFSA's September 5, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: "1. I-20 Re-Prints."

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200309a.pdf>

²³² NGLU 2003-10-b. Summary of NAFSA's October 8, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: "1. Program end date should not be changed after OPT approved."

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200310b.pdf>

term even, when there was a technical violation of SEVIS regulations.²³³ There were many other cases:

(1) J-1 regulation called for the schools: “shall update the Exchange visitor’s SEVIS record to reflect detail [on campus] employment”. However, the SEVIS software program has no such entry function.²³⁴

(2) When SELVIS was originally programmed, the law specifically provided for 1, 2, 3 years designation period for participating schools. However, new regulations published just before SEVIS went into service only provided for a two years re-designation period for sponsored program.²³⁵ The disparity created confusion and was not satisfactory resolved.

(3) NAFSA informed DHS on August 23, 2003 that the states of Serbia and Montenegro were not listed in SEVIS country codes. DHS promised to look into it. As of November it was still not taken care of.²³⁶ Students from this country had a difficult time process their application.

(4) The SEVIS program did not have an extension of stay for more than 12 months. Schools brought the issue up and expected changes to the SEVIS 4.8 version. DHS promised to discuss about it, without accepting the proposed change or committing to a firm date.²³⁷

²³³ NGLU 2003-09-a. Summary of NAFSA's September 5, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “3. Help Desk & Registration Reporting.” <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200309a.pdf>

²³⁴ NGLU 2003-08-c. Summary of NAFSA's August 20, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “2. Authorizing On-Campus Employment for Exchange Visitors.” <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200308c.pdf>

²³⁵ NGLU 2003-09-b. Summary of NAFSA's September 10, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “7. Redesignation alert for J exchange programs.” <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200309b.pdf>

²³⁶ NGLU 2003-11-b. Summary of NAFSA's November 19, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “2. Serbia & Montenegro still not listed in SEVIS country codes” <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200311b.pdf>

²³⁷ NGLU 2003-11-b. Summary of NAFSA's November 19, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “3. When will F SEVIS allow extensions of stay over 12 months?” <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200311b.pdf>

C. Varieties of technical problems

At the implementation stage, the schools faced a number of technical problems, some of them unanticipated but many of them could have been avoided through detail planning, e.g., early release of program specifications, and comprehensive testing, e.g., beta testing of SEVIS software.

a. Problems with lack of technical specifications

David Ward, President, American Council on Education, on behalf of 33 higher education associations, has urged the federal government to push for SEVIS implementation only when the technology was fully developed, tested, functional and reliable:

“First, the specifications and the interface for batch processing must be finalized. Second, the operating software for SEVIS must be made available for purchase, installation, and testing by all institutions in advance of the compliance deadline, including technical assistance and software training. Third, adequate technical training and infrastructure at INS is necessary to ensure that the SEVIS web site is fully interactive for campuses before SEVIS can be said to have gone "live.”²³⁸

Many problems and issues confronted by the schools, especially earlier on the SEVIS implementation cycle resulted from the schools having inadequate technological capacity – in hardware, software, or human resources - to interface with SEVIS. INS has promised but never released technical specifications for SEVIS until it was too late. Schools that wanted to develop its own software were not able to do so. Schools who wanted to buy software in the market found out that they were no available. Software vendors were not provided with technical details to develop SEVIS compatible software.

b. Problems with incompatibility between systems

Many of the interface problems were caused by the INS imposing standards and requirements that deviated from common accepted industrial standards established by The Postsecondary Electronic System Council and adopted by many schools.²³⁹ In so doing, the universities have to adjust their industrial standards to SEVIS protocol at substantial cost and delay, wrecking havocs and creating chaos within the universities and schools in the process.²⁴⁰ Interfacing with SEVIS required “application operability”

²³⁸ “Letter to the INS Regarding SEVIS - RE: Comments on Proposed Rule: "Retention and Reporting of Information for F, J, And M Nonimmigrants: Student and Exchange Visitor Information System (SEVIS)" INS No. 2185-02 (RIN 115-AG55)” American Council on Education. June 14, 2002. (ACE recommended that SEVIS compliance deadline be set at 180 days after “Inspector General certifies that SEVIS is fully operational and software is available for purchase.”) <http://www.acenet.edu/washington/letters/2002/06june/ins.sevis.cfm>

²³⁹ Terry W. Hartles and James R. Burns, “Interconnecting World,” *Educause Review* September/October 2002, pp. 88-9 <http://www.educause.edu/ir/library/pdf/ERM0259.pdf>

²⁴⁰ For need of integration, see David K. Moldoff, “The Economics if Application Interoperability” (1/20/2004) (The “economics of interoperability” is driving force in university

or “making independently designed application system work together” as a functioning whole.²⁴¹ The issues to be resolved were data ownership, definition and control. The challenge was in how to make different proprietary and independent data systems – with common data model, consolidated business logic, and separate functional process - speaking to each others. For example, how to make federal SEVIS system interacts freely and securely with local university systems, particularly when the university systems operators and DHS administrators refused to give up their own authority to define and control the information protocol and process.

One of the biggest issues was that of making interfacing worked within a university and between the university and SEVIS. The critical issue was whether the university IT and computing system and structure could be adjusted to comply fully with DHS – SEVIS legal, administrative and technological requirements.

“Of immediate concern in this area is the lack of technical functionality, the absence of clear business rules, and overall problems with the structure, design, and layout within the current database systems used to track and report data on the internationals affiliated with universities. The systems vary widely in terms of platform, software, level of automation, and much more. Further, none of them adequately captures all of the data elements that universities will be required to report to the INS once SEVIS is fully implemented sometime in 2003. The current database system in international education offices may be unable to interface with other departments or offices throughout such systems that are important for compliance, such as the Tax Office, Payroll Office, Registrar’s Office, Human Resources, and/or the Student Information System.”²⁴²

c. Problems with structural difficulties and system deficiencies

Structural difficulties standing in the way of successful interface between universities and SEVIS could be categorized as follows: (1) System Deficiencies, (2) Information Deficiencies, and (3) Policy Deficiencies

System deficiencies. Existing university IT structure and data collection process was not designed to serve SEVIS needs. Traditionally foreign student information collection functions were not clearly defined on paper, well organized within a department, seamlessly coordinated between business units and tightly centralized within a university. For example, there was a lack of connectivity between international student office and other academic departments and administrative offices. Historically, real time gathering, validating and monitoring of information was not a requirement in an education setting.

IT development. The movement is toward uniform interoperable codes and standards, facilitating interface and integration of systems within the between university IT systems.) e-Education Infrastructure White Paper Series, The Post Secondary Electronic Standards Council <http://www.standardscouncil.org/newsletter/01-04.pdf>

²⁴¹ *Id.* P. 3.

²⁴² *Id.*

In a university, IT philosophy was about sharing of information to support educational needs and not enforcing law to realize security goals.

Other system deficiencies included a lack of event tracking capability. In the past, universities have little interest in and incentive to track the students and monitor their activities, in a systematic and organized way. Universities structure and process promote freedom and responsible citizenship.

In as much SEVIS demanded reporting of certain substantive events, e.g. when a student ceases to enroll in a class, the international offices must be able to track each student and every event with respect to a foreign student's academic career in the U.S. There is however no university policy or administrative rules to facilitate such a comprehensive, and intrusive, tracking process, on paper or otherwise. For example, when a student is put on academic hold for poor performance or criminal misconduct, such information would usually not be shared with other academic departments and business units, such as the international student office. The failure to share information results from privacy concerns and boundary contestation habits. Thus, if the student chooses not to challenge the academic hold and ratifies the problem, the international student office will not be informed and is not in a position to do anything about it. It is certainly not be able to start the SEVIS event sensitive flagging and tracking process. More likely than not, under the existing system, the only way the international student office hears about the academic hold is when the international student contacted the office for help.²⁴³ Even if the international student office receives these types of reports, it is incredibly difficult and very time consuming to manually go through each recorded and every SEVIS events to verify the validity and reliability of such information sufficient to justify reporting it to the SEVIS; in light of dire consequences and severe penalty attached; more mundanely in ability to correct mistakes.

Information Deficiencies. Another deficiency concerns the extent to which information presently collected in universities meets SEVIS requirements. Although the final list of SEVIS data elements required submission remains unknown, it is clear that existing information systems and data base in most international student offices across the nation are not able to capture all required data elements to fully comply with SEVIS. The full capturing and reporting of all needed SEVIS information might come in conflict with various existing federal, state, and local government law, rules and regulations.

Policy Deficiencies. There was no uniform and university wide policy governing the collection and processing of SEVIS related information. As a result, the international student office and other academic/business units were left to their own accord. Thus, while the international student office might be able to collect and update the information as required by SEVIS, other data point in the university system might not do as well. Absence of a policy directing each department and all offices of the university to compile with SEVIS mandate, the effort to collect data and maintain records would be incomplete and half hazard. In addition, there was no policy or procedure governing

when and how to perform compliance audits and data integrity audits sufficient to assure that the data collected were valid and reliable ones/

The aforementioned deficiencies are not exhaustive but represented some of the more egregious, recurring and structural technological lapse to the existing information gathering system and process which promises to hamper the successful launch and effective operations of SEVIS.

d. Problems with lack of technical assistance

The SEVIS end users complained loudly and consistently about lack of technical assistance for the DHS. The university staff has no where to turn when they confronted SEVIS related technical problems and were left to their own device.

Throughout the SEVIS implementation period – 2001 to 2003 - the NAFSA members complained repeatedly of lengthy hold time when seeking assistance from the Help Desks. For the month of March 2003, Help Desks nation wide were working on 800 calls per day. 30% of those calls were password related.²⁴⁴ Help Desk issues included: refuses to issue data fix tickets and once data fix tickets were closed as fast as they were open, for failing to find problem²⁴⁵

The process time for data fix was also very long²⁴⁶ From September 1 – 16, 2003, the “maximum average” hold time was 15 minutes.²⁴⁷ For the month of August in 2003, the Help Desk’s record showed that the average hold time were just under two minutes, with some calls lasting are as long as 12 minutes. EDS showed that the hold time was about 5 minutes while NAFAS statistic showed much longer holding patter. This might have been caused by DHS removing critical Help Desk personnel to work on pressing batch issues.²⁴⁸

²⁴⁴ Help Desk has 28 members at tier one. Four ere dedicated to batch issues. There were eight staff at tier two. There was a network of analysts at tier three.

²⁴⁵ “Help Desk Issues” NGLU 2003-06-a. Summaries of NAFSA's June 4 and June 11, 2003 conference calls with DHS and DOS regarding SEVIS.
<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200307a.pdf>

²⁴⁶ NGLU 2003-03-26. Summary of NAFSA's March 26, 2003 conference call with DHS and DOS regarding SEVIS. “Password Reset”
<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu20030326.pdf> Password problems might be associated with SEVIS security measures, Temporary password on I-17 expired in 30 days. Permanent password expired in 90 days. See “Password Timeout” *Id.*

²⁴⁷ NGLU 2003-09-c. Summary of NAFSA's September 17, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “10. Hold times for SEVIS Help Desk.”
<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200309c.pdf>

²⁴⁸ NGLU 2003-03-26. Summary of NAFSA's March 26, 2003 conference call with DHS and DOS regarding SEVIS. “Help Desk Statistics”
<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu20030326.pdf>

As to data fix, the DHS reported a total of 3,700 data fix tickets between June and September of 2003. They involved individual student visa problems or more complex system non-functioning issue. DHS promised to work with Help Desks to correlate all data fix problems to discern pattern and root causes²⁴⁹ while requesting DHS requesting university members to reduce data fix problems by being more careful at point of entry.

The NAFSA members reported negative encounters in trying to communicate with DHS. They found that DHS district level student/school officers were often not well trained on SEVIS technical details or adequately informed as to the latest developments in procedures and practices. They also received confusing and conflicting opinions from different agencies and officials. As a result the school officials have little faith in DHS in helping with their inquiry or to address their concerns.²⁵⁰

Sometimes the DHS was not responsive to the schools need and call for help to resolve policy related technical issues. For example, when NAFSA asked DHS on October 8, 2002 about whether J-1 transfer students could start to study in a new school pending a data fix by DHS. DHS answered that such a student was not allowed to start a new course of study when he was changing from one category to another (non-degree student to B.A.), even the students have done what he could to embark on the study. This left the issue of starting a course of study during data fix unanswered.²⁵¹ In another instance, when schools requested DHS for guidance on appropriate nonimmigrant classification for short term student, they were given conflicting instructions and inconsistent guidance. DHS only promised to investigate but gave no firm answer.²⁵²

d. Problems with system access

The schools often have difficulties in accessing the SEVIS system. For example, SEVIS experienced periodical, sudden and substantial slow down in June of 2003.²⁵³

²⁴⁹ NGLU 2003-09-b, "Summary of NAFSA's September 10, 2003 conference call with DHS and DOS regarding SEVIS" topic on "Help Desk hold times and statistics", p. 1.

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200309b.pdf>

²⁵⁰ See NGLU 2003-12-a. Summary of NAFSA's December 10, 2003 conference calls with DHS and DOS regarding SEVIS, "11. SEVIS ICE communication with CIS Student/School Officers."

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200312a.pdf>

²⁵¹ NGLU 2003-10-b. Summary of NAFSA's October 8, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: "6. Exchange visitor study while awaiting a data fix."

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200310b.pdf>

²⁵² See NGLU 2003-12-a. Summary of NAFSA's December 10, 2003 conference calls with DHS and DOS regarding SEVIS, "15. Request for guidance on appropriate nonimmigrant classification for individuals engaging in programs of very short duration."

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200312a.pdf>

²⁵³ NGLU 2003-06-a. Summaries of NAFSA's June 4 and June 11, 2003 conference calls with DHS and DOS regarding SEVIS. "SEVIS Slowdown"

In September of 2003, a school with 2 exchange visitors was not able to access the J-program on SEVIS. It turned out that the school's assigned user ID was invalid.²⁵⁴ In another case, a seasoned (over one year) DSO from Washington University at St. Louis was denied access to SEVIS because her name was not on the I-17 form, authorizing access. But upon inquiry, her name was found to be approved all along.

e. Problems with system (zero) intolerance

The SEVIS is designed to have zero tolerance for mistakes. Once a mistake is made, the schools cannot correct it. The school has to ask the Service Center or Help Desks for a data fix ticket. This takes much time.

DHS and schools resort to creative ways to “work around” the problem. This was frequently and routinely done. However, a “work around” might cause unintended and larger problems down the road.²⁵⁵ For example, in dealing with erroneous transfer entry, the Help Desk has recommended two ways to by-pass the system and avoid data – fix. First, by sending a letter to the transfer-out school to request for a return of record. Second, by asking the transfer out school to open up a file for the incoming student and immediately do a transfer back to the originating university. DHS thought that there was nothing wrong with creating dummy files to ratify the mistakes made without pursuing time consuming and effort intensive data fix.²⁵⁶ However, SEVIS was not designed for multiple records and files pertaining to an individual student enrolled in the U.S. It goes without saying, “work around” while creative is not anticipated by the SEVIS design, and would most certainly have system impact on the proper functioning of the SEVIS system.

f. Problems with program inflexibility

The schools were not allowed to make exceptions to SEVIS rules, even in compelling cases. The SEVIS would not make allowance even when there was a mistake on the part of the system administration. This included cases when the system was found to be dysfunctional and the process discovered to be flawed, thus creating unjustifiable, unreasonable and unacceptable hardship for the students. For example, in cases after cases, a student who intended to enter a new program after he finished an old one would not be able to do so until he has obtained permission from DHS. But what happens if the student has been accepted in the new school but did not have time to apply for permission?

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200306a.pdf>

²⁵⁴ NGLU 2003-10-b. Summary of NAFSA's October 8, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “3. Exchange Program "Disappears.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200310b.pdf>

²⁵⁵ NGLU 2003-09-c. Summary of NAFSA's September 17, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “6. SEVIS work-around (e.g. SEVIS do not allow for extension of more than one year or 5 years and no data entry from POE.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevpgovcomindex.htm>

²⁵⁶ NGLU 2003-10-a. Summary of NAFSA's October 1, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “9. Transfers and Data fixes for Transfers.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevpgovcomindex.htm> (“as an option to avoid long process time”)

In one case, a student finished his program in school A on December 12. He returned home on the next day, December 13. School A would not official release him before December 13. School B where the student was transferring to would not be able to issue I-20 before December 13, before he was properly released from School A. When consulted, DHS encouraged the schools to work out amongst themselves as a matter of good business practices, but steadfastly refused to exerciser discretion and made an exception.²⁵⁷

There were other cases of inflexibility to the detriment of the schools and frustration of the students. For example, SEVIS rule did not allow for reverse matriculation. SEVIS program has only “matriculation” entry functions for Associate to Bachelor, Bachelor to Master, Master to Doctor degrees, all in a unidirectional and linear manner. In the SEVIS system a student could not obtain his Ph.D. first and then pursue a master degree later. The DHS responded: “The issue was not anticipated by DOS.”²⁵⁸

g. Problems with delay in fixing problems

DSOs were experiencing substantial delay in fixing problem, due to enormous amount of work load and limited resources. A case in point:²⁵⁹ DSO reported that he made a mistake of authorizing OPT for student 1 in the name of student 2, who has an identical name but different SEVIS #. The Texas Service center corrected the record and student 1 was afforded a correct OPT. Student 2’s OPT could not be removed because of incorrect recommendation. When the DSO recommended that Student 2 be given a OPT there was no way of purging the record of student 2. The Help Desk was called. Action was promised within 24 hours but did not happen. DHS explained it resulted from a need for doing research and interface with service center. This is a typical case of DHS not meeting up to schools operational needs and expectations.²⁶⁰

h. Problems with lack of accommodation for unconventional programs

The SEVIS was not design to accommodate unconventional or one of a kind training programs, e.g. distant learning with occasional on site visits or short intensive English training course, or repeated intensive week end EMBA courses. The SEVIS

²⁵⁷ NGLU 2003-11-b. Summary of NAFSA's November 19, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “5. Issuance of initial I-20 to transfer students who will travel and reenter.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200311b.pdf>

²⁵⁸ NGLU 2003-10-d. Summary of NAFSA's October 29, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “1. DOS to review "reverse matriculation" scenario.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200310d.pdf>

²⁵⁹ NGLU 2003-06-a. Summaries of NAFSA's June 4 and June 11, 2003 conference calls with DHS and DOS regarding SEVIS. “3. Resolutions of SEVIS Problems.” NAHSA was concerned with substantial delay before a problem was fix and the impacts on schools and students.

²⁶⁰ NGLU 2003-10-a. Summary of NAFSA's October 1, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered include: “7. OPT errors; 8. POE List and deferred attendance.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevpgovcomindex.htm>

required students who took more than 18 hours a week of instruction to apply for a F-1 visa subject to (repeated) steep SEVIS fees and lengthy interviews.²⁶¹ Consulates have been giving B-1 visa when students asked for F-1 as a “work around” to avoid the problem. DHS insisted that F-1 was the proper way to go.

i. Problems with less of appreciation for educational practices

The SEVIS was no designed to accommodate educational goals and practices. NSAFSA raised question about how to process student suspension, termination and reinstatement cases, which adversely affected students’ visa status. For example, students’ visa would still be terminated if later it was discovered that faculty made mistake or the student successful appealed for a change of grades. DHS would not reprogram the SEVIS to accommodate commonly accepted educational practices and take into account major academic concerns. DSO advised schools to wait until the academic process is finished until before taking final disciplinary action on student. But mistakes might be discovered and appeal was allowed years later. In these cases, DHS called for a data fix.²⁶²

j. Problems with breach of confidentiality

There were a few reports of “breaches of confidentiality.” Extensive system analysis has revealed that the likelihood of these occurring was 1 in 40,000 system transactions. However, DHS recognized that even this level it was unacceptable. A system solution was implemented in May 2003. No new data crossover issues have been identified since then²⁶³

k. Problems with trial and error

The SEVIS system was very much a work in progress project, for the schools as well as DHS. As end users, the school officers often have to confront problems and deal with issues that were not anticipate nor provided for. In such cases, the schools officials consulted the Help Desk on a case by case basis while the NSAFSA met in conference with DHS to resolve the difficulties. However, the Help Desk usually could not solve the problem and have to refer to the DHS. The DHS has to conduct investigation and research before an answer was available. This often resulted in long delay and/or caused great anxiety for the students and visitors. For example:

²⁶¹ NGLU 2003-10-b. Summary of NAFSA's October 8, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered include: “7. Short academic programs; <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200310b.pdf>

²⁶² NGLU 2003-10-a. Summary of NAFSA's October 1, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “Suspensions, terminations, and reversals of academic decisions.” <http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200310a.pdf>

²⁶³ Written Testimony of Under Secretary Asa Hutchinson, Border and Transportation Security, Department of Homeland Security, “The Conflict Between Science and Security in Visa Policy: Status and Next Steps.” Hearing before the Science Committee of the U.S. House of Representatives, February 25, 2004. <http://www.house.gov/science/hearings/full04/feb25/hutchin.htm>

An exchange visitor and his family used one set of DS-2019s to obtain their visa. They then came to the U.S. early under a new set of DS-2019 and visa. The POE officer endorsed the second visa but used the first SEVIS visa number for tracking purposes.²⁶⁴ The DHS did not know how to handle to situation.

A foreign student wanted to study abroad in his last year. But he also wanted to apply for OPT. The student was confronted with the issue of whether he needed to return to the U.S. to file his/her I-175 to be considered for OPT upon completion of his study abroad?²⁶⁵ This was not provided for student applied for OPT in good faith. However he failed to complete academic course requirement. Current regulation [8 CFR 214.2 (f) (10) (ii) (A) (3)] required students to apply for OPT “prior to completion of all course requirements or for the degree or prior to the completion of the course of study.” Since the student was not able to complete his academic study, he needed to abandon his OPT until all course work was completed. But could the student finish the incomplete coursework while on OPT?²⁶⁶

VII

Conclusion: Taking Stock

"When the plan meets reality, reality always wins"
SEVIS @ Berkeley Home Page²⁶⁷

A. Introduction

As of writing of this article, the SEVIS is 30 months old (1/03 – 9/05). Everyday it grows stronger, and more mature. Many predicted that it would fail to materialize, but it miraculously survived. Whatever transpired, SEVIS would be recorded as the first ever foreign students and visitor electronic tracking system in U.S. history.

The SEVIS system is in place. It is now time to take stock. What have been achieved? What are the lessons learned? That is the focus of this investigation.

²⁶⁴ NGLU 2003-10-b. Summary of NAFSA's October 8, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “4. Two sets of SEVIS documents.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200310b.pdf>

²⁶⁵ See NGLU 2003-12-a. Summary of NAFSA's December 10, 2003 conference calls with DHS and DOS regarding SEVIS: “18. OPT applications and study abroad.”

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/nglu200312a.pdf>

²⁶⁶ NGLU 2003-11-b. Summary of NAFSA's November 19, 2003 conference call with DHS and DOS regarding SEVIS. Topics covered included: “Post-Completion OPT students who discover that they did not meet degree requirements, after applying for or obtaining OPT.”

²⁶⁷ <http://ias.berkeley.edu/siss/hurricane/>

B. *What has been achieved?*

Even the harshest critics would have to acknowledge that the SEVIS has achieved a lot. For the first time in U.S. history, America has a meaningful, efficiency and effective way of monitoring and checking “every” foreign students and academic visitors in this country. The SEVIS allows the DHS to properly vet students and visitors before they come to the U.S. It is capable of rejecting visitors found acting incompatible with their status, i.e. studentship, and purpose, e.g. researching. The SEVIS also allows the FBI, CIA, and DHS to have access to valuable data to prevent and control, and if need be interdict, arrest and prosecute foreigners posing threats to U.S. national security.

On a day to day operational end, the SEVIS system makes it possible for the Department of State, DHS, and university officials to talk to each other in determining whether a foreign student is fit to study in the U.S. Domestically, the SEVIS makes it possible for the INS to work closely with the universities to make sure that foreign students are properly enrolled and engaging in school related activities. It also allows the DHS to monitor the progress and where about of each and every foreign students in the country for terrorist risk assessment and prevention.

The DHS – ICE reported in “SEVIS: One Year Of Success”²⁶⁸ the following achievements. The SEVIS has kept U.S. safe while facilitating the entry and exist process who wanted to study in the U.S. by maintaining a web-based information system on international and exchange students for the use of U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), the two Department of Homeland Security (DHS) agencies with primary responsibility for border security. (The report did not include the State Department.) It reported certifying 8,737 schools and exchange visitor programs, approving 770,000 students and exchange visitors (F-1, M-1, and J-1 visa categories), and maintaining data on more than 100,000 dependents of students and exchange visitors (as of July 2004). In terms of enforcement the SEVIS referred 36,600 potential student violators to the ICE Compliance Enforcement Unit (CEU) for investigations, including more than 2,900 cases of ‘no-shows’, expulsion, suspension, and failure to maintain a full course of study. As a result 1,591 field investigation was conducted resulting in 155 arrests. Under “ENFORCEMENT SUCCESSES” it reported four set of cases: a student and an exchange visitor was investigated for fraudulently applying for “SEVIS certification for schools that were already SEVIS-certified”; ICE agents investigated several cases of corrupt school officials selling fraudulent Forms I-20 and transcripts, in one case for \$150-\$400 each; and the last case involved a complaint from Citizenship and Immigration Services alleging attempt to get approval of school already certified, to a user ID, and password to the applicant, ability to generate fraudulent Forms I-20.

²⁶⁸ http://www.ice.gov/graphics/news/factsheets/sevis_1year_success.htm

C. What have we learned?

The SEVIS as designed and now implemented are far from perfect and leave much to be desired. At a policy level the SEVIS centralized the control of foreign students and visitors in the hand of DHS, putting security considerations over and above university administrative concerns and international students' educational needs. It allowed the use of "terror" as a reason for defining, if not controlling, educational content, process and relationship. At an operational level, this research found that, from the start, the SEVIS was a learn as one goes trial and error project, with many management, technical and legal problems unresolved and still more awaiting to be discovered.

Three years on, the SEVIS system could hardly be called a success. It is in fact a dismal failure. SEVIS was destined to fail from the very start. The SEVIS was implemented with minimal planning, inadequate support and poor planning. (The same thing could be said with the reorganization of the DHS.) The DHS forged ahead with SEVIS implementation, against an arbitrary "imposed" deadline and without due considerations for the problems it might pose for the schools and hardship it certainly would inflict on the students. It succeeded on both counts: universities were frustrated and students were anxious. Days to go before final implementation, schools were not certified, regulations were not promulgated, training was not provided, program code was not released. During implementation, SEVIS was not accessible, files were misplaced, Help Desks were unhelpful, inquiries were not responded to, data fixes were long delayed, and more...

On hindsight and upon reflection, much of blame should go to the Bush administration who refused to heed the advice of university representatives and suggestions of education experts. The only viable justification (rationalization) was perhaps that the country was at war and the public wanted a fool proof security system in place as soon as possible, to foreclose another 9/11. However if that should be the justification, the SEVIS system has failed the nation, in process and result. In rushing to put in place a SEVIS system at all cost, the DHS has paid a high price.

The high handed way the SEVIS system was imposed on the universities – from lack of consultation to unfunded mandate – spoiled the delicate working relationship between the universities and the government, making future cooperation difficult if not impossible.

The insensitivity and incompetence exhibited by the DHS in implementing the SEVIS – from lack of planning to failure of support – has all but destroyed the schools' faith and confidence in the government's ability to lead and manage the nation's educational affairs.

Finally, the rush to put SEVIS in place without due consideration of universities' educational philosophy and foreign students' welfare have eroded the hard earned status and leadership of U.S. higher education system in the world. Increasingly foreign students are staying away instead of yearning to come to United States to study, to learn, to exchange experience and ideas.

Finally, and most regrettably, the corruption of education philosophy (allowing security to trump education) and compromise of university and student relationship (transforming university's mentor role into a monitoring role) perhaps are the two greatest prices we pay for the nation's blind sighted, fool hearted and strong headed search for security at all costs. This undoubtedly would be part of the best forgotten legacy of SEVIS for years to come.