

# Essential Record Keeping and Reporting Requirements of F, M, and J Visa Nonimmigrant Students to SEVIS

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## Executive Summary

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) is an act implemented in the year 2003 to curb terrorism by monitoring university enrollments of international students with F, M, and J nonimmigrant visas (§ 8 CFR 214.3). Along with this, § 8 CFR 214.3(g): Record keeping and reporting requirements were implemented. Under this, the focus of this policy analysis is § 8 CFR 214.3(g)(1): Student records. This process was established by implementing Student Exchange and Visitor Program (SEVP). Although there are benefits of this policy, many educators raised concerns over its functionality in benefitting international students.

## Introduction

The main purpose of this policy is to protect national security and prevent immigration-related fraud through the establishment of the Student Exchange and Visitor Program (SEVP), and Student and Exchange Visitor Information System (SEVIS) which requires Designated School Officials (DSO) and SEVIS certified universities to keep records and report on students on F status (academic study), M status (vocational study), and J status (cultural exchange) to Immigration and Customs Enforcement (ICE). SEVP and SEVIS are handled through ICE following The Homeland Security Act in the year of 2002.<sup>1</sup> ICE come under the US Department of Homeland Security. The following policy was developed following evidence of foreign students abusing their student status in the 1979 Iranian hostage crisis, 1993 World Trade Center bombing, and 9/11 attack on World Trade Centre.<sup>2 3</sup> Initially the attorney general of Immigration and Naturalization Service (INS) recommended an electronic system to monitor foreign students in 1995. Following this, Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was established. It was later changed to SEVIS. The current SEVP program and SEVIS are a result of the US Patriot Act of 2003 under the regime of President George Bush.<sup>4 5 6</sup>

<sup>1</sup> Wong, K. C., Implementing the USA Patriot Act: A Case Study of the Student & Exchange Visitor Information System (SEVIS) (2006) *BYU Educ. & L.J.* 379.

<sup>2</sup> Romero, V. C. Noncitizen Students & Immigration Policy Post-9/11, (2003) *17 Geo.Immigr. L.J.* 357.

<sup>3</sup> US Immigration & Customs Enforcement, Student & Exchange Visitor Information System (SEVIS) II (2012)

<sup>4</sup> *ibid*

<sup>5</sup> Urias, D. A., Yeakey, C. C. International Students and US Border Security, (2005) *The NEA Higher Education Journal*, 187.

<sup>6</sup> Siskin, A. Monitoring Foreign Students in the United States: The Student & Exchange Visitors Information System (SEVIS), (2005) *CRS Web*.

Based on this policy, DSOs of SEVIS certified schools must report to SEVIS on the following of F, M, and J status students.<sup>7 8</sup> To comply with this system, DSO should enter student's basic information to the SEVIS system which includes nationality, date of birth, country of citizenship, etc. Further, information pertaining to student's academic standing (i.e., record of coursework, grades, transfer credits, certifications for Curricular Practical Training (CPT) or Optional Practical Training (OPT), statement of graduation) must be entered. Moreover, students' current information such as physical address must be periodically updated on the SEVIS system. In an instance of a change in student's residential address, the student should notify the DSO, and the DSO should report to SEVIS.

The DSO is required to report students at pre-determined time intervals. Failure to report on students by the DSO or University would result in the student losing his/her student status, and the student will no longer be eligible for nonimmigrant student status.<sup>9 10 11</sup> A university's failure to comply could lead the university to be stripped out of the SEVIS program certification, and they will not be able to enroll international students thereafter. Some of the intended outcomes of this policy include being able to reflect student status, minimizing data fixes on student records, avoiding unnecessary student reinstatement, preventing on-site reviews, protecting national security, and preventing immigration-related fraud. These outcomes were yielded in the backdrop of the advocacy received by the INS Task Force (this task force included members from the state department, United States Information Agency, and experts in the administration of International Student Programs), Department of Justice (DoJ), Department of State (DoS), and Federal Bureau of Investigation (FBI).<sup>12 13 14 15 16</sup> Further, the Attorney General of *INS*, Commissioner of INS, United States Secretary of the State, George W. Bush, and United States Congress were major actors responsible for developing this policy.<sup>17 18 19</sup> The objective of the policy was to implement efficient, and centralized tracking and monitoring of students and exchange visitors who come into United States through F, M, or J visa. This is done in order to reduce immigration related fraud, and to enhance national security.<sup>20 21 22 23</sup> Thus, collecting information on students who are under the aforementioned visa categories and reporting to SEVIS<sup>24</sup>, and obtaining international student assistance to fund while requesting university assistance to maintain SEVIS were identified as key components of the policy. This policy was passed as a response to the terrorist attacks on September 11, 2001.<sup>25 26 27 28</sup> This bill was passed at a voting rate of 98-1.

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<sup>7</sup> Wong (n 1)

<sup>8</sup> Policy Guidance 1004-07 Comment

<sup>9</sup> Wong (n 1)

<sup>10</sup> Urias (n 5)

<sup>11</sup> Siskin (n 6)

<sup>12</sup> Wong (n 1)

<sup>13</sup> US Immigration & Customs Enforcement (n 3)

<sup>14</sup> *ibid*

<sup>15</sup> Haddal, C. C., *Foreign Students in the United States: Policies and Legislation* (2008) CRS Report for Congress.

<sup>16</sup> Romero (n 2)

<sup>17</sup> Wong (n 1)

<sup>18</sup> *ibid*

<sup>19</sup> *ibid*

<sup>20</sup> Siskin (n 6)

<sup>21</sup> Haddal (n 15)

<sup>22</sup> Urias (n 5)

<sup>23</sup> US Immigration & Customs Enforcement (n 3)

<sup>24</sup> Romero (n 2)

<sup>25</sup> Urias (n 5)

<sup>26</sup> Wong (n 1)

<sup>27</sup> Siskin (n 6)

<sup>28</sup> Romero (n 2)

*FBI* was a major proponent of the SEVIS system. *FBI* was only focusing on international students, and they further requested personal information on foreign students in order to be compared with the Department of Justice's "Foreign Terrorist Tracking Task Force" (FTTTF) database. This request was highly criticized and senators Ted Kennedy, and Patrick Leahy questioned the legality. Although the SEVP received mixed international reactions, Malaysian embassy praised the efforts of the USA as the Malaysian embassy during the early 2000s was equally interested in tracking their students.<sup>29</sup> However, there were many opposing groups to the implementation of SEVIS.<sup>30</sup> National Association of Foreign Student Advisors (NAFSA), American Council of Education, National Association of State Universities and Land Grant Colleges (NASULGC), and American Association of Collegiate Registrars and Admissions Officers (AACRAO) strongly opposed the implementation of SEVIS. NASULGC strongly opposed the fee collection to run the SEVIS. Similarly, AACRAO refused to comply with the *FBI*'s request to provide student personal information without a court order or subpoena. Additionally, international student bodies also protested. A good example of student protests was displayed at the University of Wisconsin.

However, voting for the implementation of the above was conducted on October 21, 2001 to be fully implemented by January 1, 2003.<sup>31</sup> Thus, DSOs should enter information about students into the system by SEVIS certified universities. Students should also provide consent to enter their data into SEVIS upon receiving form I-20 (certificate of eligibility for nonimmigrants on F1, M1, or J1 visa).<sup>32</sup> Students should pay a mandatory SEVIS fee of \$200 upon receiving form I-20. This proof of payment should be produced to the US consular office in the respective country of the student. At present, the SEVIS system charges \$350. As per this system, changes of student's physical address, major of study, telephone number, etc. should be entered into SEVIS by DSO. Further, 5,500 federal enforcement officers monitor the information of approximately 1.2 million international students across the United States.

### Policy Analysis

There were many objectives that were met through this policy. SEVP and SEVIS are fully operational, and required information on international students is reported and recorded in appropriate time frames. In the system, there is one record for one individual. Implementation of SEVP and SEVIS also eliminated previously existing problems such as having multiple records for a given individual. Further, through USA PATRIOT Act a few exceptions were made to Family Educational Rights and Privacy Act" (FERPA), allowing the attorney general and his designees to access student records of students pursuant to an ex parte court order in connection with terrorism investigation.<sup>33</sup> Thus, consent should be given mandatorily by international students to release their information to INS.

<sup>29</sup> US Immigration & Customs Enforcement, Fact Sheet: Continuity Operations Planning for SEVP Approved Schools (n.d.)

<sup>30</sup> Wong (n 1)

<sup>31</sup> United States Senate Roll Call Vote 107<sup>th</sup> Congress 1<sup>st</sup> Session:

[https://www.senate.gov/legislative/LIS/roll\\_call\\_votes/vote1071/vote\\_107\\_1\\_00313.htm](https://www.senate.gov/legislative/LIS/roll_call_votes/vote1071/vote_107_1_00313.htm)

<sup>32</sup> The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99)

<sup>33</sup> FERPA ACT (1974)

The consent seeking process was implemented by adding the following line to the form I-20, “I authorize the named school to release any information from my records needed by the INS pursuant to 8 CFR §214.3(g) to determine my nonimmigrant status.” Similarly, schools and universities were made to adhere to this by making it mandatory to provide information about international students. Failure to provide the required information forfeits a school’s ability to further enroll international students.<sup>34</sup> There are 8000+ schools and universities, and 1383 exchange programs were certified for SEVP as of the early 2000s. More updated lists of institutions registered for SEVP can be found online.<sup>35</sup> Another, positive outcome was enabling a centralized system for federal officers where data is visible at border security to tighten immigration-related fraud coming from foreign students.

Similar to the above fully met objectives, there were a few that were partially met. Although SEVIS was fully operational, at the institution level difficulties were identified.<sup>36</sup> Most academic institutions stated the added legal burden on universities since the implementation of SEVP as it has increased the amount of paperwork, and it is contradictory to the Paperwork Reduction Act of 1995. Moreover, due to the complexity of the SEVIS, mistakes could happen from DSOs. In an event where a DSO accidentally deletes a record of a student, it roughly takes about a year to fix the issues by DHS.<sup>37</sup>

There are objectives that were failed to achieve. For instance, the privacy of international students is violated through this system. Students are being tracked during the entire time they are in the United States, and it is against a person’s right to privacy. The consent for sharing information is obtained through the form I-20 where the student has no option of avoiding signing since the signature is mandatory when the student goes for visas. The information on students is shared even before the students arrive in the United States. Such constant monitoring and tracking make students feel like they are felons.

Lack of efficiency in the SEVIS system is another identified drawback.<sup>38</sup> It sometimes takes 30 to 60 minutes to enter data on a single student to the SEVIS. Thus, schools with thousands of international students at any given time have a hard time entering data into SEVIS. Along with the SEVIS, information on the students is screened by the Department of State. According to Government Accountability Office (GAO), science scholars who undergo the Visa Mantis Check had taken an average of 67 days to receive the clearance in order to obtain their visa.

There are both intended and unintended consequences of the implementation of SEVIS. One of the intended consequences was tightened security across US borders.<sup>39</sup> This is one of the only advantages and a positive consequence of the establishment of the SEVIS. This provides key information to federal officers at border security and immigration, so that they could observe any grounds for inadmissibility through SEVIS. In fact, the implementation of SEVIS is to analyze the data in order to track students. The majority of the students are not bothered about INS’s involvement in this. However, a majority has concerns over the FBI’s involvement in this.

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<sup>33</sup> FERPA ACT (1974)

<sup>34</sup> Urias (n 5)

<sup>35</sup> Homeland Security, Study in the States (2022)

<sup>36</sup> Urias (n 5)

<sup>37</sup> *ibid*

<sup>38</sup> Siskin (n 6)

<sup>39</sup> *ibid*

In a few instances detention and jailing of students were also reported.<sup>40</sup> Federal law enforcement officers at border security and immigration check students through SEVIS. In the time of post 9/11, Associated Press reported that at least 6 Middle Eastern students were detained for a period of 48 hours due to not taking enough credits. Similarly, a student of the University of Colorado was jailed due to lack of one semester hour, even after the student has obtained the permission from the university. Amidst all of these, students have to fund the SEVIS system by making a mandatory fee and universities have to bear the maintenance costs.<sup>41</sup> Further, universities should hire expert personnel to manage and use the SEVIS. This puts additional costs on the university. As a result of this, universities often charge such costs to students as processing fees. Considering the financial strains SEVIS puts on students, in some sense, it contradicts the “Unfunded Mandates Reform Act” of 1995.<sup>42</sup> The act was passed in an effort to limit the number of unfunded federal mandates imposed by the federal government of the state, local, and tribal governments.

However, one of the unintended consequences of SEVIS was authorities being able to help schools and students during turbulent times such as hurricane Katrina. Most of the students in affected schools were transferred to other schools throughout the country due to the centralized system implemented by SEVIS. This is one of the unintended positive outcomes of the SEVIS.<sup>43</sup> Another unintended outcome of SEVIS is the declined student enrolment rates.<sup>44</sup> Having the SEVIS implied stringent immigration laws of United States on students. This influenced the reduction of enrolment rates of international students on the US campuses. Further, visa regulations became more stringent for Middle Eastern and South Asian students.<sup>45</sup> Students who belong to the mentioned in the preceding continents are often targets of detention. With such stringent regulations came stereotyping of students, especially students of Middle Eastern origin. It should also be noted that, tracking people restricts people, and in a way, it negatively impacts the North American Free Trade Agreement (NAFTA), where the free exchange of ideas and people across the borders is encouraged. NAFTA is now replaced by United States-Mexico-Canada Agreement (USMCA).<sup>46 47</sup> Overall, the declined rates of international student populations deprive US students of receiving exposure to foreign cultures. In a way this leads to a cultural isolation for American students. At the same time, it indicates a decline in liberal education, especially in fine arts, literature, history, and world geography. Further, international students are viewed as an economic resource with the capacity to expand, shared, controlled, and secured as a commodity and a clear portrayal of ideologies associated with colonial European imperialism.<sup>48</sup>

### Conclusion & Recommendations

This is a policy that is established to protect the United States and the country’s citizens from foreigners (especially the ones who are on student visas) who come across borders. Although the objective of tightening the security is achieved, it took a toll on the international students.

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<sup>40</sup> Urias (n 5)

<sup>41</sup> I-901 SEVIS Fee - <https://www.ice.gov/sevis/i901>

<sup>42</sup> 2 USC §1501 et seq (1995) – Unfunded Mandates Reform Act

<sup>43</sup> US Immigration & Customs Enforcement (n 29)

<sup>44</sup> Urias (n 5)

<sup>45</sup> ibid

<sup>46</sup> 8 CFR § 214.6 – NAFTA

<sup>47</sup> 19 CFR § 182 - USMCA

There are many positives of SEVP. Having a centralized system with data entered on a timely basis helps the DHS to monitor and track students. SEVIS further helps in eliminating multiple records on individuals. This further increases the consistency of the information on the students in the database. From the federal government's point of view, these are all good things.

As per the analysis of the previous section, it is clear that the establishment of SEVP and SEVIS has made it a difficult process for universities to pursue. Difficulties in operation including time constraints, and expertise required to maintain the online SEVIS system are noted. In a way, universities are negatively affected by this. The establishment of SEVP and SEVIS in some sense stereotyped Middle Eastern and South Asian students. A clear decline in students was noted from Middle Eastern countries. In addition to the operational difficulties, universities that relied mainly upon international students and English language programs were hit hard following the declined rates. During the post-2002 period, there was an overall decline of international students by 2.4%, and it was 8% for students coming from the Middle East. The same trend got further accentuated with the travel ban by Trump regime (this is not a fact relevant to the topic of interest here, however, this indicates how US policies affect the influx of international students to the United States). Although the SEVP is a required program to tighten the security, putting a tremendous work on universities, and also encouraging universities to bear the maintenance costs further adds to the existing problem of operational difficulty. Furthermore, the program is said to have glitches that make the work difficult for DSOs, and the SEVIS is known for its inefficiency as it sometimes takes about an hour to enter data of a single student. One of the major reasons this has become an operation burden is that information to SEVIS has to be entered when the student is enrolled in the school. In any school, out of all the students who get selected, a sizable proportion gets rejected from securing the visa. At times, the student might not come to United States. However, since the student was selected, a SEVIS record should be created in order to send the form I-20 to the student. The student would pay the SEVIS fee, and go to US embassy to obtain the visa along with the form I-20. The government is benefited here as they have obtained the SEVIS fee. However, DSO has utilized work time that could have been allocated for something productive, rather than spending an hour entering data to SEVIS of a student who will not even come to the United States. This further elaborates the previously mentioned operational conundrum.

Overall, it is the international students who get disadvantaged through this. Firstly, they have to pay for SEVIS, which is not a process established to serve them (however, SEVIS has helped them at emergency times, i.e. – during hurricane Katrina). Most universities add their maintenance costs of SEVIS as processing fees to students' tuition. Apparently, international students fund a program that does more harm than good for them. Since the security is tightened, federal officers in border security, especially during the post 9/11 period were more cautious when checking SEVIS and students were detained and, in some cases, jailed for not having enough credits for the upcoming semester. This kind of activity should never take place, and it certainly has serious repercussions on a person's educational experience in the United States. Further, tracking and monitoring international students deprive them of their own privacy because the federal government is capable of seeking personal information of students at their will if they sense any relation to terrorist activity. It should also be noted that most of the detained and jailed students had nothing to do with terrorism. Tracking students might help to identify students who abuse their visas. However, it is evident that SEVIS is not a valid technique to monitor terrorist activity. Most of the time, it is innocent students who have to pay the price for errors generated through this

entire system. Furthermore, having a tracking system and constant monitoring of students stereotype them and it certainly hinders the productivity of those students. If the students are viewed as a market commodity that could be shared, and expanded; thus, it should be controlled in a way not to harm the growth of it. International students boost US economy and it is a \$30 billion industry. Students get benefited from the US education, at the same time they contribute to United States through economic means, intellect, and also exposing US students to different cultures. When there is a win-win situation for both United States, and international students, it is unfair to put international students in a situation where they are being tracked and monitored regularly.

Based on the above analysis, the feasibility of the SEVP program and SEVIS for universities should be observed. Especially, operational burden to university employees, financial burden to international students, and social problems (stereotyping, unnecessary detention) for international students should be closely observed. From the perspective of the government, it is evident that the SEVP and SEVIS programs should be further fine-tuned. GAO stated in one of their reports that the existing SEVP program and stringent border crossing laws are not applied severely to students who are on Optional Practical Training (OPT), and H1-B work visas.<sup>48</sup> The government thinks those who are involved in the US through employment are generally not motivated to do harm to the United States. Similarly, one could logically argue how could someone who obtain education in the United States is motivated to harm the United States? This conflict of logic should be addressed in the future.

Further, DHS should clearly state the reason why international students are only focused in relation to terrorist activity (As noted above, with the exception made in FERPA, the FBI is primarily focused on international students while they have equal access to US citizens as well), when 80% of the terrorist activities since 9/11 is committed by US citizens and legal residents (12 crimes were reported by foreigners related to terrorism and Jihad activities, whereas 346 cases reported by US citizens/residents). There is still a security threat from international students. However, considering the statistics it is not fair to get international students to fund SEVIS. Further, a policy should be implemented to brief students about the US education system and SEVP during student orientations. This would at least stop students from getting into trouble while traveling across borders. Most universities do this. However, making it a policy would further eliminate problems.

SEVP program cannot be stopped. However, adding certain amendments to it to at least take the financial burden on institutions and students, while implementing a policy to orient students to US education would certainly help in the long run. It should be noted that most of the research on improving SEVP targets on improving the system to support the government. The lack of research conducted to support student is a grave issue that should be further addressed.

<sup>48</sup> Urias, D, A., Yeakey, C, C. International Students and US Border Security, (2005) *The NEA Higher Education Journal*, 187.

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