NAFSA

**Association of
International Educators**

**Concept Paper on "Abuse of International Student Status"
NAFSA: Association of International Educators
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This concept paper is prepared for the November 29, 2001, meeting hosted by the Office of Science and Technology policy on PDD 2, section 3, international student tracking. It is intended to facilitate discussion by helping to orient our thinking on this matter.

The international education community has a huge stake in the legitimacy of educational exchange. We would welcome any actions that produce genuine increases in security without jeopardizing exchange. On the other hand, students constitute an infinitesimal proportion (less than two percent) of those who enter the United States every year on nonimmigrant visas. They are already the most closely monitored of all such nonimmigrants. It is difficult to imagine further controls on foreign students that would add significantly to safety and security if they are not applied to the other categories of nonimmigrants.

The PDD, section 3, seems to raise five basic issues. These will serve as the outline for this paper.

(1)   Abuse of Student Visas

We do not believe that abuse of student visas in the sense of willful violations of visa status is a major problem. The two kinds of abuse that have been cited most frequently in recent press reports are failure to enroll after entering the country (of which there was one example in the September 11 attacks), and dropping out and failing to depart the country. There are no data that we know of on how common these abuses are.

To the extent that it is possible to protect against such abuses through monitoring of visa status, this will be accomplished when the SEVIS system becomes operational in 2003. Under SEVIS, failure to enroll and failure to depart will be known. No further measures are necessary and, indeed, would quite likely be counterproductive in that implementing them would distract attention and resources from the implementation of SEVIS. Knowing the intentions of the abusers, and finding them, however, are matters of intelligence and law enforcement and are beyond the scope of any visa monitoring policy.

(2)   Education and Training in Sensitive Areas

Before turning explicitly to the subject of sensitive areas, it is important to note that we would not be having this conversation were it not for the fact that the September 11 tragedy involved training in a decidedly <u>non</u>-sensitive area--flying an airplane. It is crucial to grasp the essential truth that this incident reveals: Virtually <u>any</u> training could be used against the country providing the training. It is impossible to control access to a field in which knowledge is generally available throughout the world. The best we can do is know who the terrorists are, keep them out, and find them if they get in. The contribution of the student visa system is to stop anyone on a watch list of suspected terrorists from obtaining a visa and entering the country, and to provide a database through SEVIS that could alert law enforcement authorities to the presence of a person on the watch list at an educational institution. It is generally beyond the capabilities and responsibilities of academic institutions to know the intentions of their students.

The PDD, however, focuses attention specifically on sensitive areas of advanced technology. This area is best dealt with by drawing on the experience of export controls. For generations, export control regimes have struggled with two realities: First, as technical knowledge spreads throughout the world, controls on such knowledge become increasingly untenable. For controls to be effective, the level of technology under control must be constantly revised upward as the technology advances, to be sure that the controls apply only to technology that is not already widely available. Second, since the United States monopolizes virtually no technology, export controls can only be effective if they are multilateral. Beginning with COCOM, multilateral export control regimes have sought to limit and delay the diffusion of certain types of technical knowledge to other countries.

We suggest that the same principles should apply to the admission of foreign students who wish to pursue studies in advanced technology. To be effective, controls on such students must be (1) <u>focused</u> and (2) <u>multilateral</u>.

In practical terms, this means three things. First, controls must be carefully limited to narrowly defined sensitive areas with a high danger potential. Controls on the study of basic science would be far too broad to be effective. Second, controls must be limited to a small group of nations with respect to which we have specific concerns--e.g., state sponsors of terrorism. And third, controls must be negotiated with other countries that are major destinations of foreign students, so we don't end up simply shifting the foreign student business to other countries. Existing multilateral export control regimes would probably provide appropriate fora for negotiating such controls.

We do not need to reinvent the wheel to do this. Such controls already exist. Sensitive areas are defined in the Technology Alert List, which is a guide for the use of consular officers in enforcing prohibitions on the admission of aliens seeking entry for the purpose of evading U.S. export controls on goods, technology, or sensitive information. The TAL is intended to assist in stemming the proliferation of weapons of mass destruction and missile delivery systems, in restraining the development of destabilizing conventional

military capabilities in certain regions, in preventing the transfer of arms and sensitive dual-use items to terrorist states, and in maintaining U.S. advantages in certain militarily critical technologies. The Commerce Department's Export Administration Regulations, as well as other regulations under the jurisdiction of other agencies, provide further controls. These would be the appropriate vehicles for imposing any controls on sensitive courses of study pursuant to PDD-2.

In implementing these controls, it is crucial to recognize the precarious balance that must be achieved. On the one hand, it is necessary to limit access to certain very sensitive fields which, in the wrong hands, could be used to cause great harm. On the other, it is necessary to maintain the openness of the scientific enterprise upon which the preeminence of our academic institutions rests. It would be very easy to undermine cutting-edge research through excessive controls, which would produce a net decline in national security.

(3)   Problematic Visa Applicants

The role of universities is to evaluate academic qualifications. Visa applicants who pose problems from a national security perspective are best identified by the government--by defining (in consultation with the scientific community) problematic areas of study, by placing suspected terrorists on the appropriate watch lists, and by excluding those problematic applicants at the time of the visa application. The role of the university is to give timely notification to consular officers that a student has been properly admitted to the institution, thus giving consular officers time to perform any necessary database checks or background checks. This will be done under SEVIS.

(4)   **Tracking**

We believe that SEVIS will put in place most of the necessary measures for tracking foreign students. SEVIS reporting requirements and the institutions covered were both expanded by the USA PATRIOT Act, which also requires full implementation by January 1, 2003. Under current law, higher education institutions will be required to report the following information for each foreign student, in addition to whatever additional information the INS may require, on a schedule to be determined by the INS: identity and current address; nonimmigrant classification and date of visa issuance; current academic status, including if the student is maintaining full-time status; any disciplinary action taken against the student by the school as a result of the student's conviction of a crime; and date and port of entry.

It would also be appropriate to require higher education institutions to report date of enrollment and date of termination of enrollment. In addition, it would be appropriate to require the INS to report to higher education institutions the entry of a student into the United States with that institution's documentation of admission (Form I-20), and to require higher education institutions to report to the INS the failure of any such student to enroll. If imposed, these requirements should be imposed as part of the SEVIS program, with the same effective date. We believe such information is likely to be available under

SEVIS in any case, but for purposes of responding to PDD-2, these would be appropriate recommendations.

(5)   **Control Mechanisms**

Current practice is generally to admit students for "duration of status"--that is, for such time as they are engaged full-time in the program for which they were admitted. This system functions well, and we see no compelling need to replace it. SEVIS will provide the information necessary to monitor the student's status.

PDD-2 suggests "limited-duration student immigration status" and "strict criteria for renewing such student immigration status" as possible new control mechanisms, with some countries or groups of countries exempted from the stricter controls. We have serious concerns about this idea from a national security point of view. The reason goes to the fundamental point made under (2) above: To be effective, controls must be focused. If the purpose is genuinely to enhance the protection of the country, then the name of the game is to free up resources from routine monitoring tasks and apply them to in-depth monitoring in specific problem areas.

Given finite regulatory resources, it makes more sense to focus on visa applications rather than visa renewals. The best use of resources is at the front end. Going to limited-duration visas on anything but the most limited and carefully focused basis would result in vast amounts of regulatory resources being expended on the routine renewal of those visas, with little if any real increment to the national security.

If such limited-duration visas are deemed to be necessary, we believe very strongly that it is important to turn the PDD's formulation around. The question is not which countries to exempt from the stricter controls, but which countries to include. Accordingly, we recommend that limited-duration student status, if implemented, be limited to students from a carefully selected group of problem countries. The formulation we suggest is "terrorist-list countries-plus." That is, we start with the countries that the Secretary of State has determined are state sponsors of international terrorism, and add other countries to the list only where there is a clear need to do so. No national security purpose would be served by burying regulators under the mountains of work that would result if more than a handful of countries get onto that list.