

UNCLASSIFIED//FOR OFFICIAL USE ONLY

MEMORANDUM OF AGREEMENT

BETWEEN

**THE DEPARTMENT OF HOMELAND SECURITY (DHS)
IMMIGRATION & CUSTOMS ENFORCEMENT (ICE)
STUDENT AND EXCHANGE VISITOR PROGRAM (SEVP)**

AND

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
NATIONAL INSTITUTES OF HEALTH (NIH)
OFFICE OF RESEARCH SERVICES (ORS)
DIVISION OF INTERNATIONAL SERVICES (DIS)**

REGARDING

BATCH PROCESSING OF PROGRAM DATA

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The U.S. Department of Homeland Security (DHS), acting through the U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) Directorate, Student and Exchange Visitor Program (SEVP) and the U.S. Department of Health and Human Services (HHS), National Institutes of Health (NIH), Office of Research Services (ORS), Division of International Services (DIS), a designated exchange visitor program of the U.S. Department of State (DOS), Bureau of Educational And Cultural Affairs, Private Section Exchange, hereinafter collectively referenced as the "Parties," have entered into this Memorandum of Agreement ("MOA" or "Agreement") to govern the transmission of exchange visitor program (J visa) participant data from the NIH Foreign National Information Sharing System (NFNIS) into the Student and Exchange Visitor Information System (SEVIS) of DHS/ICE.

DHS is responsible for preventing and protecting the Nation against terrorist attacks, major disasters, and other emergencies. ICE, through HSI, is responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within and out of the United States. The ICE National Security Investigations Division (NSID) is a key component of ICE/HSI, leading the effort to identify, disrupt and dismantle transnational criminal enterprises and terrorist organizations that threaten the security of the United States. The Student and Exchange Visitor Program (SEVP) is a part of the NSID, and acts as a bridge for government organizations that have an interest in information on nonimmigrants whose primary reason for coming to the United States is to be a student or exchange visitor.

This import will allow the Department of State to administer and monitor the Exchange Visitor Program (J visa) records in the Student and Exchange Visitor Information System (SEVIS). NIH system import into SEVIS will solely depend upon NIH's participation in the DOS Exchange Visitor Program. All imports will be made daily in the system and therefore readily available to worldwide authorized users.

2. BACKGROUND

A. The Student and Exchange Visitor Program

SEVP operates the SEVIS database under the authority of 8 U.S.C. § 1372 in coordination with the Department of State, which oversees the operation of the Exchange Visitor Program. Section 1372 requires DHS to develop and conduct a program to electronically collect certain information about aliens who have applied or are applying for "F," "M," or "J" status from approved educational institutions and designated exchange visitor (EV) program sponsors in the United States. Section 1372 also requires that particular information be collected, such as identifying information about the alien, field of study, status, and compliance information from educational institutions and exchange visitor programs. DHS is authorized to share this information pursuant to 8 U.S.C. §§ 1103 and 1373.

SEVIS is an Internet-based system that enables schools and exchange visitor program sponsors to transmit electronic information and event notification about nonimmigrant students (F and M visa), exchange visitors (J visa), and their spouses and dependents (F-2, M-2, and J-2), via the Internet, to DHS and DOS throughout a student's, exchange visitor's, or spouse and/or

CL-2021-00217 A-00000428980 "UNCLASSIFIED" 9/15/2021 CL-2021-00217 09152021 4
dependent's stay in the United States. SEVIS will be informed of status events concerning, but not limited to, entry/exit data, changes of current United States address (residence), program extensions, employment notifications and changes in program of study. SEVIS will also provide system alerts, event notifications, and reports to the end-user schools and programs, as well as for DHS and DOS offices.

Designated school officials of SEVP-certified schools and responsible officers of DOS approved programs use SEVIS to transmit mandatory information and event notification via the internet to DHS and DOS throughout the lifecycle of a student or exchange visitor, from entry, to stay, as well as exit from the United States. Both SEVP and DOS use SEVIS to track enrollment and attendance of nonimmigrant students at schools in the country, monitor program participation, and monitor F, M and J nonimmigrants while they visit the United States and participate in the U.S. education system.

B. The U.S. Department of State J-1 Visa Exchange Visitor Program

The Department of State (DOS) J-1 Visa Exchange Visitor Program offers cultural, work-and-study, and educational exchange opportunities in the United States through a variety of programs overseen by the U.S. Department of State.

SEVIS enables the submission of designation applications to the DOS (Form DS-3036) for review. If an entity meets the regulatory requirements established in 22 CFR Part 62 and is designated by the DOS as a program sponsor, users may update program sponsor information, submit updates to the DOS that require approval, and create and update J-1 exchange visitor and dependent records (that is, accompanying spouse and dependent children records). The DOS Office of Private Sector Exchange has the capability to review and approve updates made to program sponsor and exchange visitor records using SEVIS, and the Responsible Officers (RO) and Alternate Responsible Officers (AROs) will be notified via email of the results.

C. National Institutes of Health

The National Institutes of Health (NIH), a part of the U.S. Department of Health and Human Services (HHS), is the nation's medical research agency—making important discoveries that improve health and save lives. NIH is made up of 27 Institutes and Centers, each with a specific research agenda, often focusing on particular diseases or body systems. The Division of International Services (DIS) provides immigration-related services to NIH for visiting foreign scientists and the NIH research community.

The NIH Foreign National Information Sharing (NFNIS) database is a central storage database hosting NIH Foreign National immigration status information. The NFNIS stores Personally Identifiable Information (PII) of all NIH Foreign Nationals working at NIH institutes and centers. The NFNIS supports the mission of the NIH and the Division of International Services (DIS) by ensuring that the NIH maintains compliance with all applicable U.S. immigration laws governing and/or regulating Foreign Nationals scientist's stay in the United States set forth by the U.S. Department of Homeland Security (DHS), the U.S. Department of State, the U.S. Department of Labor, and other government agencies pertaining to the foreign researchers, scholars, and staff. The NFNIS helps meet these reporting requirements for international student/scholar by helping track, manage and report international scholars to the

CL-2021-00217 A-00000428980 "UNCLASSIFIED" 9/15/2021 CL-2021-00217 09152021 5
various government agencies. Using the NFNIS ensures that DIS can maintain Student and Exchange Visitor Information System (SEVIS) compliance, while increasing overall productivity in its other areas of responsibility.

NFNIS is hosted in the NIH/ORS Application Hosting Environment (AHE) which complies with strict IT and physical security controls as recommended by National Institute for Standards and Technology (NIST) Risk Management Framework (RMF). The AHE is integrated with information security and risk management activities during the whole system development life cycle. This includes but not limited to event, incident, change, vulnerability and configuration management.

3. DEFINITIONS.

As used in this Agreement, the following terms will have the following meanings:

- A. Alien: Any person not a citizen or national of the United States.
- B. J-1: An alien having a residence in a foreign country which he or she has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in an exchange visitor program.
- C. J-2: The spouse and/or minor children of any alien seeking to enter the United States as a J-1 exchange visitor.
- D. NFNIS Data: The specific biographic data and related information collected in accordance with NIH's participation in the Exchange Visitor Program (J visa) and maintained in NIH's NFNIS database. Biographic data includes but is not limited to the full name, date of birth, country of birth, country of citizenship, U.S. address, foreign address, email, occupational information, financial information, and passport and visa information for all NIH nonimmigrant exchange visitors working at NIH institutes and centers as well as their spouses and/or minor children seeking to enter the United States as a J-2 Dependent. A complete list of NFNIS data elements can be found in Attachment A: Batch API Data Elements.
- E. SEVIS Data: The specific biographic data and related information about nonimmigrant exchange visitors, their spouses and dependents as well as program sponsor-related data maintained in the SEVIS database.
- F. Personally Identifiable Information (PII): Any information that permits the identity of an individual to be directly or indirectly inferred, including any information which is linked or linkable to that individual regardless of whether the individual is a U.S. citizen, lawful permanent resident, visitor to the U.S., or employee or contractor to the Parties.

4. REFERENCES.

The information sharing and enhanced cooperation among the Parties to this Agreement is

- A. Title 5, United States Code, Section 552a;
- B. Title 6, United States Code, Sections 112;
- C. Title 8, United States Code, Sections 1103 and 1372;
- D. Letter of NIH Exchange Visitor Program Designation, U.S. Department of State, Bureau of Educational and Cultural Affairs (May 29, 2013);
- E. National Institute for Standards and Technology Special Publication 800-53, Recommended Security Controls for Federal Information Systems and Organizations (Aug. 2009), as revised;
- F. DHS Memorandum No. 2009-01, The Department of Homeland Security's Federal Information Sharing Environment Privacy and Civil Liberties Protection Policy (June 5, 2009);
- G. DHS Delegation No. 0001, Delegation of Authority to the Directors, Detention and Removal and Investigations, and to Field Office Directors, Special Agents in Charge and Certain Other Officers of the Bureau of Immigration and Customs Enforcement, § 2(B)(1)(f), (June 6, 2003);
- H. Notice of Privacy Act System of Records, DHS/ICE-001 Student and Exchange Visitor Information System (SEVIS), 75 Fed. Reg. 412 (January 5, 2010).

5. RESPONSIBILITIES

The following roles and responsibilities have been defined for each of the Parties to this MOA.

- A. Collection of Data: NIH may use systems external to SEVIS to create and update J-1 and J-2 records and upload the data into SEVIS.
- B. Data Elements to be Shared: NIH will provide the data elements contained in Attachment C: Batch API section - Create-Update Student and Dependent Data Elements.
- C. Delivery of Data: NIH will transmit NFNIS data electronically to SEVIS pursuant to and in accordance with the terms of this MOA and the Customer Agreement For Using The SEVIS Batch-File Transfer Process (attached) via a secure batch Application Program Interface (API). NIH must register within SEVIS to use the SEVIS batch API and conduct beta testing before beginning to use the batch API. This use of API is based on best practices, including information exchange standards, Information Sharing Environment-compliant privacy protections, and information security standards as agreed to by the Parties.

NIH will extract their J-1 and J-2 data from NFNIS into an Extensible Markup Language (XML) document that conforms to the appropriate SEVIS XML schema. This XML document will be transmitted to SEVIS using the Batch interface daily or more frequently as agreed upon by the Parties.

The procedures and method of delivery, to include the frequency of regular or periodic data

CL-2021-00217 A-00000428980 "UNCLASSIFIED" 9/15/2021 CL-2021-00217 09152021.7
updates, will be detailed in the forthcoming Interface Control Agreement (ICA) between NIH and DHS.

- D. **Receipt of Data:** Upon receipt of NFNIS data, SEVP will make the data readily available within SEVIS to SEVIS users.
- E. **Support:** The SEVIS website will contain information necessary to use the Batch interface, including the current version of the SEVIS API (Attachment C), the Batch API section - Create-Update Student and Dependent Data Elements (Attachment C).
- F. **Use:** The information shared in accordance with this MOA will be used only as described and for the purposes stated in this MOA, in a manner consistent with any statutory or regulatory requirements, including privacy compliance requirements.

6. RETENTION AND SAFEGUARDING OF INFORMATION

- A. **Retention:** Data maintained in the NFNIS database and the SEVIS database under the terms of this Agreement will be retained in accordance with the Parties' respective records retention schedules and policies.
- B. **Safeguarding:** The NFNIS data batch processed into SEVIS will be considered "Unclassified" and "For Official Use Only."

The Parties agree to maintain reasonable physical, electronic, and procedural safeguards to appropriately protect the information shared under this MOA against loss, theft, or misuse, as well as from unauthorized access, disclosure, copying, use, modification, or deletion in accordance with their respective policies and procedures concerning the handling of sensitive information. Neither party will use data provided to it under this MOA in affidavits, subpoenas, or submissions in legal, judicial, or administrative proceedings unless authorized by the providing Party or required by law (in which case the Party required to provide such data will coordinate its provision of the data with the providing Party).

The Parties will also report privacy and security incidents in accordance with their own privacy and security procedures. However, each Party must notify the appropriate system Information System Security Officer (ISSO) and POCs located in Attachment A by telephone and e-mail of any breach in security, especially breaches that result in unauthorized use or disclosure of any of the data elements listed in Attachment A of this MOA.

7. PRIVACY AND CIVIL LIBERTIES

- A. **General Protections and Public Notice:** All NFNIS data and SEVIS data containing PII will be protected by administrative, technical and physical safeguards appropriate to the sensitivity of the information. PII will only be disclosed to authorized individuals with a need-to-know and only for uses that are consistent with the stated purposes under this MOA, and for which the information was originally collected.
- B. **Training:** Each Party will ensure that its employees, including contractors with access to any of the NFNIS data and/or SEVIS data, have completed privacy training on the handling of PII

8. CORRECTION AND REDRESS

PII shared and/or maintained under this MOA shall, to the extent feasible, be as accurate, complete, and current as required by the Exchange Visitor Program regulations and as necessary for the purposes identified in this MOA. The Parties shall cooperate with each other in this regard. NIH will, in a timely manner, take appropriate action with regard to any request made by DHS for access, additions, changes, deletions, or corrections of PII. In addition, NIH will, in a timely manner, notify DHS of any data errors that it discovers.

9. AUDITING AND COMPLIANCE

The Parties will conduct periodic audits, at a minimum of every 30 days, to ensure the validity of the data being sent and received, and to audit the integrity of the file transmission and local storage process.

The Parties will meet annually or at the request of any Party, to discuss and review the implementation of this MOA. Any disagreement over the implementation of this MOA will be resolved in accordance with Section 10 of this Agreement.

10. POINTS OF CONTACT

The persons responsible for implementation of this MOA and the identification and resolution of issues hereunder are identified in Attachment A. The Parties agree the POC in Attachment A may be updated at any time without the need for coordination. All involved Parties will be notified by any Party who updates a POC.

11. SEVERABILITY

Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the DHS or NIH. If a term of this Agreement is inconsistent with such authority, then that term will be invalid, but the remaining terms and conditions of this Agreement will remain in full force and effect.

12. NO PRIVATE RIGHT

This MOA is an agreement between DHS and NIH. As such, it does not create or confer any right or benefit, substantive or procedural, enforceable by any third party against the Parties, the United States, or the officers, employees, agents, or associated personnel thereof. Nothing in this MOA is intended to restrict the authority of either party to act as provided by law, executive order, presidential or other directive, regulation, international obligation, or national or departmental policy, or to restrict any party from administering or enforcing any laws within its authority or jurisdiction.

13. FUNDING

This MOA is not an obligation or commitment of funds, nor a basis for transfer of funds. Unless otherwise agreed to in writing, each Party will bear its own costs in relation to this MOA.

CL-2021-00217 A-00000428980 "UNCLASSIFIED" 9/15/2021 CL-2021-00217 09152021 9
Expenditures by each Party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The Parties expressly acknowledge that this in no way implies that Congress will appropriate funds for such expenditures.

14. MODIFICATION

This Agreement or any appendices thereto, may be modified upon the mutual written consent of the Parties, which will be recorded and incorporated into this MOA as a separate addendum.

15. TERMINATION

The terms of this Agreement, as modified with the consent of both Parties, will remain in effect until three years from the date of execution or the termination of the NIH participation in the DOS Exchange Visitor Program (J visa), whichever comes first.

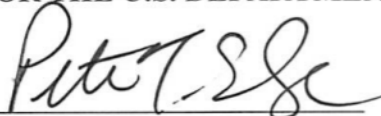
16. EFFECTIVE DATE

The terms of this Agreement will become effective upon the last signature to this MOA.

APPROVED BY:

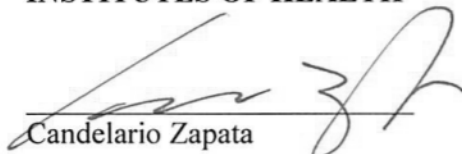
This MOA represents the understanding reached between DHS and NIH. By signing below, the Parties have caused their duly authorized representatives to execute this MOA.

FOR THE U.S. DEPARTMENT OF HOMELAND SECURITY


Peter T. Edge
Executive Associate Director Investigations
Homeland Security Investigations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

6/19/14
[Date]

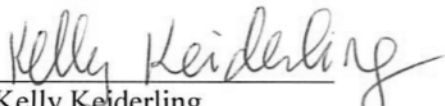
FOR THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH


Candelario Zapata
Division Director
Division of International Services (DIS)
Office of Research Services (ORS)
National Institutes of Health (NIH)
U.S. Department of Health and Human Services (HHS)

11/18/2014
[Date]

ACKNOWLEDGED BY THE U.S. DEPARTMENT OF STATE:

By signing below, the U.S. Department of State acknowledge the MOA between DHS and NIH.


Kelly Keiderling
Principal Deputy Assistant Secretary
Bureau of Educational and Cultural Affairs
U.S. Department of State (DoS)

10/16/2014
[Date]

APPENDIX

ATTACHMENT A: Points of Contact (POC) 10

**ATTACHMENT B: National Institutes of Health Designation as
Sponsor of Exchange Visitor Program (2013) 11-12**

ATTACHMENT C: Application Program Interface (API) 13-156

ATTACHMENT A: Points of Contact (POC)

POCs for the Parties are as follows:

NIH Technical POC

Amy Powers

Tel: (301) 496-6166

Fax: (301) 496-0847

E-mail: dis@mail.nih.gov

NIH Incident Response

Christopher Todd

NIH – Senior ISSO

301.451.4326 / 301.881.9726

Email: toddc@mail.nih.gov

Denny Bermudez, CISSP

ORS and ORF Information Systems Security
Officer

Information Technology Branch ORS, NIH

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ICE Incident Response

Martha Mhlanga

SEVP SEVIS (ISSO)

Student and Exchange Visitor program (SEVP)

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Yvette Oliver

SEVP Lead SEVIS Agreements/Lead SEVIS
Interface

Student and Exchange Visitor Program (SEVP)

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Yvette.S.Oliver@ice.dhs.gov

Charlene J. Mattson

Designated SEVIS System Owner

SEVP SMU Unit Chief

Student and Exchange Visitor Program (SEVP)

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CL-2021-00217 A-00000428980 "UNCLASSIFIED" 8/15/2021 CL-2021-00217-004500041E
ATTACHMENT B - National Institutes of Health, Re-designated Letter - Sponsor of Exchange Visitor Program



File

United States Department of State
Bureau of Educational and Cultural Affairs
Washington, DC 20522
www.state.gov

May 29, 2013

Mr. Candelario Zapata
Director
Division of International Services/ORS
National Institutes of Health, Dept. HHS
BLdg. 31 Rm B2B07 31 Center Drive, MSC 2028
Bethesda, MD 20892-2028

Dear Mr. Zapata:

The U.S. Department of State is pleased to inform you that the National Institutes of Health, Dept. HHS has been re-designated as a sponsor of an exchange visitor program in accordance with the administrative regulations issued under the Mutual Educational and Cultural Exchange Act of 1961 (Public Law 87-256, also known as the Fulbright-Hays Act.) The program is identified as Exchange Visitor Program No. 01515. This number is to be used in all official communications to identify the program to the Department of State and the Department of Homeland Security. The following information is provided to assist you in the administration of your designated program.

Approved Category on Form DS-2019: Government Visitor, Research Scholar and Short-Term Scholar
Annual Report Due Date: Fiscal Year, October 31

The sponsor of an exchange program is contributing to educational and cultural exchange as authorized by the Fulbright-Hays Act, the objective of which is to increase mutual understanding between the people of the United States and the people of other countries and to assist in the development of friendly, sympathetic and peaceful relations between the United States and other nations. This objective is best met by ensuring that participants in the Exchange Visitor Program return abroad to exercise the skills and knowledge acquired in the United States thereby strengthening the ties and communications that unite us with the other nations of the world.

In addition, reciprocity is an integral component of the exchange visitor program and sponsors are required to make every effort to achieve the fullest possible reciprocity (22 CFR Part 62.8(c)). Given this objective, many participants in any exchange visitor program may be subject to the provision of Section 212(e) of the Immigration and Nationality Act, as amended. For further details, see Section 22 CFR Part 41.63.

You are listed in the Department's records as the Responsible Officer (RO). Mr. Brian Daly, Ms. Rebecca Custer, Ms. Jennifer Jantos, Mr. Timothy Price, Ms. Melba Rojas, Ms. Sarah Royalty, Ms. Annie Shih, Mr. Daniel Smith, Ms. Maryland Hatch and Ms. Cynthia Tasaki are authorized as the Alternate Responsible Officers (AROs) for this program. The RO and AROs are the only officials authorized to sign the issued Forms DS-2019.

2

These individuals are also the only officials with whom this office conducts business regarding this program. All communications originating from this program must be submitted and signed by the RO or the AROs.

22 CFR Part 62.11 of the Department's administrative regulations outlines the duties of the Responsible Officer. These regulations also apply to the Alternate Responsible Officers who assist the RO in the administration of the program. The RO is ultimately responsible for ensuring that the program is administered according to the Department's regulations. Some of the duties are:

- a) training and supervision of the Alternate Responsible Officers (ARO);
- b) ensuring that Forms DS-2019 are issued responsibly;
- c) ensuring that the Forms DS-2019 is signed in blue ink;
- d) ensuring that the SEVIS Sponsor Program is updated to reflect any changes in address, telephone number, fax number and e-mail address of the RO and ARO;
- e) validating the arrival date, and participation of each exchange visitor in your program;
- f) requiring that all exchange visitors have health/accident insurance for themselves and any dependents;
- g) ensuring that an exchange visitor's stay in the United States does not exceed the set time limit for his/her category; and,
- h) meeting all requirements set forth in the Exchange Visitor Program regulations, such as submitting an annual report.

Please read and acquaint yourself with the regulations governing the Exchange Visitor Program and your facilitation of exchanges activities. The Exchange Visitor Program regulations and SEVIS User Manuals (two volumes) are available from our website at <http://i1visa.state.gov>. If you have any questions, please call the Office of Designation, Academic and Government Programs Division at 202-203-7131.

Your designation has been extended for a period of two years from the date of this letter. You are responsible for applying for re-designation no less than four months prior to the program expiration date (22 CFR Part 62.7(d)). Designation as a sponsor does not imply approval, sponsorship or promotion of your organization by the U.S. Government and should not be so implied in advertisements, business cards, websites, etc.

Thank you for your interest in international educational and cultural exchanges.

Sincerely,



Robin J. Lerner
Deputy Assistant Secretary
for Private Sector Exchange