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Patrick J. Leahy
Chairman
Committee on the Judiciary
U.S. Senate

Subject: *Student and Exchange Visitor Program: Responses to Posthearing Questions for the Record*

On July 24, 2012, I testified before the Subcommittee on Immigration, Refugees, and Border Security, Senate Committee on the Judiciary, on the Department of Homeland Security's (DHS) Student and Exchange Visitor Program. Enclosed is my response to questions for the record posed by Senator Grassley. The responses are based on work associated with our June 2012 report, *Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions*, GAO-12-572.[1]

If you have any questions about the enclosure or need additional information, please contact me at (202) 512-8777 or gamblerr@gao.gov.

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[1] GAO, *Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions*, GAO-12-572 (Washington, D.C.: June 18, 2012).

ENCLOSURE

1. **Both SEVP and CTCEU have a role to play in the student visa process. Please describe, in your view: 1) whether a particular office is better suited to determine which schools remain in the program; 2) whether a particular office is better suited to determine if individuals are qualified to be DSOs; and 3) whether a particular office is better suited to maintain control of the compliance log.**

Within U.S. Immigration and Customs Enforcement (ICE), two offices have complementary responsibilities for overseeing foreign students in the United States and those certified schools that are eligible to enroll foreign students—the Student and Exchange Visitor Program (SEVP) and the Counterterrorism and Criminal Exploitation Unit (CTCEU). SEVP certifies schools as authorized to accept foreign students in academic and vocational programs, and CTCEU, as one of ICE's investigative components, investigates school fraud cases, among other things. We have not specifically assessed whether one of these two offices is better suited to (1) determine whether a SEVP-certified school should remain in the program, (2) determine if individuals are qualified to be designated school officials (DSO), or (3) maintain control of the compliance log. However, on the basis of our June 2012 report, SEVP and CTCEU work together to oversee and monitor schools to ensure that they remain eligible to participate in the program, that school officials comply with program requirements, and that schools that may have potential compliance issues are appropriately identified and tracked (i.e., on the compliance log).

- *Determining which schools remain in the program.* SEVP initially certifies schools to be eligible to enroll foreign students and, once schools are certified, to monitor schools to verify their ongoing legitimacy and eligibility. CTCEU investigators have knowledge and information on prior and current investigations of school fraud that could help strengthen SEVP's processes, but SEVP has not fully leveraged this information. For example, as we reported in June 2012, ICE did not have a process to identify and analyze risks across schools applying for certification, as well as across the more than 10,000 schools that are SEVP-certified. In particular, we reported that SEVP had not established a process to obtain information from CTCEU investigators on things such as the characteristics of schools that commit fraud and how school officials exploited program weaknesses, which could help SEVP better identify and assess program risks. CTCEU has identified some risk factors, such as the ratio of foreign students to overall students, and the average length of time students have been in the United States, but SEVP has not made use of this information to help assess risks to the program. To better position SEVP to assess program risks, we recommended, among other things, that ICE implement a process to identify and assess SEVP risks, including obtaining and evaluating information from CTCEU investigative efforts. ICE concurred with our recommendation and

stated that it plans to develop and implement a risk assessment process by September 2012.

- *Determining if individuals are qualified to be DSOs.* A DSO must be a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. A DSO creates and updates records in the Student and Exchange Visitor Information System (SEVIS), which ICE uses to track and monitor certified schools and foreign students, and signs and issues the Form I-20s to foreign students, enabling them to apply for nonimmigrant student status.[2] A school must provide ICE with evidence of, among other things, (1) DSOs' attestation statements that both the school and officials intend to comply with program rules and regulations, such as ensuring that students attend classes, and that the school is eligible for certification, and (2) designated school officials' proof of U.S. citizenship or lawful permanent residency.[3] SEVP is responsible for ensuring that all SEVP-certified schools are and remain in compliance with the federal regulations that govern foreign nonimmigrant students. As we reported in June 2012, ICE has not consistently implemented its procedures to verify and monitor schools' legitimacy and eligibility, including program requirements related to DSOs, a fact that has hindered efforts to prevent and detect school fraud. For example, we reported that ICE has not consistently maintained certain evidence of selected schools eligibility, including evidence of DSOs' citizenship or lawful permanent residence status. Specifically, on the basis of our review of a stratified random sample of 50 SEVP-certified school case files, we found that 22 of the 48 school case files did not include proof of the DSOs' U.S. citizenship or lawful permanent residency.[4] Moreover, CTCEU has identified to SEVP its concerns about DSOs not being required to undergo background checks on the basis of its experience investigating allegations of school fraud. Among cases of school fraud we identified, there were instances of school officials having run criminal enterprises that are tied to illegitimate schools and manipulating records in SEVIS to appear eligible for SEVP certification. For example, we identified examples of school officials submitting false or fraudulently obtained letters in lieu of accreditation. To help address these issues related to ICE recordkeeping and review of schools' evidence, we recommended that ICE establish a process to identify and address all missing school case files, including obtaining required documentation from schools whose case files are missing evidence, and consistently verify evidence provided in lieu of accreditation. ICE concurred

[2] Schools interested in accepting foreign students on F (academic) and M (vocational) visas must petition for SEVP certification by submitting a Form I-17 to ICE and paying an application fee. Once certified, schools are able to accept foreign students by issuing Form I-20s for students.

[3] The acceptable evidence of officials' citizenship or residency status includes one of the following: (1) a copy of a U.S. passport (current or expired), (2), a copy of a U.S. birth certificate, (3) a copy of an alien registration card, or (4) a copy of naturalization/citizenship certificate.

[4] ICE was unable to produce two schools' case files that we requested as part of our randomly selected sample. Thus, our results include the 48 files that we were able to analyze.

with our recommendations and stated that it is working to strengthen its SEVP records management.

- *Maintaining control of the compliance case log.* In June 2012, we reported that SEVP has maintained a compliance case log since 2005—a list of approximately 172 schools as of December 2011—that officials have determined to be potentially noncompliant with program requirements. The compliance case log represents those schools that SEVP, on the basis of tips and leads and out-of-cycle reviews, is monitoring for potential noncompliance. The SEVP compliance unit first shared its compliance case log with CTCEU in October 2011, during the course of our review. Upon review of this information, CTCEU officials stated that several of the compliance cases could involve potential criminal violations. CTCEU officials identified examples of potentially criminal violations, including designated school officials sharing SEVIS passwords, a school not holding classes but reporting attendance, a school reporting its own address as students' addresses, and a school charging additional fees for showing students as compliant. The Compliance Unit Chief and the Policy Branch Chief stated that the program had not previously shared its compliance case log or other information regarding the program's compliance monitoring activities with CTCEU because the unit has never asked for such information. ICE's coordination standard operating procedure for SEVP, CTCEU, and ICE field offices requires that SEVP refer allegations or leads revealing possible criminal violations to CTCEU in a timely manner. However, we reported that SEVP has not referred potentially criminal cases to CTCEU in accordance with ICE's procedures, in part because the procedure does not have criteria for determining when certain noncompliant activity becomes potentially criminal. However, the coordination standard operating procedures as well as internal control guidance indicate that agencies could benefit from sharing internally generated information with key stakeholders, which may help with fraud management efforts. We recommended that ICE establish criteria for identifying potentially criminal activity so that SEVP would be better positioned to adhere to existing requirements of referring criminal cases to CTCEU for investigation. ICE concurred with our recommendation and stated that it plans to develop appropriate criteria.

2. Should either SEVP or CTCEU have veto authority over one another when it comes to any such decisions?

We did not specifically review whether SEVP or CTCEU should have veto authority over each other related to roles and responsibilities for overseeing foreign students and certified schools. However, as our June 2012 report showed, opportunities exist for SEVP and CTCEU to improve their coordination and sharing of information related to the program. For example, ICE's standard operating procedure for coordination between the two offices requires SEVP to defer to CTCEU regarding whether to proceed with administrative actions during ongoing criminal investigations of schools because criminal investigations take precedence over administrative

actions. Additionally, this procedure states that ICE field offices determine the timing and extent of SEVP engagement in criminal investigations based on the needs of those investigations, which includes requesting SEVP to take administrative action in SEVIS to remove designated school officials' access to the system and to withdraw school certification. However, we found that in some instances, SEVP management did not follow CTCEU requests to take or cease administrative actions in accordance with ICE's procedures. For example, in our interviews with eight ICE field offices, field investigators at two offices gave examples of SEVP officials continuing administrative activities when asked to cease such activity. In one case, investigators stated that the target (an owner of a flight school) became suspicious of increased attention by SEVP officials and fled the United States in 2011 to avoid prosecution. In another case, in California, field investigators stated that SEVP officials conducted a site visit to an institution following the owner's indictment after the local ICE field office investigators instructed SEVP to stop administrative activities. We recommended that ICE revise the standard operating procedure that governs coordination among SEVP and CTCEU to specify what information to share. ICE concurred with our recommendation and stated that it plans to make the necessary revisions.