

Student and Exchange Visitor Program Policy Guidance: 0901-01

Title: Guidance for Designated School Officials on F and M Student Enlistment in the U.S. Military Under the Military Accessions Vital to the National Interest Program (MAVNI)

Applicability: Student and Exchange Visitor Program (SEVP) -certified schools and designated school officials with students who are enlisting in the U.S. military through the Military Accessions Vital to the National Interest (MAVNI) program.

Effective Date: November 2009

Authority: 8 CFR 214.2(f)(6), (m)(9) and 8 CFR 214.3(g)(2)

Disclaimer: This Policy Guidance is issued to designated school officials (DSOs) of SEVP-certified schools. Policy Guidance is not regulation and is not intended to create or confer any rights or legal obligations or to bind the public. This Policy Guidance is intended to assist DSOs in applying the regulatory requirements in the course of their duties. SEVP issues guidance to describe and make available to DSOs the following:

- **Methods that SEVP considers acceptable for use in implementing specific parts of the regulations pertaining to F and M nonimmigrants and SEVP-certified schools;**
- **Techniques SEVP uses in evaluating specific issues; and**
- **Data SEVP uses in reviewing school certification or individual student issues.**

SEVP takes into consideration use, practices and any alternative methods employed by a school's administration in determining whether a school has complied with regulation. Methods and practices that differ from those in this operational instruction may be acceptable if school officials provide a basis to show they are in compliance with the applicable statutes and regulations. School officials are responsible for ensuring that they are using the latest version of the guidance.

Purpose: On February 23, 2009, the Department of Homeland Security published a final rule titled, *Employment Authorization and Verification of Aliens Enlisting in the Armed Forces* (74 FR 7993).

This final rule amends regulations in 8 CFR 274a that govern the employment authorization of aliens entering the U.S. military and the employment eligibility verification process.

The text of the final rule (74 FR 7993) can be read by searching at <http://www.gpoaccess.gov/fr/index.html>. This Policy Guidance is for DSOs at SEVP-certified schools with students who are enlisting in the U.S. military through the MAVNI program.

Comments: To comment on this Policy Guidance or suggest a change, please e-mail SEVP@dhs.gov with “Policy Guidance 0901-01 Comment” in the subject line.

Student and Exchange Visitor Program Policy Guidance

Effective Date: November 2009

Table of Contents

1. [Where Can I Find a Copy of the Rule?](#)

1.1. Federal Register notice

1.2. Which government agency published this rule?

2. DSO Guidance for Students Who May Enlist in the U.S. Military Through MAVNI

2.1. Information on MAVNI: What a DSO should know

2.1.1. What military branches currently use MAVNI?

2.1.2. Will the pilot be extended?

2.1.3. Is the program national?

2.2. Can nonimmigrant students become U.S. citizens through enlisting under MAVNI?

2.3. Can any nonimmigrant student enlist?

2.4. What should nonimmigrant students who are considering enlisting in the U.S. military know?

2.4.1. What is a MAVNI recruit’s nonimmigrant status prior to naturalization, but after his or her SEVIS record is either completed or terminated?

2.4.2. Will a MAVNI recruit be detained or deported if stopped for a violation of status during this time?

2.4.3. What happens if a student is injured, discharged, etc., prior to completion of his or her years of service?

2.4.4. When will a MAVNI recruit be naturalized?

2.4.5. Are a MAVNI recruit’s dependents automatically naturalized?

2.5. What guidance should DSOs provide nonimmigrant students who have enlisted in the U.S. military?

2.5.1. What training are military recruiters being given on this program?

2.5.2. Why do the document requirements specifically indicate an unexpired visa instead of a valid Form I-20?

2.6. If a MAVNI recruit does not complete basic training, and is not naturalized, what is the nonimmigrant’s, and his or her dependents’, immigration status?

3. DSO Responsibilities When Nonimmigrant Students Enlist Through MAVNI

3.1. What reason should a DSO select in SEVIS for Termination of an enlisted student’s record?

3.2. What does a DSO need to do to update the SEVIS record for a student’s dependent enlisting in the U.S. in the U.S. military?

3.3. What should a DSO do with a student’s SEVIS record after that student was on Optional Practical Training but then joined the U.S. military’s MAVNI program?

3.4. To summarize, what actions should a DSO take?

3.5. Will SEVIS II incorporate, in its record “end codes,” the appropriate reason for MAVNI enlistments?

3.6. Who should a nonimmigrant student contact with questions about nonimmigrant enlistment in the U.S. military, eligibility, the employer-specific employment authorization, the nature of the MAVNI program, the recruitment process, applications for naturalization, and other related topics?

3.7. Who should a DSO contact with questions about nonimmigrant enlistment in the U.S. military, eligibility, the employer-specific employment authorization, the nature of the MAVNI program, the recruitment process, applications for naturalization, and other related topics?

3.8. What does a DSO need to do in order to update the SEVIS record for a nonimmigrant student enlisting in the U.S. military?

3.9. What other resources are available for review?

1. Where Can I Find a Copy of the Rule?

1.1. Federal Register notice

The final rule titled, *Employment Authorization and Verification of Aliens Enlisting in the Armed Forces*, contains a preamble explaining why a change was made to the Code of Federal Regulations (CFR). The change to 8 CFR 274a was published in the Federal Register (FR) on February 23, 2009. (See 74 FR 7993.) This is the official legal copy of the changes. You can find the text of the [notice online](http://www.gpoaccess.gov/fr/index.html) on the Federal Register Web site. (See <http://www.gpoaccess.gov/fr/index.html>)

1.2. Which government agency published this rule?

The Department of Homeland Security (DHS), through the U.S. Citizenship and Immigration Services (USCIS), worked with the Department of Defense (DOD) to publish this rule. The DOD established the Military Accessions Vital to the National Interest (MAVNI) pilot program. The Student and Exchange Visitor Program (SEVP) is clarifying what steps a designated school official (DSO) may take to report a student's actions in the Student and Exchange Visitor Information System (SEVIS), and the policy regarding any nonimmigrant student who may be affected by the rule.

2. DSO Guidance for Students Who May Enlist in the U.S. Military Through MAVNI

2.1. Information on MAVNI: What a DSO should know

The MAVNI program allows certain non-citizens who are legally present in the United States to join the U.S. military and apply immediately for U.S. citizenship without first obtaining lawful permanent residence. On February 23, 2009, DHS through USCIS published a final rule titled, *Employment Authorization and Verification of Aliens Enlisting in the Armed Forces* (74 FR 7993), to establish employer-specific employment authorization for aliens who are lawfully enlisted into the U.S. military. Through this final

rule, DHS amended its regulation 8 CFR 274a, which governs the employment authorization of legal aliens and the employment eligibility verification process.

2.1.1. What military branches currently use MAVNI?

The Army and Navy are currently participating. However, the Air Force has also been allotted slots in the program, and is in the process of recruiting.

2.1.2. Will the pilot be extended?

The current cap is 1000, and the program is set to end in December 2009. However, the Army has sent a request to the Secretary of Defense to extend the program, and it probably will be extended.

2.1.3. Is the program national?

Army recruitment for MAVNI initially occurred only in Los Angeles and New York. It was expanded to include Atlanta, Chicago and Dallas in September 2009.

The Nebraska Service Center processes all naturalizations.

2.2. Can nonimmigrant students become U.S. citizens through enlisting under MAVNI?

Those who enlist under MAVNI are eligible to apply for U.S. citizenship due to the wartime enlistment statute of 2002 (8 USC 1440, INA 329), without any minimum period of military service.

2.3. Can any nonimmigrant student enlist?

No. The program is limited to legal aliens holding critical skills — physicians, nurses and certain experts in languages with associated cultural backgrounds. The program allows a nonimmigrant to enlist for at least four years of contractual Active duty as a language recruit, or a minimum of three years of Active duty or six years in the U.S. Army Reserve as a health care professional. The Military Occupational Specialties (MOS) positions available to recruits will be selected and will include only those positions that do not require a security clearance, unless and until a MAVNI recruit becomes a U.S. citizen and receives a clearance. Those who enlist are also subject to the standard requirement of eight years of service for all recruits. Persons who enlist under MAVNI will be fingerprinted and screened to ensure legal status in the United States.

The nonimmigrant must also have been in valid status for at least two years, immediately prior to the enlistment date, but not necessarily in the same status category as the one held on the date of enlistment. The nonimmigrant must not have had any single absence from the United States of more than 90 days during this two-year period.

2.4. What should nonimmigrant students who are considering enlisting in the U.S. military know?

Enlistment can affect a nonimmigrant student's SEVIS record. Nonimmigrant students who are unable to maintain their student status because of their enlistment should be aware that their SEVIS record will be terminated.

Neither the enlistment nor the actual filing of the Form N-400, *Application for Naturalization*, will provide enlistees with any immigration status pending naturalization. However, it does allow the applicant to remain in the United States while the citizenship application is pending, as long as the applicant was in legal status at the time of filing.

2.4.1. What is a MAVNI recruit's nonimmigrant status prior to naturalization, but after his or her SEVIS record is either completed or terminated?

MAVNI recruits are not able to maintain their F or M status once they have begun their tour of duty with the U.S. military. We understand that they will be eligible for naturalization upon enlistment, and that the Form N-400, *Application for Naturalization*, will likely be processed at some time before the recruits complete their basic training and are deployed.

2.4.2. Will a MAVNI recruit be detained or deported if stopped for a violation of status during this time?

Recognizing that nonimmigrant students who enter the U.S. military through the MAVNI program will not have a legal status upon entering the military, DHS has agreed to a process whereby if the nonimmigrant who is in the military or involved in the MAVNI program (including the reserves) is encountered prior to basic training, the matter will be elevated and reviewed by DHS before any action is taken.

2.4.3. What happens if a student is injured, discharged, etc., prior to completion of his or her years of service?

Injured military personnel (these are no longer F or M students, and based on this scenario are now U.S. citizens) are evaluated by their commands to determine whether they are capable of completing their original commitments, perhaps in other capacities, or should be discharged because of the severity of their injuries.

2.4.4. When will a MAVNI recruit be naturalized?

USCIS naturalizes the recruits during the last week of basic training either on "family day," which is the day before graduation, or on graduation day. They are not sworn in as citizens until the Army is sure they will graduate.

2.4.5. Are a MAVNI recruit's dependents automatically naturalized?

For details on naturalization for members of the military and their families, go to <http://www.uscis.gov/military>.

2.5. What guidance should DSOs provide nonimmigrant students who have enlisted in the U.S. military?

Nonimmigrant students who enlist through MAVNI should be advised that they should expect their recruiters or others to assist them with the filing of the Form N-400, *Application for Naturalization*, with USCIS after arriving at basic training. **There will be a period of lapsed status between the termination of the SEVIS record and the filing of the Form N-400.**

Nonimmigrant students should be aware that neither the enlistment nor the actual filing of the Form N-400 will provide them with immigration status pending naturalization. However, the filing of Form N-400 does allow the petitioner to remain in the United States while it is pending, as long as the petitioner was in legal status at the time of filing.

2.5.1. What training are military recruiters being given on this program?

DOD has provided extensive training to its recruiters, participates in ongoing conference calls and meetings with DHS to resolve issues, and has identified personnel to serve as its point of contact for students who enlist through MAVNI.

2.5.2. Why do the document requirements specifically indicate an unexpired visa instead of a valid Form I-20?

The requirements were prepared with a broad range of nonimmigrants in mind rather than students alone. An unexpired lawful status, rather than a visa itself, is required.

2.6. If a MAVNI recruit does not complete basic training, and is not naturalized, what is the nonimmigrant's, and his or her dependents', immigration status?

Each will have to be evaluated individually. Some, such as those recruits who enter the Reserve, may be able to go back to their previous status. A person who is discharged for medical reasons may receive temporary B status to allow time to get his or her affairs in order, but if the person leaves the military on his or her own accord, he or she may not get the same treatment.

USCIS is willing to excuse a late filing in some circumstances, but if the previous visa status is not an option, USCIS would look to give the individual some time to get their affairs in order.

3. DSO Responsibilities When Nonimmigrant Students Enlist Through MAVNI

3.1. What reason should a DSO select in SEVIS for Termination of an enlisted student's record?

If the student has not yet applied for naturalization, urge the student to do so as soon as possible after enlistment. For a student who has not yet filed for naturalization but has been maintaining student status up to the time when he or she can no longer do so due to enlistment, "Terminate" the record for reason of "*Authorized Early Withdrawal*." In the "*Remarks*" section of the student's record, state that the student has maintained status up to the present time and is being Terminated because of MAVNI enlistment. Include the date on which the student must report, if known.

If the enlisted student has not communicated with you about the matter but has stopped maintaining student status, select the "Termination" for reason of "*Otherwise Failing to Maintain Status*" in SEVIS.

3.2. What does a DSO need to do to update the SEVIS record for a student's dependent enlisting in the U.S. military?

The same procedures described above for a student apply for an F-2 or M-2 dependent. A DSO should select "OTHER" and either:

- Principal Status completed or
- Principal Status terminated.

And, the DSO should insert the MAVNI comments used for the nonimmigrant.

Please contact SEVP@dhs.gov with specific questions.

3.3. What should a DSO do with a student's SEVIS record after that student was on Optional Practical Training but then joined the U.S. military's MAVNI program?

Employment in the U.S. military cannot count as Optional Practical Training (OPT) employment. A student can continue to work on OPT or maintain studies until the student begins employment with the U.S. military, usually the report date for basic training. The SEVIS record should be terminated within 21 days of that date, for "*Authorized Early Withdrawal*" if the student has reported his or her situation to the DSO. The DSO should also indicate that the student is enlisting through MAVNI in the "*Remarks*" section of the Form I-20 in SEVIS and has maintained status up to that point, as applicable.

3.4. To summarize, what actions should a DSO take?

Complete the record, if the student has completed his or her program of study. Enter language in the comments section to reflect the student's MAVNI enlistment.

Terminate the SEVIS record (if the student has not completed a program) within 30 days of the session start date in which the student cannot enroll, or within 21 days of the date in the middle of a term upon which the student can no longer maintain student status.

If a dependent, terminate in SEVIS for reason of "*Other*."

If the student has notified a DSO of his or her enlistment and departure, the termination reason should be “*Authorized Early Withdrawal.*” If not, the termination reason should be “*Otherwise Failing to Maintain Status.*”

In the “*Remarks*” section of the Form I-20, the DSO may state: “Student/dependent has *maintained status up to the present time. Is being Terminated because of MAVNI enlistment; insert the Date on which he or she must report, if known.*”

3.5. Will SEVIS II incorporate, in its record “end codes,” the appropriate reason for MAVNI enlistments?

Yes, there will be an end code specific to MAVNI enlistees in SEVIS II.

3.6. Who should a nonimmigrant student contact with questions about nonimmigrant enlistment in the U.S. military, eligibility, the employer-specific employment authorization, the nature of the MAVNI program, the recruitment process, applications for naturalization, and other related topics?

Nonimmigrants should fill out the form on the following website and a recruiter will contact them: <http://www.goarmy.com/info/mavni>

3.7. Who should a DSO contact with questions about nonimmigrant enlistment in the U.S. military, eligibility, the employer-specific employment authorization, the nature of the MAVNI program, the recruitment process, applications for naturalization, and other related topics?

SEVP provides information about nonimmigrant students and maintenance of status, as well as reporting requirements regarding these students. Please contact SEVP by using SEVP@dhs.gov. Enter “ATTN: Policy” in the subject line.

USCIS provides information about naturalization at <http://www.uscis.gov/military>.

3.8. What does a DSO need to do in order to update the SEVIS record for a nonimmigrant student enlisting in the U.S. military?

If a student in Active status informs you that he or she has enlisted in the U.S. military, you should communicate with the student to determine the last day the student will be in status, whether during an authorized vacation or break, a term of enrollment in a full course of study, or period of practical training.

You should “Terminate” the student’s record in SEVIS within 21 days of the date on which the student will stop maintaining status as described by 8 CFR 214.2(f) and (m). If the student begins employment with the Army, as he or she would be authorized to do through a reserve component enlistment, the date of beginning employment would be the date of enlistment in the U.S. military.

3.9. What other resources are available for review?

<http://www.defenselink.mil/news/mavni-fact-sheet.pdf>

<http://www.army.com/enlist/mavni.html>

<http://www.uscis.gov/military>