AGENDA

Why Worry About Immigration

Immigration Basics

Compliance Concerns

Hot Topics

Best Practices

1,078,822 international students studied at U.S. colleges and universities in 2016/17.

Open Doors is conducted by the Institute of International Education with the support of the Bureau of Educational and Cultural Affairs of the U.S. Department of State. Online at: www.iie.org/opendoors
In 2016/17 there was an increase of 3.4% over the prior year in the number of international students in the United States.

50% of international students come from China and India.
Ninety-one percent of international students attended schools certified to enroll only F-1 students. The top 10 most popular F-1 programs hosted 10 percent of the entire international student population.

The continued growth in international students coming to the U.S. for Higher Education had a significant positive economic impact. International students contributed $36.9 billion to the U.S economy. [Source Dept. of Commerce]
**Common Acronyms**

- **DHS** = Department of Homeland Security
- **USCIS** = U.S. Citizenship & Immigration Services
- **CBP** = Customs & Border Patrol
- **DOS** = Department of State
- **ICE** = Immigration & Customs Enforcement
- **DOL** = Department of Labor
- **POE** = Point of Entry
- **PDSO/DSO** = Principal Designated School Official
- **RO/ARO** = Responsible Officer / Alternate Responsible Officer
- **LPR** = Lawful/Legal Permanent Resident
- **PR** = Permanent Resident
- **LCA** = Labor Condition Application
- **PW** = Prevailing Wage
- **INA** = Immigration and Nationality Act
- **OPT** = Optional Practical Training
- **FN** = Foreign National

**Basic Concepts**

- Immigrant vs. Non-Immigrant
- Visa vs. Status
- Petitioner vs. Applicant
Most Common Visa Types in Higher Education

- F-1
- J-1
- H-1B
- O-1
- Permanent Residence

Where is Immigration Housed in Your Institution

A. Human Resources
B. General Counsel
C. Student Affairs
D. Other
Primary Areas of Concern

- Student Eligibility
- Visa Processing/Procedures
- Visa Categories
- Prevailing Wage Compliance
- Unauthorized Practice of Law
- Form I-9
- E-Verify
- Export Controls

Student / Scholar Issues

<table>
<thead>
<tr>
<th>Institutional Compliance Oversight</th>
<th>Sponsorship Status Maintenance</th>
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</table>
| F-1 – Student and Exchange Visitor Program (SEVP), part of the U.S. Department of Homeland Security | F-1 Sponsorship  
- Re-Certification required every two years  
- Certification (I-17) must be updated regarding every programmatic change |
| J-1 - U.S. Department of State | J-1 Sponsorship  
- Re-Designation required every two years |
### Student / Scholar Issues

<table>
<thead>
<tr>
<th>Risk Assessment - Institutional Compliance Oversight</th>
<th>J-1 Designation – High Bar for Programmatic Compliance</th>
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<tbody>
<tr>
<td>▪ Withdrawal of Certification (F) or Designation (J)</td>
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<td>▪ How to Assess?</td>
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### Visa Processing/Procedures

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<th>F-1 Program</th>
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<tr>
<td>New I-20s for Incoming F-1 Students</td>
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<td>▪ Certain minimum documentation requirements prior to I-20 issuance</td>
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<td>▪ Who monitors compliance? How is personnel trained?</td>
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### Visa Processing/Procedures
#### J-1 Program

<table>
<thead>
<tr>
<th>New DS-2019s for Incoming J-1 Exchange Visitors</th>
<th>Reporting Requirements for Ongoing J-1 Exchange Visitors</th>
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<td>▪ Monitor activities</td>
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<tr>
<td>▪ Site(s) of Activity</td>
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<td>▪ Funding</td>
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<td>▪ Cultural Exchange</td>
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<td>▪ Employment limitations</td>
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### Visa Categories

**Students**
- F-1 or J-1

**Scholars**
- J-1 or H-1B

**Faculty/Staff**
- Who decides (beware employee deciding)
- Who prepares the petition
- Who monitors status
- Who tracks expirations?
- Who pays?
**Prevailing Wage**

- H-1B visas and Labor Certifications require a Prevailing Wage Determination (PWD)
- Determined by acceptable survey for position and worksite location
- CBA controls (if applicable)
- Must pay the actual or prevailing wage – whichever is higher
- Penalties for failure are:
  - Back pay plus compounded interest
  - Disbarment

**Unauthorized Practice of Law**

- Federal Regulations
- Who can administer programs / file petitions
  - Attorneys
  - USCIS authorized representatives
  - Employee/s of the Petitioning company
  - PDSO, DSO, RO, ARO
- When does “helping” go too far
- Liability
BEST PRACTICES – Student/Scholars

Independent Audit of program
Retain immigration counsel with higher education experience
Do not require compliance personnel to wear too many hats
Invest in ongoing professional development of compliance personnel
Invest in appropriate software solutions to facilitate compliance
Ensure that institutional IT resources facilitate appropriate notifications to compliance personnel
Foster ongoing communication between compliance personnel and academic personnel

BEST PRACTICES – Student/Scholars

Student Employment

- Emphasize development of appropriate, defensible regulatory interpretation
- F-1 Curricular Practical Training
- F-1 Optional Practical Training
- F-1 Economic Hardship
- F-1 On-campus employment
- J-1 Student Academic Training
- J-1 Student Economic Hardship
- J-1 Student On-campus employment
BEST PRACTICES – Faculty / Staff

Centralized Process
User group/working group from Departments and Colleges
Training – workshops
Institutional Policy
Documentation and Guidance
Tracking employee status, job title, hours, salary
Probationary period prior to filing for permanent residency
Retained Counsel

I-9 Compliance

- Increase in Audits
- Gone are the days of the low fine
- Belief that the Form I-9 is simple to complete
  - 69 Page Instruction Manual
  - 15 Pages of additional instructions with the form
- Established Process
  - System for tracking expirations
  - Purging
- Training
### I-9 Compliance

- No Discrimination Allowed Between U.S. Citizens, U.S. Nationals, Permanent Residents, Asylees, Refugees
- NOT allowed to ask “Are you a U.S. Citizen?” or “Do you have a Green Card?”
- NOT allowed to request specific documents or to require “more or different” documents than the minimum required.
- Should ask EVERY applicant (including Faculty) two questions (see handout regarding Hiring Questions)

#### Appropriate Questions

- ✓ Are you legally eligible to work in the U.S.?
- ✓ Will you now or in the future require visa sponsorship for employment?

### E-Verify

E-Verify is an Internet-based system, operated by DHS in cooperation with the Social Security Administration, that allows the employer to electronically verify the employment eligibility of new hires.
Training
Standardized Process
Definitive Ownership of all Components
Centralized Process
Internal External Audits
Reporting

Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States
(This section of the form is required only for H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions. It is not required for any other classifications. Please review the Form I-129 General Filing Instructions before completing this section.)

Select Item Number 1. or Item Number 2., as appropriate. DO NOT select both boxes.

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

1. ☐ A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or

2. ☐ A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

**Export Controls**

- Information collected on Form I-129
- Data provided to Department of Commerce
- Requires an analysis by knowledgeable staff for each petition
Why Now – Updates and Proposed Changes
10,000 new ICE Officers
Increase in Prevailing Wages
Limitations on OPT
Increased Enforcement
Increased Site Visits
Increased Liability
Increase in Fines/Penalties

Risks of Non-Compliance
Fines
Loss of F-1 Certification
Loss of J-1 Designation
Debarment
Criminal Penalties
Damage to Reputation
Increased Audits
Loss of Funding
Questions? Comments?

We are happy to help you!