Paying Fines is Easy – Surviving Increased Scrutiny

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Presenters

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.

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]
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>
</tr>
</thead>
<tbody>
<tr>
<td>F-1 – Student and Exchange Visitor Program (SEVP), part of the U.S. Department of Homeland Security</td>
<td>F-1 Sponsorship</td>
</tr>
<tr>
<td>J-1 - U.S. Department of State</td>
<td>Re-Certification required every two years</td>
</tr>
<tr>
<td></td>
<td>Certification (J-1) must be updated regarding every programmatic change</td>
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<tr>
<td></td>
<td>J-1 Sponsorship</td>
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<tr>
<td></td>
<td>Re-Designation required every two years</td>
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</table>

**Student / Scholar Issues**

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

**F-1 Program**

<table>
<thead>
<tr>
<th>New I-20s for Incoming F-1 Students</th>
<th>Reporting Requirements for Ongoing F-1 Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Certain minimum documentation requirements prior to I-20 issuance</td>
<td>• Every student record requires at least one transaction per academic term</td>
</tr>
<tr>
<td>• Who monitors compliance? How is personnel trained?</td>
<td>• Calendar-based reporting</td>
</tr>
<tr>
<td>• How to Assess?</td>
<td>• Event-based reporting</td>
</tr>
</tbody>
</table>

**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>
</tr>
</thead>
<tbody>
<tr>
<td>• Certain minimum documentation requirements prior to DS-2019 issuance</td>
<td>• Monitor activities</td>
</tr>
<tr>
<td>• Who monitors compliance? How is personnel trained?</td>
<td>• Site(s) of Activity</td>
</tr>
<tr>
<td></td>
<td>• Funding</td>
</tr>
<tr>
<td></td>
<td>• Cultural Exchange</td>
</tr>
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<td>• Employment limitations</td>
</tr>
</tbody>
</table>

**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
- 68 Page Instruction Manual
- 15 Pages of additional instructions with the form
- Established Process
- System for tracking exceptions
- Filing
- 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.

BEST PRACTICES – I-9 / E-Verify

Training
Standardized Process
Definitive Ownership of all Components
Centralized Process
Internal External Audits
Reporting
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!