

## Before ICE Comes Knocking:

Strategies to Address the Delicate Intersection  
of Increased Enforcement and SEVP Compliance

*2019 Higher Education Compliance Conference*

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### Presenters



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## Why Are You Here Today?

1. Understand the changing regulations, increasing scrutiny
2. Hear best practices and creative strategies on pain points including electronic I-9 compliance, recording auto extensions, and conducting proactive I-9 audits
3. Learn proactive tactics to ensure ongoing compliance and to prepare for school and visa related site visits as well as Notices of Inspection and other investigations.

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## A Brief History

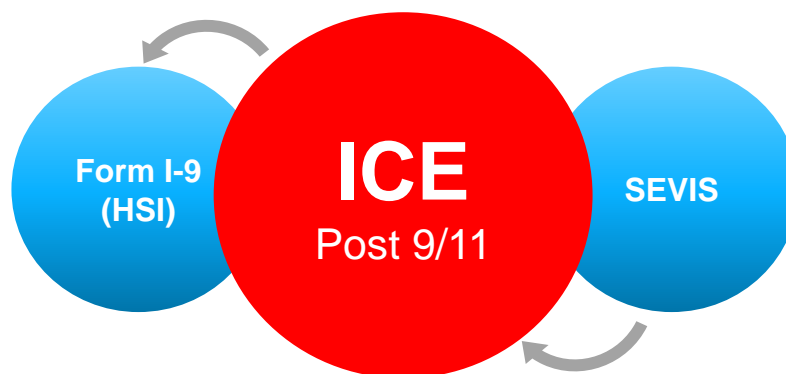
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## History: SEVIS and Form I-9

SEVIS:	Form I-9:
<ul style="list-style-type: none"> <li>1993 terrorist attack on the World Trade Center: the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996</li> <li>9/11: Increased Scrutiny – the USA PATRIOT Act, Section 416 mandated that SEVIS be fully implemented before January 1, 2003</li> <li>The Homeland Security Act of 2002: SVEP became the component of ICE</li> </ul>	<ul style="list-style-type: none"> <li>Immigration Reform and Control Act (IRCA): employers required to complete and retain Form I-9 for each employees hired after November 6, 1986</li> <li>Employers who knowingly violate or circumvent the I-9 process or anti-discrimination requirements of the INA may be subject to civil and/or criminal penalties</li> <li>In 2003, with the creation of Department of Homeland Security, ICE now houses the authority for Forms I-9 inspections</li> </ul>

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## Common Denominator: ICE



“The balance between open doors and protecting the country’s national security is at the heart”

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# General Compliance

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## SEVP and SEVIS

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- 1.2 million foreign students in the United States were enrolled in 8,744 schools approved to participate in the Department of Homeland Security's (DHS) Student and Exchange Visitor Program (SEVP)
- DHS's U.S. Immigration and Customs Enforcement (ICE) is responsible for managing SEVP, which certifies schools authorized to enroll foreign students in academic and vocational programs, and oversees such schools and students
- The Student and Exchange Visitor Information System (SEVIS) is the web-based system that the U.S. Department of Homeland Security (DHS) uses to maintain information regarding SEVP certified schools

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## DSO and International Office Obligations

- Federal laws and regulations require DSO to update and maintain the SEVIS records of nonimmigrant students in F and M visa categories
  - Obligations must be met timely
- DSOs are required to keep student records up-to-date by reporting changes in:
  - Student or dependent name or address
  - Academic program and status, including early graduation/completion
  - Disciplinary action taken by the school, as a result of a conviction of a crime
  - Employment, including STEM OPT reporting requirements
  - Failure to maintain status/complete program

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## Best Practices: Ensuring Compliance At All Times

- Student Data: Correct Entry and Timely Updates
- Early Semester Meetings: Document Copies and Quality Checks
- Cross Checks and Peer Reviews
- Periodic Reviews and Sample Audits of Student Files
- Annual Refresher Training
- Review of Students' Documents by Admissions for Potential Fraud
- Avoid Common Errors
  - I-17 updates when a new course location is added
  - Distance learning restrictions and dropping below minimum course loads

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# TRAINING

- Mandatory Training Requirements
- Set-up Training Cadence
- Recommended Trainings/References:
  - The Association of International Educators (NAFSA)

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## SEVIS Known Issues

- ICE has processes in place for school certification, recertification, and ongoing compliance monitoring
- Improve school certification
- GAO conducts covert tests of SEVP internal controls over the school certification process
- Biggest kink in the armor: long-standing delays in conducting recertification reviews every 2 years to ensure that SEVP-certified schools continue to meet program requirements
  - Critical fraud risk controls.
  - Queue of recertification petitions awaiting adjudication
  - creates additional fraud risks to the program if higher-risk schools continue to operate pending recertification

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## SEVP: Areas of Concern/Increased Enforcement Areas

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### Dirty Laundry

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*Pennsylvania college official sentenced for visa fraud, making false statements*

- ERIE, Pa. — On Wednesday, May 15, 2019, the United States Attorney's Office for the Western District of Pennsylvania, announced that a resident of Erie, Pennsylvania man, has been sentenced in federal court for visa fraud and false statements, following an investigation by ICE, Homeland Security Investigations (HSI) Philadelphia and U.S. Border Patrol.



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## GAO Recommendations

- To further enhance controls over schools and school employees to help mitigate fraud.
- **RECOMMENDATION 1.** The Director of ICE should develop a fraud risk profile that:
  - aligns with leading practices and identifies inherent fraud risks affecting the program,
  - assesses the likelihood and impact of inherent fraud risks,
  - determines fraud risk tolerance, and
  - examines the suitability of existing fraud controls and prioritizes residual fraud risks, including residual risks posed by the recertification queue.
- **RECOMMENDATION 2.** The Director of ICE should build on existing efforts to use data analytics by employing techniques, such as network analysis, to identify potential fraud indicators in schools petitioning for certification.

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## More Recommendations

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- **Recommendation 3.** As ICE works to complete its efforts to hire additional SEVP adjudicators, the Director of ICE should begin notifying certified schools 180 days prior to, and requiring submission of complete recertification petitions by, the 2-year certification expiration date, consistent with regulation, and evaluate whether additional resources are needed.
- **Recommendation 4.** The Director of ICE should, as practicable, verify the eligibility information provided to establish the immigration or citizenship status of lawful permanent residents and naturalized U.S. citizens, as well as U.S.-born citizens, who have been nominated or renominated to serve as DSOs.

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## and Even More Recommendations

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- **Recommendation 5.** The Director of ICE should develop an implementation plan for the project aimed at strengthening background checks for DSOs; that plan should outline how the project will be executed, monitored, and controlled.
- **Recommendation 6.** The Director of ICE should implement mandatory DSO training and verify that the training is completed.
- **Recommendation 7.** The Director of ICE should complete the development and implementation of its plans for mandatory fraud-specific training for DSOs.

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## Areas of Concern

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- Student and Exchange Visitor Program (SEVP): mandated by the law to report and monitor nonimmigrants while in the US as a part of the DHS Mission.
- With increased enforcement, institutions may expect SEVP to monitor data more closely to ensure that:
  - Student records are up to date (especially residence address)
  - School information in I-17 is up to date (especially “instructional sites”)
    - Common Issues: Expansions of classroom locations without I-17 approval; offerings of virtual and hybrid classes.
  - Students are not violating employment and distance education restriction
    - Virtual employment has been on the rise as have reviews of job duties by ICE.
    - IT employment is an especially reviewed area.

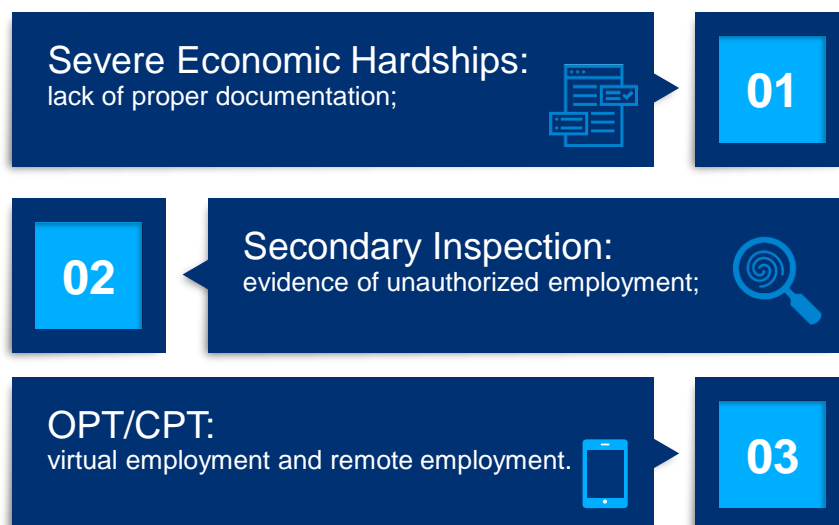
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## Oversight of Post Completion OPT and STEM “Students”

- SEVP Portal:
  - Launched in March, 2018
  - Update: international students in F-1 and M-1 categories reporting personal and employer information directly to SEVP (\*exceptions: STEM OPT students)
  - Less burden for institutions?
  - Through the portal, students can add/change their:
    - Phone number
    - Mailing and physical address
    - Employer information\*
  - What type of oversight is needed by the schools?

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## Student Employment: A High Profile Enforcement Area



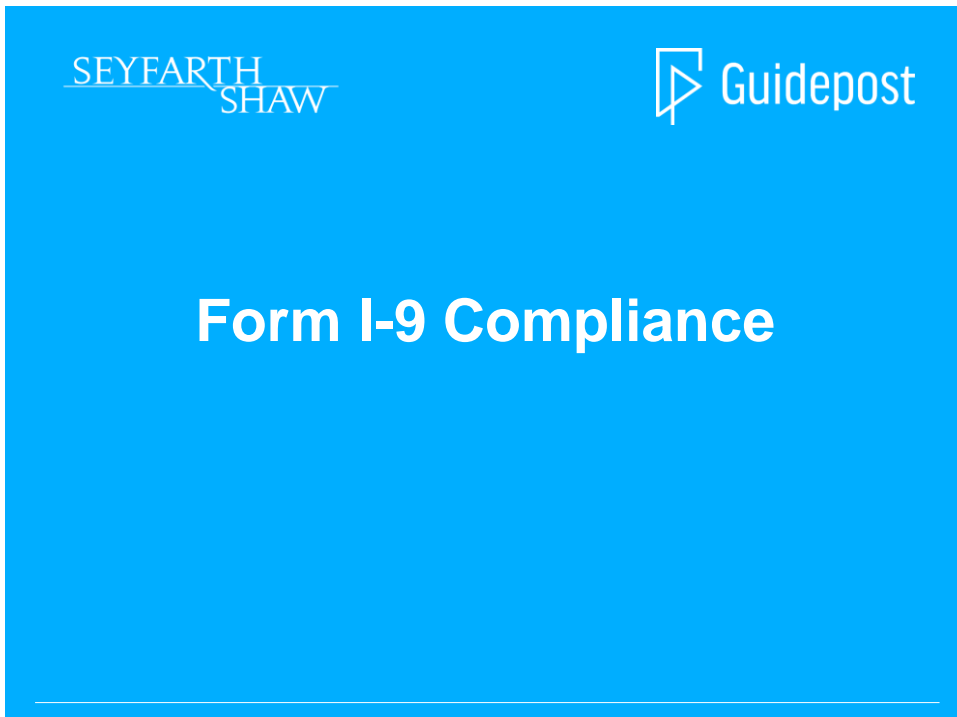
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## Areas of Concern

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- User management: only US Citizens and LPRs can be DSOs and this access SEVIS. Institutions must review their acceptable use policy related to SEVIS and retrain all personnel during enrollment busy season when international student advising departments can become overwhelmed
- Sharing of DSOs passwords can create a huge vulnerability for the school
- As soon as the DSOs depart their employment, they should be terminated from the system
- Institutions must ensure that users were present on days when their passwords were used
- Students transferring schools after not being selected in H-1b Lottery

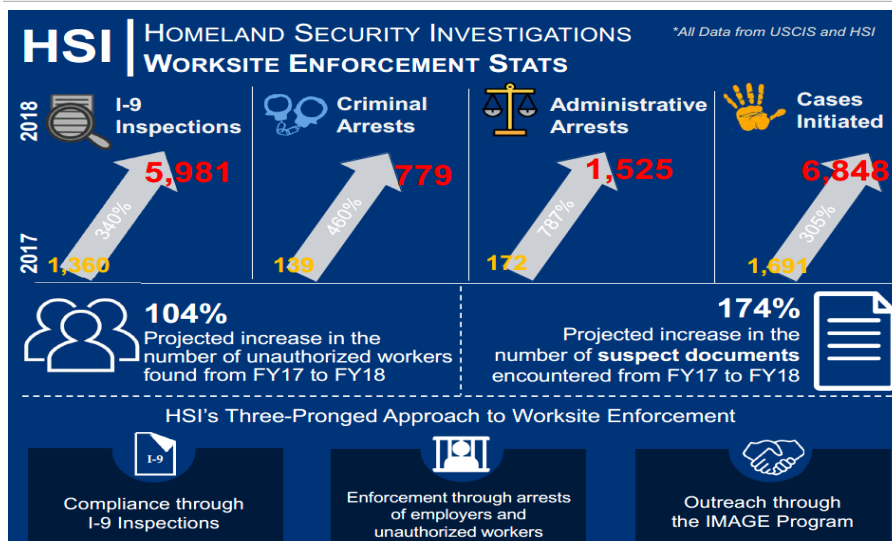
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The slide features a solid blue background. In the top left corner is the logo for SEYFARTH SHAW, with 'SEYFARTH' in a serif font and 'SHAW' in a smaller serif font below it, separated by a thin horizontal line. In the top right corner is the Guidepost logo, which consists of a stylized white icon of a person with arms raised inside a square, followed by the word 'Guidepost' in a sans-serif font. Centered on the slide is the title 'Form I-9 Compliance' in a large, bold, white sans-serif font. A thin white horizontal line is positioned near the bottom of the slide.

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## Why Should You Care?



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## Increased Compliance, Higher Stakes

- Increase in workplace enforcement in the fiscal year 2018 - which set a **10-year high record** for the number of I-9 audits conducted and criminal charges filed
- FY 2018, the Homeland Security Investigations “opened 6,848 worksite investigations compared to 1,691 in FY17; initiated 5,981 I-9 audits compared to 1,360; and made 779 criminal and 1,525 administrative worksite-related arrests compared to 139 and 172, respectively.”
- Employers were ordered to pay \$10.2 million in civil penalties for employing unauthorized workers and another 10.2 million in judicial fines, forfeitures, and restitutions
- We are seeing much heavier fines in 2019
- Branding issues government contractor debarment

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**Employment Eligibility Verification**  
Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form I-9  
OMB No. 1615-0047  
Expires 08/31/2019

**START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Attestation** (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name) First Name (Given Name) Middle Initial Other Last Names Used (if any)

Address (Street Number and Name) Apt. Number City or Town State ZIP Code

Date of Birth (mm/dd/yyyy) U.S. Social Security Number Employee's E-mail Address Employee's Telephone Number

I attest, under penalty of perjury, that I am (check one of the following boxes):

☐ 1. A citizen of the United States

☐ 2. A noncitizen national of the United States (See instructions)

☐ 3. A lawful permanent resident (Alien Registration Number/USCIS Number)

☐ 4. An alien authorized to work (expiration date, if applicable, mm/dd/yyyy)

Some aliens may write "N/A" in the expiration date field. (See instructions)

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:  
An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number

1. Alien Registration Number/USCIS Number: \_\_\_\_\_ OR \_\_\_\_\_

2. Form I-94 Admission Number: \_\_\_\_\_ OR \_\_\_\_\_

3. Foreign Passport Number: \_\_\_\_\_  
Country of Issuance: \_\_\_\_\_

Signature of Employee \_\_\_\_\_ Today's Date (mm/dd/yyyy) \_\_\_\_\_

**Preparer and Translator Certification** (check one):

☐ I am a preparer or translator. (To be completed and signed when preparing or translating this form for an employee on completing Section 1.)

☐ I am the employer. (To be completed and signed when completing this form and that to the best of my knowledge the information is true and correct.)

Signature of Preparer or Translator \_\_\_\_\_ Today's Date (mm/dd/yyyy) \_\_\_\_\_

Last Name (Family Name) First Name (Given Name)

Address (Street Number and Name) City or Town State ZIP Code

Employer Completes Next Page

Form I-9 07/17/17 N Page 1 of 3

**Section 2. Employer or Authorized Representative Review and Verification**  
(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "List of Acceptable Documents.")

Employee Info from Section 1 Last Name (Family Name) First Name (Given Name) MI Citizenship/Immigration Status

Identify and Employment Authorization OR List B Identity AND List C Employment Authorization

Document Title Document Title Document Title

Issuing Authority Issuing Authority Issuing Authority

Document Number Document Number Document Number

Expiration Date (if any) (mm/dd/yyyy) Expiration Date (if any) (mm/dd/yyyy) Expiration Date (if any) (mm/dd/yyyy)

Document Title Document Title Document Title

Issuing Authority Issuing Authority Issuing Authority

Document Number Document Number Document Number

Expiration Date (if any) (mm/dd/yyyy) Expiration Date (if any) (mm/dd/yyyy) Expiration Date (if any) (mm/dd/yyyy)

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

This employee's first day of employment (mm/dd/yyyy): \_\_\_\_\_ (See instructions for exemptions)

Signature of Employer or Authorized Representative \_\_\_\_\_ Today's Date (mm/dd/yyyy) \_\_\_\_\_ Title of Employer or Authorized Representative \_\_\_\_\_

Last Name of Employer or Authorized Representative First Name of Employer or Authorized Representative Employee's Business or Organization Name

Employee's Business or Organization Address (Street Number and Name) City or Town State ZIP Code

**Section 3. Reverification and Rehires** (To be completed and signed by employer or authorized representative.)

A. New Name (if applicable) B. Date of Rehire (if applicable)

Last Name (Family Name) First Name (Given Name) Middle Initial Date (mm/dd/yyyy)

C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title Document Number Expiration Date (if any) (mm/dd/yyyy)

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative \_\_\_\_\_ Today's Date (mm/dd/yyyy) \_\_\_\_\_ Name of Employer or Authorized Representative \_\_\_\_\_

Form I-9 07/17/17 N Page 2 of 3

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## Form I-9 – What is it?

- A Government-Issued Form
  - Completed by the Employer and Employee
  - Under Penalty of Perjury
  - Subject to Inspection by Immigration and Customs Enforcement
  - Retained by Employer
  - To Document:
    - the Identity of the Employee; and
    - the Eligibility of the Employee to Work in the U.S.

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## Form I-9 Overview – Sections 1, 2 and 3



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### Section 1 Common Errors

#### SECTION 01

- Employee inaccurately enters their name, other last names used (such as maiden name), address, or date of birth
  - At times, employees use today's date as their date of birth
- Employee does not attest to their citizenship/immigration status
  - Employee does not enter A-Number/USCIS Number after selecting "A lawful permanent resident"
  - Employee does not enter A-Number/USCIS Number, or Form I-94 admission number, and/or work authorization expiration date, after selecting "An alien authorized to work"
- An employee fails to sign and/or date the attestation
  - At times, employees use their date of birth as today's date

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## Section 2

SECTION

02

- Section 2 **must** be completed by the employer  
or
- Authorized Representative
  - may be anybody who the employer authorizes
  - notaries
  - whoever it is, provide instructions on proper I-9 completion
  - i.e. do not notarize Section 2, input the company name and address as the business, **not** the notary's address

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## Section 2 Reminders

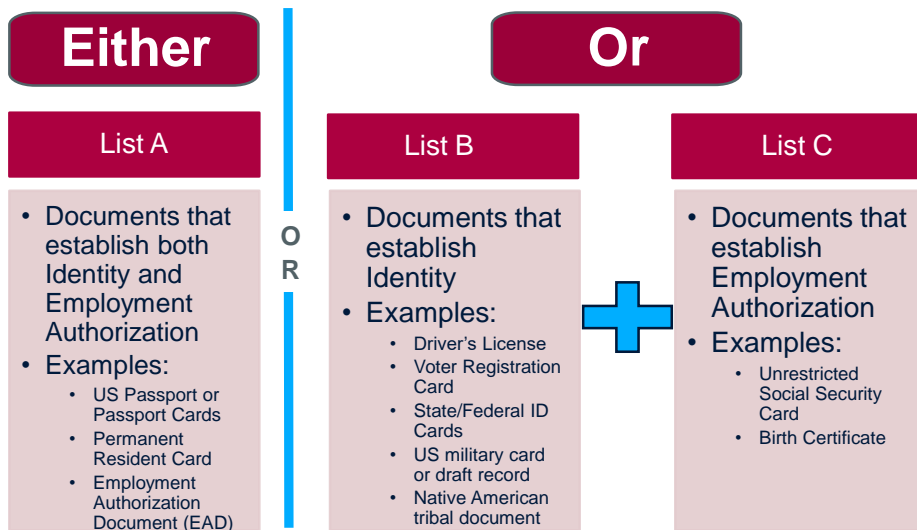
SECTION

02

- Employee must present **a document or a combination of documents** that establish both **employment authorization and identity**
  - However, employers **cannot** specify which document(s) an employee should present from the list
- **Always** have the Lists of Acceptable Documents available
- Must **physically examine** each original document the employee presents
  - **No** Skype, FaceTime, Facebook, Snapchat, WhatsApp, whatever
- Must enter correct document title, issuing authority, number, and expiration date (if applicable)

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## Form I-9: Acceptable Documents



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## Acceptable Documents: Students in F-1 Nonimmigrant Status

On-Campus Employment	Curricular Practical Training	Off-Campus Employment Based on Severe Economic Hardship	Employment Sponsored by an International organization	Optional Practical Training (OPT)	STEM OPT	Cap-Gap
Unexpired Foreign Passport and Form I-94, Arrival/Departure Record	Unexpired foreign passport and Form I-94 with Form I-20, Certification of Eligibility for Nonimmigrant Student Status	Employment Authorization Document (EAD)	Employment Authorization Document (EAD)	Employment Authorization Document (EAD)	Employment Authorization Document (EAD)	Employment Authorization Document (EAD)
	List B and List C Documents with Form I-20, Certification of Eligibility for Nonimmigrant Student Status				Expired EAD* with Form I-20 endorsed by the DSO	Expired EAD* with Form I-20 endorsed by the DSO
*In limited circumstances, employers may accept a document that appears expired on its face for Form I-9 verification.						

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## Section 2: F-1 Curricular Practical Training

### SECTION 02

**Section 2. Employer or Authorized**  
(Employers or their authorized representative must physically examine one document from List A of Acceptable Documents.)

Employee Info from Section 1 Last Name (Family Name) Smith

**List A** Identity and Employment Authorization OR

Document Title Foreign Passport  
Issuing Authority Japan  
Document Number XS1234567  
Expiration Date (if any) (mm/dd/yyyy) 01/05/2024

Document Title Form I-94  
Issuing Authority US Customs and Border Protection  
Document Number 123456789012  
Expiration Date (if any) (mm/dd/yyyy) 07/10/2019

Document Title Form I-20  
Issuing Authority Department of Homeland Security  
Document Number N0000152486  
Expiration Date (if any) (mm/dd/yyyy) 01/10/2022

Foreign Passport Information + Form I-94 Information + Form I-20 Information

**PROGRAM OF STUDY**

EDUCATION LEVEL	MAJOR 1	MAJOR 2
DOCTORATE	Physics, General NO. 0001	None 00.0000
NORMAL PROGRAM LENGTH	PROGRAM ENGLISH PROFICIENCY	ENGLISH PROFICIENCY NOTES
60 Months	Advanced	Student is proficient
PROGRAM START DATE	PROGRAM END DATE	
01 SEPTEMBER 2016	31 AUGUST 2020	

Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
SEVIS ID: N0000152486

I-20, Certificate of Eligibility for Nonimmigrant Student Status  
OMB NO. 1653-0038

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## Section 3 – Reverifications

### SECTION 03

- Employees whose work authorization has expired must be reverified
- The employee must be reverified on a **new Form I-9** if the version of the I-9 previously used is no longer valid
  - Must accept List A or List C documents (e.g. an unrestricted Social Security card)
  - Enter the document title, number, and expiration date (if any) in Section 3
- Employers must physically examine the document(s) presented
- Best Practice:** set expiration reminders at 90, 60, 30, and 10 days prior to expiration date

**Section 3. Reverification and Rehires** (To be completed and signed by employer or authorized representative.)

**A. New Name (if applicable)**

Last Name (Family Name)	First Name (Given Name)	Middle Initial	<b>B. Date of Rehire (if applicable)</b> Date (mm/dd/yyyy)
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**C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.**

Document Title	Document Number	Expiration Date (if any) (mm/dd/yyyy)
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative
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## F-1 STEM OPT Employer Requirements and Responsibilities

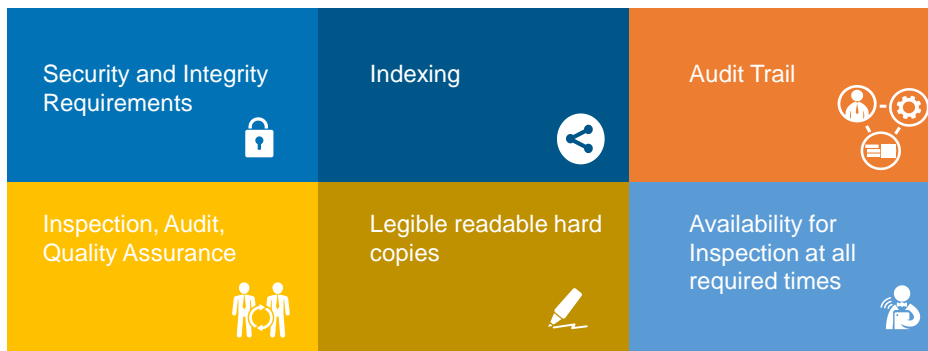
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- E-Verify
- Valid EIN issued by IRS
- Report material changes to DSO
- Formal training program
- Pay equivalent to the US workers
- Maintain bona fide employer-employee relationship
- Sufficient resources to meet training plan
- No replacement of US worker
- Training goals

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## Electronic I-9 Systems – Basic Requirements

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## What to Expect During a Civil Investigation

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### Initial Response

- **Notice of Technical or Procedural Failures**
- **Notice of Discrepancies**
- **Notice of Suspect Documents**

### Final Response

- **Warning Notice** – issued in circumstances where substantive verification violations were identified, but circumstances do not warrant a monetary penalty and there is the expectation of future compliance by the employer
- **Notice of Intent to Fine (NIF)** – may be issued for substantive, uncorrected technical, knowingly hire and continuing to employ violations
- **Notice of Inspection Results** – also known as a "compliance letter," used to notify a business that they were found to be in compliance.

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## Key Areas of Exposure During an Inspection

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- Missing I-9s
- Incomplete I-9 Section 2s
- Failure to reverify or update
- Inconsistent or sloppy completion
- Remote employees completed with copies or online
- Unauthorized workers/Fraudulent Documents or other related issues leading to Criminal Liability, including lower level management “hanky panky”
- Willful Blindness
- Electronic I-9 issues, including invalidation of I-9s

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## E-Verify

- Web-based system that confirms eligibility of employees to work in the US
- Matches the information provided by employees on the Form I-9 against records available to SSA and DHS
- Goals:
  - Ensure a legal workforce
  - Protect jobs for US workers
  - Deter document and identity fraud



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## E-Verify and the Form I-9

FORM I-9	E-Verify
Is mandatory	Is voluntary for most employers
Does not require employee's Social Security	Requires employee's Social Security Number*
Does not require a photo on identity documents (List B)	Requires a photo on identity documents (List B)
May be used to reverify expired employment authorization	<b>May not</b> be used to reverify expired employment authorization

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## Big Picture Recommendations



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## IMAGE- Being Rebranded

- Employers seeking certification in IMAGE must agree to:
- Complete the IMAGE Self-Assessment Questionnaire (Application)
- Enroll in the E-Verify program within 60 days
- Establish a written hiring and employment eligibility verification policy that includes an internal Form I-9 audit at least once a year
- Submit to a Form I-9 Inspection
- Review/sign an official IMAGE partnership agreement with ICE
- Upon enrollment and commitment to DHS' best employment practices, program participants will be deemed "IMAGE Certified"

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