Before ICE Comes Knocking:
Strategies to Address the Delicate Intersection of Increased Enforcement and SEVP Compliance

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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.

A Brief History

SEYFARTH SHAW

Guidepost
History: SEVIS and Form I-9

<table>
<thead>
<tr>
<th>SEVIS:</th>
<th>Form I-9:</th>
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<tbody>
<tr>
<td>• 1993 terrorist attack on the World Trade Center: the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996</td>
<td>• Immigration Reform and Control Act (IRCA): employers required to complete and retain Form I-9 for each employee hired after November 6, 1986</td>
</tr>
<tr>
<td>• 9/11: Increased Scrutiny – the USA PATRIOT Act, Section 416 mandated that SEVIS be fully implemented before January 1, 2003</td>
<td>• 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</td>
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<tr>
<td>• The Homeland Security Act of 2002: SVEP became the component of ICE</td>
<td>• In 2003, with the creation of Department of Homeland Security, ICE now houses the authority for Forms I-9 inspections</td>
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Common Denominator: ICE

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

• 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.
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

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

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
SEVP:
Areas of Concern/Increased Enforcement Areas

Dirty Laundry

*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.
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.

More Recommendations

• **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.
and Even More Recommendations

- **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.

Areas of Concern

- **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.
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?

Student Employment: A High Profile Enforcement Area

Severe Economic Hardships: lack of proper documentation;

Secondary Inspection: evidence of unauthorized employment;

OPT/CPT: virtual employment and remote employment.
Areas of Concern

- 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.
Why Should You Care?

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

<table>
<thead>
<tr>
<th>SECTION</th>
<th>Completed by Employee: Biographical and Immigration Status Information</th>
<th>Verification of Employment Eligibility Including Inspection of Documents</th>
<th>Reverification and Rehire</th>
</tr>
</thead>
</table>

### Section 1 Common Errors

- 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
Section 2

• Section 2 must be completed by the employer
  OR
• Authorized Representative
  ▪ may be anybody who the employer authorizes
  ▪ notaries
  ▪ whoev ever 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

Section 2 Reminders

• 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)
Form I-9: Acceptable Documents

Either

List A
• Documents that establish both Identity and Employment Authorization
• Examples:
  • US Passport or Passport Cards
  • Permanent Resident Card
  • Employment Authorization Document (EAD)

List B
• Documents that establish Identity
• Examples:
  • Driver’s License
  • Voter Registration Card
  • State/Federal ID Cards
  • US military card or draft record
  • Native American tribal document

List C
• Documents that establish Employment Authorization
• Examples:
  • Unrestricted Social Security Card
  • Birth Certificate

Acceptable Documents: Students in F-1 Nonimmigrant Status

<table>
<thead>
<tr>
<th>On-Campus Employment</th>
<th>Curricular Practical Training</th>
<th>Off-Campus Employment Based on Severe Economic Hardship</th>
<th>Employment Sponsored by an International Organization</th>
<th>Optional Practical Training (OPT)</th>
<th>STEM OPT</th>
<th>Cap-Gap</th>
</tr>
</thead>
</table>

*In limited circumstances, employers may accept a document that appears expired on its face for Form I-9 verification.
Section 2: F-1 Curricular Practical Training

Section 3 – Reverifications

- 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
F-1 STEM OPT
Employer Requirements and Responsibilities

- 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

Electronic I-9 Systems – Basic Requirements

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<tr>
<th>Security and Integrity Requirements</th>
<th>Indexing</th>
<th>Audit Trail</th>
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<tbody>
<tr>
<td>Inspection, Audit, Quality Assurance</td>
<td>Legible readable hard copies</td>
<td>Availability for Inspection at all required times</td>
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What to Expect During a Civil Investigation

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.

Key Areas of Exposure During an Inspection
- 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
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

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<tr>
<td>Is mandatory</td>
<td>Is voluntary for most employers</td>
</tr>
<tr>
<td>Does not require employee’s Social Security</td>
<td>Requires employee’s Social Security Number*</td>
</tr>
<tr>
<td>Does not require a photo on identity documents (List B)</td>
<td>Requires a photo on identity documents (List B)</td>
</tr>
<tr>
<td>May be used to reverify expired employment authorization</td>
<td><strong>May not</strong> be used to reverify expired employment authorization</td>
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Big Picture Recommendations

01
Prioritize I-9 Compliance, but understand business needs.

02
Set training cadence for I-9 and E-Verify

03
Annual External Audit

04
Consider joining IMAGE program

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"