Staff Visas

Audit Report # 14-06
March 13, 2015

Office of Auditing and Consulting Services

"Committed to Service, Independence and Quality"
March 13, 2015

Dr. Diana Natalicio
President, The University of Texas at El Paso
Administration Building, Suite 500
El Paso, Texas 79968

Dear Dr. Natalicio:

The Office of Auditing and Consulting Services has completed a limited scope audit of Staff Visas. The main audit objective was to determine whether the University of Texas at El Paso is in compliance with foreign worker employment regulations and policies with staff visas.

We also have included a follow-up review of the recommendations included in the Faculty Visas Audit Report #13-04 dated February 13, 2013, the International Student Visas Audit Report #13-05 dated July 8, 2013, and the I-9 Compliance Audit Report #13-26 dated September 30, 2013 which are documented in Appendices A, B and C.

We appreciate the cooperation and assistance provided by Human Resources throughout our review.

Sincerely,

Lori N. Wertz
Interim Director
Report Distribution:

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EXECUTIVE SUMMARY

The Office of Auditing and Consulting Services has completed a limited scope audit of Staff Visas for the time period beginning September 1, 2013 and ending June 30, 2014. The main audit objective was to determine whether The University of Texas at El Paso is in compliance with foreign worker employment regulations and policies with staff visas.

Audit procedures included interviewing key personnel, reviewing applicable regulations and verifying the existence of appropriate institutional policies and procedures.

During the audit we noted that:

- All I-9 files in our sample were completed and available for review in Human Resources.
- One international employee classified as staff submitted the Form I-9 twelve days after starting work at UTEP.
- Discrepancies in visa status in PeopleSoft were identified for 6 employees.

We also have included a follow-up review of the recommendations included in the Faculty Visas Audit Report #13-04 dated February 13, 2013, the International Student Visas Audit Report #13-05 dated July 8, 2013, and the I-9 Compliance Audit Report #13-26 dated September 30, 2013, which are documented in Appendices A, B, and C respectively.
BACKGROUND

Form I-9 requirements are included in the Immigration Reform and Control Act of 1986. According to the Department of Homeland Security (DHS), the United States Citizenship and Immigration Services Form I-9 is used to verify the identity and employment authorization of individuals hired in the United States.

All U.S. employers must ensure proper completion of Form I-9 for each individual, including both citizens and noncitizens, hired in the United States within 3 business days of the employee’s first day of employment. Both employees and employers (or authorized representatives of the employer) must complete the form, and employees must attest to their employment authorization. Employees must also present their employer with acceptable documents evidencing identity and employment authorization.

Title 8 of the Code of Federal Regulations (8 CFR § 274) provides detailed guidelines for Form I-9 compliance. Failure to complete and maintain a Form I-9 timely may result in federal fines and penalties from the DHS.

AUDIT OBJECTIVES

The objective of this audit was to determine whether The University of Texas at El Paso is in compliance with foreign worker employment regulations and policies with staff visas.

Our focal points were to determine if:

- The University is in compliance with foreign worker employment regulations with focus on staff visas,
- non-resident staff have appropriate visas which are properly authorized and in compliance with all applicable laws, regulations, and University policies, and
- the appropriate immigration and work eligibility documents for international staff are on file and updated timely in accordance with laws and regulations.
SCOPE AND METHODOLOGY

Audit procedures included interviewing key personnel, reviewing applicable regulations and verifying the existence of appropriate institutional policies and procedures. The scope for this audit is September 1, 2013 through June 30, 2014.

The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors.

AUDIT RESULTS

A: Authorization and Compliance

A.1 Form I-9 Document Management
A judgmental sample consisting of 15 of 86 UTEP international staff files was selected to test for Form I-9 compliance. We reviewed each Form I-9 for the following criteria:

- Form I-9 on file
- Form I-9 fully completed
- Correct Social Security Number
- Proper documents listed
- Signed and dated by employer
- Signed and dated by employee

100% of the I-9 records were on file and available for our review. We noted several minor errors on some forms, but in general, the process for Form I-9 completion is in compliance with federal guidelines.

A.2 Late Form I-9 Submission Staff Visas
Human Resources prepares a Late I-9 Tracking Report on a monthly basis. The report listed 177 employees hired between September 2013 and June 2014 who submitted a late Form I-9; one of the 177 was an international staff member at the University.

The Employment Eligibility Verification Form I-9 was not completed in a timely manner for the international staff member. The I-9 is submitted late when departments do not process new hire paperwork timely. Although the employee had a legitimate J-1 visa and was eligible to work, the employee worked at the University for 12 days before his work eligibility was confirmed, a violation of Title 8 of the Code of Federal Regulations (8 CFR § 274).
Failure to complete and maintain a Form I-9 timely may result in federal fines and penalties from the DHS.

**Recommendation:** Departments should be required to provide an action plan to prevent future incidents of late submissions of Forms I-9. The action plans should be shared with the President, Human Resources and the Legal Department.

**Management Response:** Human Resources (HR) has done a nice job of addressing the issues of I-9 compliance at UTEP during this review period; however, hiring officials within colleges and departments continue to go outside the compliance processes set in place. HR has provided various trainings and communications to all colleges and departments within UTEP relative to proper hiring practices.

HR will continue to work with colleges and departments to follow those guidelines relative to employment. Deans, Chairs, Chief Administrative Officers and administrative support need to become responsible parties to ensure adherence to I-9 regulations. Human Resources will continue to educate students, faculty and staff during orientations and provide guidance to ensure all are aware the implications of noncompliance. An alternative solution could involve the centralization of all hiring processes.

**Responsible Party:** Roger E. Brown Jr., Associate Vice-President, Human Resources

**Implementation Date:** September 1, 2015.

**B: Visa status in PeopleSoft**
Auditors identified discrepancies in visa status in PeopleSoft for 6 international employee records. The inconsistencies in citizenship and visa status appear in two different tabs within the same PeopleSoft module. Due to these discrepancies, reports and queries may include incorrect visa status for permanent residents.

**Recommendation:** The PeopleSoft module with citizenship and visa status needs to be corrected to ensure accurate reporting.

**Management Response:** There has been an error identified with the PeopleSoft software. A ticket has been generated for the developers to correct the error to be able to establish effective reporting. This error has been identified with six other institutions within the UT Share group and is not specific to UTEP. UT Share has been notified and has placed this issue on their docket for review.

**Responsible Party:** Roger Brown, Associate Vice-President, Human Resources

**Implementation Date:** December 31, 2015.
CONCLUSION

In our opinion, HR has implemented procedures to improve the timeliness of Form I-9 submissions. Although HR has made a concerted effort to resolve the tardiness of Form I-9 for new employees, ultimate resolution requires that individual departments comply with federal regulations and University policies and procedures. We believe that implementation of our recommendation will mitigate serious legal and financial risks.

We wish to thank the staff of the Human Resources Department for their assistance and cooperation provided during the audit.
APPENDIX A

FOLLOW-UP ON PRIOR AUDIT FINDINGS AND RECOMMENDATIONS

Audit #13-04 Faculty Visas

The items below represent recommendations made by the Office of Auditing and Consulting Services for the Fiscal Year 2013 for Audit #13-04 Faculty Visas.

Follow-up audit procedures included interviewing key personnel, reviewing documents, and limited testing of processes to determine the status of each recommendation. Based on our audit results we have assigned one of the following status descriptions to each recommendation:

* Implemented:
The recommendation has been implemented or an alternative corrective action has been taken.

* (IP) - In Progress:
The recommendation has been initiated but is not complete.

* (NI) - Not Implemented:
The recommendation has not been implemented and no corrective action has been taken.

* (N/A) - Not Applicable:
The recommendation is not applicable due to changes in procedures.

**Recommendation Status:**
The follow-up audit was limited to the two recommendations from Audit Report #13-04 Faculty Visas.

Two recommendations were fully Implemented.

**A. J-1 VISAS SPONSORED BY OTHER INSTITUTIONS**

Current Status: Implemented
B. TENURE TRACK POSITIONS

Current Status: Implemented

Recommendation:
HR should encourage the professors to obtain visas that correspond to their permanent tenure track positions. Processes should be established to ensure consistency between visas and tenure track positions for international faculty.

Follow-up Audit Results:
The finding is implemented. Both employees were awarded tenure in 2013 despite possessing a TN visa. Although they are legally authorized to work in the U.S. with a TN visa, the Trade NAFTA (TN) visa category was developed as part of the North American Free Trade Agreement (NAFTA) to facilitate the entry of Mexican and Canadian citizens to the United States for employment on a temporary basis.

Both professors obtained their TN temporary visas in December 2008 when their J-1 visas expired, but they have not completed the two-year home-country physical presence requirement which requires them to return to their home country for at least two years at the end of their exchange visitor program. According to the U.S. Department of State, “This is also known as the foreign residence requirement under U.S. law, Immigration and Nationality Act, Section 212(e).” They have since obtained two renewals of the TN visa since 2008.

The TN visas will expire in January 2017. The University is aware of the situation and the Human Resources Department has provided the professors with legal counsel to advise them on the proper steps to apply for a J-1 waiver in order to proceed onto an H1B status, since another TN visa renewal is not guaranteed.

HR has continuously worked with both faculty members, the Dean, Vice President for Research, and legal counsel to facilitate their transition into applying for a waiver and recently met with the immigration attorney to provide the group with final further guidance.
APPENDIX B

FOLLOW-UP ON PRIOR AUDIT FINDINGS AND RECOMMENDATIONS

Audit #13-05 International Workers

The items below represent recommendations made by the Office of Auditing and Consulting Services for the Fiscal Year 2013 for Audit #13-05 International Workers.

Follow-up audit procedures included interviewing key personnel, reviewing documents, and limited testing of processes to determine the status of each recommendation. Based on our audit results we have assigned one of the following status descriptions to each recommendation:

(I) - Implemented:
The recommendation has been implemented or an alternative corrective action has been taken.

(IP) - In Progress:
The recommendation has been initiated but is not complete.

(NI) - Not Implemented:
The recommendation has not been implemented and no corrective action has been taken.

(N/A) - Not Applicable:
The recommendation is not applicable due to changes in procedures.

Recommendation Status:
The follow-up audit was limited to the two recommendations from Audit Report #13-05 International Student Workers.

One recommendation was fully Implemented.

A. UNAUTHORIZED EMPLOYMENT AFTER GRADUATION
Current Status: Implemented

B. LATE FORM I-9
Current Status: See note below

One recommendation was In Progress. Since the recommendation involved late I-9 submissions, this recommendation, along with a revised implementation date, will be followed up under Finding A.1 Late Form I-9 in Audit #13-26 (See Appendix C for details).
APPENDIX C

FOLLOW-UP ON PRIOR AUDIT FINDINGS AND RECOMMENDATIONS

Audit #13-26 I-9 Compliance

The items below represent recommendations made by the Office of Auditing and Consulting Services for the Fiscal Year 2013 for Audit #13-26 I-9 Compliance.

Follow-up audit procedures included interviewing key personnel, reviewing documents, and limited testing of processes to determine the status of each recommendation. Based on our audit results we have assigned one of the following status descriptions to each recommendation:

(I) - Implemented:
The recommendation has been implemented or an alternative corrective action has been taken.

(IP) - In Progress:
The recommendation has been initiated but is not complete.

(NI) - Not Implemented:
The recommendation has not been implemented and no corrective action has been taken.

(N/A) - Not Applicable:
The recommendation is not applicable due to changes in procedures.

Recommendation Status:
The follow-up audit was limited to one recommendation from Audit Report #13-26 I-9 Compliance.

C. LATE FORM I-9
Current Status: In Progress

Recommendation:
The HR Report of I-9 violations by department should be reported to and reviewed by all management at the Vice Presidential level on a monthly basis. Departments should be required to provide an action plan to prevent future incidents. The action plans should be shared with the President and the Legal Department.
Follow-Up Audit Results:
Employment Eligibility Verification Forms I-9 were not completed in a timely manner for 177 employees classified as from September 1, 2013, through June 30, 2014. The delinquent forms were submitted from 3-80 days late (averaging 12 days late) after the new hire date because the hiring departments allowed individuals to work before employment documentation was submitted to HR. As a result, the individuals were working:

- before criminal background checks were conducted,
- without health and workers compensation coverage,
- without complete employment and payroll records, and
- with delayed compensation.

Late I-9 submissions for Fiscal Year 13-14 decreased by 15% from the previous fiscal year. The charts below compare the late I-9 submissions by employee classification and by College/Division for both fiscal years.

Management Response: Human Resources (HR) has done a nice job of addressing the issues of I-9 compliance at UTEP during this review period; however, hiring officials within colleges and departments continue to go outside the compliance processes set in place. HR has provided various trainings and communications to all colleges and departments within UTEP relative to proper hiring practices.

HR will continue to work with colleges and departments to follow those guidelines relative to employment. Deans, Chairs, Chief Administrative Officers and administrative support need to become responsible parties to ensure adherence to I-9 regulations. Human Resources will continue to educate students, faculty and staff during orientations and provide guidance to ensure all are aware the implications of noncompliance. An alternative solution could involve the centralization of all hiring processes.

Responsible Party: Roger E. Brown Jr., Associate Vice-President, Human Resources

Implementation Date: September 1, 2015.
LATE SUBMISSION OF I-9 BY YEAR
FISCAL YEAR 2012-2013 and FISCAL YEAR 2013-2014
By Employee Classification

<table>
<thead>
<tr>
<th>Employee Classification</th>
<th>2012-2013</th>
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<tbody>
<tr>
<td>Student</td>
<td>173</td>
<td>150</td>
</tr>
<tr>
<td>Staff</td>
<td>17</td>
<td>18</td>
</tr>
<tr>
<td>Faculty</td>
<td>18</td>
<td>9</td>
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