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INDEPENDENT STATE AUDITOR'S
REPORT ON CERTAIN RECORDKEEPING
AND REPORTING ACTIVITIES RELATING
TO NONIMMIGRANT FOREIGN
STUDENTS
ENROLLED IN MASSACHUSETTS
STATE AND COMMUNITY COLLEGES AND
PUBLIC UNIVERSITIES
JULY 1, 2001 THROUGH JUNE 30, 2002

OFFICIAL AUDIT
REPORT
OCTOBER 8, 2002

TABLE OF CONTENTS/EXECUTIVE SUMMARY

INTRODUCTION

1

Federal regulations enacted in 1987 placed significant responsibilities on students and schools pertaining to nonimmigrant foreign students with F-1 visas. These students are eligible to temporarily enter the United States solely for the purpose of study, once they prove that they have a permanent residence in another country. A nonimmigrant alien is a foreign national who is in the United States for a temporary stay that will end when its purpose has been accomplished.

The purpose of our audit was to determine whether the records of a sampling of Massachusetts public universities, state colleges, and community colleges concerning nonimmigrant foreign students were complete, current, and in compliance with the recordkeeping and reporting requirements detailed in Title 8 of the Code of Federal Regulations, Section 214.3 (8 CFR 214.3). We also assessed the adequacy of the educational institutions' policies, procedures, and controls for processing and reporting nonimmigrant foreign students' information. Twenty-seven of the 29 Massachusetts public institutions of higher learning provided our office with enrollment data, which showed a nonimmigrant foreign student population of 5,570 for the 2001-2002 school year.

AUDIT RESULTS

5

COMPLIANCE WITH RECORDKEEPING AND REPORTING REGULATIONS CONCERNING NONIMMIGRANT FOREIGN STUDENTS

5

Our review of Massachusetts public institutions of higher learning regarding their recordkeeping and reporting practices pertaining to nonimmigrant foreign students determined that the institutions reviewed were in compliance with applicable laws, rules, and regulations. For our review, we selected six out of 24 state or community colleges and two of five public universities (Massasoit Community College, Mass Bay Community College, Bridgewater State College, Framingham State College, Worcester State College, Massachusetts Maritime Academy, the University of Massachusetts (UMass) campus in Amherst, and the UMass Medical Center in Worcester.

Our review also determined, based on information provided by school personnel, that the U.S. Immigration and Naturalization Service (INS) was not supplying to Massachusetts public colleges and universities the information required by 8 CFR 214.3. Higher education institutions are required to confirm the foreign nonimmigrant student enrollment data furnished by the INS, to verify that the student is pursuing a full course of study, and to notify the INS of any foreign nonimmigrant students who were not listed with the INS as F-1 students. It was further noted, however, that the INS is in the process of implementing the Student and Exchange Visitor Information System (SEVIS) which will provide on-line tracking and monitoring functionality and access to accurate and current data concerning nonimmigrant foreign students.

APPENDIX	8
Nonimmigrant Foreign Students in Massachusetts Public Colleges and Universities, 2001-2002	8

INTRODUCTION

Background

The provisions of a law enacted by Congress are interpreted and implemented through regulations issued by various agencies. These regulations apply the law to daily situations. After regulations are published in the Federal Register, they are collected and published in the Code of Federal Regulations (CFR). Title 8 of the CFR deals with “Aliens and Nationality.”

For our audit, we focused on nonimmigrant foreign students attending Massachusetts public colleges and universities. A nonimmigrant alien is a foreign national who is in the United States for a temporary stay that will end when its purpose has been accomplished.

Federal regulations put into effect in 1987 placed significant responsibilities on students and schools in the administration of United States laws and regulations pertaining to students with F-1 visas. Nonimmigrant foreign students with F-1 visas are eligible to enter the United States temporarily, solely for the purpose of study, once they prove that they have a permanent residence in another country. For a foreign student to receive F-1 visa status, certain procedures must be followed. A Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students, commonly referred to as Form I-20, must be completed. An approved school may issue a Form I-20 to a foreign applicant only after the following four conditions have been met:

1. The prospective student must make a written application to the school.
2. The written application, the student’s transcripts or other records of courses taken, proof of financial responsibility for the student, and other supporting documents must be received, reviewed, and evaluated at the school’s location in the United States.
3. The appropriate school authority must determine that the prospective student’s qualifications meet all standards for admission.
4. The official responsible for admission at the school must accept the prospective student for enrollment for a full course of study.

Title 8, Section 214.3, of the Code of Federal Regulations (CFR) establishes the procedures and qualifications for schools to petition the Immigration and Naturalization Service (INS) to receive attendance approval for nonimmigrant foreign students with F-1 visa status, as follows:

Section 214.3 Petitions for approval of schools.

(a) Filing petition—

(1) General. A school or school system seeking approval for attendance by nonimmigrant students under sections 101 (1) (15) (F) (i)...shall file a petition on Form I-17 with the district director having jurisdiction over the place in which the school or school system is located. Separate petitions are required for different schools in the same school system located within the jurisdiction of different district directors. A petition by a school system must specifically identify by name and address those schools included in the petition. The petition must also state whether the school or school system is seeking approval for attendance of nonimmigrant students under section 101 (a) (15) (F) (i) or 101 (a) (15) (M) (i) of the Acts or both.

(2) Approval for F-1...classification...

(i) F-1 classification. The following schools may be approved for attendance by nonimmigrant students under section 101 (a) (15) (F) (i) of the Act:

(A) A college or university, i.e., an institution of higher learning which awards recognized bachelor's, master's, doctor's or professional degrees.

(B) A community college or junior college which provides instruction in the liberal arts or in the professions and which awards recognized associates degrees.

(C) A seminary.

(D) A conservatory.

(E) An academic high school.

(F) An elementary school.

(G) An institution which provides language training, instruction in the liberal arts or fine arts, instruction in the professions, or instruction or training in more than one of these disciplines....

(iii) ...A school may be approved for attendance by nonimmigrant students under both sections 101 (a) (15) (F) (i)...of the Act if it has both instruction in the liberal arts, fine arts, language, religion, or the professions and vocational or technical training. In that case, a student whose primary intent is to pursue studies in liberal arts, fine arts, language, religion, or the professions at the

school is classified as a nonimmigrant under section 101 (a) (15) (F) (i) of the Act. A student whose primary intent is to pursue vocational or technical training at the school is classified as a nonimmigrant under section 101 (a) (15) (F) (i) of the Act.

(iv) English language training for a vocational student. A student whose primary intent is to pursue vocational or technical training who takes English language training at the same school solely for the purpose of being able to understand the vocational or technical course of study is classified as a nonimmigrant under section 101 (a) (15) (F) (i) of the Acts.

Once the prospective student receives the completed I-20, the student takes the financial information, valid passport, and I-20 to the consular office or embassy in his/her home country and completes a visa application. If the visa application is approved, the student's passport is stamped with an F-1 visa. At the United States port of entry, the INS inspects the documents. A visa does not guarantee entry into the United States. If entry is approved, the date of entry is stamped on the passport and I-20, as is the status (F-1) and expiration date of the visa. The I-20 school copy is separated from the I-20 student ID copy. The school copy is then sent to INS data processing, and the student copy is returned to the student. At the INS, I-20 data is reviewed and then returned to the various schools for verification, a process that may take up to six months to complete.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor conducted an audit to determine whether the records of a sampling of Massachusetts public universities, state and community colleges concerning nonimmigrant foreign students were complete, current, and in compliance with the recordkeeping and reporting requirements detailed in Title 8 of CFR, Section 214.3 (8 CFR 214.3). Our review was conducted in accordance with applicable generally accepted government auditing standards.

At the eight institutions that we selected for review, we conducted site visits and interviews with personnel. We also reviewed a sample of student files, institutional policies and procedures, controls for processing and reporting, and recordkeeping practices. We also reviewed applicable laws, rules, and regulations.

Based on the results of our audit, we determined that staff at the institutions had sufficient knowledge of the requirements of 8 CFR 214.3 and that the student records we tested included the data necessary to be in compliance with applicable laws, rules, and regulations.

AUDIT RESULTS

COMPLIANCE WITH RECORDKEEPING AND REPORTING REGULATIONS CONCERNING NONIMMIGRANT FOREIGN STUDENTS

We conducted a review of certain Massachusetts public institutions of higher learning regarding their recordkeeping practices pertaining to nonimmigrant foreign students, and we determined that those institutions are in compliance with applicable laws, rules, and regulations. We also determined that according to school personnel, the Immigration and Naturalization Service (INS) was not supplying information to the colleges and universities as required by 8 CFR 214.3.

The applicable recordkeeping requirements for the institutions are set forth in Code of Federal Regulations, Title 8, Aliens and Nationality, Part 214, Section 214.3(g).

(1) Recordkeeping requirements. An approved school must keep records containing certain specific information and documents relating to each F-1...student to whom it has issued a Form I-20...while the student is attending the school and until the school notifies the Service, in accordance with the requirements of paragraph (g) (2) of this section, that the student is not pursuing a full course of study. The school must keep a record of having complied with the reporting requirements for at least one year. If the student who is out of status is restored to status, the school the student is attending is responsible for maintaining these records following receipt of notification from the Service that the student has been restored to status. The designated school official must make the information and documents required by this paragraph available to and furnish them to any Service officer upon request. The information and documents which the school must keep on each student are as follows:

- i. Name.*
- ii. Date and place of birth.*
- iii. Country of citizenship.*
- iv. Address.*
- v. Status, i.e., full-time or part-time.*
- vi. Date of commencement of studies.*
- vii. Degree program and field of study.*
- viii. Whether the student has been certified for practical training, and the beginning and end dates of certification.*

- ix. Termination date and reason, if known.*
- x. The documents referred to in paragraph (k) of this section.*
- xi. The number of credits completed each semester.*
- xii. A photocopy of the student's I-20 ID Copy.*

For our audit, we selected six out of 24 state or community colleges and two of five state university campuses: Massasoit Community College, Mass Bay Community College, Bridgewater State College, Framingham State College, Worcester State College, Massachusetts Maritime Academy, the University of Massachusetts (UMass) campus in Amherst, and the UMass Medical Center in Worcester. To determine these schools' compliance with the recordkeeping requirements of 8 CFR 214.3, we selected a sample of 25 cases from each (the sole exception was the Massachusetts Maritime Academy, which had only eight nonimmigrant foreign students enrolled). Our review determined that at the selected institutions which we visited, staff members had sufficient knowledge of the requirements; also, the student records we sampled included the data necessary to be in compliance with the regulations. Moreover, the institutional policies, procedures, and controls for processing, reporting, and recordkeeping were adequate.

The relevant law also requires the INS to send each school a list of F-1 students. Specifically, 8 CFR 214.3 states, in part, as follows:

(2) Reporting requirements. At intervals specified by the [Immigration and Naturalization] Service but not more frequently than once a term or session, the Service's processing center shall send each school a list of all F-1...students who, according to Service records, are attending that school. A designated school official at the school must note on the list whether or not each student on the list is pursuing a full course of study and give, in addition to the above information, the names and current addresses of all F-1...students, not listed, attending the school and other information specified by the Service as necessary to identify the students and to determine their immigration status. The designated school official must comply with the request, sign the list, state his or her title, and return the list to the Service's processing center within sixty days of the date of the request.

Our review determined that the INS was not supplying this information to the schools.

Consequently, the schools are not able to (1) verify the data that was to have been furnished by the INS, (2) note whether the student is pursuing a full course of study, and (3) give the names and current addresses of all F-1 students attending the school who are not on the INS list. This information is necessary to identify all F-1 students and to determine their immigration status.

However, to streamline the recordkeeping and reporting process outlined in 8 CFR 214.3, the INS is in the process of implementing its Student and Exchange Visitor Information System (SEVIS), an Internet-based system for providing online tracking and monitoring functionality and access to accurate and current information regarding nonimmigrant foreign students.

SEVIS will enable schools and program sponsors to transmit electronic information (such as I-20 forms) and event notifications, via the Internet, to the INS and State Department throughout a student's or exchange visitor's stay in the United States. SEVIS will contain information on status changes of international students and exchange visitors, including admissions at the port of entry, changes of address, program extensions, employment notifications, and changes in program of study.

The SEVIS program is mandated to be fully available by January 1, 2003. In the interim, the INS is running a SEVIS pilot program to test its functionality. Two Massachusetts colleges, Framingham State College and Worcester State College, have been selected to participate in the pilot program. Those colleges were fully participating in the program and showing positive results regarding information exchange with the INS.

Recommendation

Massachusetts public colleges and universities should continue to comply with the recordkeeping and reporting requirements of 8 CFR 214.3. Additionally, the INS should continue with its implementation of the SEVIS program to supply and receive accurate and current information regarding nonimmigrant foreign students.

APPENDIX

Nonimmigrant Foreign Students in Massachusetts Public Colleges and Universities, 2001-2002

I. Institutions Included in the Sample	Number of Nonimmigrant Foreign Students*
UMass/Amherst	1,268
Mass. Bay Community College	205
Framingham State College	180
Bridgewater State College	147
Worcester State College	140
UMass/Medical School	59
Massasoit Community College	39
Mass. Maritime Academy	8
II. Institutions Not Included in the Sample	
UMass/Boston	918
UMass/Lowell	784
Bunker Hill Community College	515
Salem State College	386
UMass/Dartmouth	304
Mass. College of Art	100
Fitchburg State College	96
Middlesex Community College	73
Springfield Tech. Community College	63
Berkshire Community College	48
Quinsigamond Community College	46
Mount Wachusett Community College	43
Holyoke Community College	38
North Shore Community College	37
Cape Cod Community College	20
Greenfield Community College	20
Northern Essex Community College	18
Mass. College of Liberal Arts	8
Westfield State College	<u>7</u>
Total	<u>5,570</u>

*Enrollment figures pertaining to nonimmigrant foreign students were provided by the schools. Bristol Community College and Roxbury Community College did not provide enrollment figures.