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From: June Cooper
Vice Chancellor
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Subject: **EMPLOYMENT ELIGIBILITY VERIFICATION PROCEDURE**

The Immigration Reform and Control Act of 1986 (P.L. 99-603) (IRCA) amended the Immigration and Nationality Act by making it unlawful to hire, recruit or refer for a fee any individual who is not authorized to accept employment in the United States. To ensure compliance with its provisions, IRCA mandates that employers verify the employment eligibility of **all employees hired on or after November 7, 1986**. Verification of employment eligibility is **not required** for persons hired on or before November 6, 1986 who have been continuously employed by the CSU since that date. This memorandum sets forth the employment eligibility verification procedure which the campuses **must implement** to comply with IRCA. This procedure must be consistently followed with regard to every employee for whom verification of employment eligibility is required.

Employment Eligibility Verification Procedure

The employment eligibility verification procedure requires each campus to verify the employment eligibility of all employees hired on or after November 7, 1986. Verification of employment eligibility requires proof that the

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individual is authorized to work and proof of the individual's identity. The verification procedure requires the completion of Immigration and Naturalization Service Form I-9 (Employment Eligibility Verification) for all individuals hired on or after November 7, 1986. To complete the verification procedure properly, the following steps must be followed:

1. **Provide Employee with Lists of Acceptable Documents.** The campus provides the employee with the lists of the acceptable documents. These lists are included on the reverse side of Form I-9. The choice of documents from those lists is the employee's alone. The campus may not require the employee to present additional or different documents than the ones chosen by the employee from those lists.
2. **Employee Completes Section 1 of Form I-9.** The newly-hired employee completes Section 1 of Form I-9 at the time that employment commences. By completing Section 1, the employee swears that he or she has provided true and correct information and documents. Every element of Section 1 must be completed. The campus is responsible if the employee fails to complete Section 1 fully.
3. **Employee Presents Documentation.** Within three business days of commencement of employment, or on the first day if employment will last for less than three days, the employee must present to the campus documentation of identity and work authorization. If the employee presents a receipt indicating application for an acceptable document (e.g., a social security card), the actual document may be presented within ninety days and the employee may commence employment in the meantime. The receipt must be for a document evidencing currently valid work authorization. If an employee fails to present documentation within the time period allowed, the employee may no longer be employed.
4. **Campus Examines Documentation.** The campus must examine the documents presented by the employee to determine that they appear to be genuine on their face and that they relate to the individual who has presented the documents. The campus is not expected to be familiar with every form in which a particular document has been issued. If the document appears genuine, the campus may not reject the document.
5. **Campus Completes Section 2 of Form I-9.** If the documents are from the lists of acceptable documents, appear to be genuine on their face, and relate to the individual presenting them, the employer completes Section 2 of Form I-9. By completing Section 2, the campus swears that it has inspected the documents and to the best of its knowledge the employee is authorized

to work in the United States. The campus must complete all of the information required in Section 2. Attaching copies of the documents to the Form I-9 does not satisfy the campus' obligation to complete Section 2 fully.

6. **Reverification.** If the employee listed an expiration date for his or her work authorization in Section 1 of Form I-9, the campus must reverify the employment eligibility of that employee before the expiration date. The reverification procedure is discussed below.
7. **Retention of Form I-9.** The campus must keep Form I-9 for each employee for a period of three years from the date of hire, or one year after employment is terminated, whichever is later.
8. **Record Availability.** The campus must make its Form I-9 records available to government inspectors upon request.

Reverification Procedure

The expiration date listed by the employee in Section 1 of Form I-9, and **not** the expiration dates of the documents listed by the campus in Section 2 governs whether and when reverification must take place. If an employee lists an expiration date for work authorization in Section 1, the campus must conduct a procedure to reverify that employee's continuing work authorization **prior** to the expiration date listed in Section 1.

Expiration dates on identity documents under List B of Form I-9 are irrelevant to reverification. The expiration date on a work authorization document under List C of Form I-9 should match the expiration date listed by the employee in Section 1. If the two dates do not match, the campus should point out the discrepancy to the employee and ask for an explanation. If the employee does not give a suitable explanation for the discrepancy, the campus should contact the Office of General Counsel.

The reverification procedure is as follows:

1. **Contact Employee.** Prior to the expiration date, the campus calls the employee back in to reverify the employee's continued work authorization.
2. **Employee Presents New Documentation.** The employee must present a document from either List A or List C of Form I-9. The choice of documents from those lists is the employee's alone. The campus may not

require the employee to present additional or different documents than the ones chosen by the employee from those lists. However, if the employee presents a social security card containing a notation that it is valid for employment only with INS authorization, the campus should request to see an INS-issued document in addition to the social security card.

3. **Campus Examines New Documentation.** The campus must examine the new document presented by the employee to determine that the document is from the lists of acceptable documents and that it appears to be genuine on its face. If the document appears genuine, the campus may not reject the document.
4. **Campus Completes Section 3 of Form I-9.** The campus enters the document title and number, and its expiration date, if any, under Item #C of Section 3 of Form I-9, and signs and dates the form.¹
5. **Further Reverification.** Only conduct further reverification procedures if the employee shows a List A or C document upon reverification that contains an expiration date for work authorization. If the document presented does not contain an expiration date, do not conduct further reverification of the employee's status in the future. Additionally, do not require that the employee state whether a new expiration date exists for work authorization if the employee shows an acceptable List A or C document that does not contain an expiration date.

Special Rules Applicable to Particular Groups

The employment eligibility verification procedure stated above is modified for particular groups. Those groups and the modifications are discussed below.

1. **Persons Under 18 and Disabled Persons.** For employees under eighteen, the presentation of the following documents in lieu of one of the documents on List B of Form I-9 are acceptable to establish identity:

School records or report cards
Clinic, doctor, or hospital records
Daycare or nursery school records

¹If the original employment verification was completed on the old version of Form I-9 (dated 5/87), the campus may complete reverification on the old form or may use the new form, attaching it to the old form.

Additionally, an employee under eighteen may have his or her parent or guardian complete the Form I-9, vouching for the employee's identity. However, the employee must still present a document evidencing work authorization under List C.

The same rules for persons under eighteen apply to disabled persons being placed in employment by a nonprofit organization, association or rehabilitation program. Additionally, such a disabled employee may have a representative of the sponsoring organization complete Form I-9 on his or her behalf.

2. **Persons Not Considered "New Hires"**. The campus must complete Form I-9 for all "new hires." However, a campus will not be deemed to have hired an individual for employment if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times. An employee is considered to be continuing in his or her employment if:
 - the employee is on a **paid or unpaid leave of absence** approved by the campus;
 - the employee is **promoted, demoted, or gets a pay raise**;
 - the employee is on a **temporary lay-off** due to lack of work;
 - the employee is not working because a **strike or other labor dispute** is in progress;
 - the employee is **reinstated** after a wrongful discharge;
 - the employee **transfers** from one distinct unit of the campus to another unit of the same campus; or
 - the employee is engaged in **seasonal employment**.

If a campus claims that an individual is not a "new hire," the campus must establish that the individual expected to resume employment at all times and that the individual's expectation was reasonable.

3. **Rehires Who Have Previously Completed Form I-9.** If a campus rehires an individual who previously worked for the campus and for whom Form I-9 was previously completed, a new Form I-9 need not be completed if the individual is rehired **within three years** of the initial completion of Form I-9.² In this situation, the campus must review the original Form I-9 to determine whether the employee remains authorized to work in the United States. If the individual is no longer authorized to work according to the information on Form I-9, the campus must complete the reverification procedure stated above prior to rehiring the individual.
4. **Rehires Who Have NOT Previously Completed Form I-9.** The campus must follow the employment eligibility verification procedure stated above for rehires who have not previously completed Form I-9.
5. **Volunteers of the CSU.** If a volunteer receives **any kind of compensation** from a campus for his or her services, a Form I-9 must be completed for that volunteer. Compensation is not limited to money, but also includes an exchange of services for services. A volunteer who renders services of his or her own free will -- without remuneration of any kind -- does not need to complete Form I-9.

Documentation Rules

The following rules must be followed regarding documentation presented by an employee to establish employment eligibility:

1. A campus may not specify which documents it wants to see to establish work authorization or identity.
2. A campus may not make any further inquiry about employment eligibility or request or require additional documents based on an employee's physical appearance or accent.
3. A campus may not make further inquiry about employment eligibility or request or require additional documents based on mere rumor or hearsay in the workplace.

²For individuals rehired after more than three years of the initial completion of Form I-9, the campus must complete a new Form I-9 following the employment eligibility verification procedure stated above.

4. A campus may not request information from the INS about the employee's employment eligibility if the employee has presented acceptable documentation from Lists A, B and C of Form I-9 that appears genuine on its face.

Implementation of Procedures

The employment eligibility verification procedure and the reverification procedure must be implemented consistently for all employees subject to the particular procedure. Failure to implement these procedures consistently will not only subject a campus to payment of IRCA's statutory penalties, but may also subject a campus to discrimination claims from individuals.

It is, therefore, recommended that a single department on a campus be designated as the department responsible for implementing these procedures for all employees, both faculty and staff.

Penalties

The hiring of an unauthorized worker subjects the campus to a penalty of \$250 to \$10,000 for each unauthorized worker. Failure to maintain verification records as required by IRCA subjects the campus to a penalty of \$100 to \$1,000 for each instance. Additionally, violations of some provisions of IRCA may result in criminal sanctions.

Resource Materials

Copies of this memorandum distributed to the academic affairs and administration vice presidents, personnel officers and payroll supervisors include INS Form M-274, Handbook for Employers - Instructions for Completing Form I-9. It is recommended that campus individuals responsible for the employment verification procedure become familiar with its contents. This document may be photocopied if additional copies are needed.

Questions

If you have any questions regarding the contents of this memorandum or questions regarding the verification procedure, please contact Linda S. MacAllister, University Counsel, in the Office of General Counsel, at (310) 985-2913.

JMC:dd

Attachments