

# HIGHER EDUCATION AND IMMIGRATION INFORMATION MEMO

DECEMBER 3, 2024

## Immigration Issues for Higher Education: Preparing For Whatever Comes Next

Immigration is a hot topic that was frequently referenced throughout the 2024 election cycle in the United States. While the recent election cycle has now ended, the focus on our immigration system continues. With a new federal administration slated to begin in January 2025, it is reasonable for many colleges and universities to wonder about the potential immigration changes on the horizon that could impact employees and students. It is important to note that while immigration rhetoric was prevalent in election speeches and on campaign trails (regardless of political party), virtually no specifics have been shared in terms of intended policy or legislative changes with respect to legal immigration rules for employees and students. In short, there is uncertainty about what lies ahead.

### Employment-Based Immigration

In order to gauge the potential changes that *could be* under consideration for the second Trump Administration beginning in 2025, it may be helpful to recall some of the historical priorities and policy changes that were laid out during the first Trump Administration (2017-2021). When viewed in this light, employers should be prepared for possible changes to federal policies and regulations that *may* focus on a variety of areas, including but not limited to the following:

Increased worksite enforcement measures (e.g., I-9 compliance audits and raids, E-Verify compliance audits, onsite inspections by Immigration & Customs Enforcement (ICE) – the enforcement arm of the Department of Homeland Security (DHS), etc.);

- Increased inspections and/or audits by various branches of the DHS and Department of Labor (DOL) that oversee immigration practices designed to protect the rights of U.S. workers, including but not limited to PERM audits, increases in prevailing wage standards which impact certain non-immigrant work visas and some employment-based green card processes, hiring and recruitment practices, visa fraud issues, etc.;
- Potential expansion in the mandatory use of the federal E-Verify system;
- Possible modifications to STEM Optional Practical Training (OPT) program;
- Potential tightening of the H-1B work visa program (i.e., higher prevailing wage level requirements, potential changes to the definition of a “specialty occupation”, etc.);
- Potential for slower processing times, more Requests for Evidence (RFEs) and higher denial rates for employment-based petitions and applications filed with the U.S. Citizenship and Immigration Services (USCIS);
- Potential reinstatement of a biometrics requirement for dependent family members of foreign national workers;

- Potential reinstatement of in-person interviews for employment-based green card applications filed with the USCIS; and
- Potential elimination of the USCIS' deference policy when adjudicating visa renewals with the same employer when there has been no change in the job duties.

To reiterate our earlier point, no specific details have been shared yet regarding which employment-based immigration programs will be impacted, amended and/or overhauled during the second Trump Administration. Despite facing a myriad of "unknowns," there are some compliance measures that higher education institutions can focus on now while we wait for official announcements regarding proposed changes to our federal immigration system.

- Review I-9 policies and E-Verify policies (if applicable) to determine overall process compliance.
  - Ensure that the college or university has a completed Form I-9 on file for every employee hired on or after November 5, 1986.
  - Make sure that I-9 reverifications are performed, where needed, and done so in a timely manner.
  - Ensure that the individuals responsible for conducting the I-9 verification/reverification process for the college or university have been properly trained.
    - Implement annual compliance training for the Human Resources team or the employees designated to conduct the I-9 verification process for the college or university.
  - Ensure that the current (2023) version of the Form I-9 is being used.
  - Conduct internal I-9 and E-Verify audits, particularly if a voluntary self-audit has not been conducted within the past three (3) years. (*\*Note: Employers should already be in the habit of conducting internal audits as these efforts preserve an institution's affirmative defense to a claim of knowingly employing undocumented workers.*)
  - For colleges and universities that have enrolled in the E-Verify system, make sure that E-Verify cases are created, and done so in a timely manner.
- For colleges and universities that employ H-1B workers, review H-1B enforcement initiatives and ensure compliance. For example, make sure that the H-1B Public Access File (PAF), a recordkeeping requirement, is complete and easily accessible, if requested during an onsite inspection. Employers who fail to prepare and maintain accurate PAFs for H-1B workers may be subject to civil penalties, back wage orders, and potential debarment from the H-1B program.
  - As a reminder, each PAF should contain a signed copy of the certified Labor Condition Application, documentation of the employee's exact pay rate, documentation reflecting the determination of the prevailing wage, documentation to confirm how employees in the workplace were notified that a Labor Condition Application had been filed, including dates and location of any posted notices, and a summary of benefits offered to all employees,

including the H-1B worker(s).

- If an employee changes a worksite location, it is important to update the PAF accordingly, including preparing an H-1B amendment, if applicable.
- Identify which representatives from the college or university will be the organization's point(s) of contact for employee immigration matters in case of a government audit, onsite inspection, etc.
- Review internal protocols to ensure equal treatment of both U.S. and foreign workers.
- Consider filing new petitions for non-immigrant work visas early and, when possible, consider filing extension petitions for non-immigrant work visas near the beginning of the 6-month filing window. In addition, consider whether upgrading a petition filing to Premium Processing is appropriate under the circumstances.

### **Student-Based Immigration**

Similar to employer-based immigration cases, the incoming Trump Administration has shared no clear guidance or anticipated policy agenda for immigration policies relating to international or undocumented students. Once again, some areas that may be potentially ripe for change could include items that were raised during the first Trump Administration, including but not limited to, the following:

- Potential changes / limitations to the STEM OPT program;
  - OPT provides foreign national students with an opportunity to gain practical employment experience in their field of study following graduation from a U.S. degree program for 12 months. STEM OPT permits students the opportunity, where eligible, to extend OPT work authorization for an additional twenty-four (24) months. The STEM OPT program is widely considered a key program that enables foreign national students to remain authorized to work in the United States while trying to change their status to an appropriate non-immigrant work visa.
- Increased scrutiny and vetting of the F-1 program that pertains to foreign national students;
- Possible modifications to curriculum criterion for the maintenance of a foreign national's "student status";
- Potential for slower processing times;
- Stricter scrutiny of undocumented students; and
- Implications for individuals holding status under the Deferred Action for Childhood Arrivals (DACA) Program and DACA-related work authorization (i.e., potential termination of the DACA program, restrictions on DACA renewals, legislative reform, changes to work authorization, etc.).

Similar to employment-based immigration, there are some things that colleges and universities can begin to do or examine now in preparation of the upcoming administration change.

- Provide support (*i.e.*, information, patience, compassion) to students, employees and other members of the campus community by acknowledging the stress that uncertainty and rhetoric may cause, sharing timely informational updates (when available), and referring students (and employees) to immigration professionals where the institution's abilities and expertise are limited.
- Stay informed about new guidance, proposed regulatory changes (as those changes become available) in order to be able to respond accordingly, if and when necessary.
- Identify which representatives from the college or university will be the organization's point(s) of contact for student immigration matters in the event of a government audit, onsite inspection, etc.

Bond's [immigration practice](#) and [higher education practice](#) will continue to monitor immigration changes that may impact higher education institutions and provide informational updates, as appropriate. If you have any questions, please contact [Elizabeth A. Heifetz](#), [Caroline M. Westover](#), any attorney in the firm's immigration or higher education practices, or the Bond attorney with whom you have regular contact.

