

Policy 1326
Immigration Reform and Control Act

Date of Current Revision: January 2017

Primary Responsible Officer: Director, Human Resources

Secondary Responsible Officer: Executive Director, Center for Global Engagement

1. PURPOSE

The purpose of this policy is to ensure that the university complies with the Immigration Reform and Control Act (IRCA) in ensuring that all university employees' identity and eligibility to work in the United States are verified. The policy also sets guidelines for the university's responsibilities in hiring individuals who are not United States citizens or permanent residents, including the guidelines for payment of immigration fees necessary to employ such international workers at the university.

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia § 23.1-1600. The Board has delegated the authority to manage the university to the president.

STATE OR FEDERAL STATUTE AND/OR REGULATION

The regulations of the U.S. Citizenship and Immigration Services (USCIS) are contained in Title 8 of the Code of Federal Regulations.

3. DEFINITIONS

Asylee

An alien in the United States or at a port of entry who is found to be unable or unwilling to return to his/her country of nationality, or to seek the protection of that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion. For persons with no nationality, the country of nationality is considered to be the country in which the alien last habitually resided. An asylee is eligible to adjust to lawful permanent resident status after one year of continuous presence in the United States.

Break in Service

For form I-9 purposes, a break in service is considered any temporary discontinuation of employment that lasts longer than one year.

CGE

Center for Global Engagement

Deferred Action for Childhood Arrivals (DACA)

DACA is a federal mandate that allows certain people who entered the United States prior to their 16th birthday to receive employment authorization and freedom from deportation. Some DACA recipients are students and some are employees at JMU.

EB-1 Category

One of the categories of employment-based permanent resident petitions for faculty of "exceptional ability." Although some faculty may be eligible for permanent residence (green card) based on this

category, JMU does not process these petitions. If the faculty member wishes to pursue this option, s/he must use outside counsel.

EB-2 Category

The most common category of employment-based permanent resident petitions for professionals holding advanced degrees, including teaching faculty. Some faculty and staff members may be eligible for permanent resident status (green cards) through this or other regulation.

E-Verify

An Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from the U. S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility.

Federal Work-Study

A federally-funded financial aid program to provide payment for work performed by students on campus or in the community, based on the needs of the student and the availability of funding. The employee must be a citizen of the United States or a lawful permanent resident to be eligible for federal student aid and therefore, eligible for federal work-study employment.

Fraud Prevention Fee

A fee associated with the H-1B filing process which, by law, must be paid by the employer.

Green Card

Green Card is used interchangeably with Permanent Resident Card (Form I-551). When an employee holds a green card (i.e., has permanent-resident status) he or she is treated identically to U.S. citizens for all employment purposes. Job restrictions applicable to employees in H-1B or other nonimmigrant status are lifted.

H-1B Category

The most commonly utilized temporary employment visa for professional workers. This is an immigration status that is available to certain professional international workers for a period of up to six years.

Immigrant Resident Alien (or Lawful Permanent Resident)

An alien admitted to the United States as a lawful permanent resident. Permanent residents are also commonly referred to as immigrants; however, the Immigration and Nationality Act (INA) broadly defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant categories (INA section 101(a)(15)). An illegal alien who entered the United States without inspection, for example, would be strictly defined as an immigrant under the INA, but is not a permanent-resident alien. Lawful permanent residents are legally accorded the privilege of residing permanently in the United States. They may be issued immigrant visas by the Department of State overseas or adjusted to permanent-resident status by U.S. Citizenship and Immigration Services in the United States.

Immigration Fees

For these purposes, immigration fees refer to any fee associated with the filing of documents with either the Department of State or the Department of Homeland Security for the purposes of obtaining employment authorization under the H-1B category, PERM, or other employment-based immigration category.

Nonimmigrant

An alien who seeks temporary entry to the United States for a specific purpose. The alien must have a permanent residence abroad (for most classes of admission) and qualify for the nonimmigrant

classification sought. The nonimmigrant classifications include: foreign government officials, visitors for business and for pleasure, aliens in transit through the United States, treaty traders and investors, students, international representatives, temporary workers and trainees, representatives of foreign-information media, exchange visitors, fiancé(e)s of U.S. citizens, intracompany transferees, NATO officials, religious workers, and some others. Most nonimmigrants can be accompanied or joined by spouses and unmarried minor (or dependent) children.

Passport

An official governmental travel document that certifies the identity and nationality of a person and grants him/her permission to travel abroad (travel to certain countries may be limited).

PERM

The common name for the process under which professional workers apply for permanent residence in the United States through their jobs. This status is necessary for anyone who desires to be employed in the United States for more than six years. The PERM process must be started within 18 months of the beginning of a tenure-track, tenured or RTA instructional-faculty appointment, an administrative & professional (A&P) faculty appointment, or a classified-staff appointment. Faculty members on fixed term or temporary appointments and wage employees are not eligible for PERM processing.

Premium Processing Fee

USCIS requires a fee (currently \$1,225) for H-1B petitions in order to process the petition within 15 days of filing the application. The regular processing time is typically three to five months.

Refugee

Any person who is outside his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion. People with no nationality must generally be outside their country of last habitual residence to qualify as a refugee. Refugees are subject to ceilings by geographic area set annually by the president, in consultation with Congress, and are eligible to adjust to lawful permanent-resident status after one year of continuous presence in the United States.

RTA

Renewable Term Appointment. See [Faculty Handbook Section III.D.4](#).

Sponsorship

Certain immigration benefits are given only to people who are sponsored by an employer. Sponsorship requires the filing of paperwork with USCIS and an offer of employment to eligible employees. JMU provides sponsorship to professional faculty and staff for positions that meet the legal requirements for various immigration benefits, as provided by federal statute.

U.S. Citizen

A person born in the United States, or naturalized, holding a U.S. passport.

U. S. Citizenship and Immigration Services (USCIS)

A government agency responsible for the admission, control and status of all aliens in the United States.

4. APPLICABILITY

This policy applies to all employees of the university. This policy also pertains to all hiring departments and to all international employees beginning their employment in a temporary visa category. For more guidance, see the [CGE](#) website.

5. POLICY

Under the Immigration Reform and Control Act (IRCA), when hiring, discharging, or recruiting or referring for a fee, employers with four or more employees may not:

- Discriminate because of national origin against U.S. citizens, U.S. nationals, and authorized aliens.
- Discriminate because of citizenship status against U.S. citizens, U.S. nationals, and the following classes of aliens with work authorization: lawful-permanent residents, temporary residents (individuals who have gone through the legalization program), refugees, and asylees.
- Knowingly hire unauthorized aliens. Supervisors who do so are subject to both civil and criminal penalties. It is not illegal to give preference to a U.S. citizen over a non-citizen if the two individuals are equally qualified.

The university will comply with IRCA by following the verification (Form I-9 and e-verify) requirements and treating all newly hired and rehired employees the same. JMU verifies the identity and certifies citizenship status of all newly hired and rehired employees, including United States citizens, on or before the employee's first day of work.

All hiring authorities are required to contact CGE before the hiring of any person who requires JMU sponsorship.

6. PROCEDURES

6.1 The Act requires employers to have their employees complete Section 1 of the Form I-9 no sooner than a job offer has been accepted and no later than the first day of employment. For Form I-9 purposes, an employee's first day of employment is the first day that the employee is physically present on campus and performs work for the university. For employees who work off-campus, the first day of employment is the first day that an employee performs work for the university.

A representative from Human Resources or an HR-authorized representative must examine the original document or documents the non-student employee presents and then fully complete Section 2 of the Form I-9. Documents examined must be originals (not photocopies) and must include one document from List A, or one from List B and one from List C.

For student employees, Student Employment must examine the original document or documents the student employee presents, and then fully complete Section 2 of the Form I-9. Documents examined must be originals (not photocopies) and must include one document from List A, or one from List B and one from List C.

Once the Form I-9 is completed, either Human Resources or Student Employment will run all I-9's through E-Verify.

6.2 All employees must have one of the following in place by their first day of employment:

- A correctly completed electronic Form I-9 on file in Human Resources or Student Employment.
- Receipts filed with Human Resources or Student Employment proving that appropriate application has been made to obtain otherwise acceptable documents for completion of the Form I-9 where the document was lost, stolen or destroyed. If an employee submits a receipt in order to begin work, the employee's Form I-9 on file must be updated within 90 days of employment or the employee will be terminated. When an employee is hired for three days or less, a receipt is not acceptable; an original document must be presented.

6.3 Documents that may be used to verify identity and employment eligibility are listed on the last page of the Form I-9. The applicant may select which document(s) to present.

6.4 The university may not specify which document(s) an employee must present, provided the employee is able to complete the Form I-9 with qualified documents from List A, or List B and List C.

6.5 For Form I-9 purposes, a break in service is considered any temporary discontinuation of employment that lasts longer than one year. When an employee has a break in service from the university, the rehired employee must complete a new Form I-9 by the first day of employment following the same procedures noted in sections 6.1 through 6.4 of this policy. (Note: Human Resources or Student Employment may require a rehired employee with a break in service of less than a year to complete a new Form I-9 when the Form I-9 on file with Human Resources or Student Employment contains errors.)

6.6 A hiring official who has determined that a position will be offered to an individual who requires JMU sponsorship must contact the CGE before making the offer to arrange for the appropriate documents to be filed by that office in support of the immigration documentation of the new employee. Various federal regulations (see 20 CFR §656.12(b) and 20 CFR 655.731(c)(9)) apply to the responsibilities of an employer in hiring individuals who are not United States citizens or permanent residents, and require the employer to pay certain fees associated with the filing of immigration documents in order to employ these individuals. By law, employers must take certain responsibilities in hiring these individuals, and some of the fees associated with these regulations may not be passed on to the employee. Other fees associated with the filing of immigration documents may legally be borne by either the employer or the employee. The CGE will determine which fees will be paid by the university and which fees must be borne by the employee.

6.6.1. Payment will be made by the CGE to the Department of State, the Department of Homeland Security, or other government agency to pay the necessary fees. The funds will be drawn for any employee in a position requiring either a temporary visa or permanent resident status. The cost of the payment will be shared between CGE and the department as determined by CGE.

6.6.1.a. All immigration fees associated with H-1B and PERM filing will be borne by the university, assuming the PERM processing is under the EB-2 category. Should the international employee be interested in filing for his/her permanent residence in a category other than EB-2, s/he will be required to bear the cost on his/her own unless special permission is received from the CGE following a recommendation by the hiring department. The only exception to this rule is for payment of the premium processing fee, which is required to be paid by the employee if the necessity for premium processing is due to the employee's personal travel.

6.6.1.b. All immigration fees associated with obtaining appropriate dependent status for dependents of the employee will be borne by the employee.

6.6.1.c. Should the employee elect to hire an attorney to file his/her own petition for the green card (Permanent Resident Card), the CGE will cooperate with that attorney, but attorney fees will be paid by the employee.

6.6.2. Should any question arise as to the appropriateness of a payment of any immigration fee not specified here, the CGE, along with the university's legal counsel, will make the decision about whether or not the fee should be paid by the university or the employee. If the CGE or other JMU department has a concern that any international employee is acting fraudulently or otherwise misusing this policy, the university reserves the right to refuse to make payments to any government office on behalf of that employee.

7. RESPONSIBILITIES

Hiring supervisors are responsible for the timely notification to Human Resources of all newly hired and rehired non-student employees through the Onboard @ JMU process. Hiring authorities are also responsible for contacting the CGE before making a job offer to an individual who is not a citizen or permanent resident of the United States to ascertain whether that person has authorization to work on campus.

Once notified by the hiring department, Human Resources is responsible for ensuring that each new non-student employee completes a Form I-9 correctly and timely.

Non-student employees are responsible for accurately completing the Form I-9 with Human Resources on or before their first day of employment.

Hiring supervisors are responsible for the timely notification to Student Employment of all newly hired or rehired student employees. Hiring authorities are also responsible for contacting the CGE before making a job offer to a student who is not a citizen or permanent resident of the United States to ascertain whether that person has authorization to work on campus.

Once notified by the hiring department, Student Employment is responsible for ensuring that each new student employee completes a Form I-9 correctly and timely.

Student employees are responsible for completing the Form I-9 with the Student Employment on or before the first day of employment.

The university is required to retain the Form I-9 for three years after the date of hire or one year after the termination date, whichever is later. Form I-9s must be available for inspection to the USCIS or Department of Labor upon request, and the Form I-9 must be on file in Human Resources for all non-student employees and on file in Student Employment for all student employees at James Madison University.

Human Resources and Student Employment are responsible for the monitoring of the employment status of all international employees on a temporary visa. If necessary, the CGE will also file paperwork necessary to obtain H-1B status and extensions and, in most cases, will file the petition for permanent-resident status (green cards) for the international employees in permanent positions who qualify for green card processing. CGE will also work with all international student employees to extend the F-1 or J-1 status as necessary.

8. SANCTIONS

Failure to follow the requirements of this policy as stated will result in the termination of employment of the employee as required by federal law.

Other sanctions will be commensurate with the severity and/or frequency of the offense and may include termination of employment.

Any office failing to comply with the requirements of this policy will be required to pay all fees and penalties from that office's budget and will not have access to funds from the CGE.

9. EXCLUSIONS

This policy applies only to JMU student and non-student employees. University affiliates, such as those employed by Aramark, Follett, Novitex, etc., are the responsibility of their particular employer.

10. INTERPRETATION

The authority to interpret this policy rests with the president, and is generally delegated to the director of human resources and the executive director, CGE.

Previous Version: December 2016
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