

October 16, 2009

MEMORANDUM

TO: State Board of Regents
FROM: William A. Sederburg
SUBJECT: Implementation of SB81 (2008 Legislative General Session)

Issue

To clarify the impact of SB-81 on higher education student affairs offices as well as outline the implementation strategies and procedures required of USHE institutions.

Background

In the 2008 General Session of the Utah Legislature, SB-81 "Illegal Immigration" was passed and signed into law by Governor Jon Huntsman, Jr. with an effective date of July 1, 2009. While the impact of this legislation is widespread throughout public entities, there are four specific points of impact upon higher education and institutions within the Utah System of Higher Education (USHE). The four are:

1. the creation of identity documents (student ID cards),
2. the verification of citizenship or immigration status for individuals within the jurisdiction of a state agency,
3. the receipt of local or state "public benefits" (institutional scholarships, tuition waivers, grants, or loans), and
4. the production and submission of an annual report.

To address these points of impact on higher education, a task force was created to better understand the impact of SB81 on higher education institutions and the students they serve. The task force is comprised of representatives from USHE and UCAT institutions and has developed implementation strategies to help ensure institutional compliance with SB81 requirements and minimize the expense of institutional resources in fulfilling its intent.

Commissioner's Recommendation

Information item; no action required.

William A. Sederburg, Commissioner

WAS/JC/CM

Impact of SB-81 on Higher Education Implementation Plan

Background

In the 2008 General Session of the Utah Legislature, SB-81 “Illegal Immigration” was passed and signed into law by Governor Jon Huntsman Jr. with an effective date of July 1, 2009. While the impact of this legislation is widespread throughout public entities, there are four specific points of impact upon higher education student affairs offices within the Utah System of Higher Education (USHE). The four are:

1. the creation of identity documents (student ID cards),
2. the verification of lawful status for students who work for higher education institutions,
3. the receipt of local or state “public benefits” (institutional scholarships, tuition waivers, grants, or loans), and
4. the production and submission of an annual report.

Purpose

The purpose of this document is to clarify the impact of SB-81 on higher education student affairs offices as well as outline the implementation strategies and procedures required of USHE institutions.

General Rule

An agency or political subdivision of the state shall verify the lawful presence in the United States of an individual at least 18 years of age who has applied for a “*state or local public benefit*”.

- A. A “state or local public benefit” means, according to federal definition (8 U.S.C., Sec. 1621):
(A) *any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government;*
and
(B) *any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.*
- B. The following are not considered to be a “state or local public benefit”:
- admission applications to colleges or universities,
 - admission to a hospital (because when someone goes to the hospital to be admitted they don’t “apply” for a “grant, contract, loan,....or..license”),
 - appointments at a student health clinics,
 - joining a student club,
 - attending class or college/university events,
 - requesting a transcript of your grades,

- concurrent enrollment, or
 - custom fit or short term intensive training (STIT) programs.
- C. The following shall be considered a “state or local public benefit”:
- applications for a scholarship paid through the USHE institution,
 - applications for a grant for purposes of postsecondary education paid through the USHE institution,
 - applications for a tuition waiver (**NOTE:** If tuition is waived, in whole or in part, *without applying* for such, then the statute would not apply.)
- D. Exceptions to the General Rule:
- Verification of lawful presence under this section is generally not required for
- any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation,
 - emergency health care,
 - disaster relief assistance,
 - immunizations,
 - programs, services, or assistance such as soup kitchens, crisis counseling, short-term shelter, and
 - the exemption for paying the nonresident portion of total tuition as set forth in UCA 53B-8-106.
- E. Verification Process:
- An institution of higher education required to verify the lawful presence in the U.S. of an applicant shall require the applicant to certify under penalty of perjury that the applicant is a U.S. citizen, or the applicant is a qualified alien and lawfully present in the U.S.
- Institutions are to use the *Systematic Alien Verification for Entitlements (SAVE) Program*, operated by Homeland Security or an equivalent program designated by the Homeland Security, to verify certification of a persons’ lawful presence in the United States who is to receive a state or local public benefit.
- F. Annual Report:
- “Each state agency or department that administers a program of state or local benefit shall:
- (a) provide an annual report to the governor, the president of the Senate, and the speaker of the House regarding its compliance.”

Implementation Strategies

1. Students applying for an institutionally administered “state and local public benefit” (student loan, tuition waiver, scholarship or grant) after July 1, 2009 should be notified that before the benefit is disbursed their lawful citizenship or immigration status will be verified through a status verification system.

2. The act is not applicable to students who applied for a state or local public benefit prior to July 1, 2009.
3. USHE institutions should review all applications for state or local benefit to ensure they include the requirements for lawful citizenship or immigrations status.
4. Only students who are offered institutionally administered state or local benefit will be verified through a status verification system.
5. The electronic verification systems acceptable for use by the USHE institutions include:
 - a. the Free Application for Federal Student Aid (FAFSA);
 - b. the Systematic Alien Verification for Entitlements (SAVE) Program; or
 - c. the Student and Exchange Visitor Information System (SEVIS) for international students.
6. In the event that electronic verification through FAFSA or SAVE is unsuccessful, institutions may follow the Department of Education *Financial Aid Handbook* guidelines for verifying lawful status by providing one of the following:
 - a. Permanent Resident Card;
 - b. Birth certificate;
 - c. Current US passport;
 - d. Consular Report of Birth Abroad (Form FS-240);
 - e. Certificate of Citizenship (N-560 or N-561); or
 - f. Certificate of Naturalization (N-550 or N-570).
7. The verification systems acceptable for use by the USHE institutions for employment purposes (e.g., student part-time employment and institutional work study programs) are:
 - a. E-verify, and
 - b. I-9 Employment Eligibility Verification.
8. The name of the USHE institution and language to the effect of “For ‘Institution Name’ Purposes Only” shall be on the front face of all student ID cards.
 - a. Institutions (public and private) shall be in compliance with this requirement as soon as possible for all newly issued student ID cards.
 - b. Institutions can be exempt from the identification card requirement to include a statement of restricted use if the institution verifies lawful status of each student receiving an identification card.
 - c. The student ID card for students who are authorized to stay in the United States temporarily must include a statement of restricted use (e.g., “For ‘Institution Name’ Purposes Only”) or contain an expiration date, which is only renewed upon the presentation of valid documentary evidence of a new expiration date.
9. The annual report will encompass the academic/fiscal year of July 1 through June 30; thus, the first report will be compiled and submitted in August 2010.
 - a. The Office of the Commissioner for Higher Education (OCHE) will compile one report representing all USHE institutions.

- b. USHE institutions shall submit their report data to OCHE by the last day of August each year.
10. In instances of falsification of information or claim of lawful status, institutions are to contact their institution's legal counsel for course of action.

Issues Yet to Be Determined

- Need suggested language for an institution/employer agreement for Custom Fit and STIT programs.