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May 31, 2012

The Honorable Gene L. Dodaro
Comptroller General of the United States
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Comptroller General Dodaro,

I am writing to you regarding my concerns about the Optional Practical Training (OPT) program, a Department of Homeland Security program that was created by regulation without the advice and consent of Congress, to give students an opportunity to learn more about their area of study before having to return to their home country. Unfortunately, there have been reports of abuse in this program, and concerns have been raised about the lack of controls and oversight by the federal government. I'm seeking the assistance of the Government Accountability Office (GAO) to fully investigate the use of OPT, including who uses it and how students are tracked, determine what weaknesses exist, and suggest ways to improve the procedures and policies that govern its administration.

The importance of an investigation can be illustrated by the large number of students that use the program. According to the Department of Homeland Security, United States Citizenship and Immigration Service approved over 80,000 applications each year between 2006 and 2010. Combined, USCIS has approved 430,515 applications for OPT within this five-year time frame. Moreover, the data suggests an upward trend in approved applications. In fiscal year 2009, almost 91,000 applications for OPT were granted, and in fiscal year 2010, over 95,000 OPT applications were granted.

I am concerned that the Executive branch has not and is not thoroughly vetting the applications from colleges and universities, and that it is rarely denying OPT work authorizations. According to data provided by the Department of Homeland Security, USCIS has denied very few applications, rejecting, on average, between 2 and 3 percent of applications submitted.

Reports suggest that the OPT program could be full of loopholes with few controls in place to determine if students are actually working, working where they claimed to be, or working in their field of study. It appears that higher educational institutions ultimately decide if a student should obtain OPT, putting them to work without actually knowing the employer or requiring proof of employment. I would like to know more about the lines of communication that exist between the various branches within the Department and between the Department and schools who issue OPT to students.

In 2008, the Bush Administration extended the time that immigrant students could stay in the United States under OPT if they had a degree in science, technology, engineering, or mathematics (STEM). Just recently on May 11, the Obama Administration announced an expanded list of degree programs that qualify eligible graduates on student visas for an OPT extension. Some may question whether these degree programs qualify as "STEM" and satisfy the criteria laid out in regulation that limit the program to 1) degrees in a technical field; 2) areas where there is a shortage of qualified, highly-skilled U.S. workers; and 3) degrees that are essential to this country's technological innovative competitiveness.

Also, the increased amount of time that one could work in the United States, without wage requirements or American worker protections, may be undermining other visa programs, such as the H-1B visa program. It may also be disadvantaging American students who are looking for work during these tough economic times. OPT was meant to be supplementary to one's studies, not act as a bridge to an H-1B visa or permanent residency. It should also not be used to allow students to remain in the U.S. until work is available, which creates competition for American students and workers.

In addition to investigating the implementation and oversight of the program, I am interested in the GAO's perspective on OPT with regard to national security. It's difficult to know how many potential terrorists have exploited the OPT program to remain in the United States, but we do know that Faisal Shahzad, a foreign national from Pakistan, used the OPT program prior to attempting to attack citizens in Times Square, New York. Reports suggest that Shahzad was issued OPT and later applied for an H-1B visa, and eventually citizenship. It is my understanding that Faisal Shahzad studied general business at the now defunct Southeastern University, and was granted OPT status after claiming employment with a temporary staffing agency. Using OPT simply to remain in the United States should be a concern to homeland security officials.

Over 14 months ago, the Department of Homeland Security assured me that it was "considering making substantive improvements to the OPT program through future rulemaking, in order to increase Departmental oversight and enhance program integrity." I would like to know whether any steps have been taken, whether changes have been effective, and if further improvements are forthcoming. Furthermore, I would like to know what guidance has been given in the past to colleges and universities with regard to approving OPT, and what restrictions, if any, are placed on the educational institution to verify the request and offer of employment.

Given that employers who employ students who work in the country under OPT status are not subject to wage requirements or other worker protections (which is the case with the H-1B visa program), more insight into the use of this program is warranted. An investigation would also benefit the homeland security community by assessing the risk posed by students who do not deserve OPT status.

In particular, I would like GAO to address the following questions:

- What potential risks exist in the OPT program, and is it being administered securely and effectively by the Department of Homeland Security?
- What measures, if any, has the Department instituted to prevent and detect fraud and abuse in the program, and what steps does the Department take to ensure the success of these measures?
- What controls has the Department implemented to ensure that educational institutions are complying with OPT requirements, and what actions does the Department take to ensure compliance with these controls?
- What guidance, if any, does the Department provide to educational institutions regarding their oversight responsibilities in OPT?
- How do employers identify students in OPT for employment opportunities?
- What process did the Department undertake when expanding the STEM fields in May 2012 to ensure that it was complying with its own criteria for including new degree programs on the list?
- Does employment with a temporary staffing agency make a student eligible for OPT, and if so, how is such employment directly related to a student's area of study?

I appreciate your consideration of this request, and look forward to working with you on this matter.

Sincerely,



Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary