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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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March 5, 2014

Via Electronic Transmission

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Johnson:

On February 27, 2014, the Government Accountability Office (GAO) released its report on the Department of Homeland Security's (DHS's) management of the Optional Practical Training (OPT) program – an immigration benefit that allows foreign students to obtain temporary work in their major area of study during and after completing an academic program in the United States. The GAO report reveals extensive and alarming DHS mismanagement of the OPT program, proving serious program integrity issues that bring to light potential risks to national security. I'm writing today to ask that you place an immediate moratorium on the program until these serious problems are fixed.

The use of the OPT program has increased dramatically over the years.¹ In 2008, just 28,497 students were approved for OPT. In 2013, 123,328 were approved. In the last six years, more than 560,000 students received OPT. Only 2.6% of those who applied in 2013 were denied. Only .06% of those approved in the last 6 years have had their OPT revoked. This data shows that there's an upward trend in applications while denials and revocations are minimal. I asked the GAO to review the OPT program to better understand 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.

Notably, the GAO's public report highlights that (1) foreign students, sometimes aided by school officials, are currently abusing the OPT program to acquire unauthorized employment in the United States, and (2) due to lack of oversight by DHS, no one in the Federal Government presently knows where tens of thousands of these foreign students are located, who they are working for, or what they are doing while staying in the United States. The GAO concluded that U.S. Immigration and Customs Enforcement "has not analyzed available information to identify and assess potential risks specific to OPT posed by schools and foreign students."² The report also highlights the lack of coordination within ICE, the inconsistent collection of information by ICE, and the inadequate monitoring mechanisms in place to ensure program compliance. Without effective oversight of the OPT program, it is impossible to know if foreign students are complying with the rules and regulations.

¹ GAO Report 14-356, page 14.

² GAO Report 14-356, page 30.

The findings of the recent GAO report are all the more disconcerting given the fact that the GAO has warned your Department of risks involving the Student and Exchange Visitor Program (SEVP) for years. For example, in April 2011, the GAO reported that some schools were attempting to exploit the immigration system by knowingly misreporting that foreign students were fulfilling their visa requirements.³ In June 2012, the GAO reported that ICE had not developed a process to identify and analyze risks across SEVP-certified schools, in accordance with internal controls and risk management guidance.⁴ In this same 2012 report, the GAO said that officials at both SEVP and ICE's Counterterrorism and Criminal Exploitation Unit (CTCEU) had expressed concerns about the fraud risks posed by schools that did not comply with regulatory requirements.⁵ Thus, even prior to receiving the GAO's report last week, DHS had clear notice of the vulnerabilities in the program.

It is especially alarming and perplexing that SEVP officials consider OPT to be a low-risk employment benefit for foreign students.⁶ Many other government officials interviewed provided a starkly different opinion. For example, senior CTCEU officials interviewed for the GAO report stated that "OPT is at risk for fraud and noncompliance, in part, because it enables eligible foreign students to work in the United States for extended periods of time without obtaining a temporary work visa."⁷ Likewise, ICE field agents interviewed for the GAO report acknowledged that "foreign students approved for OPT present a risk for becoming overstays because they are allowed to work and remain in the United States for 12 to 31 months after graduation from school."⁸ Immigration enforcement agents and designated school officials (DSOs) interviewed for the report pointed out that "DSOs face greater challenges in monitoring foreign students in post-completion OPT because the students are no longer attending classes."⁹ Moreover, officials from CTCEU provided SEVP's compliance officers on multiple occasions from 2011 to 2013 with position papers expressing concerns about vulnerabilities and risk indicators associated with OPT.¹⁰

The recent GAO report confirms the fact that OPT is vulnerable to abuse. As of September 2013, SEVP had identified 17 of the 133 schools on SEVP's compliance log as potentially noncompliant with ICE regulations related to OPT.¹¹ The report elaborated on some particularly disturbing cases to demonstrate the non-compliance. For instance, ICE investigators reported that DSOs were allegedly falsifying documents in order to authorize students for OPT. One school charged students for an OPT recommendation and for keeping students in status without requiring student attendance. Other ICE field agents identified cases in which designated school officials were recommending OPT for foreign students to work outside their major area of study (e.g., a nursing student working in a pizza parlor), which is disallowed by ICE regulations.¹²

³ GAO Report 11-411.

⁴ GAO Report 12-572.

⁵ GAO Report 12-572.

⁶ GAO Report 14-356, page 15.

⁷ GAO Report 14-356, page 15.

⁸ GAO Report 14-356, page 15.

⁹ GAO Report 14-356, page 15.

¹⁰ GAO Report 14-356, page 16.

¹¹ GAO Report 14-356, page 15.

¹² GAO Report, page 16.

ICE regulations require OPT employment to be in a job directly related to the foreign student's area of study. However, the GAO report reveals that "ICE has not provided guidance to DSOs to help determine and document whether the student's job is related to his or her area of study."¹³ Moreover, "ICE does not require DSOs to input into [the Student Exchange and Visitor Information System (SEVIS)] any information on how DSOs arrived at the determination that students' jobs related to their studies" – a concern that raises the risks that DSOs are inappropriately recommending students for OPT. GAO discovered at least 35 cases in which students in economics, liberal arts and psychology were working in food service; and 9 cases in which students with degrees in computer science, engineering, and international studies were working in retail. Accordingly, the GAO advised that properly guiding DSOs and requiring them to collect and provide such information in SEVIS "could help provide ICE with reasonable assurance that foreign students engaged in OPT are working in jobs directly related to their area of study."

Even more alarming is the GAO's finding that "ICE cannot fully ensure foreign students working under optional practical training are maintaining their legal status in the United States."¹⁴ The GAO report found that ICE does not consistently collect information as to the type and timing of foreign students' employment, despite the fact that such information "could help ICE to better ensure that foreign students are maintaining their legal status in the United States and to identify and assess potential risks to OPT." According to the report, as of August 2013, 65 percent of pre-completion OPT and 48 percent of 12-month post-completion OPT student records did not contain an employer name.¹⁵ This means that ICE is in the dark as to where these students are and for whom they might be working. Likewise, ICE regulations and policy do not require students to report to their DSOs when they begin or stop working, and do not require DSOs to enter such dates into the SEVIS. Without this information on employers or employment start and end dates, the GAO report found that "ICE's ability to oversee requirements for OPT is limited." In other words, the relevant components of DHS presently lack the information necessary to effectively fulfill their mission of protecting the homeland.

The GAO found other management issues with OPT that prove the program is susceptible to fraud and abuse. Because of a lack of oversight by ICE, officials cannot determine if foreign students with OPT are unemployed longer than ICE regulations allow. Furthermore, the GAO also found that DHS does not monitor "whether DSOs and foreign students are complying with requirements that students (1) have been in their program of study for at least one academic year prior to receiving authorization and (2) complete their OPT within certain time frames established by the type of OPT."¹⁶ In other words, thousands of foreign students are working in the United States in violation of DHS regulations.

The OPT program, which has never been approved by Congress, was created to allow foreign students to obtain temporary work in their field of study. It was created to be a benefit to employers and students alike. Yet, due to gross lack of oversight by DHS, foreign students can be undetected from enforcement. Employers have very little responsibility when employing

¹³ GAO Report, page 21.

¹⁴ GAO Report, page 18.

¹⁵ GAO Report, page 19.

¹⁶ GAO Report, page 25.

foreign students and no requirements to pay them a certain wage. Some employers even target foreign nationals with OPT, putting American workers and students at an unfair disadvantage.

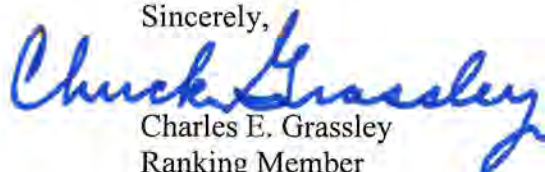
The problems with OPT are extensive and serious. The report not only calls into question the Department's oversight of the program, but also whether such lack of oversight is a serious national security risk. At least one terrorist, Faisal Shahzad, a foreign national from Pakistan, utilized OPT prior to planning out an attempted terrorist attack on U.S. citizens in Times Square, New York. While it is difficult to know how many other potential terrorists may have exploited OPT to remain in the United States, it is clear that the program requires an immediate overhaul before another potential terrorist exploits it. The SEVP program, including the OPT program, needs serious leadership that will consider enforcement a top priority and will work diligently to close loopholes and reduce risks associated with it.

The gross lack of oversight of this program is inexcusable and should be immediately addressed by you and the Department. Therefore, I urge your Department to swiftly incorporate all of the GAO's "Recommendations for Executive Action" in their entirety so that ICE can begin effectively identifying, assessing, and then addressing OPT risks. Moreover, I implore you to place an immediate moratorium on the OPT program until you can personally certify that the program is secure and that the Department can locate all foreign students with OPT authorization.

Finally, the GAO provided me with a law enforcement sensitive (LES) report in January. However, due to concerns of officials in your Department, the GAO was instructed to redact certain information and worked with the GAO to publish a public report. I would appreciate being kept apprised of the issues that were raised in the LES report but not in the public report. Please send updates and information to Kathy Nuebel of my staff at kathy_nuebel@grassley.senate.gov.

I look forward to a speedy response.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Ranking Member