Introduction

Signed into law on November 6, 1986, and scheduled to take effect on July 1, 1987, the Immigration Reform and Control Act of 1986 (IRCA--Public Law 99-603) will affect all employers in the United States by setting new procedures for verifying the citizenship status or Immigration and Naturalization Service (INS) employment authorization of persons hired. The new regulations will also affect all employers by implementing sanctions against the hiring of illegal aliens. Moreover, employers, including colleges and universities, may now be asked to furnish documentation for those illegal aliens residing in the United States since 1982 who, under the new legislation, will be eligible to apply for legal status.

Section 101 of the IRCA seeks to stem the tide of illegal aliens into the United States by: (1) making it unlawful to hire, recruit, or refer for a fee unauthorized aliens; (2) requiring those who hire, recruit, or refer for a fee individuals for employment to verify both the identity and the employment eligibility of such individuals; and (3) making it unlawful to continue to employ unauthorized aliens hired after November 6, 1986. An unauthorized alien means, with respect to employment, that the alien is not at that time either (1) lawfully admitted for permanent residence, or (2) authorized by the INS to be employed.

Basically, the new law would require all employers to do the following: (1) examine original documents from all newly hired employees that verify identity and eligibility to work (EXHIBIT A); (2) fill out the new INS Form I-9 (EXHIBIT B); and (3) keep the forms on file and available for inspection for at least three years.

The general policy and procedures that follow have been developed to facilitate the implementation of the IRCA at Boston College.

General Policy

It is the policy of Boston College to comply with the provisions of the Immigration Reform and Control Act of 1986. As this law affects all employees hired after November 6, 1986 (including full- and part-time faculty; full- and part-time monthly, weekly, and hourly staff; full- and part-time research personnel; graduate fellows and assistants; and students), its regulations have been implemented within the existing, decentralized hiring structure. Key administrators in each of the principal hiring areas (the Office of the Academic Vice President; the Evening College and Summer School; the Office of Human Resources; St. Mary’s Hall; the offices of the appropriate Graduate Schools; and the Office of Student Employment) are responsible for assuring compliance with the document verification and Form I-9 completion requirements of the IRCA. The Payroll Office, as well as the Office of Student Employment, are responsible for the record keeping requirements of this legislation. The following procedures have been established to facilitate these efforts.

Procedures

1. Form I-9 (EXHIBIT B) must be completed for any individual hired after November 6, 1986. In conjunction with completing the form, the responsible office must examine original documents that evidence both the individual’s identity and employment eligibility. An employee must present either an original document that establishes both identity and
employment eligibility or separate original documents that establish identity and employment eligibility. (Acceptable documents are listed in EXHIBIT A.)

2. IRCA regulations stipulate that, within three days of hire, the employer must physically examine the documentation presented by the individual to establish his/her identity and employment eligibility, and that both the individual and the employer must complete the appropriate sections of Form I-9. The date of hire is defined as the actual commencement of employment. Hiring offices should advise all potential employees of the need for such documentation, and a disclaimer should be added to all new contracts, appointments, and offer letters stating that the hire will be effective pending examination and acceptance of the necessary documents. **Please note: In response to the requirements of the IRCA, employees should not be allowed to work more than three days beyond the date of hire if proof of identity and employment authorization have not been provided and the Form I-9 remains incomplete.**

3. A new employee will not be placed on the payroll until the Payroll Office is in receipt of a completed Form I-9. To ensure that an employee will receive a paycheck, then, the Form I-9 must now accompany the appropriate hiring package as an integral part of the appointment paperwork. As the Office of Student Employment must retain the Form I-9 for all of its student employees, this office must simply indicate in the designated space on its hire form that the student has provided proof of identity and employment authorization, and that a Form I-9 has been completed and is on file.

4. Completed Form I-9s for all University personnel must be retained by the Payroll Office and the Office of Student Employment for at least three years after the date of hire, no matter how short the employment period. If an employee terminates after this three year period, the Form I-9 must be retained for one year following the termination date. Both the Payroll Office and the Office of Student Employment are responsible for maintaining the Form I-9 as part of the employee’s permanent record, and for making it available for inspection upon request by an authorized officer of the INS or the Department of Labor. (Although no advance notice is required, the employer has three days to comply.)

5. If an individual is rehired by a hiring office that has completed a Form I-9 within the last three years, a new form need not be completed. (It is the responsibility of the hiring office to maintain accurate records that will enable it to determine whether or not an individual is eligible to be employed under the Form I-9 currently on file.)

6. IRCA regulations do not require the employer to retain photocopies of the documents presented. If documents are photocopied, however, the regulations require that they be stored with the Form I-9 and nowhere else.

(Please see EXHIBIT C, Hiring Procedures, for additional information.)

The Office of Human Resources will have overall responsibility for implementing and monitoring the provisions of the policies and procedures addressing the employment verification requirements of the Immigration Reform and Control Act of 1986.

Employers must treat all applicants/employees in the same manner to avoid any charges of discrimination. It is important, therefore, to be sure to ask all job applicants for documentation, and not simply those who appear to be of foreign origin.

It is illegal under the IRCA for an employer to continue to employ an individual hired after November 6, 1986, knowing that the employee is or has become an unauthorized alien.

The hiring of independent contractors and consultants is not subject to IRCA regulations. However, an employer who knowingly uses a contract, subcontract, or exchange to obtain labor or services from an illegal alien will be considered to have hired the alien in violation of the law.
Procedural violations of the IRCA are subject to penalties, as are violations that involve the actual hiring of unauthorized aliens. Penalties for failure to comply with the verification requirements range from $100 to $1000 for each individual for whom violations occurred.