




Dr. Freida Hill  
Chancellor

Department of Postsecondary Education  
Post Office Box 302130  
Montgomery, AL 36130-2130  
t 334.293.4500  
f 334.293.4504  
www.accs.cc

**MEMORANDUM #2011-LGL-125**

TO: Presidents, Alabama Community College System

FROM: Freida Hill, Chancellor 

DATE: December 29, 2011

RE: Compliance with Alabama Immigration Law

Effective January 1, 2012, H.B. 56 (the "Act") imposes certain requirements on Alabama Community College System institutions "as a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees [working in the State of Alabama]." Ala. Code §31-13-9(a) and (b).

As you are aware, enrollment by ACCS institutions in the Federal E-Verify program is now mandated. Additionally, ACCS institutions have an obligation to obtain from its contractors an affidavit of immigration compliance. The Act broadly defines a contractor as "A person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This designation shall include, but not be limited to, a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity." Ala Code §13-13-3(3).

For your convenience, the following are included with this correspondence:

- A suggested **Affidavit of Alabama Immigration Law Compliance** form (Exhibit A) that you will need to complete, have notarized, file, and return a copy to the Department of Postsecondary Education; and,
- A suggested **Memorandum** (Exhibit B) and **Affidavit of Alabama Immigration Law Compliance** form (Exhibit C) that should be provided to all contractors and which should be completed, notarized, and returned to your college or institution. Your contractor should, in turn, provide a copy of the same **Memorandum** and **Affidavit** (Exhibit D) to its subcontractors and any grantees and maintain an executed copy in the contractor's office.

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MEMORANDUM #2011-LGL-125

Page 2

December 29, 2011

To minimize confusion, contractor and subcontractor affidavits have been drafted in such a fashion so that once executed and notarized, they may be accepted by any ACCS institution and the Department of Postsecondary Education. We have been informed that a sampling of these documents will be subject to audit by the Alabama Examiners of Public Accounts.

Further included with this correspondence is a **Notice of Alabama Immigration Law Compliance Requirements to all Contractors of ACCS Institutions** (Exhibit E). This notice contains the suggested contractual language between an ACCS institution and its contractors. To the extent that there is no formal written contract between the institution and its contractors, such as where business is conducted by purchase order, this document will serve as the Alabama Immigration Compliance Contract. This language should be included in all contractual agreements.

For your convenience, we have attached a list of **Questions and Answers** (Exhibit F) that we hope will be of assistance.

We are aware that this is time consuming, but you will understand our need to fully comply with the law. Our staff has worked with the State Department of Education and other educational entities in a collaborative effort to provide uniform memoranda and affidavits to minimize conflict and confusion. If you have any questions concerning this matter, please contact Lynne Thrower, General Counsel, at [lynne.thrower@dpe.edu](mailto:lynne.thrower@dpe.edu) or at 334-293-4603.

LT/gs

Attachments

c: Members, State Board of Education  
ACCS Business Managers

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**AFFIDAVIT OF ALABAMA IMMIGRATION LAW COMPLIANCE  
BY ALABAMA COMMUNITY COLLEGE SYSTEM INSTITUTIONS  
IN THE STATE OF ALABAMA**

In compliance with SECTIONS 9 (a) and (b) BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (the "Act"); CODE OF ALABAMA, SECTIONS 31-13-9 (a) and (b), this affidavit of Alabama Immigration Law Compliance is to be completed and signed by an official of an ACCS Institution in the State of Alabama, and notarized, as a condition for the award of any contract, grant or incentive by the Alabama Department of Postsecondary Education as an employer that employs one or more employees in the State of Alabama. Additionally, because the ACCS Institution contracts with various Contractors [defined broadly in the Act as "A person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This designation shall include, but not limited to, a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity." ALA. CODE §§ 31-13-3 (3)]. The ACCS Institution is to provide notice of the Contractors Alabama Immigration Law Compliance obligations to all contractors, or those the Institution provides an incentive to, are to be provided a similar notice.

State of Alabama:  
County of \_\_\_\_\_:

Before me, a notary public, personally appeared \_\_\_\_\_ (President's name), who is duly authorized by the Institution, being sworn, says as follows:

As an entity under the supervision of the State Board of Education, as condition for the award of any contract, grant or incentive by the State of Board of Education to a business entity or employer that employs one or more employees in the State of Alabama, I hereby attest that in my capacity as \_\_\_\_\_ (president) for \_\_\_\_\_ (ACCS Institution) that said Institution does not knowingly employ, hire for employment, or continue to employ an unauthorized alien. The ACCS Institution will be providing notice to its Contractors and its Grantees, or those it provides an incentive to, of their Alabama Immigration Law Compliance obligations to the Institution.

I further attest that said Institution is enrolled in the E-Verify program and attached to this Affidavit is our E-Verify Memorandum of Understanding confirming such program enrollment. I have read this Affidavit and swear and affirm that it is true and correct.

\_\_\_\_\_  
Signature of Affiant

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.  
I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

\_\_\_\_\_  
Signature and Seal of Notary Public

(To be placed on INSTITUTION letterhead)

MEMORANDUM

**TO:** CONTRACTORS AND GRANTEES  
**FROM:** (INSERT LOCAL CONTACT HERE)  
**DATE:** DECEMBER 29, 2011  
**RE:** H.B. 56 - ALABAMA IMMIGRATION LAW COMPLIANCE

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The purpose of this Memorandum is to direct your prompt attention to Alabama Immigration Law Compliance flow-down requirements that will be in effect on January 1, 2012. Those are discussed herein and can be summarized as follows:

1. PROVIDE the Alabama Community College System (ACCS) Institution proof that you are in compliance with the immigration law by timely submitting a notarized *Affidavit of Alabama Immigration Law Compliance* and an *E-Verify Memorandum of Understanding*;
2. PROVIDE the ACCS Institution a signed *Alabama Immigration Law Compliance Contract* in the attached *Notice* form provided;
3. PROVIDE your subcontractors notice of their compliance obligations and OBTAIN from each a notarized *Affidavit of Alabama Immigration Law Compliance- SUBCONTRACTOR*.

The requirements above, imposed by H.B. 56, are “a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees working in the State of Alabama. AS A Contractor or a Grantee, if you believe these obligations do not apply to you, please notify the Institution immediately.

For your convenience, we have included for your use a sample AFFIDAVIT OF ALABAMA IMMIGRATION LAW COMPLIANCE—CONTRACTOR AND GRANTEES. Please complete, notarize, and return a copy to the Institution along with your attached E-VERIFY MEMORANDUM OF UNDERSTANDING. See ALA. CODE § 31-13-9 (c).

In turn, you are to obtain from your subcontractors a notarized AFFIDAVIT OF ALABAMA IMMIGRATION LAW COMPLIANCE—SUBCONTRACTOR.

If you contract with more than one ACCS Institution, you will only need to have one affidavit completed and notarized, and then provide a copy to the requesting institution. You are required to maintain your subcontractors’ affidavits at your offices. These documents will be subject to audit. You may provide a copy of this Memorandum with your notification memorandum to your subcontractors as an explanation for this mandatory requirement.

Finally, you will find a NOTICE OF ALABAMA IMMIGRATION LAW COMPLIANCE REQUIREMENTS TO ALL CONTRACTORS (“CONTRACTORS”) OF ACCS Institutions for execution by contractors and to be returned to the Institution. To the extent that there is no formal written contract between a contractor and the Institution, such as where business is conducted by purchase order, this document shall serve as your Alabama Immigration Law Compliance Contract. Similar language will also be in contractual agreements or grant documents with the Institution.

**AFFIDAVIT OF ALABAMA IMMIGRATION LAW COMPLIANCE BY A  
CONTRACTOR OR GRANTEE TO ACCS INSTITUTIONS  
AND/ OR THE STATE BOARD OF EDUCATION**

In compliance with SECTIONS 9 (a) and (b) BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (the "Act"); CODE OF ALABAMA, SECTIONS 31-13-9 (a) and (b), this Affidavit of Alabama Immigration Law Compliance is to be completed and signed by an officer or owner of a contractor or grantee and notarized, as a condition for the award of any contract by an ACCS Institution or by the Alabama Department of Postsecondary Education (ADPE) to an employer that employs one or more employees in the State of Alabama and is a recipient of funds from the Alabama Department of Postsecondary Education, or funds from any political subdivision of the State of Alabama, or any public-funded entity (including an ACCS Institution). Contractors and Grantees are to provide notice to their Subcontractors of their Alabama Immigration Law Compliance obligations.

State of Alabama:

County of \_\_\_\_\_:

Before me, a notary public, personally appeared \_\_\_\_\_ (print name) who, is duly authorized by the business entity/employer which appears below, being sworn, says as follows:

As a condition for being a contractor or grantee on a project paid for by contract, grant, or incentive by the State of Alabama, or any political subdivision thereof, or any state-funded entity, I hereby attest that in my capacity as \_\_\_\_\_ (your position) for \_\_\_\_\_ (name of contractor or grantee), said Contractor or Grantee does not knowingly employ, hire for employment, or continue to employ an unauthorized alien. Further, Contractor or Grantee affirms that it is providing notice to its subcontractors of their Alabama Immigration Law Compliance obligations.

I further attest that said Contractor or Grantee is enrolled in the E-Verify program and attached to this Affidavit is our E-Verify Memorandum of Understanding confirming such program enrollment. I have read this Affidavit and swear and affirm that it is true and correct.

\_\_\_\_\_  
Signature of Affiant

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.  
I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

\_\_\_\_\_  
Signature and Seal of Notary Public

To be returned to the ACCS INSTITUTION.

**AFFIDAVIT OF ALABAMA IMMIGRATION LAW COMPLIANCE BY A  
SUBCONTRACTOR OR GRANTEE TO ACCS INSTITUTIONS  
AND/ OR THE STATE BOARD OF EDUCATION**

In compliance with SECTIONS 9 (a) and (b) BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (the "Act"); CODE OF ALABAMA, SECTIONS 31-13-9 (a) and (b), this Affidavit of Alabama Immigration Law Compliance is to be completed and signed by an officer or owner of a subcontractor and notarized, as a condition for the award of any contract by an ACCS Institution ("the Institution") or by the Alabama Department of Postsecondary Education (ADPE) to a Contractor that employs one or more employees in the State of Alabama and is a recipient of funds from the Alabama Department of Postsecondary Education, or funds from any political subdivision of the State of Alabama, or any public-funded entity. As determined by Chancellor of the Alabama Department of Postsecondary Education, a notarized Subcontractor Affidavit in this format shall be acceptable by all Contractors to all ACCS Institutions in the State of Alabama and the ADPE in compliance with the Act. Subcontractors are to provide notice to their Subcontractors of their Alabama Immigration Law Compliance obligations.

State of Alabama:  
County of \_\_\_\_\_:

Before me, a notary public, personally appeared \_\_\_\_\_ (print name) who, is duly authorized by the business entity/employer which appears below, being sworn, says as follows:

As a condition for being a subcontractor to a contractor or grantee on a project paid for by contract, grant, or incentive by the State of Alabama, or any political subdivision thereof, or any state-funded entity, I hereby attest that in my capacity as \_\_\_\_\_ (your position) for \_\_\_\_\_ (name of subcontractor), said subcontractor does not knowingly employ, hire for employment, or continue to employ an unauthorized alien. Further, subcontractor affirms that it is providing notice to its subcontractors of their Alabama Immigration Law Compliance obligations.

I further attest that said subcontractor is enrolled in the E-Verify program and attached to this Affidavit is our E-Verify Memorandum of Understanding confirming such program enrollment. Further, as a direct subcontractor, for those current employees for whom the E-Verify system may not be used in accordance with applicable federal rules and regulations, subcontractor has reviewed, or had reviewed, the Form I-9s for each of its current employees and has a good faith belief that it has complied with ALA. CODE § 31-13-9(c) and (d).

I have read this Affidavit and swear and affirm that it is true and correct.

\_\_\_\_\_  
Signature of Affiant

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.  
I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

\_\_\_\_\_  
Signature and Seal of Notary Public

To be returned to the Contractor or Grantee of an ACCS INSTITUTION.

(To be placed on **LOCAL INSTITUTION** Letterhead)

## **Notice of Alabama Immigration Law Compliance Requirements to all Contractors of ACCS INSTITUTIONS**

As a Contractor, as defined in the Act, to an ACCS Institution, it is critical to your relationship (future or continuing) with the Institution that you comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Accordingly, please provide your Affidavit of Alabama Immigration Law Compliance with attached E-Verify Memorandum of Understanding, as requested in the attached memorandum. If you do not believe these obligations apply to you, please notify the Institution immediately.

Every contract entered into by an ACCS Institution from this point forward with a contractor will contain the following clause or one substantially similar:

**Alabama Immigration Law Compliance Contract:** Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to *knowingly* hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplied by the Institution and return the same to the Institution. Contractor shall also enroll in the E-Verify Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as the Institution may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Contractor receives *actual knowledge* of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the Institution and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by the Institution. To the

fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the Institution from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

To the extent that there is no formal written contract between the Institution and the Contractor, such as where business is conducted by purchase order, this document shall serve as the Alabama Immigration Law Compliance Contract.

**Alabama Immigration Law Compliance Contract Notice Acknowledged and Agreed by Contractor whose name appears below:**

\_\_\_\_\_  
Contractor Officer or Owner Signature/Date

\_\_\_\_\_  
Print Name/Title/Company

Please execute and return to the ACCS INSTITUTION within the next 10 days



## **E-Verify Questions and Answers Related to Alabama Community College System (ACCS) Institutions**

1. Does an **AFFIDAVIT OF ALABAMA IMMIGRATION LAW COMPLIANCE** need to be obtained for every contract employee?

*No. A contract with an individual hired at a college or institution employee and paid through the institution's payroll process does not require an affidavit.*

2. Our Institution contracts with numerous individuals who are not Institution employees. How do we determine what individuals and contractors are subject to the E-Verify requirements?

*Form W-9 provided to the Institution by the contract employees or contractors has a Taxpayer Identification Number in Part I. If an Employer Identification Number is entered in Part I, the contract employee or contractor may be subject to enrollment in the E-Verify program. (If a Social Security Number is entered in Part I of the W-9, assume an affidavit is not required for the individuals, contract employees, or contractors.)*

3. Does the entire **E-Verify Memorandum of Understanding** document need to be submitted with the affidavit?

*The law requires that documentation of enrollment in the E-Verify program is attached to the affidavit. The signature page(s) at the end of the E-Verify Memorandum of Understanding provides that documentation.*

4. Are an affidavit and documentation of enrollment in the E-Verify program required for a contractor who was awarded a one-year contract effective July 1, 2011?

*Section 9 of the new immigration law that contains the E-Verify requirements for the award of any contract, grant, or incentive is effective January 1, 2012.*

5. How do we start the process of determining which contractors will need to provide the affidavits?

*Obtain a listing of contractors coded according to the Fiscal Procedures Manual. Form W-9 will identify contractors or business entities with an Employer Identification Number.*

<b>Other Professional Services</b>	
Accounting and Auditing	626
Architect and Engineering	627
Legal Services	624
Other Legal Services (i.e. court reporting)	625
Other Professional Fees	628
<b>Technical Services</b>	
Data Processing Services	639
Clerical Services	639
Appraisal Services	639
Substitutes (i.e. Kelly Services)	639
Other Technical Services	639
<b>Property Services</b>	
Equipment/Service Contract	607
Land and Building Repair/Maintenance	606
<b>Other Contractual Services</b>	
Custodial Services	639
Garbage and Waste	639
Other Property Services	639
<b>Other Purchased Services</b>	
Food Services	639
Printing and Binding	619
<b>Other Expenditure Objects</b>	
Buildings-Constructed	777
Building Improvements	780
Other Real Property	519