



UNIVERSITY OF FLORIDA

Office of the Vice President and General Counsel

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May 26, 2005

Nathan A. Adams, IV
Deputy General Counsel
Florida Department of Education
1244 Turlington Building
Tallahassee, FL 32399

Re: International Student Service Charge

Dear Dr. Adams:

You have asked the University of Florida to provide information concerning the subject matter of the petition that has been filed by Sophie Croisy and Graduate Assistants United (Petitioners) concerning the international student service charge. It has not been made clear whether the University of Florida will be allowed a hearing or other proceeding to respond fully to the petition, and we would reserve our right to raise issues of jurisdiction, standing, timeliness, and potential remedies.

Nonetheless and pending the initiation of such proceedings, the University of Florida welcomes the opportunity to clarify the position that was previously set forth in the University's September 16, 2004 letter concerning the validity and appropriateness of this service charge.

SUMMARY OF POSITION

- The certificate of eligibility processing and enrollment status verification fee (sometimes also referred to as the "international student fee") is a lawful service charge for which the University has statutory and Board of Governors authority.
- The University of Florida Board of Trustees has followed the rulemaking procedures set forth by the Board of Governors in its resolution of January 7, 2003; therefore, the challenge based on an unpromulgated rule has no basis.

BACKGROUND

In response to the events of September 11, 2001, the Federal Government in July 2002 instituted comprehensive requirements for foreign students attending colleges and universities in

the United States. Certain services were required to be provided to students with F or J visas. Federal law requires information to be reported to the Bureau of Citizenship and Immigration Services and/or the Department of State, through the Student and Exchange Visitor Information System (SEVIS) of the United States Department of Homeland Security. Various requests and applications must also be processed, including:

- Reporting registration hours, transfers, extension of stay and reinstatements, extension of I-20 or DS-2019 forms, and all changes of address, program, level of student and funding, and all requests to bring in family members.
- Reporting students with F or J visas who fall below course load or who are terminated from the University.
- Processing and reporting of applications for curricular practical training (CPT), optional practical training (OPT), and academic training.
- Processing of requests from students with F or J visas to take a reduced schedule or leave of absence for medical or other reasonable purposes.

To provide these services to the persons affected, the University of Florida had to make and continues to make significant expenditures for staff, computer software, and training. In August 2002, after considerable review and study, approval was granted by the President to assess a service charge on the persons using the services. The charge was implemented in September of 2002.

After gaining sufficient experience with the charge, the University determined in its 2003-2004 rulemaking cycle to promulgate the service charge as an amendment to an existing University of Florida rule.¹ The proposed rule amendment stated:

Certificate of eligibility processing and enrollment status verification fee – A charge of \$50.00 shall be assessed in each fall and spring semester to a student requiring processing of a certificate of eligibility for F-1 or J-1 student status and enrollment status verification services.

The rulemaking process began with a Notice of Proposed Rule Development published on February 16, 2004. A rule development workshop was held. Subsequently a Notice of Proposed Rulemaking was published, and a rule hearing was requested and held on the proposed amendment to the rule. The Board of Trustees approved the rule amendment on March 4, 2004.

¹ Neither the Petitioners, nor any other person, filed a challenge to the service charge until February 2005, well after the University initiated rulemaking. Under the Florida Administrative Procedures Act, a petition challenging the proposed rule would have been deemed untimely.

After University Board of Trustees' approval, an attorney for the Joint Administrative Procedures Committee (JAPC), which reviewed proposed rules for statutory authority, transferred the question of statutory authority for the rule to the General Counsel's Office of the Department of Education. The reason for the transfer was the intervening NAACP case, which held that the Florida Administrative Procedure Act did not apply to the Board of Governors. The court's implied limitation on legislative power meant that questions of statutory authority would no longer be appropriate for a legislative body such as JAPC.

In September 2004, the University of Florida provided to the Department of Education a comprehensive justification for imposing this service charge, including a discussion of the authority for the charge as well as the relationship of actual cost of the services to the service charge (Attachment A).

THE UNIVERSITY HAS THE AUTHORITY TO IMPOSE THE SERVICE CHARGE

Section 229.0082, Fla. Stat. (2001), gave the President of the University the "authority to prioritize the use of University space, property, equipment, and resources and the authority to impose charges for the use of those items." (Emphasis added.) The service charge at issue was imposed pursuant to this authority.

The Board of Governors confirmed that university authority in a resolution dated January 7, 2003. The resolution stated:

Each board of trustees shall have responsibility for the use, maintenance, protection, and control of university-owned or university-controlled buildings and grounds, property and equipment, name, trademarks and other proprietary marks, and the financial and other resources of the University. . . . The authority vested in the board of trustees in this subsection includes the prioritization of the use of space, property, equipment, and resources and the imposition of charges for those items. (Emphasis added.)

In addition, the resolution authorized the boards of trustees to set fees pursuant to Section 1009.24, Florida Statutes. Although two of these statutory "fee" provisions (Section 1009.24(12)(m) and (n)), and Board of Regents Rule 6C-7.003(14) and (23), also provide authority because the SEVIS requirements necessitate duplicating services and the extensive use of facilities and equipment, the fee at issue fundamentally is a service charge authorized by the Board of Governors resolution authorizing service charges.

Petitioners have not presented any evidence to show that the charge is not an authorized service charge. The charge is in fact for specific services necessitated under the SEVIS requirements. The service charge is based on the cost of specific services provided certain students only and is not part of tuition and fees charged to all students. It is not a charge payable under the Bright Futures Scholarship Program or the Florida Prepaid College Program. The

attachment to the University's September 16, 2004 letter, clearly demonstrates that it is a service charge.

NOT AN UNPROMULGATED RULE

In the Board of Governors resolution setting forth the authority of the boards of trustees, the Board of Governors allowed the boards of trustees to adopt rules pursuant to Sections 120.536(1) and 120.54, Florida Statutes. Under Section 120.54, an unpromulgated rule challenge cannot be brought once the rulemaking process has begun. The University of Florida Board of Trustees is following the rulemaking procedures set forth in the Board of Governors resolution. Therefore, Petitioners' complaints on this basis are invalid.

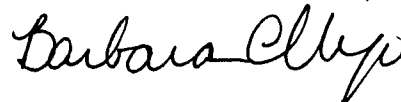
CONCLUSION

The service charge at issue is fully authorized by law and the Board of Governors resolution of January 7, 2003. Because the rulemaking procedures are pending, there is no unpromulgated rule subject to challenge.

Both the Legislature and the Florida Board of Governors expect the University of Florida Board of Trustees to operate its University in a manner that is fiscally responsible. The Florida Statutes and the Board of Governors resolution contemplate that costs for services which the University must provide to particular students can be passed along to the specific users of those services. To not allow the University to pass such costs to these persons actually using University resources results in the University having to subsidize them, at the expense of the student body and the faculty as a whole. Such a result would be in contravention of the expectations of the Legislature and the Florida Board of Governors that the University of Florida Board of Trustees operate its University in a manner that wisely utilizes resources and that is fiscally responsible.

Please let me know if you have any further questions.

Sincerely,



Barbara C. Wingo
Associate Vice President and
Deputy General Counsel

Attachment

cc: Mary F. Aspros
Attorney for Petitioners



UNIVERSITY OF FLORIDA

Office of the Vice President and General Counsel

123 Tigert Hall
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September 16, 2004

Nathan A. Adams, IV, Ph.D., M.A., Esquire
Deputy General Counsel
Florida Department of Education
1244 Turlington Building
Tallahassee, FL 32399

Re: Certificate of eligibility processing and enrollment status verification fee
("international student fee")

Dear Nathan:

This is in response to your letter of August 24, 2004, concerning the certificate of eligibility processing and enrollment status verification fee (sometimes referred to as the "international student fee") that is a proposed amendment to University of Florida Rule 6C1-2.012, F.A.C. You note that the Joint Administrative Procedures Committee ("JAPC") staff had preliminarily concluded that the proposed amendment setting forth this charge was not supported by the statutes noted as specific authority and law implemented. Although JAPC no longer has jurisdiction over the matter, the Board of Governors has adopted by resolution the statutes that were referred to as specific authority and law implemented. You have asked why the statutes cited as specific authority and law implemented permit the international student fee. You also ask whether the University has been collecting the fee and expending the funds and to justify the amount of the fee.

As is more fully explained below, the statutes cited provide authority for the certificate of eligibility processing and enrollment status verification fee. Information justifying the amount of the fee is also provided in this letter, and supports the conclusion that the charges are for the recoupment of the costs of services provided to a particular group of students.

(1) Authority for the charge.

Section 1001.74(6), Fla. Stat., authorizes the certificate of eligibility processing and enrollment status verification fee. The Board of Governors' Resolution dated January 7, 2003,

Attachment A

granted the university boards of trustees this authority: “[E]ach board of trustees shall have responsibility for the use, maintenance, protection and control of university-owned or university-controlled buildings and grounds, property and equipment, . . . and the financial and other resources of the University.” This authority “includes the prioritization of the use of space, property, equipment and resources and the *imposition of charges* for those items. (Emphasis added.)” According to the Board of Governors Resolution, the university boards of trustees may implement this authority through rulemaking.

University of Florida Rule 6C1-2.012, F.A.C., establishes various charges for the use of university resources under this authority. Pursuant to this rule, university and non-university groups and persons (including students and student groups) may be charged for facilities and various library services. JAPC did not question the authority for these charges. The Chief Attorney for JAPC has questioned this particular service charge for international students, taking the position that the statutory authority only extended to the “imposition of charges or fees for use of university buildings, property and other resources by persons or entities other than the university itself in the regular course of its operations.” There is no basis whatsoever for reading the statute in such a narrow way, but even if one did so read the statute, it would allow the imposition of this charge. The fee at issue is a service charge assessed for services (use of resources) provided to certain students.

Specifically, the charge is for the provision of certain services to students with F or J visas. Information must be reported to the Bureau of Citizenship and Immigration Services and/or the Department of State, as required by federal law, through the Student and Exchange Visitor Information System of the United States Department of Homeland Security. Various requests and applications must also be processed. Such reporting and processing includes:

- Reporting registration hours, transfers, extension of stay and reinstatements, extension of I-20 or DS-2019 forms, and all changes of address, program, level of student and funding, and all requests to bring in family members.
- Reporting students with F or J visas who fall below course load or who are terminated from the University.
- Processing and reporting of applications for curricular practical training (CPT), optional practical training (OPT), and academic training.
- Processing of requests from students with F or J visas to take a reduced schedule or leave of absence for medical or other reasonable purposes.

Although Section 1001.74(6), Fla. Stat., provides sufficient authority for the charge, Section 1009.24(12)(m) and (n), Fla. Stat., also provide authority. Section 1009.24(12)(m) allows fees for duplicating and photocopying, and Section 1009.24(12)(n) allows for fees related to the use of facilities and equipment. Indeed, the services provided require, in addition to other University resources such as personnel, extensive use of, and investment in, computer equipment and software.

Finally, the service charge is not precluded under Rule 6C-7.003, F.A.C., as that rule allows fees when approved by the Board of Governors. The Board of Governors has allowed this charge through its delegation of authority to the boards of trustees as set out in Section 1001.74, Fla. Stat.

(2) Relationship of Actual Costs to the Charge.

The fee is calculated based on the cost of the services described above. "University of Florida Request to Operate an Educational Business Activity" for International Center Services (enclosed), indicates the basis for the calculation of the fee. As shown on page 3 of this document, the service charge at issue covers most of the costs for the services provided. The fee has been approved by the University of Florida Board of Trustees and has been collected since the fall of 2002.

In summary, the fee represents a charge for services to students holding F and J visas. The charge is based on the costs of providing specific services to these students. It is not a fee or tax on all students; and it fits within the delegation represented in Section 1001.74(6), Fla. Stat.

Thank you for this opportunity to clarify the authority for, and appropriateness of, the certificate of eligibility processing and enrollment status fee.

Sincerely,



Barbara C. Wingo
Deputy General Counsel

Enclosure

UNIVERSITY OF FLORIDA
REQUEST TO OPERATE AN EDUCATIONAL BUSINESS ACTIVITY

1. NAME OF PROPOSED ACTIVITY: International Center Services
2. SPONSORING UNIT: UF International Center
3. INITIATOR/TITLE: Lynn Frazier, Ex. Assoc. Director P.O.BOX: 113225
TELEPHONE: 392-5323
FAX: 392-5575

4. ACTIVITY:

a. Describe the educational business activity:
UFIC provides services to international students that are different and in addition to services provided to any other group of students. These services include: preparation of and reporting to INS/DOS I-20/IAP-66 for new international admissions, dependents, travel, change of degrees, change of majors, and notification extensions. Additionally UFIC processes and reports to INS/D the following documents: Optional Practical Training applications, Curricular Practical Training applications, change of visa status, reinstatements of visa status, transfers (entering UF from another school), expense letters, verifica letters of student status, late fee and registration waiver letters, work authorization letters and Fulbright paperwork. UFIC verifies that all international students have health insurance and conducts orientations and workshop

b. How does the activity support the mission of the University of Florida?

The activity of sponsoring and supporting international students assists faculty & staff in supporting the common pursuit of the University's threefold mission: education, research and service which address not only the needs of the state, the nation but also the world. UF's mission statement states UF "is committed providing knowledge, benefits & services with quality & effectiveness. It aspires to further state, national and international achievements in support of human values & improving the quality of life." A global perspective is an essential vital component in UF's ability to accomplish this mission and to enhance its standing among the very best public institutions in the nation & to gain recognition of its achievements. The hosting of international students is one aspect of the global perspective UF is striving to achieve.

5. ACTIVITY BEGINNING DATE: August 1, 2007
- ENDING DATE (if one-time activity): _____
6. LOCATION OF ACTIVITY: 123 Grinter Hall
7. OTHER SUPPORT: Complete the following if this activity will receive support from other funding sources.

Funding Source (e.g., E & G, C & G, Auxiliary)	Position Number	Salary		OPS	Expense	OCO
		Value of Support (including fringe benefits)				
<u>E & G</u>	<u>849890</u>	<u>\$9,160</u>	<u>0</u>	<u>0</u>	<u>0</u>	
<u>"</u>	<u>811860</u>	<u>\$8,140</u>	<u>0</u>	<u>0</u>	<u>0</u>	
<u>"</u>	<u>849860</u>	<u>\$6,590</u>	<u>0</u>	<u>0</u>	<u>0</u>	
<u>"</u>	<u>811720</u>	<u>\$7,340</u>	<u>0</u>	<u>0</u>	<u>0</u>	
<u>"</u>	<u>816040</u>	<u>\$6,950</u>	<u>0</u>	<u>0</u>	<u>0</u>	
<u>"</u>	<u>850350</u>	<u>\$4,500</u>	<u>0</u>	<u>0</u>	<u>0</u>	

8. SPECIAL FUNDING SOURCES: Identify specific funding source(s) for the following (SAMAS Organization/EO)

A. Start-Up Funds: n/a
(1) Gift amount and donor name _____
(2) Loan amount (Note: Must be Auxiliary Lender) _____
Lender name and SAMAS Organization/EO _____

Loan terms _____

B. If expenditures exceed income, how will shortage be covered?
E & G funds _____

9. FINANCIAL PLAN: A financial plan must be submitted with each Request to Operate an Educational Business Activity. (Attached)

I have reviewed and support this Request to Operate an Educational Business Activity. I understand its mission as it relates to the overall mission of the University. I understand that this activity must maintain a positive financial condition and hereby recommend approval of this request.

E. Lynn Frazier
Initiator/Accountable Officer

E. Lynn Frazier
Signature

7/30/02
Date

Dennis C. Jett
Dean/Director

Dennis C. Jett
Signature

Date

APPROVAL:

Suzanne K. Sindledecker
Cost Accounting Coordinator
Contracts and Grants

Suzanne K. Sindledecker
Signature

8/8/02
Date

Ed Poppell
Vice President
for Finance and Administration

Ed Poppell
Signature

8/8/02
Date

UNIVERSITY OF FLORIDA
FINANCIAL PLAN FOR EDUCATIONAL BUSINESS ACTIVITY

	<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
Start-Up Gift	<u>0</u>	<u>0</u>
Start-Up Loan	<u>0</u>	<u>0</u>
Beginning Cash	<u>0</u>	<u>0</u>
Revenues:		
E & G funds	<u>42,680</u>	<u>82,026</u>
Student visa service charge (2,700 @ \$100)	<u>270,000</u>	<u>270,000</u>
	<u> </u>	<u> </u>
	<u> </u>	<u> </u>
Transfers In	<u> </u>	<u> </u>
Interest Earnings	<u> </u>	<u> </u>
Available Cash	<u>312,680</u>	<u>352,026</u>

	<u>Current Fiscal Yr</u>	<u>Next Fiscal Yr</u>
<u>Expenditures</u>		
Salaries	<u>227,049</u>	<u>293,199</u>
OPS	<u>5,000</u>	<u>5,200</u>
Beginning Inventory	<u> </u>	<u> </u>
Inventory Repurchase	<u> </u>	<u> </u>
Other Expenses		
Communications	<u>11,000</u>	<u>11,550</u>
Reproduction & Publications	<u>5,500</u>	<u>5,775</u>
Supplies	<u>8,000</u>	<u>8,400</u>
Software	<u>30,000</u>	<u>0</u>
Training	<u>6,000</u>	<u>6,300</u>
Orientations & Workshops	<u>6,000</u>	<u>6,300</u>
Travel	<u>8,000</u>	<u>8,400</u>
OCO	<u> </u>	<u> </u>
Subtotal Expenditures for OVH	<u>306,549</u>	<u>345,124</u>
Overhead @ 2%	<u>6,131</u>	<u>6,902</u>
Loan Repayment	<u> </u>	<u> </u>
Transfers Out	<u> </u>	<u> </u>
Total Expenditures	<u>312,680</u>	<u>352,026</u>
ENDING CASH BALANCE	<u>0</u>	<u>0</u>
(Available - Expenditures)		

UNIVERSITY OF FLORIDA
EDUCATIONAL BUSINESS ACTIVITY INCOME STATEMENT

	<u>Current Fiscal Yr</u>	<u>Next Fiscal Yr</u>
A. Revenue From Sales	270,000	270,000
B. Cost of Goods Sold	0	0
C. Gross Margin (A-B)	270,000	270,000
D. Operating Expenses (including OVH)	312,680	352,026
E. Net Income (C-D)	(42,680)	(82,026)
F. Gross Margin % of Sales (C/A)	100 %	100 %
G. Net Income % of Sales (E/A)	%	%

UNIVERSITY OF FLORIDA
EDUCATIONAL BUSINESS ACTIVITY INVENTORY TURNOVER

	<u>Current Fiscal Yr</u>	<u>Next Fiscal Yr</u>
H. Beginning Inventory	0	0
I. Purchases	0	0
J. Total Available (H+I)	0	0
K. Cost of Goods Sold (B)		
L. Ending Inventory (J-K)		
M. Average Inventory [(H+L)/2]		
N. Turnover Rate * (K/M)		

* Cost of Goods Sold / Average Inventory

ISS Budget	FY 2002 - 2003	FY 2003 - 2004
Salaries & Fringe		
6.15 FTE (see sheet 2)	227,049	293,199
8.15 FTE FY 03-04		
OPS		
3 CWSP @ .50 FTE	5,000	5,200
Operating Expense		
Communications	11,000	11,550
Reproduction	2,000	2,100
Publications	3,500	3,675
Supplies	8,000	8,400
Software	30,000	0
Training	6,000	6,300
Orientations	3,000	3,150
Workshops	3,000	3,150
Travel	8,000	8,400
Subtotal	74,500	46,725
OCO		
Computer Equipment	0	8,000
Overhead @ 2%	6,131	6,902
TOTAL	312,680	360,026
Revenue		
2700 students @ \$100 ea	270,000	270,000
Variance	-42,680	-90,026

E & G funds (0125001-01) will subsidize variance.