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Part III

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22 CFR Part 62  
Exchange Visitor Program—General Provisions; Final Rule

## DEPARTMENT OF STATE

## 22 CFR Part 62

[Public Notice: 8893]

RIN 1400-AC36

## Exchange Visitor Program—General Provisions

**ACTION:** Final rule with request for comment.

**AGENCY:** Department of State.

**SUMMARY:** With this rulemaking, the Department of State is amending the general rules governing the Exchange Visitor Program that govern the designation of sponsors and the overall administration of the Program. This final rule encompasses technical changes to the general provisions and addresses public diplomacy and foreign policy concerns, including the Department's ability to monitor sponsors to protect the health, safety and welfare of foreign nationals who come to the United States as exchange visitors. The Department previously published a proposed rule, and, after analyzing the comments received, the Department is promulgating this final rule with request for comment and soliciting comments over a period of 60 days.

**DATES:** *Effective Date:* This rule is effective January 5, 2015.

*Applicability date:* The insurance amounts listed in 22 CFR 62.14(b)(1) and the provisions of 22 CFR 62.14(h) will be applicable on May 15, 2015.

*Comment date:* The Department will accept written comments for up to 60 days until December 5, 2014.

**ADDRESSES:** You may submit comments identified by an of the following methods:

*Email:* [JExchanges@state.gov](mailto:JExchanges@state.gov). You must include the RIN (1400-AC36) in the subject line of your message.

Persons with access to the Internet may also view this document and provide comments by going to the [regulations.gov](http://regulations.gov) Web site and searching for RIN (1400-AC36, docket number DOS 2014-0018), at: <http://www.regulations.gov/>.

Mail (paper, disk, or CD-ROM submissions): U.S. Department of State, Office of Policy and Program Support, SA 5, Floor 5, 2200 C Street NW., Washington, DC 20522-0505.

**FOR FURTHER INFORMATION CONTACT:** Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA 5, Floor 5, 2200 C Street NW., Washington, DC 20522; or email at [JExchanges@state.gov](mailto:JExchanges@state.gov).

## SUPPLEMENTARY INFORMATION:

## Executive Summary

This first comprehensive modification to Subpart A of 22 CFR Part 62 since 1993 makes five significant changes, as well as minor, technical changes intended to clarify the existing language. Specifically, this final rule amends Subpart A to provide more specific filing requirements for entities seeking to become designated sponsors and for sponsors seeking to renew their designations, including requiring proposed and current Responsible Officers and Alternate Responsible Officers to undergo criminal background checks. The final rule adopts a requirement that private sector sponsors submit management reviews in a format and on a schedule determined by the Department. It modifies certain sections from Subpart F to Subpart A and enhances provisions governing the Student and Exchange Visitor Information System (SEVIS) database that sponsors use to track the whereabouts of exchange visitors. It also removes Appendices A, D, which have been replaced by information collections through Forms DS 3036, DS 3037 and DS 3097. In recognition of the increase in health and accident insurance costs since 1993, it also updates these requirements. The final rule also adds, deletes, and modifies definitions of terms used throughout the regulations. In addition, it adds language to make explicit the discretion of the Assistant Secretary for Educational and Cultural Affairs to waive or modify provisions of 22 CFR Part 62 (the regulations governing the Exchange Visitor Program), to the extent consistent with the authorities described in 22 CFR 62.1(a) and other applicable law, with respect to programs that are established pursuant to arrangements between the United States and foreign governments. The Department must provide notice concerning any such program for which provisions of Part 62 are waived or modified. Finally, it makes technical modifications to the text of the September 2009 proposed rule to ensure that the regulator's text is clear and correct.

The Department published the proposed rule on September 22, 2009 (RIN 1400-AC36; see 74 FR 48177), soliciting comments on proposed modifications to Subpart A. This final rule does not make certain changes that the Department had proposed in the September 2009 proposed rule. Specifically, it will not require applicants or current sponsors to secure and submit Don & Bradstreet reports on

themselves; applicants for sponsor designation will have site visits only at Department discretion; and sponsors need not collect and report Employment Authorization Document information for an accompanying spouse and dependents in SEVIS.

Having thoroughly reviewed the nearly 700 comments received in response to the proposed rule published in 2009 (see citation above), the Department hereby adopts sections of the proposed rule and amends or eliminates others in response to the comments submitted.

The next version of the SEVIS database, which has been in place since 2003, will have no immediate impact on this final rule, since its implementation date remains uncertain. The next version of SEVIS will focus upon increased functionality, national security, and improved stability. Prior to its implementation, the Department anticipates that the Department of Homeland Security will introduce any new requirements or procedures to the public through a proposed rule with a comment period. The Department of State also will reexamine its regulations prior to the implementation of any future system developments.

## Analysis of Comments

The Department received 656 comments in response to the publication of the proposed rule. Of these, 494 comments (or 75% of the total comments received) were form letters or miscellaneous letters relating to the Camp Counselor and Summer Work Travel categories of the Exchange Visitor Program, as follows:

1. Form Letter Camp Counselor and Camp Support 353
2. Form Letter Summer Work Travel Employers 60
3. Form Letter Former Summer Work Travel Participants 45
4. Miscellaneous Letters 36

The remaining 162 comments were general letters from sponsors, support groups, third parties, and concerned individuals. Based on the review of all comments, the Department has decided to adopt sections 62.2-62.16 of the proposed rule with modifications prompted by the comments received. Section 62.17 Fees and Charges, remains unchanged. Appendices A, D are removed to reflect changes in the regulations since 1993 and the implementation of information collections through Forms DS 3036, DS 3037, and DS 3097.

## Section 62.2 Definitions

The proposed rule contained 45 definitions; this final rule contains 47.

When adding definitions for the Department-controlled forms, the Department had inadvertently included Form DS 3097 (Ann A Report), which it no longer includes. Similarly, the Department is also adding a definition for the "Office of Exchange Coordination and Compliance," the "Office of Private Sector Exchange Administration," which, combined with the "Office of Designation," currently comprise the Office of Private Sector Exchange. The Department also deletes the redundant definition for "trainee," which is already covered in sections 62.4(c) and 62.22, and foreign medical graduate, which is covered in section 62.27.

A total of 26 parties filed comments about the Subpart A definitions. Comments related to the three SEVIS-related definitions that have been added to the regulations (i.e., "actual and current U.S. address," "site of activity," and "validation") generally reflected appreciation for these definitions and sought guidance and information on the consequences of non-compliance. As with other regulations in Part 62, non-compliance could subject a sponsor to sanctions under 22 CFR 62.50(a). The first two definitions are critical as they relate to the physical location of a nonimmigrant participating in an exchange visitor program in the United States. Indeed, Title VI, Section 641 of Public Law 104-208, requires sponsors to ensure that the exchange visitor has arrived at his or her site of activity and to maintain current and accurate data in these SEVIS fields so that officials may locate nonimmigrants, if necessary, both during the day (i.e., at their sites of activity) and at night (i.e., at their actual and current U.S. addresses). Accordingly, correctly maintaining this information is a matter of national security. The function of validating a SEVIS record is also important, as it marks the beginning and end of a sponsor's obligation to monitor and provide other services (i.e., insurance coverage) to an exchange visitor and his or her accompanying spouse and dependents. One commenting party sought guidance and/or an explanation of the consequences of failing to validate the SEVIS record of an accompanying spouse or dependents, entering the United States on J-2 visas to accompany an exchange visitor here on a J-1 visa. In response to this comment, and because the validation of a primary J-1 visa holder's record automatically validates the associated J-2 visa holders' records, the Department is removing an

accompanying spouse and dependents from this definition.

The Department received a total of 18 comments regarding the change of the term "accredited educational institution" to "accredited academic institution." The majority of comments questioned the need for a change in terminology. The Department believes this change is necessary to reflect more accurate recent trends in the use of the term "academic." In the proposed definition section (which also affects the definition of "student" in section 62.4), the Department clarifies that educational institutions that offer primarily vocational or technical courses of study are not considered academic. Accordingly, the Department substitutes the term "academic" for "educational."

One party commented about the confusion associated with the definition of "country of nationality or last legal permanent residence," stating that the conjunction "or" seemed to link the two alternatives takes precedence and the language does not define the meaning of the term "legal permanent residence." The program regulations have always referred to these two terms in tandem. The Department believes that the meaning of each phrase is clear and concise, and therefore makes no changes to the definition. Three commenting parties expressed concern that the terms(s) did not clearly subject an accompanying spouse and dependents traveling to the United States on J-2 visas to the two-year home country physical presence requirement (i.e., section 212(e) of the Immigration and Nationality Act (INA)). Because the INA applies this requirement to "person[s] admitted under section 101(a)(15)(J) . . . or acquiring status after admission," it applies to J-2 visa holders as well, if the exchange visitor the accompanying or join is subject to the requirement (See 22 CFR 41.62(c)(4)).

The Department received one comment regarding the proposed definition of "exchange visitor" as it refers to foreign nationals who are in the United States on J-1 visas. In particular, the commenting party took issue with the language because, as written, it does not include Canadian citizens who are allowed to participate on the Exchange Visitor Program without obtaining a J-1 visa. Also, the term does not include the accompanying spouse and dependents of an exchange visitor. In reviewing the comment, the Department has decided to modify the definition to clarify that the term also includes participants in the program who are not required to obtain J-1 visas. The

Department, however, has proposed to include an exchange visitor's accompanying immediate family (i.e., accompanying spouse and dependents) from the definition because these regulations operate primarily for the benefit, and based upon the actions, of the individual participant in the Exchange Visitor Program. When necessary (e.g., section 62.14 (insurance)), the regulations specify their applicability to an exchange visitor's immediate family.

On a related matter, two parties commented that the title of the Form DS-2019 A Certificate of Eligibility for Exchange Visitor (J-1) Statute describes an reference to an accompanying spouse and dependents, even though it is the form necessary for family members (since the inception of SEVIS in 2003) to apply for J-2 visas. The Department agrees and will explore the opportunity of replacing "(J-1)" with "(J-1 Nonimmigrant)" in the Form's title at the time of the Form's scheduled revision cycle.

Two parties commented on the definition of "foreign medical graduate." They both appreciated the Department's decision to clarify the definition and requested that the definition be revised to locate the definition within section 62.27 (the only section of 22 CFR Part 62 that uses this term) and to clarify how it applies to non-clinical exchange programs. The Department acknowledges that the definition of this category of participation does not belong in section 62.2, and will define it within section 62.27 in the future.

The Department received one comment related to the definition of the terms "full course of study" and "prescribed course of study," suggesting that language in section 62.2 may be read to contain substantial evidence requirements that may be better located in the relevant sections in Subpart B, rather than in the definitions section of section 62.2. The Department has considered the recommendations and makes no changes to these definitions, since it is of the view that definitions that pertain only to an individual program category should be included in sections of Subpart B that pertain to that individual category.

The Department received one comment concerning the definitions for the terms "internship program" and "student internship program." Because of the confusion experienced in the exchange comment about the similarity of these two terms, it was suggested that the Department further clarify these definitions by annotating the difference between the two types of

internship programs. The Department believes that the definitions of these terms (and the language in Subpart B associated with these two categories) already provides ample clarity. Verifying the definition of a “student internship program” specifies that the internship program must “partially or fully fulfill a student’s post-secondary academic degree requirements.” This does not mean, however, that a current student could not participate in a regular internship program in pursuit of meeting academic requirements. In some situations, therefore, there would be no difference between the two programs, except that the sponsor in one instance would be an academic institution, and in the other, it would be a private business.

One comment was submitted suggesting that the term “management audit” be defined. The Department agrees and adds a definition of “management review,” the Department’s preferred term, to section 62.2.

Five parties commented on the definition of “third party.” Among other things, commenting parties claim that the proposed language disregarded the sub-agent network that a sponsor’s foreign entities (e.g., foreign partners or agents) may use as part of the recruiting process. They added that the language is unclear about what entities are and are not third parties, given the large number of contacts upon which exchange programs rely. The Department recognizes that sponsors contract with or otherwise engage third parties to provide ordinary services in the support of their business operations (e.g., cleaning, payroll processing, and utilities). The Department excludes these types of generic service providers from the definition of “third party” and includes only those that truly relate to the conduct of a sponsor’s exchange visitor program.

As the Department updates the regulations governing specific categories of the Exchange Visitor Program (included in Subpart B), it may articulate further restrictions. In the interim, the Department clarifies, first, that it considers “recruiting” to be conduct of the sponsor’s exchange visitor program. It also considers the functions of the local coordinators (or other similar field staff) to be conduct of the sponsor’s exchange visitor program. Ordinary services in support of sponsors’ business operations (cleaning, payroll processing, and utilities) are not considered conduct. Should there be circumstances that require additional clarification on a category-specific basis prior to the incorporation of these

concepts into Subpart B, the Department will issue email guidance or guidance directives. Accordingly, the Department revises the definition of “third party” to avoid the unintended consequences recognized by the commenting parties.

The Department is updating the definitions to include language that explains the purposes of Forms DS 2019, DS 3036, DS 3037, and DS 7002. As discussed above, this final rule corrects the inadvertent exclusion of “Form DS 3097,” the existing Annual Report form, from the proposed rule. Similarly, the Department inadvertently excluded a definition for the “Office of Exchange Coordination and Compliance,” a part of the Office of Private Sector Exchange (formerly known as the Exchange Visitor Program Services). In addition, the Office of Private Sector Exchange has recently added the Office of Private Sector Exchange Administration to its organization. The two offices, in addition to the existing Office of Designation, oversee the Exchange Visitor Program. This final rule defines these new offices within the Office of Private Sector Exchange.

Finally, in the NPRM, the definition for “Citizen of the United States (entity)” with respect to nonprofit organizations included, among other things, a requirement that the entity be “qualified with the Internal Revenue Service as a tax-exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.” In this rulemaking, this language has been removed, with the result that a nonprofit organization otherwise qualifying as a “United States Person (legal entity)” need not be a tax-exempt organization to participate in the Exchange Visitor Program. The Department realized that there might be taxable nonprofit organizations that might wish to participate in one of the Exchange Visitor Programs. Seeing no reason to retain this barrier to participation, the Department determined there was good cause to remove it in this rulemaking.

### Section 62.3 Sponsor Eligibility

The proposed rule increased from one to three years the required minimum experience in international exchange that an entity seeking designation must show that it, or its proposed Responsible Officer, has. Five parties commented on this proposed new minimum experience requirement. One supported the increase in years of experience, three opined that the new requirement was excessive and restrictive for new programs, and one asked for clarification of whether the

requirement was intended for existing exchange visitor programs as well. Recently, many entities staffed by individuals with minimal experience have applied for designation. These entities and individuals typically have worked with designated sponsors in some capacity or have conducted short-term exchanges, but lack the full scope of experience in all aspects of exchange activities, including the regulatory knowledge critical to administering a successful exchange program. Some exchange visitor categories involve more complex administration processes than others (e.g., the paired and secondary school student categories, which require locating and screening host families and schools, hiring and managing local and regional staff, and close monitoring of placements). The Department believes that three years of experience is the minimum necessary to develop a strong foundation for the conduct of an exchange visitor program. Applicants may demonstrate their experience in international exchange by providing staff resumes, as well as information about the applicant entity’s or individual’s experience and involvement with other cultural exchange programs. The Department adopts the proposed regulatory change for entities applying for designation. The Department will not require sponsors who have been designated for fewer than three years to demonstrate no three years of experience.

The proposed rule included a new provision requiring that an entity applying for sponsor designation undergo a site visit as part of the designation process. Such site visits, conducted by the Department of State or a third party acting on its behalf, were intended to evaluate whether an applicant had sufficient facilities, staff, and infrastructure necessary to conduct a successful exchange visitor program. Ten parties submitted comments on this proposal. Seven parties supported these site visits and three parties opposed them. One of the opposing parties specifically stated that the site visits were unnecessary due to the potential costs. One party believed that site visits should be required of current sponsors as part of the redesignation process and in lieu of a management audit requirement. Another party opined that the requirement was burdensome and stressful for longtime program sponsors and that site visits are too costly and disruptive of daily work schedules. Finally, one party, in response to the assertion that the cost of the site visits would be determined “by the required bi-annual service fee schedule,”

stated that the designation and redesignation application fees were sufficiently high to cover the cost of such site visits.

The Supplemental Information section of the proposed rule also mentioned the on-site reviews of existing sponsors and that the Department currently conducts on-site reviews at its discretion. In response, parties commented that such a requirement would be both burdensome and superficial for a longtime sponsor.

Although the Department considers pre-designation site visits for new applicants to be a useful means of evaluating the ability of potential sponsors to run good exchange programs, as a matter of priority the Department has elected not to require them at this time, but to retain the discretion to conduct them. The Department will continue its practice of conducting on-site reviews of current sponsors as a part of monitoring and compliance of sponsors.

#### Section 62.4 Categories of Participant Eligibility

Five parties submitted comments concerning four categories of participant eligibility, namely, Teacher, Research Scholar, Intern, and Trainee. The Department has addressed the comment about the evaluation of a teacher's eligibility and experience in a separate rulemaking on section 62.24, which was published May 2, 2013. (RIN 1400 AC60; see 78 FR 25669).

Three parties asked the Department to reinsert the term "teaching" into the description of a Research Scholar. The Department agrees to correct this inadvertent deletion.

One party opposed the addition of the term "full-time" to the description of an Intern's enrollment, stating that the current regulations do not stipulate this requirement and that adding "full-time" to the category definition will complicate the process unnecessarily. The Department disagrees with the commenter that the proposed language will complicate the rules. The Department adopts the proposed language, as it is a technical modification conforming to language in this section with the specific regulations currently governing the Trainee and Intern Program. See 22 CFR 62.22(b)(2).

In addition, one party commented on the definition of the Trainee category, arguing that the definition of "Trainee" is inapplicable to corporate program sponsors whose employees primarily administer the training of the exchange visitor. In addition, the comment states, "In such cases, the foreign national need

not satisfy an educational or experience requirements to be classified as a J-1 Trainee. A corporate program sponsor primarily administers training while its employee(s) act as trainer(s) for a minimum of 95% of the exchange visitor's training." In the Supplemental Information section of the Trainee and Intern Final Rule (RIN 1400 AC15; see 72 FR 33669, June 19, 2007), the Department explained that a foreign national may not participate in a trainee or intern exchange visitor program until he or she has acquired sufficient education or related work experience to benefit sufficiently from the available experiential learning opportunities that training programs and internships provide. The Department confirms the definition on the basis that an exchange visitor must meet the requisite education and work experience to be suitable for participation in a training program. Therefore, sponsors must make sure that the selection criteria for their exchange visitors indeed meet the regulatory requirements.

The Department has amended the definition of a teacher to reflect language in a proposed rule. (RIN 1400 AC60; see 78 FR 25669, dated May 2, 2013).

#### Section 62.5 Application Procedure

The Department received a total of 514 comments regarding the proposed collection of Business Information Reports from D & Bradstreet both for new applicants (proposed section 62.5(c)(6)) and for sponsors seeking redesignation (proposed sections 62.7(c)(1) and (2)). Only one commenting party supported this requirement, but, like many other parties, was concerned about the cost. Some suggested that this report requirement would cost several hundred dollars for a medium to large sponsor and would represent a significant net expense for every sponsor. Other parties noted that many camps have never registered for a D & Bradstreet Number because the registration has no business purpose. Accordingly, requiring camps to register and pay for credit reports would be an undue burden on the camp community. The Department received the tilt of the D & Bradstreet report for oversight purposes, and determined that it is outweighed by the potential financial and resource implications for applicants for designation or currently-designated sponsors. Hence, the Department is eliminating the D & Bradstreet report requirement.

The proposed rule identified as the appropriate individuals to sign certain documents (e.g., the certifications

required by Forms DS-3036, as set forth in section 62.5(a)) a sponsor's "Chief Executive Officer, President, or equivalent." One party seeks clarification as to which positions are considered "equivalent" in this respect. The Department amends the rule to reflect that an executive with legal authority to make commitments on behalf of the sponsor (as identified in the organization's governing documents) be the signatory of such documents.

Section 62.5(c)(9) of the proposed rule requires a sponsor's Chief Executive Officer, President, or equivalent to certify that the proposed Responsible Officer and all proposed Alternate Responsible Officers are United States persons (i.e., U.S. citizens or legal permanent residents), and that the sponsor has obtained criminal background reports on all such candidates and has determined their suitability for these positions. Section 62.5(c)(9) requires that a sponsor include in its complete application both SEVIS-generated Citizenship Certifications for the proposed Responsible Officer and proposed Alternate Officers as well as separate evidence (e.g., a copy of a passport or birth certificate, or green card) that they are U.S. citizens or legal permanent residents of the United States. One commenting party supported the U.S. citizenship requirement; another recommended that it apply only to new entities seeking designation; and a third opined that the executive certification, SEVIS certification, and separate evidence requirements were redundant. The Department disagrees that the certifications are redundant. There is only one certification of U.S. citizenship or legal permanent resident status required. The executive certification is required on the SEVIS-generated form to ensure that the criminal background check has been completed on the proposed Responsible Officer and all proposed Alternate Responsible Officers. Providing documented proof is already a required practice and does not pose an additional burden on the sponsor. Therefore, the Department adopts the language of the proposed rule.

With respect to the overall application process, one party commented that the requirements for submission of applications for designation and redesignation should be differentiated by program types, since colleges and universities already have unique requirements that must be met. Another party suggested that the required information should place an unnecessary administrative burden on established, low-risk entities. The

Department has found that the specific information it requests is necessary to evaluate an applicant's initial or a sponsor's ongoing qualifications to participate in the Exchange Visitor Program, with regard to the program type or the entity's legal status. Accordingly, and to ensure equal treatment of all applicants, the Department adopts the language of the proposed rule.

A single party commented on the definitions of "financed directly" and "financed indirectly," as set forth in the proposed rule, noting that current regulations do not require certain publicly held companies to disclose the names, addresses, and citizenship or legal permanent resident status of their Boards of Directors or the percentage of stock/shares held in order to demonstrate the entity's U.S. citizenship status. The Department determined that this comment appears to have been directed to the application process requirements and not the financial support associated with an exchange visitor. The Department clarifies that the proposed rule already exempts publicly held U.S. companies whose shares are traded on a U.S. stock exchange from this requirement.

In addition, the Department deletes Appendices A and B to Part 62 in light of the collection of information through Form DS-3036 (*Exchange Visitor Program Application*) (OMB collection 1405-0147).

**Section 62.6 Designation**

The Department received three comments regarding sponsor designation. Comments ranged from statements indicating that these requirements should be applicable only to new entities seeking designation to requests that the Department differentiate exchange visitor program requirements by category, because colleges and universities must meet other requirements in order to operate. Some comments also argued that the information being requested would place an unnecessary administrative burden on established, low-risk entities. The Department respectfully disagrees and finds that the requested documentation is necessary to complete a full review of all new applications for designation on a consistent basis across all categories. It would be tremendously complex to have the Designation requirements be varied across the 15 categories of the exchange visitor program.

One party commented on the proposed flexibility of the Department to redesignate a sponsor for one or two years, at its discretion, opining that all

sponsors should be redesignated for two years. Four parties commented that the cycle should be set at the original five years. Under section 502(b) of Public Law 107-173, enacted March 14, 2002, the Department of State is to conduct a periodic review of sponsors of exchange visitors at least every two years. The legislation, however, does not prohibit the Department from reviewing a sponsor's qualifications more frequently. For example, experience has demonstrated that there are a number of sponsors having technical infractions that are of enough concern to cause the Department to withhold a longer period of designation until that sponsor has corrected these problems. The Department believes that it can work with such sponsors to assist them in improving their program operations in this area. The one-year redesignation informs a sponsor that it needs to correct any issues identified, but also creates a time period after which the Department will formally check the content of the sponsor's improvement and determine whether it indeed did it

include in order to opportunity to include necessary to consider that it to demognated sponsors t

sponsors in the Summer Work Travel category of the Exchange Visitor Program must submit the names of all foreign entities to the Department in accordance with 22 CFR 62.32(p)(2).

Finally, the Department proposed requiring sponsors to confirm or reconfirm the suitability of proposed or current Responsible Officers and Alternate Responsible Officers, by requiring them to undergo criminal background checks. One party objected to requiring current Responsible Officers and Alternate Responsible Officers to repeat the process. The Department will require designated sponsors to obtain these reports every four years; sponsors that are redesignated for a single year, however, will be required to repeat the process for their next designation application.

The Department anticipates that thorough criminal background reports will provide management decision makers with sufficient information to determine whether candidates for Responsible Officer and Alternate Responsible Officer positions that work with a national security computer system have criminal records or other blemishes on their pasts that may make them unsuitable for the proposed positions. Furthermore, the criminal background check requirement reflects the importance of such individuals in a sponsor's organization and their right of access to, and ability to manipulate data within, a controlled federal government database that tracks foreign nationals participating in the Exchange Visitor Program. In addition, protection of exchange visitor personal data is important to the health, safety, and welfare of program participants.

Responsible Officers and Alternate Responsible Officers are the only individuals authorized to log onto SEVIS, issue and sign a Form DS-2019, the "Certificate of Eligibility for Exchange Visitor (J-Nonimmigrant) Status," and otherwise update the system with timely and accurate information. Thus, it is of vital importance that all individuals with access to SEVIS be properly vetted. The Department will not require an additional background check for Responsible Officers and Alternate Responsible Officers who are working for a federal or state government entity and have already passed a government background check.

Nine out of 24 comments specifically addressed the paperwork, including proof of criminal background checks, which must be submitted as part of the redesignation application, deeming it excessive. Except on an ad hoc basis,

the Department of State has decided not to require applicants or sponsors to submit the results of the criminal background checks. Rather, the Chief Executive Officer, President, or equivalent must submit a certification that the sponsor's Responsible Officer and Alternate Responsible Officer(s) have undergone criminal background checks within the last four years or when a new sponsor files a designation application. The proposed regulation did not set specific requirements for a sponsor to follow with respect to report format, screening company, or assessment of criminal background check reports. The Department does, however, require a sponsor to utilize the services of a bona fide background screener. Although the Department does not endorse any particular screener or screening organization, it identifies, for sponsors' convenience, an organization that can help identify potential background companies: The National Association of Professional Background Screeners (NAPBS). NAPBS has more than 500 members (a list of which is located at [www.NAPBS.com](http://www.NAPBS.com)), all of which are expected to adhere to the NAPBS code of conduct governing background investigations and confidentiality.

The Department emphasizes that obtaining a criminal background report does not in and of itself confirm an individual's suitability to act as a Responsible Officer or an Alternate Responsible Officer. A sponsor should consider the results of such a report, and other factors, in making a reasoned judgment about an individual's fitness to assume either of these two roles.

#### Section 62.8 General Program Requirements

Only one party commented on the general program requirements section. Specifically, the commenting party proposed that the minimum number of exchange visitors required for program designation be raised from five, as currently specified in section 62.8(a) of the proposed rule, to ten. The party also asked the Department to specify what constitutes the "good cause" that would permit an applicant to run an exchange program with fewer than five exchange visitors. The Department established a minimum number of exchange visitors based on the smallest program size; it believes justifies the resources it must expend to evaluate a sponsor's redesignation application and monitor its program on an on-going basis.

Increasing the minimum size would have no impact on any parties except those small programs themselves, and could potentially and unnecessarily

remove niche sponsors from the program. Accordingly, the Department will not increase the minimum number. With respect to "good cause," each situation is fact-specific, and, since the Department wishes to maintain maximum discretion, the Department has decided to delete the reference to "good cause." With the exception of the removal of "good cause," the Department adopts the current language of the proposed rule.

#### Section 62.9 General Obligations of Sponsors

The Department received a total of 56 comments regarding various general program obligations of sponsors. Many of the comments related to the appointment of Responsible Officers and Alternate Responsible Officers.

One party commented on the payment bond requirement in section 62.9(e)(3), suggesting that the regulations should both provide objective criteria regarding when and what kind of bond may be required, and should exempt programs that have proven their financial stability from the bond requirement. The Department notes that this provision is not new. Although the Department has not required a sponsor to secure a payment bond for many years, it recognizes that there may be a number of circumstances in which it might be necessary to do so. For example, the Department could have a reason to believe that a sponsor does not have either the resources to support an existing exchange visitor population or the inclination to fulfill its monitoring and support obligations. Unfortunately, such circumstances might befall even a long-standing sponsor with an historical record of financial stability and program support. To provide another example,

when the Department redesignates a sponsor for a single year, it may wish to require that sponsor to obtain a bond that provides sufficient funding to cover the cost of supporting the sponsor's current year exchange visitors and/or transferring the next year's exchange visitors to other sponsors. Were the sponsor's performance not to improve and were the Department to initiate a suspension or other serious sanction against the sponsor, a payment bond could help ensure that there would be sufficient funding available to take care of potentially stranded exchange visitors. The Department, therefore, must retain the flexibility to require all sponsors to secure payment bonds at the Department's discretion.

Three parties addressed the provision in section 62.9(f)(2) that requires a sponsor to ensure that its employees, officers, agents, independent

contractors, third parties, volunteers, or other individuals associated with the administration of its exchange visitor program are adequately qualified and trained and comply with the Exchange Visitor Program regulations and immigration laws. One party stated that this regulation should be expanded to include foreign nationals who work as "agents or representatives" of sponsors. Although the Department believes that this language is already sufficiently broad to include any party that a sponsor engages to assist in its exchange visitor program oversight and operations, it modifies the language to change "other individuals" to any "other individual or entity" to avoid confusion about this broad sponsor obligation to ensure the regulator's awareness and compliance of entities it may engage to assist.

Two other parties opined that, in order to adequately train staff and others working in the SEVIS system, sponsors must be permitted to employ more than ten Alternate Responsible Officers. It is not clear how individuals must have access to SEVIS in order to be capable of training others on Exchange Visitor Program regulations. Regardless, as it has noted above, the Department will accept requests for additional Alternate Responsible Officers on a case-by-case basis.

Eight parties opposed the proposed criminal background check requirement for Responsible Officers and Alternate Responsible Officers in proposed section 62.9(g)(1). Fifteen parties supported it, although of those, thirteen parties recommended that the background checks not be required annually and that Responsible Officers and Alternate Responsible Officers of current designated sponsors be "grandfathered" in. The Department considered this recommendation and has decided that current Responsible Officers and Alternate Responsible Officers will need to obtain a background check before their sponsor organization is next redesignated after the promulgation of this final rule and maintain background check paperwork on Responsible and Alternate Responsible Officers that is no older than five years at any time. New sponsors seeking designation by the Department must conduct new background checks on their proposed Responsible Officers and Alternate Responsible Officers. Thus, in accordance with section 62.5(c)(8)(iii) below, an entity seeking designation must obtain criminal background reports on all proposed Responsible and Alternate Responsible Officers, certify that it has done so, and maintain

records that are no older than five years at any time. In those few instances where the Department is concerned about a sponsor's regulatory inconsistencies related to their administration of the program and redesignates it for a single year, such sponsor should be required to obtain reports for that year.

One commenting party suggested that if a sponsor were merely required to maintain records of these criminal background checks and submit them to the Department only on request, it would undermine the rationale for requesting these checks because they would not be trusted. However, the Department intends for sponsors to see their own judgment and internal standards to assess the suitability of individuals for these jobs, based on whether a report revealed any information about a candidate's past that would disqualify him or her from assuming a position of trust and responsibility.

Nine of ten parties commented that the proposed maximum of ten Alternate Responsible Officers specified in section 62.9(g)(1) is not large enough, and that larger sponsors with more exchange visitors should be permitted to have more than ten Alternate Responsible Officers. The Department will explore the idea of expanding the maximum number of Alternate Responsible Officers for sponsor organizations that request additional officers and demonstrate a need for them.

Two parties addressed the requirement in section 62.9(g)(2) that Responsible Officers and Alternate Responsible Officers be employees of the sponsors. One comment, from a Rotary organization, explained that Rotary sees only volunteers, not employees, as Responsible Officers and Alternate Responsible Officers. The other comment, from a large corporation, raised the concern that company lawyers and paralegals would no longer be permitted to serve as Alternate Responsible Officers under the new rules. The Department has reviewed this comment and has determined that it would prefer that Responsible Officers and Alternate Responsible Officers be employees of the sponsor organization. However, an applicant entity or a sponsor wishes to nominate an individual who is not an employee as an Alternate Responsible Officer may make a request to the Department, which the Department may approve in its discretion. One important factor that may qualify a volunteer as an Alternate Responsible Officer might be that person's longstanding, close, and

continuing relationship with the sponsor organization. Another factor might be that the volunteer works for a sponsor organization that has a predominantly volunteer exchange model.

Ten parties commented on the requirement in section 62.9(g)(3) that sponsors replace outgoing Responsible Officers and Alternate Responsible Officers within ten calendar days, suggesting that this requirement is unrealistic. Comments indicated, for example, that it takes a long time to hire new staff, making it not feasible to speedily replace personnel. The Department understands these concerns, but maintains the requirement. The Department is not suggesting that the sponsor organization hire a new employee in this timeframe, but that it designate and provide documentation for an existing staff member to be placed in the position on a temporary basis until a permanent replacement is hired. Ten days is the amount of time that the Department believes that a Responsible Officer/Alternate Responsible Officer could go uncompleted; after this time period, someone must take on the Responsible Officer/Alternate Responsible Officer monitoring workload at the sponsor organization. The Department wishes to reiterate that a sponsor must have in place and maintain a Responsible Officer and a minimum of one Alternate Responsible Officer at all times. If the Responsible Officer leaves, the sponsor may wish to designate an existing Alternate Responsible Officer to that position on a temporary basis. If the only Alternate Responsible Officer leaves, the sponsor should select another existing employee or officer to be an Alternate Responsible Officer. The potential Responsible Officer/Alternate Responsible Officer needs to undergo the criminal background check and be trained in the system, unless it is a case of an Alternate Responsible Officer becoming the Responsible Officer temporarily. In either case, and regardless of the reason, when a Responsible Officer or Alternate Responsible Officer departs the organization, the sponsor must ensure that the departing person's access to SEVIS is terminated as quickly as possible, but in no event later than ten calendar days after departure. This action serves to limit unauthorized SEVIS access by a person who is no longer inolved with the administration of a sponsor's exchange visitor program and, therefore, protects all involved parties, as well as U.S. national security. The Department reminds sponsors that they must make it their highest priority



to replace a departing Responsible Officer as quickly as possible as this role is critical to the stewardship of the sponsor's exchange visitor program.

In addition, the Department deletes the second sentence of section 62.9(a); the regulations governing the imposition of sanctions are set forth in 22 CFR 62.50. The Department also deletes Appendix C to Part 62 in light of the collection of information through Form DS-3037 (*Update of Information on a Sponsor's Exchange Visitor Program*) (OMB collection 1405-0147).

### Section 62.10 Program Administration

Ten different parties commented on the proposed requirement in section 62.10(a)(2) that exchange visitors be proficient in the English language, "as measured by an objective measurement." All but one of these parties recommended maintaining the current language (i.e., "The exchange visitor possesses sufficient proficiency in the English language to participate in his or her program.") One party recommended that the Department adopt the test set forth in the regulations for the Trainee and Intern categories (Section 62.22(d)(1)). The Department believes that not only is an exchange visitor's success in his or her particular program dependent upon sufficient English language capability, but good English communication skills are essential to ensure the health, safety, and welfare of exchange visitors. Moreover, the Department continues to find that too many exchange visitors lack sufficient English proficiency to perform their jobs or complete their academic programs; to navigate daily life in the United States; to read and comprehend program materials; to understand fully their responsibilities, rights, and protections; and to know how to obtain assistance, if necessary. Accordingly, the Department adopts a modified version of the language governing the Trainee and Intern categories as the program-wide standard for determining the English language proficiency of exchange visitors. The Department reminds sponsors to retain evidence of how the measured applicants' English language proficiency so that it may be made available to the Department upon request.

The proposed revised sections 62.70(b) and (c) to sections 62.10(d)(3) and (4) and required that sponsors report in SEVIS an exchange in an exchange visitor's U.S. address, telephone number, email address, or primary site of activity within ten business days of being notified by the exchange visitor. Of the fifteen parties

commenting on this proposed requirement, the majority opined that ten days are not sufficient time to update records, given the number of exchange visitors in programs and the other responsibilities of the Responsible Officer and Alternate Responsible Officers. Since the inception of SEVIS, sponsors are required to update SEVIS records within 21 days. Upon receipt of current SEVIS reporting requirements and the Department's legislative mandate to ensure that sponsors maintain SEVIS, the Department holds the proposed language and requires sponsors to report in SEVIS within ten business days of notification by an exchange visitor of an change in address, telephone number or email address.

Thirty parties opposed the proposed requirement in section 62.10(d)(5) that sponsors report the actual and current U.S. address and email address for accompanying spouses and dependents. They argued that such a requirement would be unduly burdensome, that the information could be obtained from the Department of Homeland Security (DHS), and that the requirement should be postponed until the net version of SEVIS is operational, at which time exchange visitors can enter this information directly into SEVIS themselves. Similarly, 31 parties objected to the proposed requirement in section 62.10(d)(6) that sponsors report Employment Authorization Document (EAD) information in SEVIS for accompanying spouses and dependents. They argued that sponsors do not have this information, that this information is not part of the employment authorization process, or that, in an event, U.S. Customs and Border Protection should collect this information. To be "accompanying," spouses and dependents with fee exemptions (e.g., dependents are in a boarding school) should be living with the exchange visitors. The Department finds that collection of the accompanying spouse and dependents' email addresses is necessary for emergency contact information and holds this requirement. The Department deletes proposed section 62.10(d)(6) regarding Employment Authorization Documents from this final rule; however, the Department will receive the requirements of this proposed section at the time another version of SEVIS is implemented.

In order to protect the health, safety, and welfare of exchange visitors, language has been inserted into the regulation making it unlawful for sponsors or their foreign entities to retaliate against exchange visitors if the

should make complaints about the program.

### Section 62.11 Duties of Responsible Officers and Alternate Responsible Officers

Proposed section 62.11(a) would require Responsible Officers and Alternate Responsible Officers to be thoroughly familiar not only with the Exchange Visitor Program regulations and Department codes required for issuing Forms DS-2019, but also with "all federal and state regulations pertaining to the administration of its exchange visitor program, including the Department of State's and Department of Homeland Security's policies, manuals, instructions, guidance and SEVIS operations relevant to the Exchange Visitor Program," as well as federal, state and local laws pertaining to employment, including the Fair Labor Standards Act, if the exchange category overseen has an employment component. Five commenting parties encouraged the Department to develop clear, up-to-date policy and interpretive guidance on all relevant laws and regulations, and to make such guidance easily available to program sponsors. In an attempt to capture relevant Department guidance, regulations, and other information, the Department launched a new Web site design last year, and all such information can now be accessed under one section, at <http://j1visa.state.gov/sponsors/current/regulations-compliance>. Sponsors nonetheless may need to research some federal, state, and local requirements that may impact their exchange visitor programs.

One commenting party expressed concern about proposed section 62.11(d), which directs sponsors to ensure that their spam filters do not block reception of SEVIS or communications from either the Department of State or the Department of Homeland Security. The party noted that it is not always possible to know if messages are being sent in the first place and suggested that multiple messages be sent, including a paper notice if there is no response from the sponsor. The proposed regulation is consistent with the requirement set forth in 8 CFR 214.3(e)(1) that goes to electronic notices sent to Student and Exchange Visitor Program (SEVP) certified schools. Paper notices will be sent at Departmental discretion in certain circumstances, such as when sponsors have notified the Department that their electronic systems will have outages within a specific timeframe. Therefore, the Department adopts the language of the proposed rule.

### Section 62.12 Control of Forms DS-2019

The proposal in section 62.12(b)(1)(i) stated that a sponsor must certify that each prospective exchange visitor is eligible, qualified and accepted into the sponsor's exchange visitor program. The parenthetical language implies that the sponsor has secured a placement, by obtaining a camp offer letter or a written secondary student school acceptance, before issuing a Form DS 2019. A total of 25 parties, mostly from the secondary school student and camp counselor communities, commented on this proposed change, only one of which supported it. A majority of those commenting expressed concern that if program pre-placement (e.g., a camp offer letter or a written secondary student school acceptance) were required for all exchange visitors, many exchange visitors would be unable to secure visas because the visa process is so slow during high school seasons. The secondary school student regulations set forth under section 62.25, for example, permit sponsors to place students up to August 31 each academic year. Due to high volume of visas processed every summer, waiting until the end of August when a school placement is confirmed does not permit ample time for the visa to be processed and travel to the United States prior to the first day of school.

The Department believes that there are many advantages to its proposal. First, it would prevent sponsors from cancelling programs at the last minute due to their inability to secure program placements (and a prospective exchange visitor would know that there is no guarantee of a program until he or she received a Form DS 2019). It also would lessen the potential for applicants to obtain and secure visas without ever intending to participate in the Exchange Visitor Program. Finally, it would require sponsors to secure placements earlier in the season than they usually do, allowing more time for planning and orientation than is now available.

Nevertheless, without further analysis, the Department cannot assess whether posts would be able to timely grant all the necessary visas in order to avoid anticipated shrinkage in program sizes. In light of this, the Department is eliminating the proposed parenthetical language "(e.g., has an offer letter from a camp, a written acceptance from a secondary school)" from section 62.12(b)(1)(i). The Department acknowledges that, in certain categories sponsors are able to meet the regulations by accepting exchange visitors into their program

with the securing final placement prior to issuing a Form DS 2019. It is important to note that certain categories, such as Summer Work Travel, secondary school students, interns and trainees, have their own criteria regarding placements within the specific program provisions set forth in Subpart B.

Four parties opposed the new language in section 62.12(d)(1) regarding annual allotment of Forms DS 2019, arguing that a limited annual allotment might result in a sponsor not having enough forms to meet market demand. The Department notes that the process for submitting an annual request for the Department for allotment of Forms DS 2019 or the request for additional Forms DS 2019 (i.e., an expansion) is no different than the process that has been in place since the publication of the original 1993 regulations. The Department started "allocating" Forms DS 2019 before the advent of SEVIS. The transition to the electronic generation of such forms to be printed on a sponsor's printer, however, does not eliminate the need for the Department to determine how many forms a sponsor may have and thus, how many exchange visitors a sponsor may bring to the United States each year. Indeed, the Department assesses each sponsor's financial and staffing resources in an effort to ensure that a sponsor does not sponsor more exchange visitors than it can adequately monitor and support. The Department, therefore, will issue Forms DS 2019 to sponsors based on the current need of the sponsor, how the Department issues program expansion as a policy issue, and an upcoming expressed need of sponsors in their implementation of the program.

The commenting parties noted that the program size expansion request procedures in section 62.12(d)(2) are unclear and require further clarification from the Department. The Department respectfully disagrees. The language in the proposed regulations parallels the language in section 2.4.2 of the *User Manual for Exchange Visitor Program Sponsor Users (RO/ARO) of SEVIS Version 6.10: Volume 1 Forms DS-3036 and DS-3037*. Sponsors have long been required to describe their source of planned program growth, staff increases, training capacity, current financial status, and provide other information on how they will handle program growth (*id.* at p. 46). Accordingly, the Department will adopt section 62.12(d) as proposed.

Thirteen commenting parties addressed the prohibition in section 62.12(e)(2) against forwarding, via facsimile

or other electronic means, copies or PDFs of signed or unsigned Forms DS 2019 to an unauthorized party. The parties noted that, although they appreciate the importance of keeping copies of government documents secure, the prohibition as written in the proposed rule is too rigid. One party observed that the proposed regulation does not clearly indicate if there are any "authorized parties" other than the Department of State and the Department of Homeland Security and queried whether, for example, an exchange visitor whose DS 2019 is stolen is an "authorized party" for purposes of receiving a copy of his or her own scanned DS 2019. Another commenter noted that because the original DS 2019 must be signed by the sponsor in blue ink, a precaution that permits anyone using the DS 2019 to distinguish readily an original from a photocopy, there is no reason to restrict a sponsor's ability to transmit a facsimile or PDF to an entity other than the Department of State or the Department of Homeland Security. In light of current technologies that make it easy to create counterfeit copies of documents, the Department does not wish for there to be any electronic or paper replicas of Forms DS 2019 to be available to anyone, hence, the only authorized parties are the Departments of State and Homeland Security. It would be relatively simple to remove a black signature from a copy of a Form DS 2019 and replace it with an original blue ink signature. While sponsors are certainly authorized to maintain copies of these forms for their internal files and may be called on to provide such copies to a requesting Department, the only other "versions" of Forms DS 2019 should be the original documents maintained by the exchange visitors and their accompanying spouses and dependents. Accordingly, the Department will adopt the proposed regulation as drafted.

Three commenting parties opposed the requirement in section 62.12(e)(5) that a sponsor ask exchange visitor applicants to return unsigned Forms DS 2019. Two of the parties pointed out that SEVIS makes this requirement obsolete. The Department agrees as long as sponsors promptly change the status of the SEVIS records associated with the unsigned Forms DS 2019 to "invalid." Otherwise, individuals with malicious intentions could use a Form DS 2019 to obtain a visa to illegally enter the United States. While the Department will withdraw the requirement set forth in section 62.12(e)(5), it reminds sponsors of the

critical importance of maintaining current and accurate SEVIS records.

In addition, the Department deletes section 62.12(b)(2)(iii); the regulations governing the imposition of sanctions are set forth in 22 CFR 62.50.

### Section 62.13 Notification Requirements

The Department received a total of 18 comments regarding various aspects of the notification requirements section. One party stated that the wording of section 62.13(a)(1) mistakenly implies J-2 accompanying spouses and dependents will need to be validated separately from the J-1 exchange visitors they accompany or join, even though J-2s are automatically validated in SEVIS when J-1s are validated. Under the current SEVIS, a J-2's record is automatically changed from "Initial" to "Active" status upon the validation of the associated J-1 record. Accordingly, the Department modifies the language of section 62.13(a)(1) to clarify that separate validation is not necessary.

Several parties commented on the requirement proposed at section 62.13(a)(4) that sponsors track and report early departure of accompanying spouses and dependents, stating that they had no system to track them, and that "this requirement goes beyond regulatory requirements." The Department disagrees. There have been 30,000 J-2 visa holders that entered the United States on the Exchange Visitor Program since the program's inception. Sponsors of exchange visitors are equally responsible for tracking the whereabouts of accompanying spouses and dependents to whom they also issued Forms DS-2019. One commenting party, however, explains that there is no regulatory requirement for the J-1 exchange visitor to report to the sponsor the travel plans of his or her accompanying spouse and dependents. The Department reminds sponsors that it is incumbent upon them to draft and implement programmatic rules that allow them to satisfy the requirements in Part 62. In other words, a sponsor can easily make it a condition of bringing an accompanying spouse and dependents that the exchange visitor must report if and when they depart the United States prior to the exchange visitor. Accordingly, the Department retains the proposed language for section 62.13(a)(4).

Four parties submitted comments about the requirement proposed in section 62.13(b)(2) that a sponsor must update SEVIS to reflect any change to an exchange visitor's site of activity. This is not a new requirement: current

section 62.70(a)(5) requires a sponsor to "[u]pdate SEVIS to provide information on any change of visitor, spouse, or dependent child for whom a SEVIS record has been created." The purpose of the new language in section 62.13(b)(2) is to ensure that sponsors understand that an exchange visitor's site of activity is included in the SEVIS information that they are required to update.

As "site of activity" is a newly defined term, the Department understands that additional guidance is needed to inform sponsors how to accommodate certain situations. One university expressed concern at the burden of updating the (secondary) site of activity field for an exchange visitor who goes to another site "for a few days at most" to lecture or consult. Proposed regulations at section 62.13(b)(2) require a sponsor to update an exchange visitor's site of activity within ten days. Clearly, changes in activity locations that last only a few days would not need to be captured in SEVIS. Keeping in mind that a purpose of maintaining a current site of activity in SEVIS is to enable law enforcement to locate exchange visitors, in the above example, it is likely that someone at the professor's primary site of activity could provide law enforcement with the professor's itinerary. However, if an individual had both a permanent office and a lab site, it would be appropriate to enter as the primary address, the one at which the exchange visitor is primarily located, and to enter the other as secondary. The collection of this data will remain in the final rule.

When a nonimmigrant enters the United States and reports to his or her exchange visitor program sponsor, the sponsor must note this occurrence in SEVIS through the validation process, thereby demonstrating that the exchange visitor is currently present in the United States and is participating in his or her exchange visitor program identified on the Form DS-2019 used to enter the United States. For the purpose of this rulemaking, the 30-day requirement for validation remains unchanged, with the exception of those exchange visitors participating in a program of which the maximum duration of the program is less than 30 days. Section 62.8(b), regarding minimum duration of program, requires a sponsor, other than a federal government agency, to provide each exchange visitor, with the exception of Short-term Scholar, with a minimum period of participation in the United States of no less than three weeks. When an exchange program is less than three weeks, the requirement to validate the SEVIS record within 30

days of the Program Start Date does not work. Therefore, the SEVIS record with a program duration of less than 30 days must be validated before the Program End Date listed in SEVIS. Failure to validate a nonimmigrant's SEVIS record (e.g., before the Program End Date for program durations of less than 30 days or within 30 days of the Program Start Date for programs with a program duration of 30 days or greater) will result in the automatic change of the status of a SEVIS record to "Invalid" (when no Port of Entry information is contained on the SEVIS record) or "No Show" (when Port of Entry information is present on the SEVIS record). A record in "Invalid" status indicates that a foreign national did not see the associated Form DS-2019 to enter the United States. A record in "No Show" status indicates that the nonimmigrant entered the country, but failed to commence participation in the exchange visitor program for which he or she entered the United States. It is important to recognize that a SEVIS record in "No Show" status is a negative indicator that alerts the proper authorities that the individual failed to comply with the requirements of the Exchange Visitor Program regulations by entering the United States with no intention of reporting to his or her sponsor. Sponsors must see caution and timely validate SEVIS records or they could change to "No Show" status and unintentionally create a negative nonimmigrant history for the exchange visitor, thereby impacting his or her application for visas in the future.

Sponsors should realize that Invalid and No Show records will appear on the sponsor's Form DS-3097, Annual Report, and may be of concern to the Department's Office of Designation when processing Form DS-2019 allotment requests or applications for redesignation. Failure to validate SEVIS records also may impact a sponsor's allotment of available SEVIS records and the administrative actions that are required (by both the sponsor officials and the Department of State officials) to correct the SEVIS status of the records; and is evidence of a sponsor's failure to comply with program regulations.

Three parties commented on proposed section 62.13(a)(3), which provides that a sponsor must report in SEVIS any withdrawal from or early completion of an exchange visitor's program. One party suggested changing the functionality of SEVIS to allow a sponsor to enter a retroactive date in the "Complete Program More than 30 Days Before Program End Date" field. The second party urged the Department to make reference to the impending

paperless environment so that “SEVIS can be programmed to implement Exchange Visitor Program regulations, rather than expecting the regulations to be amended later in response to SEVIS programming.” The third party, a sponsor in the research scholar category, suggested omitting this provision from the Final Rule, arguing that sponsors sometimes overestimate the amount of time a research project can take, making it more sensible to reactively change the program end date rather than report that the program was completed early. The Department has carefully considered these comments, and will adopt the language of the proposed rule. The Department can anticipate neither the implementation date nor the final characteristics of a SEVIS update. Accordingly, it must adopt regulations that address the current state of technology and guidance and/or new regulations after the technologies change.

Current section 62.13(c)(8) requires sponsors to report the loss or theft of Forms DS 2019 to the Department by telephone. Two commenting parties asked the Department to reconsider this requirement and instead permit sponsors to report this information via email or in SEVIS. The Department agrees with this suggestion and, accordingly, will change section 62.13(c)(8) to permit such information to be reported by telephone or email.

Section 62.13(d), which has been changed to require sponsors to inform the Department of an serious problem or controversy on or before the next business day, inspired two comments. One party asked the Department to keep the language “promptly” rather than change the operative language to “on or before the next business day.” The Department believes that “promptly” is too vague a standard to guide sponsors in the event of a serious problem or controversy. Thus the Department will adopt the wording “on or before the next business day.” The other party asked that the Department more explicitly define or provide examples of what might constitute a “serious problem or controversy.” Examples of such instances are death or serious injury of an exchange visitor, sexual abuse, or another event that could bring the Department or the Exchange Visitor Program into notoriety or disrepute.

In addition, the Department deletes section 62.13(b)(1)(iii); the regulations governing the imposition of sanctions are set forth in 22 CFR 62.50.

#### Section 62.14 Insurance Coverage

This rule increases by \$50,000 the level of insurance coverage a sponsor must require its exchange visitors (and accompanying spouses and dependents) to maintain for the duration of their exchange visitor program participation, as reflected on their Forms DS 2019 (i.e., from the “Program Begin Date” through the “Program End Date”). Many sponsors already require insurance policies for their exchange visitors at a higher level of coverage than the current regulations require. Although the regulations do not require “entry to entry” insurance coverage, the Department strongly encourages sponsors to offer this highly desirable coverage.

The Department received a total of 47 comments regarding the insurance provisions. Of those, 37 parties supported the increased amounts, nine parties opposed the proposed changes, and two parties neither agreed nor disagreed but made further inquiries about acceptable ratings. The majority of the comments recognized the need for an increase in the health insurance coverage amounts. However, some commenters indicated that the amount of coverage of \$200,000 per accident or illness was too high and that \$100,000 would be sufficient. The Department has further reviewed insurance levels and recommendations and agrees that \$100,000 is an acceptable level of coverage per accident or illness. The Department also has adopted, as prompted by two of the comments, two additional insurance ratings: the “A-” rating by Fitch Ratings, Inc. and the “A3” rating by Moody’s Investor Services. Thirteen of the commenting parties asked the Department to delay or provide a grace period for implementation of the new insurance requirements in order to give sponsors time to enter into new contracts with insurance carriers. The Department understands that current contracts must be fulfilled and that it will take some time to put new agreements in place. Therefore, the new insurance requirements will go into effect on January 1, 2015. Three comments suggested deletion of proposed section 62.14(j), which gives the Secretary of State the authority to update the mandatory minimum levels of insurance coverage. The comments argued that this power is too broad and that, in an event, changes to minimum insurance coverage requirements should go through the full regulatory review process. The Department agrees and has deleted this provision from section 62.14.

#### Section 62.15 Reporting Requirements

Sponsors must submit annual reports to the Department, to be generated through SEVIS. Such reports must be filed on an academic (July 1–June 30), calendar (January–December 31), or fiscal (October 1–September 30) year basis, as directed by the Department. The annual report has recently been updated in SEVIS to reflect the changes made on the Department’s Form DS 3097 (Annual Report). The statistical calculations for the number of exchange visitors each year is taken directly from SEVIS records. Sponsors must input answers to the narrative questions on Form DS 3097 in SEVIS; however, the sponsor must continue to print the form, sign the certification, and mail it to the Department until the implementation of the next version of SEVIS. In addition, the Department deletes Appendix D to Part 62 in light of the collection of information through Form DS 3097 (Annual Report Form) (OMB collection 1405-0151).

The Department received 11 comments regarding section 62.15(e)(2) of the proposed rule (now identified as section 62.15(a)(5)(ii) in this rulemaking), eight of which opposed the stipulation that only the Chief Financial Officer of an academic, medical, and private sector entity is authorized to sign its annual report. The annual report form already permits the Responsible Officer’s signature; therefore, the Department revises section 62.15(a)(5)(ii) to permit an institution’s Chief Executive Officer or Responsible Officer to sign the institution’s annual report.

To strengthen program oversight, proposed section 62.15(e)(3) (now identified as section 62.15(b) in this rulemaking) requires management representatives, currently titled in the A Pair category, for Private Sector Program sponsors, which includes the categories of Trainees, Interns, Teachers, Secondary School Students, Camp Counselors, A Pairs, Alien Physician, and Summer Work Travel. The Department received 59 comments on the proposed management audit requirement, 23 of which were in favor of the new requirement, 35 of which were opposed, and one of which requested clarification on the cost and a list of recommended auditors. Ten of the three comments recognized the value of a management audit but still raised concerns about the financial impact of such audits on small entities, the financial impact on organizations that hold designations in multiple categories of exchange, and the requirement that audits be conducted annually.

A management review or audit, as it is previously referred to, is a review of a sponsor's internal controls. The management review identifies weaknesses in operating procedures in the conduct of an organization's business and in meeting regulatory requirements in the administration of its exchange visitor program or programs. Requiring a management review would give the Office of Exchange Coordination and Compliance an additional tool to assess the extent to which designated private sector exchange sponsors comply with the Exchange Visitor Program regulations. The Department will provide sponsors with a format and schedule of the management review timeframe. The Department intends to roll out the management reviews beginning with the secondary school student category. Initial management reviews will be due for 6 months after the end of each category's annual cycle. Management reviews for the other categories will be implemented on different schedules in order to spread out the deadlines over a 10-year period. Sponsors that administer exchange programs funded by federal, state, or local governments (e.g., public school systems) are exempt from the management review requirement. These exchange programs are a direct under other governmental requirements.

Sponsors are required to engage independent auditors to perform the management reviews, including reviewing internal operating procedures of the sponsor and the files of a statistically valid sampling of the sponsor's exchange visitors.

Three commenting parties set forth general concerns about proposed section 62.15(f) (now identified as section 62.15(a)(6) in this rulemaking), which requires sponsors to report a numerical count, by category, of all exchange visitors participating in the sponsor's program for the reporting year. Specifically, the comments called into question the accuracy of such data before an SEVIS revision were to go into effect. The Department and SEVIS have addressed these concerns since publication of the proposed rule. The new annual report form, Form DS-3097, was implemented in SEVIS in April 2011.

Five commenting parties also opposed the characterization, in the Supplemental Information section of the proposed rule, of certain exchange visitor program categories as "high risk." These parties stated that, although the exchange committee understands the special vigilance required for certain programs where the majority of

exchange visitors are minors, the Department has previously noted on several occasions that the overall number of problematic incidents is low. Using this language gives an inaccurate impression to the general public, policymakers, and U.S. embassy staff who may not be familiar with these programs. The Department agrees and eliminates from the Final Rule language describing certain Exchange Visitor Program categories as "high risk."

#### Section 62.16 Employment

As discussed above with respect to section 62.10, the Department has eliminated the requirement that sponsors collect Employment Authorization Document numbers for accompanying spouses and dependents. Accordingly, section 62.16(c) has also been amended to remove all reference to the collection of Employment Authorization Document numbers. Further, the language has been updated to reference the Department of Homeland Security and not the non-defunct Immigration and Naturalization Services (INS).

**Note:** Current section 62.17 Fees and Charges remains unchanged.

#### Regulatory Analysis

##### *Administrative Procedure Act*

The Department of State is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from sections 553 (Rulemaking) and 554 (Adjunctive) of the Administrative Procedure Act (APA). The U.S. Government, by policy and longstanding practice, oversees foreign nationals who come to the United States as participants in exchange visitor programs, either directly or through private sector program sponsors or grantees. When problems occur, the U.S. Government is often held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems.

Department certified that the proposed changes to the regulations are not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601 612, and Executive Order 13272, section 3(b).

Members of Small Businesses

The Department notes that the final rule will affect the operations of the nearly 1,400 sponsors designated by the Department to conduct the change programs. These 1,400 sponsors bring into the United States close to 300,000 new change visitors annually. The Department has not conducted a study of how many of its sponsors are small businesses. However, even if all of the 1,400 sponsors are stipulated to be small businesses, the proposed changes to the regulations would not be expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601 612 and Executive Order 13272, section 3(b).

Small Business Compliance Costs

The Department has not specifically studied the effect of this regulation on small businesses. However, it estimates the cost of a management review, whose parameters the Department may define, to be around \$10,000. There is a cost of around \$35 per person for an instant electronic-type of background check or \$15 per person cost for one where local documentation is reviewed

electronically. These types of checks meet the standard outlined in the regulation. Health insurance should not cause an increase in sponsor costs, as most sponsors are already requiring insurance at the level noted in the rulemaking, if not higher. The vast majority of the change visitors pay for their own insurance and benefit from a variety of employers with different costs that are affected by myriad factors.

The cost per small business is estimated at around \$10,000 every two years for the management review. The cost, on average, is \$48-\$180 every four years for background checks based on an average of three to six ROs/AROs per sponsor.

The Office of Ad Hoc, Small Business Administration, submitted a public comment letter on this rule. The Office was concerned with the Department of State's use of the foreign affairs exemption, the use of the Interim Final Rule format, and the lack of small business data to justify this certification. After receiving and analyzing the aforementioned 656 comments and after consultation with the affected stakeholders, a number of changes were made to the proposed regulation. The Department removed the requirement for sponsors to collect a Dun & Bradstreet number on the organization and affiliated third parties, which would have been a cost to sponsors of several hundred dollars each. In addition, the expense of required pre-designation on-site reviews to sponsors was removed, which also would have

cost sponsors several hundred dollars each.

After reviewing the proposed rule, the Department again reviewed the regulations being promulgated in this Final Rule in order to determine if they would potentially have a significant economic impact on any other small entities during the process. Other than those comments received regarding management audits, no other commenters claimed that there would be a potential significant economic impact on small entities.

Accordingly, the Department has determined that the Final Rule is not expected to have an economic impact on a substantial number of small entities.

Executive Orders 12866 and 13563

The Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has nevertheless reviewed the final rule to ensure its consistency with the regulatory philosophy and principles set forth in those Executive Orders. The following number of sponsors and participants will be affected by regulatory changes (note that the total number of sponsors in the table adds up to more than 1,400, since many sponsors cover more than one category of change visitor):

Category	Number of sponsors	Number of participants (CY 2013)
Au Pair .....	15	14,625
Camp Counselor .....	24	18,889
College and University Student .....	816	45,738
Intern .....	77	21,879
Alien Physician .....	1	2,331
Professor & Research Scholar .....	975	31,842
International Visitor .....	7	5,715
Government Visitor .....	22	5,299
Secondary School Student .....	77	23,697
Short Term Scholar .....	834	19,572
Specialist .....	412	801
Summer Work Travel .....	46	86,518
Teacher .....	54	1,176
Trainee .....	85	9,111
<b>Total .....</b>	<b>.....</b>	<b>287,193</b>

The Department acknowledges an increased paper workload on the 1,400 sponsors that participate in the change visitor program. The reasons for these requirements were explained above, and will be explained in detail when the respective information

collections are updated. However, to summarize, these requirements will enhance the safety and security of the change visitor change visitors (some of whom are vulnerable minors) and will support interagency national security efforts by ensuring that

representative individuals have access to SEVIS. The increased costs, as explained in the preamble above, will include the cost of criminal background checks for personnel assigned to each of the sponsors, which we estimate to be less than \$10 per person, for an average

of three to six Responsible Officers and Alternate Responsible Officers per sponsor, as well as costs associated with performing a management review. The management reviews will be conducted by sponsors in each category on a rolling basis, starting with sponsors in the secondary school student category. The Department intends the cost of the review to be around \$10,000 per sponsor per review period.

The general provisions section (Subpart A) has not been amended since March 19, 1993. Exchange programs conducted under the authorities of the Exchange Visitor Program promote mutual understanding by providing exchange visitors an understanding of and an appreciation for the similarities and differences between their own culture and that of the United States. Upon their return home, the exchange visitors enrich their communities with their fresh perspectives of U.S. culture and events. Although this is an intangible benefit, one that is not easily quantified, the Department finds that the benefits of this reformaking outweigh its costs. The Department has revised this reformaking in light of Executive Order 13563, and finds that it is consistent with the guidance therein.

#### *Executive Order 12988*

The Department of State has reviewed this final rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### *Executive Orders 12372 and 13132*

This regulation will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. Executive Order 12372, regarding intergovernmental consultation on federal programs and activities, does not apply to this regulation.

#### *Paperwork Reduction Act*

The information collection requirements contained in this final rule are pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and OMB Control Number 1405-0147, Form DS 7000, which requires collection of additional information for

the Exchange Visitor Program. (See 78 F.R. 38429, June 26, 2013).

#### **List of Subjects in 22 CFR Part 62**

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR Part 62 is amended as follows:

#### **PART 62—EXCHANGE VISITOR PROGRAM**

1. The authority citation for Part 62 is revised to read as follows:

**Authority:** 22 U.S.C. 2651a; 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431 *et seq.*; 22 U.S.C. 2451 *et seq.*; P.L. 105-277, Division C, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; P.L. 104-208, Division C, 110 Stat. 3009-546, as amended; P.L. 107-56, sec. 416, 115 Stat. 354; and P.L. 107-173, 116 Stat. 543.

#### **Subpart A—General Provisions**

2. Sections 62.1 through 62.16 are revised to read as follows:

- 62.1 Purpose.
- 62.2 Definitions.
- 62.3 Sponsor eligibility.
- 62.4 Categories of participant eligibility.
- 62.5 Designation application procedure.
- 62.6 Designation.
- 62.7 Redesignation.
- 62.8 General program requirements.
- 62.9 General obligations of sponsors.
- 62.10 Program administration.
- 62.11 Duties of Responsible Officers and Alternate Responsible Officers.
- 62.12 Control of Forms DS 2019.
- 62.13 Notification requirements.
- 62.14 Insurance.
- 62.15 Reporting requirements.
- 62.16 Employment.

#### **§ 62.1 Purpose.**

(a) The regulations set forth in this part implement the Mutual Educational and Cultural Exchange Act of 1961 (the “Act”), as amended, Public Law 87-256, 22 U.S.C. 2451, *et seq.* (1988). The purpose of the Act is to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. Educational and cultural exchanges assist the Department of State in furthering the foreign policy objectives of the United States. These exchanges are defined by section 102 of the Act, 22 U.S.C. 2452, and section 101(a)(15)(J) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(15)(J).

(b) The Secretary of State of the Department of State facilitates activities specified in the Act, in part, by designating public and private entities

to act as sponsors of the Exchange Visitor Program. Sponsors may act independently or with the assistance of third parties. The purpose of the Program is to provide foreign nationals with opportunities to participate in educational and cultural programs in the United States and return home to share their experiences, and to encourage Americans to participate in educational and cultural programs in other countries. Exchange visitors enter the United States on a J visa. The regulations set forth in this subpart are applicable to all sponsors.

(c) The Assistant Secretary for Educational and Cultural Affairs of the Department of State may, in his or her sole discretion and to the extent consistent with the authorities described in paragraph (a) of this section and other applicable law, advise or modify any provision of this Part with respect to programs that are established pursuant to memoranda of understanding, letters of intent or similar arrangements between the United States and foreign governments. When establishing such a program, the Department will publish a notice in the **Federal Register** describing the program and any resulting modifications to or waivers of provisions of this Part. If such an arrangement will not result in a waiver of or other modification to the provisions of this Part, then the Department need not publish a notice.

#### **§ 62.2 Definitions.**

The following definitions apply to this part:

**Academic institution.** An publicly or privately operated primary, secondary, or post-secondary institution in the United States or abroad that offers primarily academic programs. For the purpose of these regulations, an institution that offers primarily vocational or technical programs is not an academic institution unless the specific program or programs in which the exchange visitor is to participate or has participated has been determined by the U.S. Department of State on an exceptional basis to be comparable to those offered in academic institutions.

**Accompanying spouse and dependents.** The alien spouse and/or minor unmarried child(ren), if any, of an exchange visitor who are accompanying or following to join the exchange visitor and who seek to enter or have entered the United States temporarily on non-immigrant J visas or seek to acquire or have acquired status after admission. For the purpose of these regulations, a minor is a person under the age of 21 years old.

**Accredited academic institution.** An accredited institution that is duly accredited by the appropriate academic accrediting authority of the U.S. jurisdiction in which such institution is located. In addition, all post-secondary institutions also must be accredited by a nationally recognized accrediting agency or association as recognized by the Secretary of Education.

**Act.** The Mutual Educational and Cultural Exchange Act of 1961, as amended.

**Actual and current U.S. address.** The physical, geographic location at which an exchange visitor and accompanying spouse and dependents reside while participating in an exchange program.

**Alternate Responsible Officer.** An employee or officer of a sponsor who has been nominated by the sponsor and approved by the Department of State to assist the Responsible Officer in carrying out the responsibilities outlined in 62.11. An Alternate Responsible Officer must be a United States person.

**Certificate of Good Standing.** A document issued by a state Secretary of State, Secretary of Commonwealth, or other official in the state where the business entity is registered. A Certificate of Good Standing confirms that a corporation, partnership or other legal entity is in existence or authorized to transact business. A Certificate of Good Standing is also known as a Certificate of Authorization or a Certificate of Existence.

**Clerical work.** Routine administrative work generally performed in an office or office-like setting, such as data entry, filing, typing, mail sorting and distribution, and other general administrative or support tasks.

**Consortium.** A not-for-profit corporation, partnership, joint venture or other association formed by two or more accredited academic institutions for the purpose of sharing educational resources, conducting research, and/or developing new programs to enrich or expand the opportunities offered by its members. An academic institution in the United States that participates in a consortium is not barred from having separate exchange visitor program designations of its own.

**Country of nationality or last legal permanent residence.** Either the country of which the exchange visitor is a national at the time status as an exchange visitor is acquired or the last foreign country in which the visitor had a legal permanent residence before acquiring status as an exchange visitor.

**Cross-cultural activity.** An activity designed to promote exposure and interchange between exchange visitors

and Americans so as to increase their mutual understanding of each other's society, culture, and institutions.

**Department of State.** The U.S. Department of State.

**Designation.** The written authorization issued by the Department of State to an exchange visitor program applicant to conduct an exchange visitor program as a sponsor. The term includes the written authorization issued to a current sponsor that applies to continue its designation (i.e., redesignation).

**Employee.** An individual who provides services or labor for an employer for wages or other remuneration. A third party, as defined in this section, or an independent contractor, as defined in 8 CFR 274a.1(j), is not an employee.

**Exchange visitor.** A foreign national who has been selected by a sponsor to participate in an exchange visitor program, and who is seeking to enter or has entered the United States temporarily on a non-immigrant J-1 visa or who has obtained J status in the United States based on a Form DS-2019 issued by the sponsor. The term does not include the accompanying spouse and dependents of the exchange visitor.

**Exchange Visitor Program.** The international exchange program administered by the Department of State to implement the Act by means of educational and cultural exchange programs. When "exchange visitor program" is set forth in lower case, it refers to the individual program of a sponsor that has been designated by the Department of State.

**Exchange visitor's government.** The government of the exchange visitor's country of nationality or last legal permanent residence.

**Financed directly.** Financed in whole or in part by the U.S. Government or the exchange visitor's government if funds contributed directly to the exchange visitor in connection with his or her participation in an exchange visitor program.

**Form DS-2019, A Certificate of Eligibility for Exchange Visitor (J-Nonimmigrant) Status.** A controlled document of the Department of State that a sponsor issues to a potential Exchange Visitor Program participant (J-1) and his or her accompanying spouse and dependents (J-2) as permitted by regulations. This form, together with other necessary Department of State documents, permits the named foreign national, if required, to schedule an interview at a U.S. embassy or consulate to seek to obtain a J-1 visa to enter the United States as an Exchange Visitor Program participant or

as an accompanying spouse and dependent.

**Form DS-3036, Exchange Visitor Program Application.** A controlled document of the Department of State that an organization seeks to apply to become a designated sponsor of the Exchange Visitor Program and that a designated sponsor seeks to request redesignation or amendment of an existing exchange visitor program.

**Form DS-3037, Update of Information on a Sponsor's Exchange Visitor Program.** A controlled document of the Department of State that a sponsor seeks to update information on its exchange visitor programs in SEVIS.

**Form DS-3097, Annual Report.** A controlled document of the Department of State in which a sponsor reports program activity and evaluation on a yearly basis.

**Form DS-7002, Training/Internship Placement Plan (T/IPP).** A controlled document of the Department of State issued in connection only with a Trainee or Intern under 22 CFR 62.22, or a Student Intern under 62.23 respectively, to outline an exchange visitor's program activities.

**Full course of study.** Full-time enrollment in an academic program of classroom participation and student and/or doctoral thesis research at an accredited academic institution as follows:

(1) Secondary school students must satisfy the attendance and course requirements of the state in which the school they attend is located; and

(2) College and university students must register for and complete a full course of study, as defined by the accredited academic institution in which the student is registered, unless exempted in accordance with 62.23(e).

**Graduate medical education or training.** Participation in a program in which a foreign medical school graduate will receive graduate medical education or training, which generally consists of a residency or fellowship program in ongoing health care services to patients, but does not include programs in ongoing observation, consultation, teaching or research in which there is no or only incidental patient care. This program may consist of a medical specialty, a directly related medical subspecialty, or both.

**Home-country physical presence requirement.** The requirement that an exchange visitor, and an accompanying spouse and dependents, who are within the purview of section 212(e) of the Immigration and Nationality Act, as amended, or Public Law 94-484 (substantially quoted in 22 CFR 41.63), must reside and be physically present in



the country of nationality or last legal permanent residence for an aggregate of at least 10 years following departure from the United States before the exchange visitor is eligible to apply for an immigrant visa or permanent residence, a non-immigrant K visa as the fiancé(e) of a U.S. citizen, a non-immigrant H visa as a temporary worker or trainee, or a non-immigrant L visa as an intracompany transferee, or a non-immigrant H or L visa as the spouse or minor child of a person who has been granted status in H or L non-immigrant classification as a temporary worker or trainee or an intracompany transferee.

**Host organization.** A third party in the United States that conducts training and/or internship programs on behalf of a designated sponsor pursuant to an executed written agreement between the two parties.

**Internship program.** A structured and guided work-based learning program for an intern as set forth in an individualized Training/Internship Placement Plan (Form DS 7002) that reinforces an intern's academic studies; recognizes the need for work-based experience; provides on-the-job exposure to American techniques, methodologies, and technologies; and enhances the intern's knowledge of American culture and society.

**J visa.** A non-immigrant visa issued pursuant to 8 U.S.C. 1101(a)(15)(J). A J 1 visa is issued to an exchange visitor. A J 2 visa is issued to the exchange visitor's accompanying spouse and dependents, if qualified under 214b of the Immigration and Nationality Act, as amended.

**Management review.** A program-specific management audit in a format approved by the Department of State that is conducted by an independent auditor who is not an employee or third party contractor of the sponsor, to identify weaknesses in operating procedures in the conduct of an organization's business and in meeting regulatory requirements in the administration of a sponsor's exchange visitor program.

**Office of Designation.** The Department of State, Bureau of Educational and Cultural Affairs office assigned to administer designations of sponsors.

**Office of Exchange Coordination and Compliance.** The Department of State, Bureau of Educational and Cultural Affairs office assigned to oversee sponsor compliance with 22 CFR Part 62 and, as appropriate, impose sanctions.

**Office of Private Sector Exchange Administration.** The Department of State, Bureau of Educational and Cultural Affairs office assigned to

monitor administration of each sponsor's exchange visitor program.

**On-the-job training.** An individual's observation of and participation in given tasks demonstrated by experienced workers for the purpose of acquiring competency in such tasks.

**Prescribed course of study.** A non-degree academic program with a specific educational objective. Such course of study may include intensive English language training, classroom instruction, research projects, and/or academic training to the extent permitted in 62.23.

**Reciprocity.** The participation of a U.S. citizen or U.S. national in an educational and cultural program in a foreign country in exchange for the participation of a foreign national in the Exchange Visitor Program. Where used herein, "reciprocity" will be interpreted broadly, unless otherwise specified, reciprocity does not require a one-for-one exchange or that exchange visitors be engaged in the same activity.

**Responsible Officer.** An employee or officer of a sponsor who has been nominated by the sponsor, and approved by the Department of State, to carry out the duties outlined in 62.11. A Responsible Officer must be a citizen of the United States or a lawful permanent resident of the United States.

**Secretary of State.** The Secretary of State or an employee of the U.S. Department of State acting under a delegation of authority from the Secretary of State.

**SEVIS (Student and Exchange Visitor Information System).** The statutorily mandated system designed to collect information on non-immigrant students (F and M visas), exchange visitors (J visas), and their spouses and dependents (F 2, M 2, and J 2 visas). SEVIS enables schools and program sponsors to transmit information and event notifications electronically, via the Internet, to the Department of Homeland Security and the Department of State through a student's or exchange visitor's station in the United States.

**Site of activity.** The physical, geographic location(s) where an exchange visitor participates in his or her exchange program.

**Sponsor.** A legal entity designated by the Secretary of State to conduct an exchange visitor program.

**Staffing/employment agency.** A U.S. business that hires individuals for the express purpose of supplying workers to other businesses. Typically, the other businesses here workers are placed pay an hourly fee per employee to the staffing/employment agency, of which the worker receives a percentage.

**Student internship program.** A structured and guided work-based learning program for a post-secondary student intern as set forth in an individualized Training/Internship Placement Plan (Form DS 7002) that partially or fully fulfills a student's post-secondary academic degree requirements; recognizes the need for work-based experience; provides on-the-job exposure to American techniques, methodologies, and technologies; and enhances the student intern's knowledge of American culture and society.

**Third party.** A person or legal entity with whom a sponsor has executed a written agreement for the person or entity to act on behalf of a sponsor in the conduct of the sponsor's exchange visitor program. All entities that act on behalf of the sponsor in the conduct of the sponsor's exchange visitor program must execute written agreements with the sponsor that outline the full relationship between the entity and the sponsor on all matters involving the administration of the exchange visitor program. A sponsor's use of a third party does not relieve the sponsor of its obligations to comply, and to ensure third party compliance, with the provisions of this Part. Failure by an individual third party to comply with the regulations set forth in this Part or with an additional terms and conditions governing administration of the Exchange Visitor Program that the Department of State may from time to time impose will be imposed to the sponsor. Sponsors are required to ensure that third parties know and comply with all applicable provisions of these regulations.

**Training program.** A structured and guided work-based learning program for a trainee as set forth in an individualized Training/Internship Placement Plan (Form DS 7002), that develops and advanced skills in a trainee's occupational field through exposure to American techniques, methodologies, and technologies; and enhances a trainee's understanding of American culture and society.

**United States person (individual).** A person who is born within or is a national of the United States or an of its territories or other possessions. A U.S. person is a citizen or an individual who has been lawfully admitted for permanent residence, within the meaning of section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101).

**United States Person (legal entity).**

(1) A general or limited partnership created or organized under the laws of the United States, or of an state, the

District of Columbia, or an territory or other possession of the United States, of which a majority of the partners are United States persons:

- (i) Which has its principal place of business in the United States; and
- (ii) In instances where the partnership is additionally governed by a Board, the majority of whose officers are United States persons.

(2) A for-profit corporation, association, or other legal entity created or organized under the laws of the United States, or of an state, the District of Columbia, or a territory or other possession of the United States, whose principal place of business is located in the United States, and

- (i) Whose shares or voting interests are publicly traded on a U.S. stock exchange; or
- (ii) A majority of whose officers, a majority of whose shareholders, and a majority of whose members of its Board of Directors are United States persons and collectively hold a majority of the shares or stock (i.e., the *de jure* controlling interest); or

(3) A non-profit corporation, association, or other legal entity created or organized under the laws of the United States, or an state, the District of Columbia, or an territory or other possession of the United States; and

- (i) Whose principal place of business is located in the United States; and
- (ii) A majority of whose officers and a majority of whose members of its Board of Directors, Board of Trustees or other like body vested with its management are United States persons; or

(4) An accredited college, university, or other post-secondary academic institution in the United States created or organized under the laws of the United States, or of an state, county, municipality, or other political subdivision thereof, the District of Columbia, or of an territory or other possession of the United States; or

(5) An agency of the United States, or of an state or local government, the District of Columbia, or an territory or other possession of the United States.

**Validation.** The process by which a Responsible Officer or Alternate Responsible Officer updates the SEVIS record of an e change visitor to show he or she has entered the United States, and that the e change visitor reported to his or her sponsor and is participating in the e change visitor program at the site of activity identified on his or her Form DS-2019.

### § 62.3 Sponsor eligibility.

(a) The following types of entities are eligible to apply for designation as a sponsor of an e change visitor program:

- (1) Designated as a
- eligible to apply
- DU-1.1 significant district of Columbia, or an territory
- DU-1.1 local

observing, consulting, or demonstrating special knowledge or skills.

(h) *Other person of similar description.* A foreign national of description similar to those set forth in paragraphs (a) through (g) of this section coming to the United States as a participant in an exchange visitor program designated by the Department of State under this category, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training. The programs designated by the Department of State in this category consist of:

(1) *Alien physician.* A foreign national who is a graduate of a school of medicine who comes to the United States under a program in which he or she will receive graduate medical education or training conducted by accredited U.S. schools of medicine or scientific institutions.

(2) *International visitor.* A foreign national who is a recognized or potential leader, selected by the Department of State for the purpose of consulting, observing, conducting research, training, or demonstrating special skills in the United States.

(3) *Government visitor.* A foreign national who is an influential or distinguished person, selected by a U.S. federal, state, or local government agency for the purpose of consulting, observing, training, or demonstrating special skills in the United States.

(4) *Camp counselor.* A foreign national selected to be a counselor in a summer camp in the United States (e.g., during the U.S. summer months).

(5) *Au pair.* A foreign national who comes to the United States for the purpose of residing with an American host family and participating directly in their home life, while providing limited childcare services, and fulfilling an educational requirement.

(6) *Summer Work and Travel.* A foreign national who is a bona fide foreign post-secondary student, who at the time of application is enrolled in and actively pursuing a degree or a full-time course of study at a foreign ministerially-recognized post-secondary academic institution and whose purpose is work and travel in the United States for up to four months during his or her break between academic years.

(7) *Intern.* A foreign national participating in a structured and guided work-based internship program in his or her specific academic field and who either:

(i) Is currently enrolled full-time in and actively pursuing studies at a foreign ministerially-recognized degree-

or certificate-granting post-secondary academic institution outside the United States, or

(ii) Graduated from such an institution no more than 12 months prior to the exchange visitor program begin date reflected on Form DS-2019.

#### § 62.5 Designation application procedure.

(a) An entity meeting the eligibility requirements set forth in § 62.3 may apply to the Department of State for designation as an Exchange Visitor Program sponsor. An applicant must first complete and submit Form DS-3036 in SEVIS. The complete application must consist of:

(1) A completed copy of Form DS-3036 signed by the applicant's Chief Executive Officer, President, or other executive with legal authority to make commitments on behalf of the sponsor (as identified in the organization's governing documents);

(2) Required supporting documentation and certifications as set forth in paragraph (c); and

(3) Confirmation of payment of the required non-refundable application fee through payment go as set forth in § 62.17.

(b) A complete application must set forth, in detail, the applicant's proposed exchange program activity and must demonstrate, to the Department of State's satisfaction, the applicant's ability to comply and remain in continual compliance with all the provisions of this part, and, in particular, to meet the sponsor eligibility requirements set forth in § 62.3 and the general obligations of sponsors set forth in § 62.9.

(c) An application must be accompanied by the following supporting documentation and certifications, as relevant:

(1) Evidence of sponsor eligibility as set forth in § 62.3(a), including evidence of legal status (e.g., charter, proof of incorporation, business, partnership agreement);

(2) Evidence of experience in operating a successful business, including a minimum of three years of experience in international exchange by the organization or by the proposed Responsible Officer;

(3) Evidence of the applicant's ability to meet at all times its financial obligations and responsibilities attendant to successful sponsorship of its exchange visitor program, and evidence that it can comply with § 62.9(e) and provide any supplemental or planatory financial information the Department of State may request. In addition:

(i) An established entity must present a current audit report with audit notes

prepared by an independent certified public accounting firm.

(ii) A newly formed entity must present a compilation (i.e., a balance sheet, statement of cash flows and all disclosures, revenues, expenditures, and notes to financial statements) prepared by an independent certified public accounting firm demonstrating that the entity has been capitalized with sufficient funds to cover general operating expenses and costs associated with an exchange program.

(4) A current Certificate of Good Standing (see § 62.2);

(5) An Employer Identification Number (EIN), which specifies the date of issuance;

(6) Evidence of current accreditation if the applicant is a secondary or post-secondary academic institution;

(7) Evidence of current licensure, if required by local, state, or federal law, to carry out the activity for which the applicant is seeking designation;

(8) A statement signed by the Chief Executive Officer, President, or other executive with legal authority to make commitments on behalf of the sponsor (as identified in the organization's governing documents), certifying that:

(i) The applicant is a United States Person as defined in § 62.2;

(ii) The proposed Responsible Officer and all proposed Alternate Responsible Officers are United States citizens or lawful permanent residents of the United States;

(iii) The sponsor has completed a criminal background check on the potential Responsible Officer and all Alternate Responsible Officers, and has determined their suitability for these positions; the criminal background checks must be no older than four years at any time for re-designated sponsors and must be newly conducted as part of the designation application for new sponsors and the redesignation application for sponsors designated for only one year; and

(iv) The Responsible Officer will be provided sufficient staff and resources to fulfill his or her duties and obligations on behalf of the applicant;

(9) A completed SEVIS-generated Citizenship Certification for the proposed Responsible Officer and all proposed Alternate Responsible Officer(s) along with evidence that they are citizens of the United States or lawful permanent residents (e.g., copy of passport, birth certificate, green card); and

(10) Such additional information or documentation that the Department of State may deem necessary to evaluate the application. In addition, the Department may decide, in its

discretion, to conduct a pre-designation site visit of a first-time applicant.

#### § 62.6 Designation.

(a) Upon its favorable determination that an applicant meets all statutory and regulatory requirements, the Department of State may, in its sole discretion, designate the applicant as an Exchange Visitor Program sponsor.

(b) Initial designations are effective for one or two years at the sole discretion of the Department of State.

(c) Designation will confer upon a sponsor the authority to engage in one or more activities specified in § 62.4. A sponsor may engage only in the activity or activities specifically authorized in its written letter of designation.

(d) The Department of State may, in its sole discretion, require a sponsor to secure a payment bond in favor of the Department of State guaranteeing the sponsor's obligations hereunder.

(e) Designations are not transferable or assignable.

#### § 62.7 Redesignation.

(a) Sponsors must file for redesignation no more than six months and no fewer than three months before the designation expiration date as set forth in the sponsor's letter of designation or its most recent letter of redesignation.

(b) A sponsor seeking redesignation as an Exchange Visitor Program sponsor must first complete and submit Form DS 3036 in SEVIS. The complete application must consist of:

(1) A completed copy of Form DS 3036, signed by the sponsor's Chief Financial Officer, President or other executive with legal authority to make commitments on behalf of the sponsor (as identified in the organization's governing documents);

(2) Required supporting documentation and certifications as set forth in paragraph (c); and

(3) Confirmation of payment of the required non-refundable application fee through payment as set forth in § 62.17.

(c) The complete application must include the following supporting documentation and certifications:

(1) A copy of the most recent year-end financial statements;

(2) A copy of the most recent letter of accreditation if the sponsor is a secondary or post-secondary academic institution;

(3) A list of the names, addresses and citizenship or legal permanent resident status of the current members of its Board of Directors or the Board of Trustees or other like body, vested with the management of the organization or partnership, and/or the percentage of stocks/shares held, as applicable;

(4) For a non-profit organization, a signed copy of the sponsor's most recent Form 990 filed with the Internal Revenue Service;

(5) A statement signed by the Chief Executive Officer, President, or other executive with legal authority to make commitments on behalf of the sponsor (as identified in the organization's governing documents) certifying that the sponsor has completed timely criminal background checks since the date of the last designation or redesignation letter on the Responsible Officer and all Alternate Responsible Officers and has determined their suitability for these positions; and

(6) Such additional information or documentation that the Department of State may deem necessary to evaluate the application.

(d) Upon its favorable determination that a sponsor meets all statutory and regulatory requirements, the Department of State may, in its sole discretion, redesignate the organization as an Exchange Visitor Program sponsor for one or two years. A sponsor seeking redesignation may continue to operate its program(s) until such time as the Department of State notifies it of a decision to approve, amend or terminate its designation.

#### § 62.8 General program requirements.

(a) *Size of program.* A sponsor, other than a federal government agency, must have no fewer than five active participating exchange visitors during the annual reporting cycle (e.g., academic, calendar or fiscal year), as stated in its letter of designation or redesignation. The Department of State may, in its sole discretion, waive this requirement.

(b) *Minimum duration of program.* A sponsor, other than a federal government agency, must provide each exchange visitor, except those sponsored in the short-term scholar category, with a minimum period of participation in the United States of no less than three weeks.

(c) *Reciprocity.* In conducting its exchange visitor program, sponsors must make a good faith effort to develop and implement, to the fullest extent possible, reciprocal exchanges of persons.

(d) *Cross-cultural activities.* In addition to category-specific requirements, sponsors must:

(1) Offer or make available to exchange visitors and the accompanying spouses and dependents, if any, a variety of appropriate cross-cultural activities. The extent and type of the cross-cultural activities will be determined by the needs and interests of

the particular category of exchange visitor. Sponsors will be responsible for determining the appropriate types and numbers of such cross-cultural programs, unless otherwise specified by the Department. The Department of State encourages sponsors to give their exchange visitors the broadest exposure to American society, culture and institutions; and

(2) Encourage exchange visitors to participate voluntarily in activities that are for the purpose of sharing the language, culture, or history of their home country with Americans, provided such activities do not delay the completion of the exchange visitors' program.

#### § 62.9 General obligations of sponsors.

(a) *Adherence to Department of State regulations.* Sponsors are required to adhere to all regulations set forth in this part.

(b) *Legal status.* A sponsor must maintain the legal status it had when it was designated. A sponsor's change in legal status (e.g., from partnership to corporation, non-profit to for-profit) requires the submission of a new application for designation of the successor legal entity within 45 days of the change in legal status.

(c) *Accreditation and licensure.* A sponsor must remain in compliance with all local, state, and federal laws, and professional requirements necessary to carry out the activities for which it is designated, including accreditation and licensure, if applicable.

(d) *Representations and disclosures.* Sponsors must:

(1) Provide accurate, complete, and timely information, to the extent lawfully permitted, to the Department of State and the Department of Homeland Security regarding their exchange visitor program(s), exchange visitors, and accompanying spouses and dependents (if any);

(2) Provide accurate information to the public when advertising their exchange visitor program(s) or responding to public inquiries;

(3) Provide accurate program information and materials to prospective exchange visitors, host organizations, and host employers, if applicable, at the time of recruitment and before exchange visitors enter into agreements and/or payment of non-refundable fees. This information must clearly explain program activities and terms and conditions of program, including the terms and conditions of any employment activities (job duties, number of work hours, wages and compensation, and any typical deductions for housing and

transportation), have itemized list of all fees charged to the exchange visitor (i.e., fees paid to the sponsor or a third party, including the host employer), insurance costs, other typical costs, conditions, and restrictions of the exchange visitor program(s), and the type, duration, nature and importance of the cultural components of the program. Program recruitment information and materials also must make clear to prospective exchange visitors in the exchange categories with a work component that their stipend or wages might not cover all of their expenses and that they should bring additional personal funds.

(4) Not use the program number(s) assigned by the Department of State at the time of designation on any advertising materials or publications, including sponsor Web sites; and

(5) Not represent that its exchange visitor program is endorsed, sponsored, or supported by the Department of State or the U.S. Government, except for U.S. Government sponsors or exchange visitor programs financed directly by the U.S. Government to promote international educational exchanges. A sponsor may, however, represent that it is designated by the Department of State as a sponsor of an exchange visitor program.

(e) *Financial responsibility.* (1) Sponsors must maintain the financial capability to meet at all times their financial obligations and responsibilities attendant to successful sponsorship of their exchange visitor program.

(2) The Department of State may require non-government sponsors to provide evidence satisfactory to the Department of State that funds necessary to fulfill all obligations and responsibilities attendant to sponsorship of their exchange visitor programs are readily available and in the sponsor's control, including such supplemental or explanatory financial information as the Department of State may deem appropriate, such as, for example, audited financial statements.

(3) The Department of State may require a non-government sponsor to secure payment bonds in favor of the Department of State guaranteeing all financial obligations arising from its exchange visitor program when the Department has reasonable doubt about the sponsor's ability to meet its program and other financial obligations.

(f) *Staffing and support services.* Sponsors must ensure that:

(1) Adequate staffing and sufficient support services are provided to administer their exchange visitor program; and

(2) Their employees, officers, agents, third parties, volunteers or other individuals or entities associated with the administration of their exchange visitor program are adequately qualified, appropriately trained, and comply with the E-Change Visitor Program regulations and immigration laws pertaining to the administration of their exchange visitor program(s).

(g) *Appointment of Responsible Officers and Alternate Responsible Officers.* (1) Sponsors must appoint and maintain a Responsible Officer and between one and ten Alternate Responsible Officers to assist the Responsible Officer in performing the duties set forth in 62.11. Upon written sponsor request, the Department of State may, in its sole discretion, permit a sponsor to appoint more than ten Alternate Responsible Officers. A sponsor redesignated for two years must ensure that the proposed Responsible Officer and Alternate Responsible Officer(s) have undergone a criminal background check within the past four years to determine their suitability for these positions. Responsible Officers and Alternate Responsible Officers must be U.S. persons.

(2) Responsible Officers and Alternate Responsible Officers must be employees or officers of the sponsor. Upon written sponsor request, the Department of State may, in its sole discretion, authorize the appointment of an individual who is not an employee or officer to serve as an Alternate Responsible Officer.

(3) In the event of the departure of a Responsible Officer or Alternate Responsible Officer, the sponsor must file a request in SEVIS for the approval of a replacement and forward the required documentation to the Department of State within ten calendar days from the date of the Responsible Officer's or Alternate Responsible Officer's departure.

(4) Requests to replace the Responsible Officer or add an Alternate Responsible Officer must be submitted in SEVIS, and a signed Form DS 3037 must be either mailed or emailed to the Department of State with the required completed Citizenship Certification, along with certification that the individual has undergone a criminal background check conducted at the time of such Certification.

(5) The Department of State reserves the right to deny the appointment of a Responsible Officer or an Alternate Responsible Officer.

#### **§ 62.10 Program administration.**

Sponsors are responsible for the effective administration of their

exchange visitor program(s). These responsibilities include:

(a) *Selection of exchange visitors.* Sponsors must establish and utilize a method to screen and select prospective exchange visitors to ensure that they are eligible for program participation, and that:

(1) The program is suitable to the exchange visitor's background, needs, and experience; and

(2) The exchange visitor possesses sufficient proficiency in the English language, as determined by an objective measurement of English language proficiency, successful ability to participate in his or her program and to function on a day-to-day basis. A sponsor must verify an applicant's English language proficiency through a recognized English language test, by signed documentation from an academic institution or English language school, or through a documented interview conducted by the sponsor either in-person or by videoconferencing, or by telephone if videoconferencing is not a viable option.

(b) *Pre-arrival information.* At the pre-arrival stage, sponsors must provide exchange visitors clear information and materials on, but not limited to, the following topics: Program activities, cultural goals and components of the program, employment information and terms and conditions of employment (including employer name and address, position duration, job duties, number of work hours, wages, other compensation and benefits, deductions from wages, including those taken for housing and transportation), insurance costs, and other conditions and restrictions of their exchange visitor. In addition, sponsors must provide clear information and materials on:

(1) The purpose of the E-Change Visitor Program;

(2) The home-country physical presence requirement;

(3) Travel to and entry into the United States (e.g., procedures to be followed by exchange visitors and accompanying spouses and dependents in paying SEVIS fees and obtaining visas for entry to the United States, including the information and documentation needed for the interview; travel arrangements to the United States, and what to expect at the port of entry, including the necessity of having and presenting travel documents at the port of entry);

(4) Housing, including specific information on what housing is provided by the program or otherwise available and the expected cost to the exchange visitor;

(5) An itemized list of all fees to be paid by a potential exchange visitor (i.e.,

fees paid to the sponsor or a third party);

(6) Description and amount of other costs that the exchange visitor will likely incur (e.g., insurance, living expenses, transportation expenses) while in the United States;

(7) Health care and insurance description, costs, and requirements for exchange visitors and their accompanying spouse and dependents, as applicable;

(8) Arrival notification requirements (e.g., procedures that exchange visitors, spouses and dependents are to follow upon entry into the United States in reporting their arrival to the sponsor and reporting to the location of their program); and

(9) Other information that will assist exchange visitors to prepare for their stay in the United States (e.g., how and when to apply for a social security number, if applicable; how to apply for a driver's license; how to open a bank account; employee rights and laws, including workman's compensation; and how to remain in lawful non-immigrant status).

(c) *Orientation.* A sponsor must offer and record participation in an appropriate orientation for all exchange visitors. Sponsors are encouraged to provide orientation for the exchange visitor's accompanying spouse and dependents, especially for those exchange visitors who are expected to be in the United States for more than one year. Orientation must include, but is not limited to, information concerning:

(1) Life and customs in the United States;

(2) Local community resources (e.g., public transportation, medical centers, schools, libraries, recreation centers, and banks), to the fullest extent possible;

(3) Available healthcare, emergency assistance, and health insurance coverage;

(4) A description of the exchange visitor program in which the exchange visitor is participating such as information on the length and location of the program; a summary of the significant components of the program; information on any payment (i.e., stipend or wage) an exchange visitor will receive; and deductions from wages, including for housing and transportation;

(5) Sponsor rules that exchange visitors are required to follow while participating in their exchange visitor program;

(6) Name and address of the sponsor and the name, email address, and telephone number of the Responsible

Officer and Alternate Responsible Officer(s);

(7) The Office of Designation's address, telephone number, facsimile number, Web site and email address, and a copy of the Exchange Visitor Program brochure or other Department of State materials as appropriate or required;

(8) Wilberforce Pamphlet on the Rights and Protections for Temporary Workers; and

(9) The requirement that an exchange visitor must report to the sponsor or sponsor designee within ten calendar days any changes in his or her telephone number, email address, actual and current U.S. address (i.e., physical residence), and site of activity (if the exchange visitor is permitted to make such change without prior sponsor authorization).

(d) *Monitoring of exchange visitors.* Exchange visitors' participation in their exchange program must be monitored by employees of the sponsor. Monitoring activities must not include any retaliation or discrimination against exchange visitors who make adverse comments related to the program. No sponsor or employee of a sponsor may threaten program termination, remove from the program, ban from the program, adversely annotate an exchange visitor's SEVIS record, or otherwise retaliate against an exchange visitor solely because he/she has filed a complaint; instituted or caused to be instituted any proceeding; testified or is about to testify; consulted with an advocate, organization, community organization, legal assistance program or attorney about a grievance or other work-related legal matter; or exercised or asserted on behalf of himself/herself any right or protection. Sponsors must:

(1) Ensure that the activities in which exchange visitors are engaged are consistent with the category and activity listed on their Forms DS-2019;

(2) Monitor the physical location (site of activity), and the progress and welfare of exchange visitors to the extent appropriate for the category;

(3) Require that exchange visitors report to the sponsor within ten calendar days any changes in their telephone numbers, email addresses, actual and current U.S. addresses (i.e., physical residence), and site(s) of activity (if the exchange visitor is permitted to make such change without prior sponsor authorization);

(4) Report in SEVIS within ten business days of notification by an exchange visitor any change in the exchange visitor's actual and current U.S. address, telephone number, email

address, and/or primary site of activity; and

(5) Report the email address for each accompanying spouse and dependent.

(e) *Requests by the Department of State.* Sponsors must, to the extent lawful permitted, furnish the Department of State within the Department-requested timeframe all information, reports, documents, books, files, and other records or information requested by the Department of State on all matters related to their exchange visitor program. Sponsors must include sponsor's program number on all responses.

(f) *Inquiries and investigations.* Sponsors must cooperate with any inquiry or investigation that may be undertaken by the Department of State or the Department of Homeland Security.

(g) *Retention of records.* Sponsors must retain all records related to their exchange visitor program and exchange visitors (to include accompanying spouse and dependents, if any) for a minimum of three years following the completion of each exchange visitor program.

#### **§ 62.11 Duties of Responsible Officers and Alternate Responsible Officers.**

Responsible Officers must train and supervise Alternate Responsible Officers and ensure that these officials are in compliance with the Exchange Visitor Program regulations. Responsible Officers and Alternate Responsible Officers must:

(a) Be thoroughly familiar with the Exchange Visitor Program regulations, relevant immigration laws, and all federal and state regulations and laws pertaining to the administration of their exchange visitor program(s), including the Department of State's and the Department of Homeland Security's policies, manuals, instructions, and guidance on SEVIS and all other operations relevant to the Exchange Visitor Program; if Responsible Officers and Alternate Responsible Officers work with programs with an employment component, they also must have a detailed knowledge of federal, state, and local laws pertaining to employment, including the Fair Labor Standards Act;

(b) Monitor that the exchange visitor obtains sufficient advice and assistance to facilitate the successful completion of his or her exchange visitor program;

(c) Conduct all official communications relating to their sponsor's exchange visitor program with the Department of State and the Department of Homeland Security. A sponsor must include its exchange visitor program number on all

correspondence submitted to the Department of State and to the Department of Homeland Security;

(d) Monitor to ensure that that sponsor spam filters do not block receipt of SEVIS or Department of State and Department of Homeland Security notices; and

(e) Control and issue Forms DS-2019 as set forth in 62.12.

#### § 62.12 Control of Forms DS-2019.

(a) *Issuance of Forms DS-2019.* Sponsors must:

(1) Grant access only to Responsible Officers and Alternate Responsible Officers and ensure that they have access to and use SEVIS to update required information;

(2) Ensure that Responsible Officers and Alternate Responsible Officers input into SEVIS accurate, current, and updated information in accordance with these regulations; and

(3) Issue Forms DS-2019 only for the following authorized purposes:

(i) To facilitate the initial entry of the exchange visitor and accompanying spouse and dependents, if any, into the United States;

(ii) To extend the duration of participation of an exchange visitor, when permitted by the regulations and authorized by the Department of State;

(iii) To facilitate program transfers, when permitted by the regulations and authorized in writing by the Department of State;

(iv) To replace lost, stolen, or damaged Forms DS-2019;

(v) To facilitate the re-entry into the United States of an exchange visitor and accompanying spouse and dependents, if any, who travel outside the United States during the exchange visitor's program;

(vi) To facilitate a change of category, when requested in SEVIS and authorized by the Department of State;

(vii) To update information when significant changes take place in regard to the exchange visitor's program (e.g., a substantial change in funding, a change in the primary site of activity, or a change in actual and current U.S. address);

(viii) To facilitate the correction of a minor or technical infraction; or

(ix) To facilitate a "reinstatement" or a "reinstatement update SEVIS status" when permitted by the Department of State.

(b) *Verification.* (1) Prior to issuing Forms DS-2019, sponsors must verify that each prospective exchange visitor:

(i) Is eligible and qualified for, and accepted into, the program in which he or she will participate;

(ii) Possesses adequate financial resources to participate in and complete his or her exchange visitor program; and

(iii) Possesses adequate financial resources to support an accompanying spouse and dependents, if any.

(2) Sponsors must ensure that:

(i) Only Responsible Officers or Alternate Responsible Officers who are physically present in the United States or in a U.S. territory may print and sign Forms DS-2019; and

(ii) Only the Responsible Officer or the Alternate Responsible Officer, whose name is printed on the Form DS-2019, is permitted to sign the document. The Form DS-2019 must be signed in blue ink to denote that it is the original document.

(c) *Distribution of Forms DS-2019.* Sponsors must ensure that completed Forms DS-2019 are distributed directly to the exchange visitor and accompanying spouse and dependents, if any, or to an individual designated by the exchange visitor only via the sponsor's employees, officers, or third parties in the administration of its exchange visitor program.

(d) *Allotment requests.* (1) Annual Form DS-2019 allotment. Sponsors must submit an electronic request via SEVIS to the Department of State for an annual allotment of Forms DS-2019 based on the annual reporting cycle (e.g., academic, calendar or fiscal year) stated in their letter of designation or redesignation. Sponsors should allow up to four weeks for the processing of allotment requests. The Department of State has the sole discretion to determine the number of Forms DS-2019 to be issued to a sponsor.

(2) Expansion of Program. A request for program expansion must include information such as, but not limited to, the source of program growth, staff increases, confirmation of adequate trained employees, noted programmatic successes, current financial information, additional overseas affiliates, additional third party entities, explanations of how the sponsor will accommodate the anticipated program growth, and any other information requested by the Department. The Department of State will take into consideration the current size of a sponsor's program and the projected expansion of the program in the coming 12 months and may consult with the Responsible Officer and/or Alternate Responsible Officer prior to determining the number of Forms DS-2019 to issue to a sponsor.

(e) *Safeguards and controls.* (1) Responsible Officers and Alternate Responsible Officers must secure their SEVIS logon Identification Numbers (IDs) and passwords at all times (i.e., not

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visitor's SEVIS record from "Initial" to "No Show."

(3) End of an exchange visitor's program. Sponsors must report in SEVIS an initial report from or early completion of an exchange visitor's program that occurs prior to the "Program End Date" listed in SEVIS on the exchange visitor's Form DS 2019. Sponsors must not alter the "Program End Date" field, but should enter the date of program completion in the "Effective Date of Completion" field. This will change the status of the exchange visitor's SEVIS record from "Active" to "Inactive." Such notification in SEVIS ends a sponsor's programmatic obligations to the exchange visitor and/or his or her accompanying spouse and dependents.

(4) Accompanying spouse and dependent records. Sponsors must report in SEVIS if accompanying spouses and/or dependents depart from the United States prior to the exchange visitors' departure dates.

(5) Termination of an exchange visitor's program. Sponsors must promptly report in SEVIS the imminent termination of an exchange visitor's program. Sponsors must not alter the "Program End Date" field, but should enter the date of program termination in the "Effective Date of Termination" field. This will change the status of the SEVIS record from "Active" to "Terminated". Such notification in SEVIS ends a sponsor's programmatic obligation to the exchange visitor and his or her accompanying spouse and dependents, if any, and prevents the sponsor from thereafter extending the exchange visitor's duration of participation, transferring the exchange visitor to another program, or changing the exchange visitor's category. Sponsors must not terminate the program of an exchange visitor who ultimately ends his or her program.

(b) *Change of circumstance of an exchange visitor.* Sponsors must promptly notify the Department of State via SEVIS of any of the following circumstances:

(1) Change in the actual and current U.S. address. Sponsors must ensure that the actual and current U.S. addresses of an exchange visitor are reported in SEVIS:

(i) Sponsors must report the U.S. mailing address (i.e., provide a P.O. Box number) in SEVIS in those limited cases where mail cannot be delivered to the exchange visitor's actual and current U.S. address (e.g., the exchange visitor resides in a camp setting); and

(ii) If a U.S. mailing address is reported to SEVIS, sponsors must also

maintain records in SEVIS of actual and current U.S. addresses (e.g., dormitory, building and room number) for such exchange visitors.

(2) Change in site of activity. Sponsors must report in SEVIS any change to an exchange visitor's site of activity by

entering the new site within ten days of the change in SEVIS\* (T\* (ac rre



(2) May include provisions for compensation under the terms of which the exchange visitor may be required to pay up to 25% of the covered benefits per accident or illness; and

(3) Must not be an unreasonable cost coverage for perils inherent to the activities of the exchange program in which the exchange visitor participates.

(d) Any policy, plan, or contract secured to fill the above requirements must, at a minimum, be:

(1) Underwritten by an insurance corporation having an A.M. Best rating of "A-" or above; a McGraw Hill Financial/Standard & Poor's Claims-paying Ability rating of "A-" or above; a Weiss Research, Inc. rating of "B+" or above; a Fitch Ratings, Inc. rating of "A-" or above; a Moody's Investor Services rating of "A3" or above; or some other rating as the Department of State may from time to time specify; or

(2) Backed by the full faith and credit of the government of the exchange visitor's home country; or

(3) Part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor; or

(4) Offered through or underwritten by a federally qualified Health Maintenance Organization or eligible Competitive Medical Plan as determined by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

(e) Federal, state or local government agencies; state colleges and universities; and public community colleges may, if permitted by law, self-insure or all of the above-required insurance coverage.

(f) At the request of a non-governmental sponsor of an exchange visitor program, and upon a showing that such sponsor has funds readily available and under its control sufficient to meet the requirements of this section, the Department of State may permit the sponsor to self-insure or to accept full financial responsibility for such requirements.

(g) The Department of State may, in its sole discretion, condition its approval of self-insurance or the acceptance of full financial responsibility by the non-governmental sponsor by requiring such sponsor to secure a payment bond in favor of the Department of State guaranteeing the sponsor's obligations hereunder.

(h) Accompanying spouses and dependents are required to be covered

by insurance in the amounts set forth in paragraph (b) of this section. Sponsors must inform exchange visitors of this requirement, in writing, in advance of the exchange visitor's arrival in the United States.

(i) Exchange visitors who will fail to maintain the insurance coverage set forth above while a participant in an exchange visitor program or who make material misrepresentations to the sponsor concerning such coverage will be deemed to be in violation of these regulations and will be subject to termination as an exchange visitor.

(j) Sponsors must terminate an exchange visitor's participation in their program if the sponsor determines that the exchange visitor or an accompanying spouse or dependent will fail to remain in compliance with this section.

#### § 62.15 Reporting requirements.

(a) Sponsors must submit annual reports to the Department of State that are generated through SEVIS on Form DS 3097. Such reports must be filed on an academic, calendar, or fiscal year basis, as directed by the Department of State in the sponsor's letter of designation or redesignation, and must contain the following:

(1) *Program report and evaluation.* A summary of the activities in which exchange visitors were engaged, including an evaluation of program effectiveness, program difficulties, and number of staff used in the administration of the exchange visitor program;

(2) *Reciprocity.* A description of the nature and extent of reciprocity occurring in the sponsor's exchange visitor program during the reporting year;

(3) *Cross-cultural activities.* A description of the cross-cultural activities the sponsor provided for its exchange visitors during the reporting year;

(4) *Proof of insurance.* Certification of compliance with insurance coverage requirements set forth in § 62.14;

(5) *Certification.* The following certification:

"I certify that the information in this report is complete and correct to the best of my knowledge and belief; and, that the above named program sponsor has complied with all health and accident insurance requirements for exchange visitors and their accompanying spouses and dependents (22 CFR 62.14)."

(i) For exchange visitor programs classified as "Government Programs," this certification will be signed by the Responsible Officer.

(ii) For exchange visitor programs classified as P 1 or P 2 "Academic Programs" this certification will be signed by the institution's Chief Executive Officer or Responsible Officer.

(iii) For exchange visitor programs classified as P 3 and P 4 "Private Sector Programs," this certification will be signed by the organization's Chief Executive Officer or Responsible Officer.

(6) *Program participation.* A numerical count of all exchange visitors participating in the sponsor's program for the reporting year (i.e., by category, form usage, active status at one point during the annual cycle, and by other status).

(b) Sponsors of P 3 and P 4 "Private Sector" programs must file a program specific management review (in a format and on a schedule approved by the Department of State).

#### § 62.16 Employment.

(a) An exchange visitor may receive compensation from the sponsor or the sponsor's appropriate designee, such as the host organization, when employment activities are part of the exchange visitor's program.

(b) An exchange visitor who engages in unauthorized employment shall be deemed to be in violation of his or her program status and is subject to termination as a participant in an exchange visitor program.

(c) The acceptance of employment by the accompanying spouse and dependents of an exchange visitor is governed by Department of Homeland Security regulations.

#### Subpart F—[Removed and Reserved]

3. Subpart F, consisting of §§ 62.70 through 62.79, is removed and reserved.

*Appendices A, B, C and D to Part 62 [Removed and Reserved]*

4. Appendices A, B, C and D to Part 62 are removed and reserved.

Dated: September 25, 2014.

**Robin J. Lerner,**

*Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs.*

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