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DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 9522]

RIN 1400-AD14

Exchange Visitor Program – Summer Work Travel

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of State (Department) proposes to amend existing regulations to provide new program requirements for the Summer Work Travel category of the Exchange Visitor Program. This rulemaking strategy is informed by the Department's comprehensive and ongoing review of the Summer Work Travel program that began in mid-2010.

With this proposed rulemaking, the Department proposes to: specify general program administration requirements for sponsors and their third parties; enhance transparency in the recruitment of exchange visitors; limit exchange visitor repeat participation to a total of three visits; require all exchange visitors to be placed in advance of the exchange visitor's arrival in the United States; outline additional sponsor responsibilities for use and vetting of host entities; and specify host entity requirements for program participation.

In addition, the proposed rule limits the number of late night and early morning hours during which exchange visitors may work; adds a section regulating placements in door-to-door sales; explains new processes for exchange visitor housing; and introduces

Form DS-7007 (Host Placement Certification). The proposed rule also specifies more exactly pre-departure orientation and documentation requirements, including with respect to bicycle safety; ensures that sponsors and host entities provide exchange visitors with cross-cultural activities; and outlines processes for sponsor use and vetting of domestic and foreign third parties.

DATES: The Department of State will accept comments on this proposed rule until [INSERT DATE 45 days AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: JExchanges@state.gov. You must include the Regulatory Information Number (RIN) 1400-AD14 in the subject line of your message.
- Persons with access to the Internet also may view this notice and provide comments by going to the regulations.gov website at:
<http://www.regulations.gov/> and search the RIN 1400-AD14 or docket number DOS-2016-0034.
- Mail (paper 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.
- All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address. If the Department is unable to receive or understand your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will

publish a final rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Keri Lowry, Deputy Assistant Secretary of State, Office of Private Sector Exchange, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA-5, Floor 5, 2200 C Street, NW, Washington, DC 20522-0505; E-mail: JExchanges@state.gov.

SUPPLEMENTARY INFORMATION: For the past fifty years, the Summer Work Travel program has served as one of the most popular exchange opportunities for foreign post-secondary school students to visit and learn about the United States. It is also one of the Department's largest avenues to influence the opinion and attitudes of foreign post-secondary students toward the United States through people-to-people diplomacy. The program also helps these students improve their English language proficiency. In 2015, the Summer Work Travel Program provided students from approximately 125 countries the opportunity to earn money to help defray some expenses of a short stay in the United States by working in seasonal or temporary host placements that require minimal training.

The Summer Work Travel program links university students from every region of the world to the people of the United States. In the past decade alone, approximately one million foreign post-secondary school students have visited the United States, improved their English language skills, developed ties with U.S. persons, and experienced U.S. culture while sharing their own cultures with those they meet. They have returned to their home countries and, after graduation, have begun careers in nearly every field. They remain lifelong ambassadors between their home countries and the United States.

The Department views Summer Work Travel as an important and uniquely effective mechanism for establishing cross-cultural communication and contributing to English language proficiency globally. The program represents the largest Department exchange opportunity for young adults; most exchange visitors are between the ages of 18 and 30. The program reaches diverse exchange audiences, including those from non-traditional sending countries and cities and towns outside national capitals. Such characteristics make the program important to the United States because people-to-people exchanges, and especially exchanges for young adults, are one of the most effective ways the U.S. forges ties with other nations.

The decision for exchange visitors to participate in the Summer Work Travel program is a significant one involving an adventurous spirit, since exchange visitors must live and work in a potentially unfamiliar environment in the United States. The decision also involves a significant investment of time and money on the part of these exchange visitors. It is, therefore, essential that sponsors—and host entities and third parties working with sponsors—take all necessary steps to ensure that every exchange visitor enjoys a safe, rewarding, enjoyable, and memorable U.S. exchange experience.

Sponsors and host entities play vital roles in the success of the program. This proposed rulemaking is intended to promulgate new minimum standards, clearly articulate program requirements, and advance consistency throughout the program.

The Department's insight from its monitoring role, as well as from complaints, incidents, and lessons learned, informs the contents of this rulemaking. The Department has interviewed thousands of exchange visitors and host entities taking part in the SWT program and interacts regularly with program sponsors. The proposed rule's provisions

are intended to improve the program as, first and foremost, a cultural exchange and public diplomacy program of the highest quality. As a private sector exchange model, the program's success is based on creating standards of practice common across all sponsors. In many cases, the proposed requirements are actions already being taken by some sponsors. In others, the Department views the requirement as essential to protect the program and/or the exchange visitor.

As a public diplomacy program, exchange visitors' successful experience with this program will create lifelong ambassadors of goodwill between the United States and other countries. As such, the quality of the program for the exchange visitor is the essential goal. In addition, placement at a host entity permits exchange visitors of all means to know their host communities, engage in cross-cultural activities, and travel. Such exchange visitors also are provided the opportunity to gain work and English language skills and interact with Americans in the workplace.

Sponsors must ensure that all parties involved in this exchange commit to its success.

First, *sponsors* must provide exchange visitors with clear, easy-to-read orientation materials and transparent information on fees, costs, program requirements, and wages; place exchange visitors with only those host entities that commit to advance the foreign policy and cultural exchange goals of the program; orient host entities to inform them fully about the program; place exchange visitors only with suitable and permissible host entities that provide appropriate compensation; ensure that exchange visitors have easy and convenient access to necessary amenities such as grocery stores, post offices, and public transportation; monitor exchange visitors regularly as required; update exchange

visitor site-of-activity information in the Student and Exchange Visitor Information System (SEVIS) promptly as required; and provide and facilitate cross-cultural activities for all exchange visitors. In addition, sponsors must carefully vet and monitor the activities of their domestic and third party organizations.

Second, sponsors must ensure that the *host entities* they select contribute to the program's stated goals and know about and agree to their role as part of a U.S. public diplomacy program. This includes requiring that host entities ensure the exchange visitor's quality of experience in the United States and protect the exchange visitor's health, safety, and welfare. Sponsors must place exchange visitors with those host entities that respect the benefits and obligations the program places on exchange visitors. In addition, sponsors must place exchange visitors at host entities that provide an experience where exchange visitors have significant contact with U.S. colleagues, supervisors, and customers, gain new skills, and increase their English language proficiency through regular use in their placements. Exchange visitor host placement schedules should accommodate reasonable time outside of working hours for exchange visitors to spend time with friends, tour the local area, and practice English.

And third, sponsors must set expectations for the *exchange visitors* they recruit so that they come to the United States already understanding the underlying cross-cultural purpose of the program; their responsibility to fulfill their program obligations as defined through the Exchange Visitor Program regulations by the Department and by the rules set by their sponsor; the necessity for them to abide by U.S. laws during their programs; and also their responsibilities toward their hosts, co-workers, and local U.S. community. Exchange visitors who have an enjoyable and productive experience through the program

become ambassadors of goodwill and understanding between their countries and the United States.

In order to strengthen the Summer Work Travel program, the Department reviewed its implementation of the program beginning in mid-2010. Between 2010 and 2012, the Department identified a number of regulatory changes needed to better protect the health, safety, and welfare of exchange visitors, enhance the program's cross-cultural component, and strengthen overall program administration. The Department published an interim final rule (IFR) with a request for comment on April 26, 2011 (RIN 1400-AC79; see 76 FR 23177) (2011 IFR). Then, after further monitoring program implementation, the Department published an IFR with a request for comment on May 11, 2012 (RIN 1400-AD14; see 77 FR 27593) (2012 IFR). This rule addressed public comments submitted to the 2011 IFR and became effective immediately, with the exception of one provision regarding prohibited placements, which became effective on November 2, 2012 (see also 77 FR 31724).

In promulgating this and previous rulemakings, the Department continues to advance a comprehensive rulemaking strategy to: (i) protect the health, safety, and welfare of exchange visitors on this important program; (ii) respond to issues identified during monitoring and ongoing oversight; (iii) articulate consistent and robust minimum standards for program administration; (iv) prioritize the quality of the exchange visitor experience; and (v) fortify the program's purpose as an important U.S. public diplomacy tool.

Analysis of comments received on the 2012 IFR

The Department reviewed, analyzed, and fully considered the comments submitted for both the 2011 and 2012 IFRs. Comments received in response to the 2011 IFR were analyzed and addressed in the 2012 IFR (see 77 FR 27598-27600, 27602-27604), which responded to emerging program issues requiring monitoring and enforcement.

Comments received in response to the 2012 IFR are addressed below. The 2012 IFR strengthened protections for exchange visitors and reemphasized the cross-cultural component of the program, consistent with the requirements of the Mutual Educational and Cultural Exchange Act of 1961, as amended (Pub. L. 87-256) (22 U.S.C. 2451, *et seq.*) (Fulbright-Hays Act), and 22 CFR 62.8(d).

The Department received comments on the 2012 IFR from 171 parties, including: 102 former exchange visitors previously hosted in mobile concession businesses; 21 leaders of different local, county, and state fairs; ten organizations representing and/or advocating for trafficking victims, low- to-middle-income, migrant and guest workers, unions, and/or civil rights; nine mobile concession business owners that have employed exchange visitors; eight businesses associated with the mobile amusement industry; seven trade associations representing the mobile amusement industry and/or mobile concessionaires; one trade association representing seafood processors; a membership association of many of the largest international educational and cultural exchange organizations in the United States; eight Department-designated Summer Work Travel program sponsors; two private U.S. persons; one foreign entity working with sponsors; and a commercial printing business that has hosted exchange visitors.

The Department received public comment on the following 2012 IFR provisions, all in 22 CFR Part 62:

Program dates. The 2012 IFR and its Supplementary section indicated that the Department determines the program dates for each country (see §62.32(c)). The Department establishes country-specific program start and end dates according to the academic year calendar of each country's ministerially-recognized post-secondary institutions and may modify them as necessary. The Department received three comments, all of which proposed that the Department continue to be open to amendments to program start and end dates. One commenting party suggested that the Department establish bi-annual reviews of the calendar for summer and winter placements.

The Department currently conducts a regular review of country-specific program start- and end-dates and believes that this review addresses these comments by allowing sufficiently for amendment of program dates. The Department is always open to hearing from sponsors, participants, and other members of the public about how country-specific program dates affect Summer Work Travel program participants.

Termination of programs of unresponsive exchange visitors. The 2012 IFR (see §62.32(e)(9)) required sponsors to provide exchange visitors with information explaining that sponsors will terminate the programs of participants who fail to comply with enumerated program regulations (e.g., reporting their arrivals, reporting changes of residence, not starting work at un-vetted jobs, responding to sponsor monthly outreach/monitoring efforts). The Department explained in the Supplementary section of that rulemaking that sponsors should terminate the programs of exchange visitors who do not report their arrival in the United States within ten days. The Department received six comments, five of which disagreed with this provision as overly punitive. They explained that most exchange visitors are at an age where it is common not to follow administrative

rules carefully, that exchange visitors sometimes face difficulties in contacting sponsors upon arrival, and that port of entry information is unreliable if an exchange visitor arrives before his/her program start date, rendering consistent enforcement of this provision impossible. One sponsor suggested that exchange visitors should be terminated only after they demonstrate a pattern of uncommunicativeness.

The Department does not agree with these comments. In order for sponsors to ensure that an exchange visitor is physically located at the site of program placement, as is required by the Department of Homeland Security, and in order that sponsors may monitor the health, safety, and welfare of that exchange visitor at the placement site, sponsors must know that the exchange visitor is indeed present there. This requires the exchange visitor to report his or her arrival, as well as any subsequent sites of activity, for example, if the exchange visitor changes host entities.

Sponsors can enhance the timeliness of exchange visitor reporting by giving them an effective pre-arrival orientation about the necessity of and usable methods for reporting U.S arrival to their sponsor. Sponsors must explain to exchange visitors as part of their orientation that site of activity notification in SEVIS is a Department of Homeland Security requirement and that the sponsor is also authorized under §62.40(a)(3) to terminate exchange visitors who violate the Exchange Visitor Program regulations and sponsors' rules governing the program. Exchange visitors are assigned by their sponsors to report to their initial assignment on the date they are expected to report and then have ten days to notify their sponsor that they have arrived. In addition, exchange visitors have this same period of time to notify their sponsor to update their contact information each time they undergo a host entity or housing change, which the

Department believes is a sufficient time-period for such notification. This provision has not changed in this proposed rule.

Cross-cultural component. The 2012 IFR required that sponsors plan, initialize, and carry out events or other activities that provide exchange visitors exposure to U.S. culture (§62.32(f); see also §62.8(d)). The Department received nine comments, four of which disagreed with this provision. Two commenting parties supported this new requirement, but recommended that the Department provide for a two-year unofficial pilot period of the cross-cultural component to test ways sponsors can most effectively provide and facilitate these cross-cultural experiences. Other commenters disagreed with or expressed reservations about the cross-cultural component requirement, stating that the Department failed to take into account the natural cross-cultural exchange of day-to-day work life and interactions provided by the Summer Work Travel program. In contrast, another party commented that this provision is critical to protecting the exchange visitors and the integrity of the Summer Work Travel program. Another commenter agreed with the addition of a cross-cultural component, but contended that the cross-cultural requirement is so vaguely defined as to be meaningless.

The Department maintains its strong belief that an organized cross-cultural component is necessary for the fulfillment of the Summer Work Travel category's purpose as a cultural and educational exchange and U.S. public diplomacy program. Following the publication of the 2012 IFR, the Department provided all sponsors with a guide to cross-cultural programming, and the Department has consistently sought and highlighted examples of successful cross-cultural programming to share with the sponsor community. The Department requires sponsors and their host entities to create

opportunities to provide cross-cultural programming for exchange visitors. In the proposed rule, this requirement has been set at a minimum of once per month in order to more clearly define the requirement and respond to sponsor inquiries since publication of the 2012 IFR about what was an adequate amount of cross-cultural programming. The Department will continue to work with sponsors to facilitate successful implementation of cross-cultural programming requirements, including by issuing guidance outlining best practices.

Since the 2012 IFR went into effect, many sponsors (approximately 42 percent according to Department records) have already put policies in place to implement, either directly or through host entities, cross-cultural activities for exchange visitors. Organizing a cross-cultural activity for exchange visitors is not especially complex; there are many possible activities that can make use of local resources and community events and that are not especially costly. Some examples organized by either sponsors or host entities over the last year of the Summer Work Travel program are noted under point 16 of the proposed rule discussion below.

72-hour deadline for vetting host placements. The 2012 IFR required that sponsors confirm initial host placements and re-placements for all exchange visitors before exchange visitors could start work by verifying, at a minimum, the terms and conditions of such employment and fully vetting their host entities as set forth at §62.32(g)(2). If an exchange visitor in in the United States finds his or her own host replacement, sponsors must vet that host re-placement within 72-hours. The Department received nine comments, all in opposition to the 72-hour deadline, which they viewed as unrealistic. Commenters explained that host re-placement vetting is a time-consuming

and multi-step process, and it is particularly challenging when the 72-hour timeframe falls over a weekend when host entities are difficult to contact and sponsor staff is not available to carry out all required steps of proper vetting; they proposed changing the deadline to three business days.

The Department agrees to propose a change to the vetting deadline to three business days, as provided in proposed paragraph §62.32(h)(1). Sponsors have systems in place for vetting host entities, and the Department believes that three days are sufficient for the sponsor to check a host entity's location and suitability and conduct a background check on that entity, so that the exchange visitor can begin his or her new placement as soon as possible thereafter.

Housing and transportation. The 2012 IFR required that sponsors actively and immediately assist exchange visitors with arranging appropriate housing and identifying appropriate local transportation when host entities do not offer housing and local transportation (see §62.32(g)(9)(i)), or when exchange visitors decide to ask for assistance after initially declining host entity-provided housing. The Department received four comments from sponsors on the topic of housing. Some sought clarification on what specific measures the Department intends with regard to sponsors' assisting exchange visitors with their housing, while others questioned the feasibility of sponsors' providing an additional level of housing assistance.

One commenter expressed support for the requirement that sponsors assist exchange visitors to ensure appropriate housing and suitable local transportation. However, others disagreed. One commenting party explained that sponsor assistance should be limited in scope to informing exchange visitors of their rights, explaining types

of housing and local transportation, reasonably investigating allegations of unsafe or inadequate housing, and offering additional assistance and guidance as appropriate. Other commenters worried about increased costs if sponsors are required to provide exchange visitors with suitable housing. Some noted that sponsors may have to put down deposits to secure housing even before knowing whether exchange visitors have received visas. Still other commenters stated that exchange visitors are not minors and may willingly choose substandard housing to save money unless the Department imposes penalties on exchange visitors who choose to do so.

The Department continues to respond to serious concerns about housing and local transportation. The Department maintains that a placement is appropriate only if it includes safe and affordable housing accommodation, as well as readily available local transportation. Host entities are a resource for identifying both housing and local transportation options. Due to the reality that poor housing and lack of local transportation may prove disastrous to an exchange visitor's experience or well-being, sponsors must only approve placements for exchange visitors that include an identification of safe and affordable housing that is within reasonable distance from the exchange visitor's host entity(ies), in a location that is neither isolated nor difficult to access, and in reasonable proximity to commercial infrastructure and necessities. Sponsors or their host entities must identify, but are not obligated to fund, such housing and local transportation as part of the placement selection. Sponsors placing exchange visitors in remote national park, summer camp, or resort locations must document the host entity's written arrangement for transportation for those exchange visitors during their off hours and in case of emergency. At times, exchange visitors will identify

housing themselves. Sponsors must verify that any housing option selected is safe, affordable, and otherwise appropriate, including from a local transportation perspective.

The Department proposes a number of changes to better ensure access to appropriate housing and local transportation, as set forth in proposed paragraph 62.32(l) and discussed later in this section.

Expansion of excluded host placements. The 2012 IFR expanded the program exclusion list of host placements (see §62.32(h)) by adding to that list host placements that raise concerns for the health, safety, and welfare of exchange visitors and the integrity of the Summer Work Travel program, and that generally cannot meet the cross-cultural exchange requirement (see, for example, proposed paragraph 62.32(o)).

Comments on specific prohibitions follow:

Exclusion of host placements requiring driver's licenses. The 2012 IFR excluded positions that require driving or operating vehicles for which driver's licenses are required (§ 62.32(h)(5)). The Department received 11 comments, seven of which disagreed with this prohibition. Some commenters understood the prohibition of driving-intensive host placements, but did not believe it necessary to exclude host placements that require occasional driving on non-public roads or host placements that incidentally require exchange visitors to drive, such as positions as bellhops and valet parking attendants.

In the Department's view, prohibiting exchange visitors, on behalf of their host entity, from driving or operating vehicles on public roads for which a driver's license is required, however incidental this driving activity may be, helps mitigate the risk to the health, safety and welfare of the exchange visitors. Moreover, should an exchange visitor

collide with another driver or a pedestrian while driving or be hit by another vehicle on a public road, the exchange visitor may become involved with insurance companies and/or law enforcement, leading to potentially serious consequences for the exchange visitor. (See proposed paragraph 62.32(k)(10)).

Exclusion of host placements deemed hazardous to youth. The 2012 IFR prohibited positions and activities declared hazardous to youth by the U.S. Secretary of Labor (§ 62.32(h)(9)). The Department received five comments, two of which disagreed with this prohibition. One commenter disagreed with the prohibition of such host placements because the Secretary of Labor's list is intended for minors, while the majority of exchange visitors on the Summer Work Travel program are not minors. While a second commenter generally disagreed with these exclusions, three other commenters stated that the Secretary's list provides a useful guide for sponsors in making appropriate placements. A commenter also noted that the Department should not bar host placements in which exchange visitors conduct hair braiding and henna tattooing, activities generally not seen as dangerous but that are incidental to some summer host placements.

One of the primary goals of the 2012 IFR was to mitigate risks to the health, safety and welfare of exchange visitors. The Department believes that, regardless of the fact that most exchange visitors are not minors, the Secretary of Labor's list provides a sensible, easy-to-use directory of host placements that are potentially dangerous and are thus inappropriate for post-secondary students working in the United States on a cultural and educational exchange program. Proposed paragraph 62.32(k)(13) continues to refer to the Secretary of Labor's list at 29 CFR Part 570 (<http://www.ecfr.gov/cgi-bin/text->

[idx?tpl=/ecfrbrowse/Title29/29cfr570_main_02.tpl](#)), and puts in place additional prohibited positions to those specified in the 2012 Summer Work Travel program interim final rule.

Exclusion of placements with traveling fairs and itinerant concessionaires. The 2012 IFR prohibited placements in positions with traveling fairs and itinerant concessionaires (§62.32(w)(14)). Host placements in the mobile amusement and mobile concession industries are overly burdensome to monitor, and have, in specific instances, created unacceptably high risks to the health, safety, and welfare of exchange visitors, largely as a consequence of the mobile nature of the worksite. The Department received 151 comments, 147 of which disagreed with this prohibition. Comments in opposition were submitted by: 102 former exchange visitors employed by mobile concessionaires; 21 heads of different local, county and state fairs; eight businesses associated with the mobile amusement industry; seven organizations representing the mobile amusement industry and/or mobile concessionaires; and nine mobile concession business owners.

Commenters argued that the prohibition of host placements in an entire industry because of the actions of a few businesses within that industry is unfair; that the traveling nature of such host placements provides excellent cross-cultural experiences; that modern technology and the submittal of the businesses' itineraries make it possible for exchange visitors to be accurately tracked in SEVIS; that fairs' charitable, technological and agricultural contributions depend on mobile concessionaires and that this relationship could be damaged by the provisions of the 2012 IFR; and that the timing of the 2012 IFR's effective date was unnecessarily and unacceptably disruptive. Commenters also

argued that every host placement comes with risks, and that the 2012 IFR's prohibitions were overreactions to negative press.

The Department respectfully disagrees with these comments. The purpose of the Exchange Visitor Program, including the Summer Work Travel category, is not to satisfy the labor needs of any industry. The Department also has received and cannot ignore serious complaints about substandard housing and other related inadequacies associated with almost all host placements in the mobile amusement and mobile concession industries. In addition, placement in these industries entails frequent address changes that require exchange visitors and their sponsors to update SEVIS records frequently to ensure accuracy and maintain compliance with both Department of State and Department of Homeland Security regulations. Many sponsors' demonstrated lack of compliance with these SEVIS reporting requirements added to the Department's determination that these placements pose a sufficiently high risk to the health, safety, and welfare of exchange visitors. Finally, if a sponsor does not know where an exchange visitor is residing, security risks arise for both the exchange visitor and the general public. A prohibition is, therefore, appropriate (see proposed paragraph 62.32(k)(17)). The Department does not propose substantial changes to this section in response to comments. It proposes only to change the term to identify this industry as "traveling fairs and itinerant concessionaires," rather than "mobile amusement or mobile concessionaire industries."

Exchange visitor compensation. The 2012 IFR reinserted language inadvertently omitted in the 2011 IFR that mandates exchange visitor compensation at the highest of the applicable federal, state, or local minimum wage (see §62.32(i)(1) and proposed paragraph 62.32(f)(6)(i)). The Department received five comments urging further

protections to ensure adequate exchange visitor compensation. Three commenters expressed concern that the language as written does not explicitly guarantee compensation equal to federal, state, or local wages in host placements exempt from minimum wage requirements in the Fair Labor Standards Act (FLSA) of 1938. Two commenting parties stated that, unless sponsors are actually penalized for placing exchange visitors with host entities that fail to provide exchange visitors with sufficient pay, no additional compensation rules will be effective. In addition, the Department received two comments suggesting that exchange visitor wage levels be set at the same level that U.S. persons receive for doing the same work.

The Department wishes to ensure that exchange visitors on the Summer Work Travel program will be able to meet the financial obligations they incur as part of their exchange experience. The Department proposes to retain the requirement from the 2012 IFR, with slight editorial changes. Proposed paragraph 62.32(m)(1)(i) requires that sponsors must inform exchange visitors of federal, state, and local minimum wage requirements, and proposed paragraph 62.32(f)(6)(i)-(ii) requires that, in their host placement(s), exchange visitors receive pay and benefits commensurate with those offered to their U.S. counterparts and/or those on another class of nonimmigrant visa, as applicable, doing the same or similar work in the same work setting, and not less than the federal, state, or local minimum wage, whichever is highest, for all hours worked (including overtime) in conformance with federal, state, and local laws, including the Fair Labor Standards Act. Host entities may reasonably offer an exchange visitor wages commensurate with those of a qualified, experienced, or fully competent U.S. worker or

worker on another visa class, only after considering the experience, education, and skill requirements of the position.

Additional protections for U.S. workers. The 2012 IFR introduced new protections for U.S. workers by requiring sponsors to confirm that host entities of exchange visitors: (1) do not displace U.S. workers at the worksite in which exchange visitors are placed (§62.32(n)(3)(ii)); (2) have not experienced layoffs in the past 120 days (§62.32(n)(3)(iii)); and (3) do not have workers on lockout or on strike (§62.32(n)(3)(iii)). The Department received eight comments, all of which agree with the new provisions or call for further protections for U.S. workers. One commenting party proposed requiring a Department of Labor-certified prevailing wage that protects U.S. workers from the depressive effects of foreign labor.

The Department agrees with the need to have exchange visitors' compensation and benefits be commensurate with those offered to their U.S. counterparts doing the same or similar work in the same work setting and having similar qualifications and experience (and that exchange visitors should receive the same compensation and benefits as those on another class of nonimmigrant visa if they are doing the same or similar work in the same work setting and have similar qualifications and experience), as well as providing for greater transparency in wages and work-related costs. See changes set forth in proposed paragraph 62.32(f)(6)(i) and (ii).

PROPOSED CHANGES:

The Department has worked to engage Summer Work Travel stakeholders, listening to their views about program improvement and considering their comments in drafting this proposed rule. The Department was represented at annual international

conferences attended by a large number of sponsors and foreign partners throughout the 2012-2016 period. It hosted sponsor conference calls in June and August 2012, and again in January 2013 and May 2014, for all Summer Work Travel program sponsors to discuss program administration improvements, best practices, host and housing placement concerns, and the Department's notional timeline of this proposed rulemaking. The Department held two dialogue meetings for Summer Work Travel sponsors in late summer and in early fall 2013, and another dialogue session in fall 2015.

Furthermore, the Department has observed a great variety of Summer Work Travel placements through a monitoring program that it instituted in 2012. Throughout summer 2012, the Department conducted 650 Summer Work Travel site visits in 31 U.S. states. In summer 2013, the Department visited 667 sites in 32 states. In summer 2014, the Department visited 676 sites in 33 states. In 2015, the Department visited 985 sites in 42 states and the District of Columbia. In summer 2016, the Department visited sites of activity hosting 1,246 Summer Work Travel participants in 36 states. Program monitoring through site visits includes interviewing exchange visitors and visiting their host placement sites and housing. In addition, in August 2013, the Department sent surveys directly to some 15,000 exchange visitors in the Summer Work Travel program in order to learn about exchange visitor perspectives on their program and received nearly 4,000 responses, for a 25 percent response rate. The Department has made a determined effort to catalogue program successes, and in 2014 and 2015 publicly highlighted these success stories. Observations from site visits, the study of best practices, and the Department's robust interaction with sponsors contributed directly to the content of this proposed rulemaking.

The Department invites public comment on the proposed regulatory changes set forth below. Provisions of the proposed regulation have been organized to follow the general sequence of administering the Summer Work Travel program. In your response, please number comments to coincide with the following topics:

1. **Definitions.** The Department includes in proposed paragraph 62.32(b) definitions of “host entity,” “host placement,” “seasonal nature,” and “temporary nature.” These definitions provide clarity in areas important to the Summer Work Travel program that are in common use by the Department and the sponsor community, but which, up until now, have not been defined. The Department in this rulemaking seeks to define these terms narrowly in terms of their application only to the Summer Work Travel category of exchange.

2. **General sponsor responsibilities.** Due to the variations in sponsor program administration, particularly with respect to relationships with third parties, the Department delineates in proposed paragraph 62.32(d) a sponsor’s general program responsibilities and those responsibilities it is permitted to delegate to its foreign and domestic third parties. Sponsors are directly responsible for screening; making the final selection of exchange visitors; placing and re-placing exchange visitors; issuing Forms DS-7007 and DS-2019; orienting host entities; finding, approving and verifying exchange visitor housing; and conducting monitoring of exchange visitors and their host placements within the United States. These activities must be done by employees of the sponsor. In addition, the sponsor must make provision for pre-departure and post-arrival orientations in accordance with §62.10(b) and (c). A sponsor may conduct a pre-arrival orientation directly and/or through a foreign third party. A sponsor may conduct a post-

arrival orientation directly and/or through the host entity. Sponsors should encourage their host entities to provide exchange visitors with a post-arrival local orientation in order to acquaint exchange visitors with resources, financial institutions, possible cross-cultural activities, evacuation and other safety procedures, and so forth, in their specific host community.

The use of third parties may serve as an important benefit to a program; however, it represents some risk to sponsors, who are responsible for the actions of their third parties. A sponsor may use foreign third parties for recruitment, initial identification of host entities, and overseas orientation of exchange visitors. A sponsor may use domestic third parties for initial identification of host entities, implementation of cross-cultural activities for exchange visitors, providing a local point of contact or local orientation for exchange visitors, providing housing assistance, and offering transportation options for exchange visitors.

A host entity (i.e., where exchange visitors are placed) is not considered to be a domestic third party. There are separate regulatory requirements that apply to a sponsor's selection of and relationship with host entities.

The Department reminds sponsors that third parties that work with sponsors in administering the program are always deemed to be acting on that sponsor's behalf when conducting aspects of the sponsor's exchange visitor program, and their actions are imputed to the sponsor as set forth in §62.2 (Definitions; *Third party*) and as provided in proposed paragraph 62.32(d)(5). Sponsors must ensure that any fees they or their third parties charge are legal. For example, fees that sponsors charge to provide program services to participants, such as application fees or related document translation fees to

prove program eligibility as a student or a very recent student, would be permitted. But any fees that require an exchange visitor to remit a portion of his or her earnings in the United States to overseas private entities are not permitted. Sponsors must ensure that fees be clearly disclosed and that they and their third parties document all aspects of their administration of the exchange visitor program, retaining this documentation on file for three years.

3. ***Exchange visitor recruitment.*** Because the Department of State authorizes this program for the purposes of public diplomacy and global engagement with young adults, the Department is particularly mindful of sponsor or foreign third party marketing and promotional efforts that inaccurately characterize the program as solely one with a work component. This program is an international cultural and educational exchange program, not a program to recruit aliens to work in U.S. businesses. The success of this program derives from exchange visitors' acquiring cross-cultural knowledge, gaining English language skills, and making ties that benefit the United States and the countries to which they return after their exchange. In order to create consistency and appropriate industry practice, the Department has included a requirement in proposed paragraph 62.32(d)(8) that would ensure sponsors promote the Summer Work Travel program as a cultural and educational program and recruit applicants and host entities appropriately. Sponsors must cooperate only with foreign third parties that abide by this requirement through both their communications with, and the marketing materials they distribute to, potential exchange visitors abroad.

In addition, in the proposed rule, the Department addresses recurring issues regarding the lack of transparency in program costs, including fees charged to exchange visitors by

sponsors, foreign and domestic third parties, and host entities, deductions from wages, and other program-related costs. The General Provisions (Subpart A) of 22 CFR Part 62 create an initial requirement regarding fee transparency for the Exchange Visitor Program in general (as set forth in §62.9(d)), and the Department proposes to create additional administrative requirements for the Summer Work Travel category. Exchange visitors recruited into the program must be made aware, at the time of their recruitment, what fees are charged by sponsors and any third party organizations with which sponsors work and estimated other costs the exchange visitor will likely incur. Proposed paragraph 62.32(d)(9), therefore, would require each sponsor to include in its recruiting material, and post on its main website (e.g., with a visible link to such a page on the sponsor's homepage), examples of the typical monthly budgets of exchange visitors placed in various regions of the United States to illustrate wages (based on the required weekly minimum of 32-hours of work at a typical host placement) balanced against itemized fees and estimated costs. Providing exchange visitors with such information better ensures that they fully understand the financial obligations they assume when choosing to participate in the program. This is especially important since the earnings of exchange visitors are likely to defray only some of the costs they will incur during their exchange opportunity.

4. ***Exchange visitor screening and selection.*** The Summer Work Travel Program requires exchange visitors to exercise great responsibility while in the United States. Exchange visitors must adjust to life in a new culture, accustom themselves to a new work environment, and understand all their rights and responsibilities as exchange visitors in a workplace setting. The Department, therefore, has included in proposed

paragraph 62.32(e)(1), the following eligibility requirements: Exchange visitors must be at least 18 years old by their Summer Work Travel program start date. In addition, at the time they file their program applications, prospective exchange visitors must be foreign nationals enrolled in and actively pursuing a full-time course of study toward a degree at a classroom-based post-secondary academic institution that is physically located outside the United States and ministerially-recognized within the national education system where the student is enrolled (including final year students).

Repeat participation has both benefits and drawbacks. In seeking to create the appropriate balance, the Department proposes at §62.32(e)(1)(iii) to limit to three the total number of times an exchange visitor is permitted to participate in the Summer Work Travel program during his or her post-secondary education career. The Department has observed the value of repeat participation, including solidifying a relationship between a host and exchange visitor, and enabling an exchange visitor to continue building skills while gaining exposure to an even greater diversity of U.S. culture, society and tourism. The Department also has observed the drawbacks of repeat participation, where some exchange visitors with more knowledge of the United States and the Summer Work Travel program have been encouraged to repeat their program participation in order to organize for host entities or other entities activities forbidden by regulation. In limiting participation in the program to three visits, the Department notes that the working holiday programs of 20 other countries, the programs that are most comparable to the Summer Work Travel program, restrict participation to a single work and travel visit. In several other countries, working holiday programs are restricted to two visits. The Department is interested in maximizing the number of individuals who gain exposure to the Summer

Work Travel program, given its nature as an exchange program. Moreover, previous participation in the program will not limit exchange visitors from participating in other applicable categories of the Exchange Visitor Program.

The Summer Work Travel program permits exchange visitors to practice and enhance their English language skills; effectuates both the Department's public diplomacy goals and the legislative intent of the Fulbright-Hays Act, which enables the U.S. government to establish programs that promote mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange (22 U.S.C. 2451). The Department requires sponsors to review the applications of, interview, and select those applicants who have a level of English language proficiency that would enable them to be understood by co-workers and community members, discuss their personal backgrounds, and comprehend safety, work, housing, and transportation-related instructions. In addition, because participation in cross-cultural activities is a main purpose for the Summer Work Travel program, proposed paragraph 62.32(e)(1)(v) requires sponsors to select exchange visitors who evidence an intention, for example, in their written application or interview, to participate in such activities while in the United States. This requirement is important toward ensuring that exchange visitors participate in the program for the correct reasons, and will have the interest and prior learning experience necessary to succeed in the program to which they applied.

Proposed paragraph 62.32(e)(2) specifies that, prior to selecting exchange visitors, sponsors must conduct interviews with them in person or by video-conference and, upon

request, facilitate videoconferences between exchange visitors and host entities in order that these parties can learn about one another prior to the exchange.

5. *Exchange visitor placement.* Finding an appropriate host placement for each exchange visitor is one of the most important decisions a sponsor must make. In proposed paragraph 62.32(f), the Department summarizes the responsibilities of sponsors in securing a host placement for each exchange visitor. Among these requirements are that host placements be seasonal and temporary in nature, require minimal training, and be interactive. Interaction and use of English language during the regular course of the day can help achieve the central goals of the Summer Work Travel program: relationship-building, cultural exchange, and English language proficiency. Thus, as provided in proposed paragraph 62.32(f)(iii), sponsors must ensure that all placements permit daily personal interaction with customers and/or American co-workers as an integral part of the placement. The Department seeks to avoid, as part of this program, positions that provide little to no language exposure or skill acquisition, and that are inappropriate for a cultural and educational exchange program. Such positions do not fulfill the stated goals of the program. Sponsors must be able to ensure that host entities make appropriate accommodation to meet this objective.

For example, one observed best practice was a host entity that, rather than retain one individual solely on dishwashing, a task the host felt offered little interpersonal interaction, rotated restaurant staff and exchange visitors through this task in order to offer each person a variety of assignments. Additionally, the Department has no objection to exchange visitors working alongside foreign nationals in other visa categories, as long as the exchange visitors with similar qualifications and experience receive the same

compensation and exchange visitor employment does not have an adverse effect on U.S. workers. The Summer Work Travel program serves to create long-term relationships between Americans and program participants, and working alongside U.S. workers is essential to the achievement of that goal.

Pre-placement. The Department engages with host communities where exchange visitors are housed. It has learned that overcrowding in some communities can become a major problem where exchange visitors who are not pre-placed arrive unannounced and unexpected. Seasonal communities struggle to identify affordable and appropriate housing for those who are pre-placed. In the worst cases, exchange visitors live in overcrowded accommodations, and some even have been left homeless. These situations defeat the purposes of the exchange visitor program, bring notoriety, and can generate tensions within communities. Accordingly, the Department proposes in paragraph 62.32(f)(1) to extend the applicability of existing pre-placement requirements so that they pertain to exchange visitors from all countries, rather than only exchange visitors from non-Visa Waiver Program countries, as is currently so under §62.32(g)(10).

Prior to July 15, 2011 (the effective date of the 2011 IFR), sponsors were required to allow no more than half of their Summer Work Travel exchange visitors to enter the United States without pre-arranged host placements. Since July 15, 2011, sponsors have been required to pre-place all exchange visitors except those from Visa Waiver Program countries. Requiring uniform pre-placement in positions with a vetted host placement prior to exchange visitor receipt of a Form DS-2019 will permit host entities and local communities to prepare for exchange visitor arrival, allow sponsors to ensure that each placement is with a host who has been oriented in advance and is committed to the goals

of the program, and reduce the potential for temporary housing or overcrowding. Finally, requiring pre-placement will reduce the number of exchange visitors from Visa Waiver Program countries who never get host placements during their stay in the United States, estimated according to Department records to be around 10 percent of exchange visitors from all Visa Waiver Program countries. The Department also believes that a 100 percent pre-placement requirement will better ensure that proposed expanded host placement requirements are met.

Host entity orientation. A sponsor's engaging the host entity in welcoming the exchange visitor, providing the exchange visitor with a positive experience while in the United States, and connecting with that exchange visitor to provide cross-cultural activities are all fundamental elements of the Summer Work Travel program's mission as one of exchange. Many sponsors have created orientations for host entities. The Department sees this as a positive trend, and proposes in paragraph 62.32(f)(1)(x) that all sponsors be required to orient host entities (e.g., in person, online, through CD or DVD, through teleconference), clearly explaining to them the public diplomacy purpose and requirements of the program and the host entity's duties during the program and toward the exchange visitor. Sponsors must explain program regulations and policy to host entities so that they may be well-informed at all times about the program.

Remote placements. The Department receives reports of emergencies and urgent situations from sponsors, exchange visitors, host entities, and members of the public. If serious incidents occur regarding the host placement, host entities are responsible for supervision of and immediate assistance to their exchange visitors in such circumstances. However, sponsors with a presence near and/or that have arrived immediately to the

location of an emergency have had the most success in assisting all parties, including host entities, in such situations, during which major programmatic decisions may need to be made. The Department proposes in paragraph 62.32(f)(1)(xii) that each exchange visitor be placed in a location that the sponsor's employee or representative is able to reach in-person within eight hours (i.e., within one business day), through any reliable transportation means. Each sponsor should plan how its staff or representatives would reach exchange visitors placed in more isolated locations where there is limited transportation, and who in the sponsor organization is to be responsible for reaching the exchange visitor in such circumstances.

The Department has monitored placements that are isolated, with little to no infrastructure nearby, and where a sponsor has not visited prior to the placement. The Department has concluded that sponsors should take great care when placing exchange visitors in locations that are far from commercial infrastructure and transportation options, and in those instances, host entities should assume responsibility for ensuring sufficient local transportation for the exchange visitor to meaningfully experience U.S. culture and cross-cultural activities.

The Department has seen successful placement of exchange visitors at summer camps and national parks, which may be a distance from commercial infrastructure. In those instances, the host entities made arrangements for cross-cultural outings, shopping excursions, emergency evacuation if needed, and so forth.

Sponsor ownership by host entity. Host entities that either partially or wholly own the sponsor, and sponsors that wholly or partly own the host entity, must under proposed paragraph 62.32(f)(2) divulge that relationship to the Department and retain or

make available an independent and neutral entity, such as an ombudsperson, to act as an advocate for the exchange visitor should the Department determine there is a need. This is important because a sponsor that is owned by the host entity at which the exchange visitor is placed may not be able to act impartially or advocate for the exchange visitor in a dispute between the exchange visitor and the host entity. For example, if an exchange visitor were to complain of alleged legally non-compliant conduct on the part of the host entity (such as requiring the exchange visitor to conduct unauthorized activities in the host placement) and seek redress from the sponsor, the host entity that owns the sponsor could exert pressure on that sponsor not to respond to the exchange visitor's request. In this and other cases, an independent or neutral entity could serve as an advocate for the exchange visitor, as the sponsor and host entity are not well placed to adopt this role since, by definition, the sponsor and the host entity have an inseparable business relationship with each other.

Strikes at the host entity. At proposed paragraph 62.32(f)(3), during the pre-placement phase, sponsors must not match exchange visitors with host entities at which there is a strike (or other labor dispute that the sponsor reasonably believes would have a negative impact on the exchange visitor's program) at the placement site. If a strike (or other similar labor dispute) occurs at the host entity in the location where an exchange visitor's host placement has been finalized pending the arrival of the exchange visitor or where an exchange visitor is currently carrying out the program, sponsors must re-place the exchange visitor at a different host entity immediately, to the extent possible, but in any event, within five business days. Exchange visitors placed where there is a strike or other such labor dispute will likely be subjected daily to a tense work environment that

requires them either to cross picket lines and work in the place of striking employees or choose to join a strike, which could lead to conflict with management. Such work environments at a host entity are not conducive to the cross-cultural program experience the Department wishes to provide for its exchange visitors.

Hours. The Department has learned that gaining sufficient work hours is a significant concern to exchange visitors on the Summer Work Travel program. Many exchange visitors participate with the intention of maximizing their days and experiences, and become despondent if they have too few hours of work. Too few hours also may lead exchange visitors to experience difficulties with their financial obligations. On the other hand, too many hours may exhaust the exchange visitor and leave little time for any other activities.

The ideal situation would be for exchange visitors to work 40-hour work weeks, as is common in the United States for full-time employees, but the Department also understands that seasonal employment ebbs and flows. In order to create appropriate standards and transparency, as well as protect exchange visitors who expend significant personal investment to participate, the Department proposes at paragraph 62.32(f)(4) that sponsors place exchange visitors only with host entities that commit to provide exchange visitors with no less than 32-hours and no more than 65-hours of permissible work per calendar week, averaged over a two-week period, for all work weeks of their placement. The Department will allow a calculation of hours averaged over a two-week period to accommodate a measure of potential irregularity in working hours from week to week. Exchange visitors must be paid overtime for hours completed, calculated on a weekly basis, in accordance with applicable federal, state, and local laws. Because exchange

visitors have various motivations, the Department will permit an opt-out provision for the lower limit of hours (32), if requested in writing by the exchange visitor and acknowledged by the sponsor. Recognizing that certain host entities may not be able to guarantee 32-hours consistently, the Department would find appropriate placement at two authorized host entities simultaneously in order to meet the 32-hour minimum. Each placement must follow all regulatory requirements.

Over the years, the Department has been made aware that an exchange visitor's hours may decline over the course of the placement, causing exchange visitors to seek other unauthorized host placements. Should an exchange visitor's hours, averaged over a two-week period, fall below the 32-hour weekly minimum for longer than two weeks, the sponsor must assist the exchange visitor to increase his or her hours at the current host placement or find a re-placement or an additional placement to meet the required hour minimum. If the exchange visitor's hours averaged over a two-week period fall below the 32-hour weekly minimum, the exchange visitor also has the option to accept the below-minimum hours by indicating such to the sponsor in writing; the sponsor must acknowledge the communication.

Although the Department proposes at paragraph 62.32(f)(4) to require a minimum of 32-hours and a maximum of 65-hours per calendar week for authorized placements in the program, the Department does allow for some flexibility within that range in order to accommodate the special needs of seasonal placements. An exchange visitor's written consent is essential for work below or beyond previously agreed-upon hours. The importance of mutual agreement and clarity in hours and placement conditions is the motivation for an amended Form DS-7007.

Both the host entity and the exchange visitor will be subject to the requirement of two weeks' notice as set forth in proposed paragraph 62.32(f)(4)(iii) and (iv) before changing central terms of the host placement agreement. The Department has learned that exchange visitor no-shows or abandonment of jobs are a major risk to the program, as host entities are counting on and have prepared for exchange visitor arrival. Likewise, the Department has too often been made aware of exchange visitors who arrive at the agreed placement only to be told that they have no job, or the job they are provided upon arrival is not the job to which they agreed. In order to instill greater commitment and, thus, higher quality exchange experiences, consequences for failure to fulfill requirements must exist on both sides.

An exchange visitor who abandons the placement, has a delayed arrival, or fails to arrive at the placement without first notifying the sponsor and gaining sponsor permission may be terminated from the program. Similarly, a sponsor may terminate from hosting exchange visitors any host entity that fails to provide the exchange visitor and sponsor two-weeks of notice before ending the placement, decreasing hours below the 32-hour weekly minimum, averaged over a two-week period, or otherwise significantly changing agreed-upon terms of the placement. The two-week notice provision does not apply to host entities in cases where the exchange visitor fails to report to work on a sustained basis (i.e., for longer than ten days and without contacting the sponsor and host entity supervisor and receiving permission to be absent). The above requirements are intended to respond to sponsor concerns of no-shows, and exchange visitor concerns of significant changes to their placements without their knowledge or advance consent. (Proposed

paragraph(f)(4)(iv) states that the two-week requirement does not apply to credible allegations of conduct that could result in sanctions.)

In addition, once notified, the exchange visitor must be given at a minimum 72-hours to consider any significant additional requirements or changes that host entities wish to make to the exchange visitor's host placement, such as new duties, departmental relocation, or geographic relocation. An exchange visitor cannot be required to accept major program changes without consent. As set forth in proposed paragraph 62.32(m)(3), the sponsor must inform host entities and exchange visitors that, if an exchange visitor does not agree to such requirements or changes, he or she may continue with his or her previous host placement duties or, if this is not possible, request a replacement by the sponsor. In the Department's experience, most sponsors are able to complete the re-placement vetting process for exchange visitors (i.e., verifying the terms and conditions of such employment and fully vetting host entities) within the three day period required by this proposed rulemaking, so that the exchange visitor may begin the re-placement position as soon as possible thereafter. Sponsors should expedite replacements of exchange visitors who refuse to take on additional work requirements and wish, as a consequence, to be re-placed, so that exchange visitors are not required by circumstances to stay in host placements where they cannot or do not wish to conduct additional or alternative work requirements to those listed on their Form DS-7007.

6. **Compensation.** The 2012 IFR required sponsors to ensure that all exchange visitors are compensated at "the applicable Federal, State, or Local Minimum Wage (including overtime)" (77 FR 27610; §62.32(i)). The Department reiterates that sponsors must ensure that host entities pay exchange visitors an hourly wage not less than the

federal, state, or local minimum wage, whichever is higher, for all hours worked (including overtime) in conformance with applicable federal, state, and local laws, including the Fair Labor Standards Act. This requirement is retained in proposed paragraph 62.32(f)(6)(i) , which will, in addition, require sponsors to place exchange visitors with host entities that agree to provide exchange visitors with pay, benefits, and working conditions commensurate with those offered to their U.S. counterparts and/or those on another class of nonimmigrant visa doing the same or similar work in the same work setting if they have similar qualifications and experience (see proposed paragraph 62.32(f)(6)(ii)). The Department does not wish host entities to use exchange visitors as a way of undercutting the wages of U.S. workers or the wages of those workers who have come to the United States after having been accepted into non-immigrant labor programs. Any host entity employing exchange visitors should be advancing the public diplomacy goal of the program and willing to offer exchange visitors an experience that is in keeping with this program purpose. The sponsor also must ensure that each exchange visitor has advance knowledge of his or her expected hourly earnings, enabling the exchange visitor to plan accordingly for living expenses (see proposed paragraph 62.32(d)(9)). The hourly wage requirement is particularly important for sponsors to monitor in certain placements, such as summer camps, where the exchange visitor's room and board are covered by the camp and where hours of work may become extended due to the setting.

Sponsors or host entities must compensate eligible exchange visitors for time spent in required training, including applicable overtime (if the exchange visitor is working more than 40-hours in a single work week), in accordance with all applicable federal, state, and

local laws (see proposed paragraph 62.32(f)(6)(i) and (ii)). For trainings held in a city that is farther than 60 miles away from the exchange visitor's site of activity (see proposed paragraph 62.32(f)(11)), or where exchange visitors are required by the sponsor or host entity to stay overnight at the training site, the sponsor or host entity must compensate (either themselves pay or reimburse the exchange visitor) for related lodging during the training.

In addition, as set forth in proposed paragraph 62.32(f)(8), sponsors, in accordance with the Fair Labor Standards Act, must ensure that host entities provide exchange visitors, without charge or deposit, all uniforms, tools, supplies, and equipment needed to perform placement-required activities. Finally, because the Summer Work Travel Program is cultural and educational, and not a work program, and because exchange visitors are not in the United States for sufficient time to make use of union services, sponsors must reimburse exchange visitors any union dues that are required as part of their host placement.

7. *Door-to-door sales positions.* The Department is concerned that door-to-door sales positions may create unsuitable risks for exchange visitors because such positions involve living in different housing from time to time and visiting homes unannounced and unrequested to sell products. Because door-to-door sales have become highly infrequent in this age of online sales, household reaction to the exchange visitor's outreach may be uncertain. The Department is aware that these positions are highly interactive, offer professional skills some exchange visitors are seeking, and offer daily English language usage. However, they tend to require some travel of the exchange visitor, usually within a pre-defined area, and may require long and/or irregular hours.

The Department thus requires in proposed paragraph 62.32(g) that sponsors placing exchange visitors in door-to-door sales positions execute an agreement with each exchange visitor in advance of the exchange visitor's acceptance of the host placement. This agreement must explain host placement duties and expectations, the geographical area the placement will encompass, how the purchase of any necessary state or local permits will be handled, how exchange visitors may access pre-arranged housing while traveling, and how, in accordance with the Fair Labor Standards Act, exchange visitors will be paid an hourly wage for time spent in their arrival orientation and be timely reimbursed for housing and other necessary business costs incurred while traveling on behalf of their host entity. Sponsors also must provide exchange visitors with an orientation containing information on safety considerations while selling door-to-door, how they will be supervised, how to react when faced with possible adverse situations (e.g., if potential customers do not wish to buy offered products), and how products that customers do purchase will be delivered, especially in light of the fact that, in accordance with proposed paragraph 62.32(k)(10), exchange visitors are not permitted to drive.

Sponsors of exchange visitors working in door-to-door sales must ensure, as set forth in proposed paragraph 62.32(g)(2)(ii), that these exchange visitors earn in each calendar week of their program, averaged over a two-week period, the equivalent of the applicable federal, state, or local minimum wage per hour through hourly pay or sales profits, and receive pay and benefits commensurate with those offered to their U.S. counterparts and/or those on another class of nonimmigrant visa with similar qualifications and experience doing the same or similar work in the same work setting. The Department will allow a calculation over a two-week period to accommodate some

fluctuation in sales profits week-by-week. Exchange visitors engaged in door-to-door sales must begin their sales calls no earlier than 9:00 am and end their last sales call no later than 8:00 pm in their respective time zones.

In order to protect exchange visitors from a situation where they may be mistakenly taxed on funds collected for a host entity's business purposes, sponsors must ensure, as set forth in proposed paragraph 62.32(g)(2)(iii), that customers make all checks and other forms of payment directly payable to the host entity, not to the exchange visitor. In addition, proposed paragraph 62.32(g)(3) requires that sponsors honor an exchange visitor's reasonable request for re-placement at a non-door-to-door assignment.

8. ***Exchange visitor host re-placement.*** In paragraph 62.32(h), the Department proposes to change the deadline for sponsors to complete, at a minimum, the vetting of host re-placements (i.e., verifying the terms and conditions of such employment and fully vetting the host entity) from 72-hours to three business days. Sponsors also are required to complete and secure the requisite signatures on a new Form DS-7007 prior to an exchange visitor's beginning work at a host re-placement. The Department is of the view that because exchange visitors have already paid their sponsor to find them a viable Summer Work Travel placement, sponsors may not charge exchange visitors additional fees at the time of re-placement.

9. ***Sponsor vetting of host entities.*** The private sector exchange model succeeds only if sponsors respect their role as an objective party seeking the best interests of the program and commit to advancing U.S. public diplomacy goals. Sponsors must become knowledgeable about host entity third parties through the vetting process. Annual host entity vetting, as currently required under the 2012 IFR (§ 62.32(n)(2)) and as retained in

proposed paragraph 62.32(i)(1), works to ensure that all placements are with legitimate and reputable entities that have reputable managers and supervisors working with the exchange visitor. As set forth in proposed paragraph 62.32(j)(3), the Department will impute to the sponsor the actions of the host entity and any third parties hired by a host entity to carry out the exchange visitor's program, whether or not the host entity has disclosed that third party to the sponsor.

10. ***Host entity cooperation.*** Because the conditions of an exchange visitor's placement at his or her host entity may have a significant impact upon the opinion that exchange visitor develops of the Summer Work Travel program and of the United States, the Department sees it as vital to create consistent minimum standards to which sponsors must adhere in their authorization of host entities. The Department proposes in paragraph 62.32(j)(1) and (2) that sponsors be required to ensure that host entities understand program regulations and arrange or permit time for sponsor- or host-entity-organized cross-cultural activities for exchange visitors designed to meet the Department's cross-cultural activity requirements. If hosts understand their role in this public diplomacy initiative, they are likely to be more successful in hosting exchange visitors.

11. ***Protections for exchange visitors.*** The Department is of the view, as reflected in proposed paragraph 62.32(j)(6) that, in order for the exchange visitor to be secure in his or her possessions and have freedom of movement, it is never appropriate for a host entity to hold or withhold an exchange visitor's personal documents without the exchange visitor's advance written permission. The Department, through its program monitoring, has seen instances where the host entity seeks to retain exchange visitor documents or forbid exchange visitor communication until the exchange visitor meets certain work

requirements. The Department believes that such host entity conduct has largely ended as a result of its monitoring, but wishes to make clear that no sponsor or host entity may retain the exchange visitor's Forms DS-2019 and DS-7007, money, identification (including passport and social security card), cellphone, flight tickets, or any other personal property, unless specifically requested in writing (to include an itemized list), by the exchange visitor. Such exchange visitor authorization may be withdrawn at any time in writing, at which time, the sponsor or host entity must release the documents and other items within 48-hours. In addition, under proposed paragraph 62.32(j)(5), a host entity must never stand in the way of communication between the exchange visitor and his or her sponsor, or prevent communication between the exchange visitor and his or her family and friends, or prevent communication with any other person, while the exchange visitor is not on duty. Finally, sponsors or employees of a sponsor must continue to follow the requirements set forth in §62.10(d) regarding non-retaliation against an exchange visitor.

12. ***Program exclusions.*** The Department has witnessed improvement in sponsor administration of the program since its 2012 IFR, and the quality of placements has improved since the Department provided greater clarity regarding appropriate working conditions and inappropriate placements. This regulation proposes to expand the list of “program exclusions” as set forth in paragraph 62.32(k). In both the 2011 and 2012 IFRs, the Department increased the types of host placements in which sponsors were no longer permitted to place exchange visitors. The Department deemed such host placements as either being fundamentally unsuitable for a cultural and educational exchange program or posing an unacceptably high risk to the health, safety or welfare of

exchange visitors. The Department proposes in this rulemaking to expand this list to include the following host placements:

Locations without possibility for regular contact. The Department expects sponsors to remain in contact with their exchange visitors. Therefore, sponsors, in accordance with proposed paragraph 62.32(k)(4), must not place exchange visitors where regular and convenient telephone and Internet communication is not accessible. This is especially important with regard to placements in national parks and summer camps.

Staffing agencies. As set forth in proposed paragraph 62.32(k)(7), a sponsor must ensure that staffing/employment agencies or similar entities do not become inactive intermediaries between the exchange visitor and the host entity. In accordance with proposed paragraph (k)(7), when such an agency places exchange visitors, it must provide daily supervision and primary and onsite monitoring of the exchange visitor's work environment at his or her host entity, and it must pay the exchange visitor directly. If such an agency is involved in the exchange visitor's program, it, along with the host entity, must be vetted in accordance with proposed paragraph 62.32(i).

Mobile amusement. Since publication of the 2012 IFR, the Department has become aware that the term "mobile amusement" is used more widely and is clearer than existing regulatory language prohibiting positions in "traveling fairs." The Department accordingly proposes in paragraph 62.32(k)(17) to replace the term "traveling fairs" with "mobile amusement." This regulation retains the prohibition on placements in the above industries due to a failure of host entities in these industries in the past to regularly update the exchange visitors' sites of activity, which is a basic requirement of the program, and to the fact that such exchange visitors, through heavy travel in these industries, never

become established in a U.S. host community where they may make U.S. friends and engage in cultural activities on a sustained basis.

Movers. The Department in paragraph 62.32(k)(20) proposes to prohibit host placements in positions where exchange visitors' primary activity is the movement of household or office goods. Such positions can place exchange visitors at risk of serious injury.

Repetitive motion jobs. The Department in paragraph 62.32(k)(21) proposes to prohibit host placements in positions requiring repetitive motion, including on an assembly line or in certain factory-like settings. Host placements that require exchange visitors to engage in repetitive motion activities generally do not offer exchange visitors the required opportunity to interact frequently and substantially with American co-workers or customers. In addition, some repetitive motion jobs, including certain jobs on an assembly line or in certain factory-like conditions, require working with heavy machinery or dangerous chemicals. These positions require a great deal of focus on the task at hand to avoid injury, which also takes away from the opportunity for interaction with American co-workers.

Waste management and custodian/janitorial positions. The Department proposes in paragraph 62.32(k)(22) to prohibit host placements in any waste management, janitorial, or custodial positions or in any position that involves more than a small percentage (five percent of the hours or less) of waste management duties or keeping the premises of a building clean, tending to the heating, plumbing or air-conditioning system, or making building repairs. Such positions are not suitable for a cultural and educational exchange program. The above types of duties may be acceptable only if they are incidental to other

types of service placements and comprise no more than the noted small percentage of duties performed by the exchange visitor.

Placements in non-seasonal or non-temporary positions: The Summer Work Travel program permits sponsors to place exchange visitors in seasonal or temporary positions. The nature of the position is determined by such factors as whether a host entity has a supplemental need for assistance; whether it has an increase in financial revenue, tourist, or seasonal customer numbers; the number of months such a peak includes within one calendar year; the nature of recreational or cross-cultural activities in the area or other factors that might cause the peak need; and whether the host entity has conducted outreach to local residents for employment.

Sole responsibility for safety of others. In situations where an exchange visitor would be solely responsible for the safety of others, such as working as lifeguards at single lifeguard pools, exchange visitors may not be placed at such host entities where the host entity does not provide regular on-site or on-call supervision and reasonable time off for exchange visitor breaks and meals. (See proposed paragraph 62.32(k)(24)).

13. Exchange visitor housing and local transportation. Issues involving housing and local transportation (between place of residence and place of work) raise constant concerns both for the Department and for exchange visitors, who file housing-related complaints each year. In 2015, 16 percent of exchange visitors on the Summer Work Travel program, according to Department monitoring surveys, said they were dissatisfied with their housing and described their housing as dirty, run-down, too crowded, and unsuitable, and often without cooking facilities. In some instances, the Department received complaints that exchange visitors arrived in the United States to find that the

housing listed on their pre-departure documents was unavailable or at capacity. The Department also received complaints about landlords who engaged in rent-gouging, withheld security deposits, and charged exchange visitors outrageous amounts for normal wear and tear at the end of the exchange period before they left for home so that they did not have to return exchange visitor security deposits. Unavailable and unsuitable housing appears to have been the top issue of concern for exchange visitors in both the 2014 and 2015 Summer Work Travel program years.

The Department proposes to require in paragraph 62.32(l)(1) that sponsors may only authorize placements that include options for safe and affordable housing accommodation and accessible modes of local transportation. Housing options must have reasonable proximity to the host entity and regular, safe, and affordable local transportation options leading to commercial infrastructure and to the host entity, unless the sponsor or host entity provides such transportation. Possible housing and local transportation options must be identified before the placement is approved as part of the sponsor's program. The specific conditions of the housing option selected for the exchange visitor by either the sponsor or sponsor's host entity, as applicable, must be reflected on the Housing Addendum to Form DS-7007 in accordance with proposed paragraph 62.32(m).

The Department proposes to retain the option for exchange visitors to self-identify housing, but both the sponsor and the exchange visitor must document such a selection in writing (proposed paragraph 62.32(l)(5)), and the sponsor may deny the housing if it does not include the characteristics set forth in proposed paragraph 62.32(l)(2). All housing, whether provided or found by the exchange visitor, must meet all applicable housing codes and ordinances. It also must be affordable for the exchange visitor; in a safe

location; within reasonable distance from the exchange visitor's site of activity at the host entity(ies); in an area with regular, safe, and affordable transportation options; in a location that is neither isolated nor difficult to access; and in reasonable proximity to commercial infrastructure. Likewise, sponsors may not approve a placement if the associated housing option does not include those same characteristics.

Recent summers have seen an increased number of severe exchange visitor bicycle accidents. If an exchange visitor bicycles to and from the host entity or to reach commercial infrastructure, sponsors, in accordance with proposed paragraph 62.32(1)(7) must ensure that the exchange visitor is informed that he or she must wear a helmet and other appropriate protective gear and that he or she must check that the bicycle is in working order (e.g., brakes functional, frame not bent, all tires inflated properly, bicycle chain and gears functional). All sponsors must provide bicycle safety information in pre-arrival materials and during orientation, including the Department-generated bicycle safety flyer, and place a bicycle safety video on their website. No exchange visitor should be expected by sponsors or host entities to ride a bicycle to work on a highway or other major road without bicycle lanes. Likewise, no exchange visitor should be expected to ride a bicycle over distances of longer than a total of eight miles per day in order to travel to and from the host entity or reach commercial infrastructure.

Sponsors placing exchange visitors in national parks, ski resorts, and summer camps must have on file, in accordance with paragraph 62.32(1)(3), the host entity's written arrangement for transportation for those exchange visitors in their off-duty hours or in case of emergency.

14. ***Form DS-7007 (Host Placement Certification)***. Proposed paragraph 62.32(m) contains the requirement of the Summer Work Travel Host Placement Certification Form (Form DS-7007). The Department believes certain host placement information must be agreed upon by the three primary parties--the exchange visitor, host entity, and sponsor--before issuance of a visa.

Provision of Forms DS-7007 to exchange visitors will ensure that they are fully aware, before traveling to the United States, of the details of their individual Summer Work Travel program. As set forth in proposed paragraph 62.32(m)(1)(i), these details must include information about location and description of the host placement; number of employees and other exchange visitors on location; hours of work each week that will be offered the exchange visitor; duties, wages, and expectations of overtime; expected training period, if any; physical demands of the host placement; benefits each exchange visitor will receive from the host placement; total itemized fees and costs of the program charged by sponsors, host entities, and third parties (noting clearly which of those that are mandatory and those that are optional) that the exchange visitor will incur; itemized costs to each exchange visitor for benefits and mandatory and optional deductions (such deductions must be noted on the form); and any meals included at the host entity.

Deductions taken from wages must be disclosed in advance to the exchange visitor.

The Department further proposes, in paragraph 62.32(m)(1)(i), to require sponsors to complete Form DS-7007 for every initial and subsequent host placement the exchange visitor accepts, and to update the form if the terms of the host placement(s) changes significantly. Sponsors must provide each signatory an executed copy of the Form DS-7007 (excluding the Housing Addendum) before the sponsor issues the exchange visitor a

Form DS-2019 and the exchange visitor makes his or her visa application; and inform the exchange visitor that he or she must have his or her fully executed Form DS-7007 (excluding the Housing Addendum) available (along with his or her Form DS-2019) should it be requested during the visa interview.

In accordance with proposed paragraph 62.32 (m)(2), sponsors also must provide details about any sponsor- or host entity-arranged housing on the Housing Addendum to Form DS-7007, including the type of housing (house, apartment, dormitory, or other); distance to the exchange visitor's site of activity, and local transportation type and cost; cost of housing either weekly or monthly; need for an exchange visitor housing deposit; utilities covered in rent and those that the exchange visitor must pay separately; number of other tenants; housing features and description (including numbers of bedrooms and bathrooms); and type of housing contract, if any, that the exchange visitor must sign.

For protection of exchange visitors under proposed paragraph 62.32(m)(3), sponsors must give exchange visitors 72-hours to consider any significant additional requirements or changes proposed by the host entity to their host placement or housing after the DS-7007 or Housing Addendum is initially executed. If the exchange visitor disagrees in writing with the proposed changes to his or her placement or does not respond at all about suggested changes, he or she must be permitted to continue with the duties in the original placement, unless the host entity requests that the sponsor re-place the exchange visitor. An exception to the 72-hour rule may be made if such a change must be implemented before 48-hours to protect the health, safety, and welfare of the exchange visitor.

If the sponsor or host entity arranges housing for the exchange visitor, the Housing Addendum to Form DS-7007 must be completed and sent to the exchange visitor prior to

the visitor's departure for the United States in accordance with proposed paragraph 62.32(m)(2). Sponsors must update the DS-7007 and/or Housing Addendum if exchange visitors move to other sponsor-provided (including host entity-provided) housing. If exchange visitors find their own housing or opt out of sponsor-provided housing (including host entity-provided), which they must do in writing, the sponsor need not complete the Housing Addendum, but must vet the housing address and its suitability before the exchange visitor can move in. Sponsors must keep the DS-7007 on file for three years, as set forth in proposed paragraph 62.32(m)(4).

15. ***Exchange visitor pre-departure orientation.*** The Department believes that an orientation for each exchange visitor is of the utmost importance in order to inform the exchange visitor about the role of the sponsor and the host entity, exchange visitor requirements during the program, and benefits and protections offered. Sponsors must fulfill the pre-arrival information and orientation requirements as set forth at §62.10(b)-(c). In addition, pursuant to proposed paragraph 62.32(n), sponsors would be required to provide, prior to each exchange visitor's departure from his or her home country, an orientation, either in person or online, or a combination of both, that includes the following: An explanation of the sponsor's role during the program, including monitoring, and of host entity responsibilities; the Department of State's Summer Work Travel Exchange Visitor Welcome Letter and Diversity Flyer; the sponsor's 24/7 immediate (i.e., non-answering machine) contact telephone number; a description of exchange visitor and host entity obligations and responsibilities, including a list of program obligations and responsibilities; information explaining the cross-cultural component of the Summer Work Travel program, including the exchange visitor's

obligation to participate in sponsor- and/or host entity-arranged cross-cultural activities, and how best to experience local or national U.S. culture; information on how to identify and report workplace abuse, sexual abuse, sexual harassment, bullying, and exploitation; information on how to identify and report wage violations, housing violations, poor housing conditions, and instances of host entity retaliation against the exchange visitor for reporting problems; information on general personal, pedestrian, transportation, including bicycle safety information (i.e., providing the Department-generated bicycle safety flyer and placing a bicycle safety video on the sponsor's website); an identification card with a photo of the exchange visitor listing the exchange visitor's name, the sponsor's name, and main office and emergency telephone numbers, 911, the telephone number of the Department's J-1 visa toll-free emergency help line, the J-1 visa e-mail address, and the name and policy number of the sponsor's health insurance provider, if applicable; and information on how to seek medical care in the United States (e.g., information on insurance deductibles, the differences between emergency room visits and regular hospital visits), and locations of the nearest medical facilities (e.g. hospitals, clinics, for general medicine).

The orientation must additionally include information to exchange visitors on the process of monitoring and on their obligation to notify their sponsor within ten days of arrival in the United States and of any changes to the terms agreed to in Form DS-7007. Sponsors must describe the circumstances that may lead to termination of an exchange visitor's program under rules governing the program.

All of the proposed requirements for the pre-departure orientation are those that cover major aspects of the program, including the responsibilities of each party involved

in the exchange; what reporting is required; necessary communications among the sponsor, host entity, and exchange visitor; workplace violations to which the exchange visitor should be alert; and what to do in case of emergencies. The Department is also aware that many parents of exchange visitors attend pre-departure orientation, although this is not a requirement, and believes that such information is also helpful for exchange visitors' families to know.

16. *Cross-cultural activities*. The Department proposes at paragraph 62.32(o)(1) to require all sponsors to ensure that exchange visitors in the Summer Work Travel Program work with U.S. persons and actually engage in cross-cultural activities, as opposed to merely having, as the 2012 IFR required, the opportunity to do so. This proposed requirement more properly reflects the Department's intent, i.e., that exchange visitors are on an exchange program, the goals of which are to have them both work alongside U.S. persons and learn about U.S. culture through and outside of work. The Department proposes at paragraph 62.32(o)(2)-(3) that sponsors must themselves plan, initiate action, and/or assist host entities, domestic third parties, or local community groups, to provide each of their exchange visitors with at least one cross-cultural activity per calendar month in addition to their work activities, thereby giving him or her exposure to U.S. culture and/or the opportunity for interaction with U.S. persons. Sponsors may include in their agreements with host entities a provision that the host entity plan and implement cross-cultural activities each calendar month during which it has exchange visitors under its supervision.

Cross-cultural programming opportunities should provide exchange visitors on the Summer Work Travel program at least one of the following benefits. They should enable

exchange visitors to: 1) learn about U.S. society, higher education, and culture outside of their placement; 2) share their own culture, traditions, and views with U.S. residents; 3) experience the United States and its geographical diversity; 4) see the world or the United States from another perspective; 5) better understand the history and heritage of a diverse U.S. population; and/or 6) appreciate similarities that bring people of different nationalities and backgrounds together.

Cross-cultural activities can range from small and informal to large-scale and organized activities. A cultural activity does not need to be a trip to another city or a large or expensive event that takes weeks of planning. It can be something small and relatively spontaneous, making use of local resources. Some examples that occurred over the last program year were: having the exchange visitor come to an already-planned staff picnic; organizing a potluck dinner at the supervisor's house with colleagues; going to a state fair; organizing a building-a-bonfire-on-the-beach event; having a group visit a natural resource, such as a cave or a federal, state, or local park nearby; playing softball with fellow employees; going with the exchange visitor to a local sporting event such as baseball (including having a contest about who can best describe the rules of baseball); bowling; or a trip to a downtown area, museum, library, or outdoor concert that is either free of charge or has a nominal charge. Around 42 percent of sponsors and their host entities already arrange such cultural activities for exchange visitors. Sponsors should be prepared to provide guidance to host entities not yet offering cultural activities on how to fulfill this requirement.

17. *Exchange visitor monitoring and assistance.* The Department will continue to require, as set forth in proposed paragraph 62.32(p), that sponsors maintain, at a

minimum, monthly personal contact with exchange visitors. The Department wishes to clarify that sponsors should make actual contact with each exchange visitor and ascertain how his or her program is progressing. The sponsor must communicate in a way that elicits an exchange visitor response (in writing through e-mail or by telephone or telephone message) that provides clarity as to the exchange visitor's well-being. In addition, the Department intends for sponsors to be proactive during their monitoring in assessing exchange visitors' overall health, safety, and welfare and address appropriately and in a timely manner issues identified through their monitoring; provide assistance to exchange visitors as requested; and serve as information resources, facilitators, and counselors upon an exchange visitor's request. (See proposed paragraph 62.32(p)(2)-(6)).

Sponsors must document all efforts to resolve problematic placements and efforts to contact non-responsive exchange visitors before termination. Sponsors must conduct monitoring of their exchange visitors and facilitate Department oversight and visits to placement locations. In addition, sponsors should inform host entities about the Department's monitoring process. Sponsors must be prepared to incorporate additional monitoring steps at the suggestion of the Department in order to resolve efficiently any problems that come to the Department's attention regarding the Summer Work Travel program.

18. ***Sponsor use and vetting of foreign third parties.*** The Department expects that sponsor use of foreign third parties be as transparent as possible and that sponsors be substantially knowledgeable of and closely oversee the actions of any foreign third parties with which they work. The Department has seen instances of sponsors delegating most of the responsibility for their Summer Work Travel program to third parties, many

of which are domiciled abroad. Because many third parties recruit exchange visitors in an exchange visitor's home country, these third parties are known first to the exchange visitor. But this should not remain the case throughout the exchange. Sponsors, which are designated by the Department to facilitate the Exchange Visitor Program, are expected to develop and have the primary relationship with host entities in the United States, even though host placement leads may have been initially recommended to the sponsor by a foreign third party. In addition, sponsors should develop their own forms and other information-gathering documents when they work with host entities in the United States; these should not be provided by third party entities.

Because the Summer Work Travel program is first and foremost a public diplomacy and cultural exchange program, if utilizing the services of foreign third parties, sponsors must, under proposed paragraph 62.32(q)(1), select only those that market the Summer Work Travel program as a cultural and educational program with a 32- to 65-hour per week work component rather than a labor program.

As proposed in paragraph 62.32(q)(1)(ii), sponsors must use only foreign third parties that have a fixed office address, employees with professional experience in the service(s) the foreign third party provides, an organizational mission applicable to cultural and educational exchange, and a secure system to collect, protect, and dispose of the personal data of potential and actual program exchange visitors (e.g., a digital security system for intrusions if the data is maintained electronically, a securely locked file cabinet if collected in paper format). Of great importance is that third parties have a secure system in place to dispose of exchange visitor applications and other documents that have personal data on them (e.g., through shredding).

As proposed in paragraph 62.32(q)(1)(iv), sponsors must ensure that their foreign third parties charge exchange visitors only fees and costs that are permissible under regulation, transparent, justifiable in terms of services provided, and legal. In accordance with proposed paragraph 62.32(d)(9), it is not permissible to require an exchange visitor to remit a portion of his or her income earned in the United States to an overseas business entity.

Sponsors must adequately orient their foreign third parties on the purpose and intent of the Exchange Visitor Program, as set forth in proposed paragraph 62.32(q)(3), as well as provide regulatory updates about the Exchange Visitor Program when these are announced by the Department. In addition, as proposed in paragraph 62.32(q)(4), sponsors must require, review and approve annually the marketing materials for exchange visitor programs marketed on the sponsor's behalf by each of their foreign third parties. These marketing materials must include updated itemized price lists that adhere to any Department-initiated template.

In order to promote transparency for potential exchange visitors, the Department proposes in paragraph 62.32(q)(6) that a sponsor place information about each of its foreign third parties on the sponsor's main website (i.e., with a visible link to this page on the sponsor's homepage). The website entry must include the foreign third party's official name, headquarters address, and specific program functions performed (e.g., recruitment and overseas orientation of exchange visitors, initial identification of host entities). This will give potential applicants to the program a way to check that any third party or outside entity that approaches them plays a legitimate role in the sponsor's program administration.

In accordance with §62.2 and as provided in proposed paragraph 62.32(q)(8), failure by any foreign third party to comply with the regulations or with any additional terms and conditions governing administration of the Exchange Visitor Program will be imputed to the sponsor by the Department. And, pursuant to proposed paragraph 62.32(q)(8), sponsors are required to ensure that foreign third parties know and comply with all applicable Departmental regulations and guidance.

The Department proposes in paragraph 62.32(r) that sponsors thoroughly vet their foreign third parties. At a minimum, a sponsor must annually review current documentation for each of its foreign third parties as part of the vetting process to ensure that the third party is legally authorized to conduct business where it operates; is solvent, as determined through an examination of its recent financial statements; is reputable, as evidenced by references from business associates or partner organizations; does not have legal judgments against it or pending legal actions or complaints; and has staff all of whom have undergone criminal background checks. These are very important aspects for sponsors to consider as they select and vet foreign third parties. Such foreign third parties come into direct contact with exchange visitor program applicants and participants, and the reputation of the Summer Work Travel program is dependent upon the financial and operational stability of those third parties. As proposed in paragraph 62.32(q)(9), a sponsor may not use a foreign third party if the Department has determined and informed the sponsor that the third party does not meet the requirements of proposed paragraph 62.32(q)(1).

19. *Sponsor use and vetting of domestic third parties.* In proposed paragraphs 62.32(d)(4) and 62.32(s)(2), domestic third parties providing initial identification of host

entities, implementing cross-cultural activities for exchange visitors, serving as a local point of contact and orientation for exchange visitors, or providing housing assistance and transportation for the program now must be covered under written agreement with the sponsor. In proposed paragraph 62.32(s)(4), these third parties also must be listed on the sponsor's main website, noting each party's official name, headquarters address, and the specific program functions performed. As proposed in paragraph 62.32(s)(1), sponsors must use only domestic third parties that have a fixed office address; employees with professional experience in the service(s) the domestic third party provides; a willingness to learn about and contribute through provided services to the public diplomacy mission of the Summer Work Travel program; and, if the organization collects applications or other materials with the personal data of prospective or actual exchange visitors, a secure system to collect, protect, and properly dispose of such data.

Sponsors will be required to supervise and monitor carefully their third parties' program-related activities to ensure that the third party is in compliance with the Exchange Visitor Program regulations. Sponsors must not refer any potential exchange visitor applicants to a domestic third party that is not covered by a written agreement. Sponsors that engage another designated sponsor as a third party do not need to vet that sponsor, but must require that the third party sponsor provide proof of current Department designation.

Sponsors must vet domestic third parties in accordance with the requirements set forth in proposed paragraph 62.32(t). These are very important aspects for sponsors to consider as they select and vet domestic third parties. Such domestic third parties may initially identify host entities where exchange visitors are placed, which placement will

materially impact the exchange visitor's experience in the United States; implement cross-cultural activities for the exchange visitor, which is a central aspect of such a public diplomacy program; orient the exchange visitor on what is permitted and not permitted on the program; serve as a point of contact throughout that exchange visitor's time in the United States; or provide transportation for the exchange visitor. The experience of the exchange visitor and the reputation of the Summer Work Travel program are protected by assessing whether the third party, at a minimum, legally operates in the United States; has disclosed any bankruptcy, complaints, pending legal actions, or adverse judgments; and has liability insurance sufficient to cover the activities it provides in connection to the Summer Work Travel program.

Requiring sponsors to enter into a fully executed written agreement with both foreign and domestic third party entities (proposed paragraphs 62.32(q)(2) and (s)(2)) will provide more oversight than the previously informal agreements sponsors may have relied upon for such services, and will better protect the health, safety, and welfare of exchange visitors. It will also ensure that the sponsor acknowledges in writing that the third party is in a legal relationship with that sponsor in regard to that third party's contribution to the Exchange Visitor Program and what specific services that sponsor expects the third party to provide to exchange visitors.

20. *Reporting requirements.* As proposed in paragraph 62.32(u)(1), sponsors must report to the Department, within 30 days of conclusion, any new written agreement they have made with a foreign third party and the name of and contact information for that foreign third party. A sponsor also must notify the Department within 30 days after ceasing to work with a foreign third party previously reported. Each sponsor must keep

the list of foreign third parties up-to-date with the Department so that the Department can ensure program office and consular office worldwide awareness of whether or not foreign third parties are operating on behalf of the Summer Work Travel program, both within the United States and abroad. It also will require sponsors to submit each year by December 1 a report of itemized exchange visitor price lists with breakdowns of the costs that exchange visitors must pay each sponsor and foreign third party by country in order to participate in the program.

21. *Re-evaluation of exchange visitor cap and moratorium on sponsors.* On November 7, 2011, the Office of Private Sector Exchange published a notice in the Federal Register (Public Notice 7677) stating that, until further notice, Summer Work Travel program sponsors in business for the full 2011 calendar year would not be permitted to expand their number of program participants beyond their actual total 2011 participant program size (a cap) and that no new applications from prospective sponsors for Summer Work Travel program designation would be accepted (a moratorium). The cap has meant that designated sponsors may not increase the number of exchange visitors participating in their Summer Work Travel programs beyond their current allotment of Forms DS-2019 (i.e., they cannot request program expansion under §62.12(d)(2)). The Department intends to re-evaluate the cap and the moratorium upon completion of this rulemaking and invites public comment.

Regulatory Analysis

Administrative Procedure Act

The Department of State is of the opinion that administration of the Exchange Visitor Program, including the Summer Work Travel program category, is a foreign affairs

function of the U.S. Government and that rules implementing this function are exempt from Section 553 (Rulemaking) and Section 554 (Adjudications) of the Administrative Procedure Act (APA). As reflected in the Fulbright-Hays Act, the purpose of such programs is to increase “mutual understanding” between the people of the United States and those of other countries, “unite us with other nations,” and “promote international cooperation.” Pursuant to law, policy, and longstanding practice, the Department of State has supervised, either directly or through private sector program sponsors or grantee organizations, those foreign nationals who come to the United States as exchange visitors in exchange visitor programs, one of which is the Summer Work Travel Program. Exchange visitors in the Summer Work Travel Program come to the United States currently from approximately 125 countries. When problems occur in a program such as this, foreign governments often directly engage the Department of State regarding the treatment of their nationals, regardless of who is responsible for the problems.

A major purpose of this rulemaking is to put in place extra measures to protect the health, safety, and welfare of foreign nationals entering the United States to participate in the Summer Work Travel Program then returning to their countries of nationality or last legal permanent residence upon completion of their programs. A number of foreign governments have informed the Department that they regard this program as important to their bilateral relationship with the United States and to their nationals who seek to participate. Participating countries look to the Department to protect their nationals. The Department is of the view that failure to protect the health and welfare of these foreign nationals can have direct and substantial adverse effects on the foreign affairs of the United States.

The Department emphasizes that many provisions of this proposed rule – indeed, the majority – reflect careful consideration of public comments received on two previous Interim Final Rules issued on May 11, 2012, and April 26, 2011 (see the citations in the “Supplemental Information” section of this Notice, above). Members of the public submitted detailed comments, and this proposed rule has benefited from those comments. A number of provisions within this proposed rule are new, based on additional monitoring of the program that the Department has conducted and meetings with sponsors about their current experience in conducting this program.

Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule as a proposed rule, with a 45-day provision for public comment and without prejudice to its determination that the Exchange Visitor Program is a foreign affairs function.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.).

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175--Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act/Executive Order 13272: Small Business Impacts

Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, the Department is also of the view that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272. However, to inform the public as to the costs and burdens of the this rule upon designated program sponsors, the Department notes that, if adopted in full, the changes proposed herein will affect the operations of 41 corporate, academic, and tax-exempt program sponsors designated by the Department to conduct the Summer Work Travel Program. Further information follows.

Numbers of Small Businesses

Of the 41 current designated sponsors in the Summer Work Travel category, 29 sponsors or 70 percent of the total had annual revenues of less than \$7 million in 2015. These 29 small program sponsors accounted for approximately 26,000 exchange visitors on the Summer Work Travel program in 2015, or 28.8% of the average total number (90,000) of exchange visitors on the Summer Work Travel program (averaged over the past three calendar years (2013-2015)).

- *Transparency:* Proposed fee and wage transparency requirements include the requirement to provide sample budgets and a breakdown of all fees that an exchange visitor pays. The Department estimates cost for 29 small sponsors

multiplied by 1 burden hour at \$26 weighted wage (i.e., including staff benefits), in accordance with Bureau of Labor Statistics (National Compensation Survey, *Monthly Labor Review*, January 2016) and the salary figures for entry-to-junior-level or “other services” staff at non-profit or for profit organizations (also junior contractors) working on administering daily program activities, or \$754. This is a new cost to sponsors.

- *Sponsor screening of candidates for eligibility and selection.* The Department estimates the cost at 0.5 hours per exchange visitor (26,000 exchange visitors under the purview of small sponsors) multiplied by \$26 per weighted wage, or \$338,000. This is not a new cost for sponsors. However, the cost, now set forth in proposed paragraph (e)(1) of the proposed rule, was previously calculated as part of placement (paragraph (g) of the 2012 IFR) and has now been separated out.
- *Exchange visitor pre-placement at host entities.* The Department estimates that there will be no new costs and that the cost will be \$260,000 (26,000 exchange visitors under the purview of small sponsors multiplied by 1 hour multiplied by \$10 per exchange visitor). Placement includes finding a host entity at which the exchange visitor may conduct the work component of the exchange and identifying information about the work component, such as hourly wage, activities of the job, whether any heavy lifting or other physical labor is involved, whether there are any training requirements, whether there are any meals that may be taken onsite, whether there are costs to the exchange visitors for the host entity placement, and so forth.

- *Exchange visitor host re-placement.* It is estimated that there may be as many as 725 re-placements or additional placements by small sponsors and the cost to small sponsors will be 0.5 hours of sponsor administrative staff time multiplied by \$10 (Bureau of Labor Statistics estimated hourly wages for seasonal administrative workers) multiplied by 725 or a total of \$3,625. This is not a new cost to sponsors. However, the cost was previously calculated as part of placement and has now been separated out.
- *Sponsor vetting of host entities.* The Department estimates that the cost for vetting host entities will be \$91,000 for all sponsors collectively (7,000 host entities associated with small sponsors multiplied by 0.5 man hours multiplied by \$26). This is not a new cost.
- *Facilitating the placement of exchange visitors in appropriate and affordable housing.* The Department estimates the cost at \$260,000 (26,000 exchange visitors multiplied by 1 hour multiplied by \$10 per hour for administrative staff wage). This is not a new cost.
- *Preparing and disseminating Form DS-7007.* The Department estimates that it will take sponsors a total of 1.25 hours to complete both parts of the form at a cost of \$868,563 (26,725 exchange visitors (including re-placements) multiplied by 1.25 hours multiplied by \$26 weighted wage per hour). This cost includes completion of both the main form and the housing addendum. This is a new cost for sponsors.
- *Orientation documentation for exchange visitors:* The Department estimates the cost of sponsors' providing orientation-related materials to 26,000

exchange visitors under the purview of small sponsors at 0.5 hours multiplied by \$26 weighted wage per hour, or \$338,000. This is not a new cost.

- *Cross-cultural activities.* Small sponsors (or their host entities) must plan cross-cultural activities for exchange visitors, with one cross-cultural activity being planned each calendar month during which exchange visitors are on program. Exchange visitors are, on average, in the program for a period of four months. Planning and carrying out the cross-cultural activities is calculated at 7,000 small business host entities of exchange visitors multiplied by six hours (four for planning and two for implementation of one activity) over the course of the summer (one per calendar month of the summer work travel program period equals four total) at \$10 per hour administrative staff wage; this equals \$1,680,000. The time commitment to plan an activity for exchange visitors could be less for many host entities, given that the entity is not required to plan a complex cultural activity. This is a new cost.
- *Exchange visitor monitoring and assistance:* It is estimated that small sponsors will spend 30 minutes per exchange visitor to monitor exchange visitor activities throughout the program cycle, including checking on exchange visitor health, safety and welfare, resolving placement problems, and contacting less responsive participants, at an annual cost of \$130,000 for sponsors collectively (26,000 exchange visitors multiplied by 0.5 multiplied by \$10 per hour administrative staff wage). This is not a new cost to sponsors.

- *Sponsor use and vetting of foreign and domestic third parties.* The Department estimates that small sponsors will use and vet around 252 foreign and 280 domestic third parties. The Department estimates that it will cost small sponsors two hours to conclude an agreement and vet each third party at a cost of \$26 weighted wage per hour, or \$27,664. This is not a new cost.
- *Reporting requirement.* Sponsors will only need to submit the foreign third party (formerly foreign entity) names and contact information and their price lists. The twice-yearly placement report is no longer required, as the Department can retrieve this information from existing SEVIS files. It is estimated that the 29 small sponsors will spend one hour on each of two reporting requirements multiplied by \$26 per man hour, or \$1,508. This is not a new cost.

The total cost of all regulatory provisions per small sponsor exchange visitor is \$154; total cost of all new regulatory provisions per small sponsor exchange visitor is \$98. Last calendar year, there were 13 small sponsors having fewer than 500 exchange visitors in the Summer Work Travel category. The largest of this number had permission from the Department to host 477 exchange visitors and would under the proposed regulation incur total costs of \$73,458, and new costs of \$46,746, or four percent of revenue. The smallest of this number had permission to host five exchange visitors and would under the proposed regulation incur total new costs of \$490, or less than one percent of revenue.

Last calendar year, there were twelve sponsors with permission to host between 500 and 2,000 exchange visitors in the Summer Work Travel category. Of these, the

largest had permission to host 1,934 exchange visitors and would under the proposed regulation incur a total cost of \$297,836, and total new costs of \$189,532, or around nine percent of revenue. The smallest sponsor in this group had permission to host 555 exchange visitors and under the proposed regulation would incur a total cost of \$85,470 or around eight percent of revenue and new costs of \$54,390, or around six percent of revenue.

Last calendar year, there were five sponsors with permission to host more than 2,000 exchange visitors. The largest of these were able to host 5,569 exchange visitors and would under the proposed regulation incur a total cost of \$857,626, or eight percent of revenue and total new costs of \$545,762, or six percent of revenue. The smallest of these were permitted to host 2,311 and would incur under the proposed regulation total costs of \$355,894 and total new costs of \$226,478.

The Department considered whether alternative approaches for small businesses could adequately protect the safety and welfare of exchange visitors while reducing costs to small entities. For example, the Department considered requiring cross-cultural activities less frequently for small sponsors and/or host entities. However, the Department has a mandate to ensure cross-cultural engagement for all visitors, and a monthly requirement provides a minimum level of cross-cultural engagement to meet the objectives of the Fulbright-Hays Act. The Department also considered the requirement to complete a DS-7007 on housing and host entity placement for small businesses and considered whether small entities could be given additional time for compliance. The Department decided against this proposal due to the need to provide adequate information about the host entity and housing available to all visitors to the United States. The

requirements for the Summer Work Travel category, as well as all Exchange Visitor Program categories, are driven almost exclusively by considerations of the health and safety of the exchange visitor, and any impact on foreign relations with the visitor's home country. These considerations constrain the number of feasible alternatives to the requirements proposed in this Notice of Proposed Rulemaking. That said, the Department requests comment on other possible alternatives that would meet the objectives of this rulemaking in a less costly manner for small entities.

Executive Order 12866 and Executive Order 13563

As discussed above, the Department is of the opinion that the subject of this rulemaking constitutes a foreign affairs function of the United States, and thus is exempt from the provisions of Executive Order 12866. The Department has nevertheless reviewed this rulemaking to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563. This rulemaking has been reviewed by the Office of Information and Regulatory Affairs, which has designated it a significant rule pursuant to Executive Order 12866.

In order to inform the public as to the costs and benefits of this rule, the Department presents the following information.

Affected Population. The Department estimates that this rule will affect 41 current designated sponsors hosting approximately 90,000 exchange visitors annually and working with an estimated 26,000 host entities and 1,900 foreign and domestic third parties. Sponsors facilitate the Exchange Visitor Program and provide the necessary information, support, and guidance for exchange visitors.

Costs. Implementation of certain provisions set forth in this proposed rule may result in costs for sponsors. A cost breakdown of old and new costs is noted below:

- *Transparency:* Proposed fee and wage transparency requirements, including the requirement to provide sample budgets and a breakdown of all fees and estimated costs that an exchange visitor pays. The Department estimates cost at 41 sponsors multiplied by 1 hour at \$26 weighted wage, in accordance with Bureau of Labor Statistics salary figures for entry-to-junior-level non-profit organization staff or contractors working on administering daily program activities, or \$1,066. This is a new cost to sponsors.
- *Sponsor screening for candidate eligibility and selection:* The Department estimates the cost at 0.5 hours per exchange visitor (90,000) multiplied by \$26 per weighted wage or \$1,170,000. This is not a new cost for sponsors; it was previously calculated as part of placement, and has now been separated out.
- *Exchange visitors for providing required eligibility and screening information:* The Department estimates the cost at 1 hour per exchange visitor (90,000) multiplied by \$1 or \$90,000. This is not a new cost, but has been added to cost calculations for the first time and is thus calculated as a new cost. The exchange visitors submitting eligibility information to the program are students in their home countries and are unlikely to be paid an hourly wage.
- *Exchange visitor pre-placement at host entities:* The Department estimates that there will be no new costs and that the cost will be \$900,000 (90,000

exchange visitors multiplied by 1 hour multiplied by \$10 per exchange visitor). Sponsors generally place exchange visitors from a contact list that is used year-to-year and updated through public notice or current contacts.

- *Door-to-door sales placements:* The Department estimates that the cost to the one sponsor making such placements to execute an agreement explaining in detail 1,325 exchange visitor's duties will be 0.5 hours multiplied by \$5 per exchange visitor, or \$3,313. This is a new cost to one current sponsor.
- *Exchange visitor host re-placement:* It is estimated that there may be as many as 2,500 re-placements or additional placements and the cost to sponsors will be 0.5 hours of sponsor administrative staff time multiplied by \$10 Bureau of Labor Statistics estimated hourly wages for seasonal administrative workers multiplied by 2,500 or a total of \$12,500. This is not a new cost to sponsors; it was previously calculated as part of placement and has now been separated out.
- *Sponsor vetting of host entities:* The Department estimates that the cost for vetting host entities will remain at \$338,000 for all sponsors collectively (26,000 host entities multiplied by 0.5 man hours multiplied by \$26). This is not a new cost.
- *Facilitating the placement of exchange visitors in appropriate and affordable housing:* The Department estimates the cost at \$900,000 (90,000 exchange visitors multiplied by 1 hour multiplied by \$10 per hour). This is not a new cost.

- *Preparing and disseminating Form DS-7007:* The Department estimates that it will take sponsors (or their host entities) a total of 1.25 hours to complete both parts of the form at a cost of \$3,006,250 (92,500 exchange visitors (including re-placements) multiplied by 1.25 multiplied by \$26 weighted wage per hour). This cost includes completion of both the main form and the housing addendum by the sponsor (or the host entity). This is a new cost for sponsors.
- *Orientation documentation:* The Department estimates the cost of sponsors' providing orientation-related materials to 90,000 exchange visitors at 0.5 hours multiplied by \$26 weighted wage per hour, or \$1,170,000. This is not a new cost.
- *Cross-Cultural activities:* Sponsors (or their host entities) must plan cross-cultural activities for exchange visitors, with one cross-cultural activity being planned each calendar month during which exchange visitors are on program. Exchange visitors are, on average, on program for a period of four months. Planning and carrying out the cross-cultural activities is calculated at 26,000 host entities for exchange visitors multiplied by six hours (four for planning and two for implementation of one activity) over the course of the summer (one event per calendar month of the summer work travel program period equals four total) at \$10 per hour administrative staff wage equals \$6,240,000. This is a new cost.
- *Exchange visitor monitoring and assistance:* It is estimated that sponsors will spend 30 minutes per exchange visitor to monitor exchange visitor

activities throughout the program cycle, including checking on exchange visitor health, safety and welfare, resolving placement problems, and contacting less responsive participants, at an annual cost of \$450,000 for sponsors collectively (90,000 exchange visitors multiplied by 0.5 multiplied by \$10 per hour administrative staff wage). This is not a new cost to sponsors.

- *Sponsor use and vetting of foreign and domestic third parties:* The Department estimates that sponsors will make agreements with and vet around 900 foreign and 1000 domestic third parties. The Department estimates that it will cost sponsors two hours to conclude an agreement and vet each third party at a cost of \$26 weighted wage per hour, or \$98,800. This is not a new cost.
- *Reporting requirements:* There will be a decrease in reporting requirements. Sponsors will only need to submit the foreign third party (formerly foreign entity) names and contact information as sponsors make agreements with such third parties, and also submit third party price lists. The twice-yearly placement report is no longer required, as the Department can retrieve this information from existing SEVIS files. It is estimated that sponsors will spend one hour on each of two reporting requirements multiplied by \$26 per man hour, or \$2,132. This is not a new cost.

Total Costs. The Department estimates the total cost of this proposed rule to all designated sponsors in the Summer Work Travel program category at \$14,382,061 each year, of which up to \$9,340,629 would be new costs, mainly having to do with better

documenting the host placement and ensuring that cross-cultural activities are part of the program for all exchange visitors. Total costs of the proposed regulation per exchange visitor would be \$160 and total new costs per exchange visitor would be \$104.

Benefits. This proposed rule is a continuation of Department efforts based on a comprehensive review of the current Summer Work Travel program category of the Exchange Visitor Program. The rule predominantly enhances sponsor requirements for programmatic, partnership, and fee/cost transparency and vetting of domestic entities. These enhancements are necessary to continue the reform efforts of the Summer Work Travel category that began with the 2011 and 2012 IFRs.

Events that occurred prior to 2011 led the Department to enhance its scrutiny of the Summer Work Travel category and amend regulations to protect exchange visitors. Additionally, in recent years, the work component of the Summer Work Travel category has too often overshadowed the cultural component required by the Fulbright-Hays Act.

Accordingly, the Department issued the 2012 IFR to address issues most directly affecting the health, safety, and welfare of the exchange visitors and to reinforce the cultural exchange aspects of the program to promote mutual understanding in accordance with the purpose of the Fulbright-Hays Act. Changes made by 2012 IFR were intended to protect the health, safety, and welfare of exchange visitors by reducing the number of improper or unsafe job placements, fraudulent job offers, post-arrival job cancellations, inappropriate work hours, and problems regarding housing and transportation.

However, as the Department has increased its monitoring of the program and received additional sponsor input, it also has seen the need to make the proposed rule

more specific than the 2012 IFR in certain sections, so that exchange visitors are provided assurance that sponsors have a formal agreement with each of the domestic and foreign entities that work with exchange visitors; certainty in what their host placement will entail and in what housing will be provided; and transparency about the total cost of the program balanced against wages they can expect to earn while in the United States.

For the reasons outlined above, the Department considers that the costs of this proposed rulemaking are outweighed by: (1) the benefits of increased protection and transparency for exchange visitors, enhancing both their experiences and U.S. foreign policy; and (2) closer adherence to the purpose of the Fulbright-Hays Act.

Executive Order 12988

The Department of State has reviewed this proposed 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 proposed 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, it is determined that this proposed 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 – DS-7000

The information collection requirements contained in this proposed rule are pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and OMB Control Number 1405–0147, Form DS–7000. As part of this rulemaking, the Department is seeking comment regarding the additional administrative burden placed on sponsors due to the corresponding requirements for the sponsors to disclose, collect, and maintain information in the administration of their programs (*see* 22 C.F.R. 62.10(f)). You should include the DS form number (if applicable), information collection title, and/or OMB control number in any correspondence about burden.

Form DS-7000

TITLE: Recording, Reporting, and Data Collection Requirements - Student and Exchange Visitor Information System (SEVIS), Form DS-7000

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including copies of the proposed collection instrument and supporting documents, to the U.S. Department of State, Office of Policy and Program Support, SA-5, 2200 C Street, NW, Floor 5, Washington, DC 20522.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* 45-Day Notice of Recording, Reporting, and Data Collection Requirements - Student and Exchange Visitor Information System (SEVIS), DS-7000
- *OMB Control Number:* 1405-0147
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/EC

- *Form Number:* Form DS-7000
- *Respondents:* Exchange Visitors, host entities, and entities designated by the Department of State as Exchange Visitor Program sponsors in the Summer Work Travel category
- *Estimated Total Number of Respondents for the Exchange Visitor Program:* 191,675 (DS-3036 – 60; DS-3037 – 1,415; DS-7000 – 190,200). The total respondent summary for Summer Work Travel requirements is as follows:

<i>Respondent</i>	<i>Estimate</i>
Exchange visitor	90,000
Sponsor	41
Host entities	26,000
Total	116,041

- *Estimated Number of Responses for the Exchange Visitor Program:* 1,952,655 (DS-3036 – 60; DS-3037 – 2,830; DS-7000 – 1,949,765 (SEVIS=20,977 and non-SEVIS=1,928,788 responses)). *Number of responses for the Summer Work Travel Program:* 690,307. For a complete analysis of the number of responses for Exchange Visitor Program requirements, please refer to the Supporting Statement titled Form DS-7000 - Recording, Reporting and Data Collection Requirements – Student and Exchange Visitor Information System (SEVIS) (OMB No. 1405-014) and “SEVIS” and “Non-SEVIS” spreadsheets included in docket number DOS-2016-0038.
- *Average Hours Per Response for the Exchange Visitor Program:* 68 minutes

- *Average Hours Per Response for the Summer Work Travel Program: 92 minutes*
- *Total Estimated Burden Time for the Exchange Visitor Program: 2,182,518 hours*
(DS-3036 – 480 hours; DS-3037 – 943 hours; DS-7000 – 2,181,095 hours
(SEVIS=9,144 and Non-SEVIS=2,171,951 hours)
- *Total Estimated Burden Time for the Summer Work Travel Program: 1,061,062.*
For a complete analysis of the estimated burden for Exchange Visitor Program requirements, please refer to the Supporting Statement titled *Form DS-7000 - Recording, Reporting and Data Collection Requirements – Student and Exchange Visitor Information System (SEVIS) (OMB No. 1405-014) and “SEVIS” and “Non-SEVIS” spreadsheets* included in docket number DOS-2016-0038.
- *Frequency: On occasion*
- *Obligation to Respond: Required for participation in the program*

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department;
- Evaluate the accuracy of our estimates of the time and cost burden for this proposed collection;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this rule are public record.

Before including any detailed personal information, you should be aware that your

comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program. The changes proposed are only to Form DS-7000.

Methodology: The collection will be submitted to the Department by mail or fax as requested by the Department during the review of program sponsor files, re-designations, incidents, etc.

Form DS-7007

TITLE: 45-Day Notice of Proposed Information Collection: Form DS-7007, Summer Work Travel - Host Placement Certification, OMB Control Number 1405-xxxx.

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments from all interested individuals and organizations on this collection as it relates to proposed changes to 22 CFR 62.32. The purpose of this notice is to allow 45 days for public comment in the Federal Register preceding submission to OMB.

DATE(S): The Department will accept comments from the public up to 45 days from [insert date of publication in the Federal Register].

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

- *Web:* Persons with access to the Internet may view and comment on this notice by going to www.regulations.gov. You can search for the document by entering

“Docket Number: DOS-2016-0005” in the Search Field. Then click the “Comment Now” button and complete the comment form.

- *E-Mail:* JExchanges@state.gov
- *Mail* (paper, disk, or CD-ROM submissions): U.S. Department of State, Office of Policy and Program Support, SA-5, 2200 C Street, NW, Floor 5, Washington, D.C. 20522

You must include the form number (DS-7007 or 7000), information collection title, and OMB control number (if any) in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collections listed in this notice, including copies of the proposed collection instruments and supporting documents, to the U.S. Department of State, Office of Policy and Program Support, SA-5, 2200 C Street, NW, Floor 5, Washington, DC 20522.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Exchange Visitor Program – Summer Work Travel Host Placement Certification
- *OMB Control Number:* 1405-xxxx
- *Type of Request:* New Collection
- *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/EC
- *Form Number:* Form DS-7007
- *Respondents:* Entities designated by the Department of State as Exchange Visitor Program sponsors in the Summer Work Travel category
- *Estimated Number of Respondents:* 41

- *Estimated Number of Responses:* 92,500
- *Average Hours Per Response:* 1.25 hours
- *Total Estimated Burden Time:* 115,625 hours
- *Frequency:* On occasion
- *Obligation to Respond:* Mandatory

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department;
- Evaluate the accuracy of our estimates of the time and cost burden for this proposed collection;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this Notice are public record.

Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This collection of information is needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act of 1961, as amended. Summer Work Travel Host Placement Certification Forms are to be completed by designated program sponsors (with reference to some information provided by host entities).

A Host Placement Certification (Form DS-7007) is required for each Summer Work Travel participant. It will set forth: location and description of the host placement; number of employees and other exchange visitors on location; hours of work each week that will be offered the exchange visitor; duties, wages, expected training period, if any; physical demands of the host placement; any placement-related benefits or amenities; total itemized fees and estimated costs of the program charged by sponsors, host entities, and third parties (noting those that are mandatory and optional), that that exchange visitor will incur; explanation of costs and deductions for benefits and mandatory and optional deductions (noting those that are mandatory and optional); and meals included at host entity. Form DS-7007 must be signed by the sponsor, the sponsor's host entity, and the exchange visitor.

The Housing Addendum will describe the housing and local transportation and cost (either weekly or monthly), distance to the site of activity at the host entity, need for an exchange visitor housing deposit; utilities covered in rent and those that the exchange visitor must pay separately; whether deductions for housing or local transportation will be taken from exchange visitors' wages, number of other tenants; housing features and description (including numbers of bedrooms and bathrooms); and whether there is a firm contract for the housing that the exchange visitor must sign for a fixed period of time. The Housing Addendum page must state the market value of housing and/or local transportation.

Upon request, Summer Work Travel applicants must present a fully executed Summer Work Travel Host Placement Certification (Form DS-7007) to any Consular Official interviewing them in connection with the issuance of a J-1 visa.

Methodology: The collection will be submitted to the Department by mail or fax as requested by the Department during the review of program sponsor files, re-designations, incidents, etc.

List of Subjects in 22 CFR Part 62

Cultural exchange programs, Reporting and recordkeeping requirements

Accordingly, 22 CFR Part 62 is proposed to be amended as follows:

PART 62--EXCHANGE VISITOR PROGRAM

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

Authority: 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.*; 22 U.S.C. 2651a; Pub. L. 105-277, Div. G, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 42 F.R. 62461, 3 CFR, 1977 Comp. p. 200; E. O. 12048 of March 27, 1978; Pub. L. 104-208, Div. C, 110 Stat. 3009-546, as amended; section 416 of Pub. L. 107-56, 115 Stat. 354; and Pub. L. 107-173, 116 Stat. 543.

2. Section 62.32 is revised to read as follows:

§62.32 Summer Work Travel.

(a) Purpose. Together with other applicable provisions of 22 CFR Part 62, the regulations in this section govern participation in the Summer Work Travel program category conducted by U.S. Department of State-designated sponsors. The purpose of this program is to provide foreign college or university students (or those recently graduated) the opportunity, during their breaks between or immediately following academic years, to:

- (1) interact with U.S. persons and experience the culture and customs of the United States through authorized placements and cross-cultural activities;

- (2) share their individual cultural experiences and background with U.S. friends, colleagues and communities;
- (3) improve their command of the English language;
- (4) earn funds to help defray a portion of their expenses by working in seasonal or temporary host placements that require minimal training; and
- (5) travel in the United States.

(b) *Definitions.* In addition to those definitions set forth in §62.2, the following definitions apply to the Summer Work Travel category of the Exchange Visitor Program:

(1) *Host entity.* A person or organization that employs an exchange visitor. Host entities are not considered “third parties” as that term is used in this Part.

(2) *Host placement.* The location of an exchange visitor at a host entity and any related sponsor-or host entity-arranged housing of such exchange visitor.

(3) *Seasonal nature.* A host placement is of a seasonal nature when the required service is utilized only at a certain time of the year (e.g., summer or winter) when the host entity increases labor levels to accommodate its seasonal increase in business.

(4) *Temporary nature.* A host placement is of a temporary nature when a host entity’s need for the duties to be performed is a one-time occurrence, a peak load need (e.g., the need for workers is tied to one or more seasons or other short-term demand), or an intermittent need. It is the nature of a host entity’s need, not the nature of the duties, which is controlling.

(c) *Duration of participation.* Exchange visitors on the Summer Work Travel Program may participate for no more than four months. The program must coincide with the official break between the exchange visitor’s academic years or the break immediately

following his or her final academic term. In permitting exchange visitor participation, a sponsor must adhere to the earliest allowable program start date and the latest allowable program end date for each country for its exchange visitors, as communicated to sponsors by the Department. Extensions beyond Department-approved program dates are not permitted.

(d) *General sponsor responsibilities.*

(1) A sponsor is responsible for screening prospective exchange visitors as set forth in §62.32(e); making the final selection of exchange visitors; placing (and re-placing, as necessary) exchange visitors; issuing Forms DS-7007 and DS-2019; providing an orientation for host entities; finding, approving, and verifying (as applicable) exchange visitor housing; and conducting monitoring of exchange visitors and their host placements within the United States. These activities must be conducted by employees of the sponsor.

(2) A sponsor must provide for a pre- and post-arrival orientation for exchange visitors. The pre-arrival orientation may be conducted by sponsor employees or through a foreign third party with which the sponsor has a written agreement (pursuant to §62.32(q)(2)), or both. The post-arrival orientation may be conducted by sponsor employees or by the host entity, or both.

(3) A sponsor may use foreign third parties, in accordance with §62.32(q), for recruitment and overseas orientation of exchange visitors, and initial identification of host entities.

(4) A sponsor may use domestic third parties, in accordance with §62.32(s), to provide for initial identification of host entities, implementation of cross-cultural activities for

exchange visitors, a local point of contact for exchange visitors, orientation of exchange visitors, housing assistance, and exchange visitor transportation.

(5) A sponsor's third party or host entity acts on a sponsor's behalf in the conduct of the sponsor's exchange visitor program, and failure by any third party or host entity to comply with the regulations set forth in this part will be imputed to the sponsor.

(6) A sponsor and its third parties shall not pay or otherwise provide financial incentive to host entities to accept exchange visitors for host placements.

(7) A sponsor must ensure that any fees it or its third parties charge are legal, justifiable, and permitted under this Part.

(8) Sponsor promotional materials must characterize the Summer Work Travel Program as a cultural and educational program with a work component.

(9) A sponsor must include in its recruiting material, and post on its main website, examples of the typical monthly budgets of exchange visitors placed in various regions of the United States to illustrate wages (based on the minimum-required 32 hours of work at a typical host placement) balanced against fees and estimated costs. A sponsor must itemize fees that it and its third parties will charge, or provide within the sponsor's fee list a specific link to a third party's fee list on the third party's website, and estimate other typical exchange visitor costs, including estimated housing costs and estimated costs for cultural activities, in its posting. Actual fees that should be itemized include the following, as applicable: Program fee (with an explanation of what this includes); fees for recruitment, interview and screening, placement, arrival/orientation services; vetting of re-placement or additional jobs; health insurance; expedited application review; document translation; and fees related to program administration and the Form DS-2019

(such as expedited form changes, program extensions within allowable program windows, health insurance extension during grace period, reinstatement, re-placement of lost Form DS-2019, SEVIS adjustments, and travel validation). No sponsor or third party may require an exchange visitor to remit a portion of his or her earnings in the United States to an overseas private entity.

(10) A sponsor must ensure that any host entity at which it places an exchange visitor hires, remunerates, and provides supervision for that exchange visitor and is willing and able to assist the exchange visitor in the absence of the sponsor in cases of emergency.

(11) A sponsor must ensure that an exchange visitor does not change his or her site of activity at the host entity, type of position within the current host placement, or residence without first notifying the sponsor.

(e) *Exchange visitor screening and selection.*

(1) A sponsor must verify and document, prior to each exchange visitor's selection, that each exchange visitor:

(i) Will be at least 18 years of age by the program start date;

(ii) Is, at the time of application, a foreign national post-secondary student (including a student in his/her final year) who is enrolled in and actively pursuing a full-time course of study toward a degree at a classroom-based post-secondary academic institution that is physically located outside the United States and is ministerially-recognized within the national education system where the student is enrolled; applicants must have successfully completed at least one term, or equivalent, of post-secondary academic study at the time of application.

(iii) Has not participated in more than two previous Summer Work Travel program exchanges to the United States;

(iv) Has at a minimum a level of English language proficiency, verified in accordance with §62.10(a)(2), that allows him or her to communicate effectively when speaking with co-workers and community members, to understand work requirements, to discuss autobiographical information, and to comprehend both written and oral instructions related to work, housing, and transportation; and

(v) Intends to participate in sponsor, host-entity, and/or self-initiated cross-cultural activities while in the United States.

(2) Prior to selecting an exchange visitor, a sponsor must conduct an interview with each prospective exchange visitor either in-person or by video-conference and, where requested by the host entity or exchange visitor, facilitate a video-conference between the host entity and the exchange visitor.

(3) A sponsor must communicate to prospective exchange visitors that they may not be accompanied by spouses and dependents unless these spouses and dependents secure the requisite immigration status. Spouses and dependents of an exchange visitor in the Summer Work Travel program category are not eligible for J-2 (derivative) status.

(f) *Exchange visitor placement.*

(1) Before issuing a Form DS-2019, a sponsor must secure for each prospective exchange visitor a host placement(s):

(i) That is seasonal or temporary in nature;

(ii) Requiring only minimal training;

(iii) Entailing daily interaction with, and work alongside, American guests, customers, co-workers, and supervisors, as an integral part of the host placement;

(iv) Providing the exchange visitor with hours of work numbering between the allowable minimum and maximum, in no more than two host placements in accordance with §62.32(f)(4);

(v) Meeting the requirements for compensation in accordance with §62.32(f)(6);

(vi) Provided by a host entity that has been vetted in accordance with §62.32(i);

(vii) Provided by a host entity informed of its responsibilities pursuant to §62.32(j);

(viii) Not on the program exclusions list set forth in §62.32 (k);

(ix) Satisfying the standard for exchange visitor housing and local transportation as set forth in §62.32(l);

(x) Provided by a host entity that has been fully oriented by the sponsor about the public diplomacy purpose of the Exchange Visitor Program, federal regulations (including updates), and other requirements of the Exchange Visitor Program;

(xi) Provided by a host entity that accepts responsibility for the exchange visitor as necessary in case of emergency; and

(xii) Located where an employee of the sponsor can reach the exchange visitor in-person within eight hours through any reliable means of transportation.

(2) A sponsor must divulge to the Department where a partial or full ownership relationship exists between the sponsor and the host entity. In these instances, the sponsor must identify an individual who will act as an independent advocate for the exchange visitor, such as an ombudsperson.

(3) A sponsor must not place exchange visitors with host entities if there is a strike or lockout, at the placement site, or other labor dispute at the placement site that the sponsor reasonably believes would have a negative impact on the exchange visitor's program. If a strike, lockout, or other such labor dispute occurs at the host entity in the location where an exchange visitor's host placement has been finalized pending the arrival of the exchange visitor, or where an exchange visitor is currently carrying out the program, a sponsor must place the exchange visitor at a different host entity as soon as possible and no later than five business days after the occurrence of such dispute.

(4) *Hours.*

(i) A sponsor must place the exchange visitor only with one or two host entities that, taken together, commit to provide a total minimum of 32-hours and a total maximum of 65-hours of permissible work per exchange visitor per calendar week averaged over a two-week period, as accepted by the exchange visitor on Form DS-7007. Should the exchange visitor's hours fall below the required 32-hour minimum per week for longer than two weeks (except in cases where the exchange visitor is ill or otherwise has been authorized an absence), the sponsor must assist that exchange visitor within three business days to raise his/her placement hours at the host entity or be re-placed, or, if the exchange visitor does not already have two placements, an additional placement. Should the exchange visitor's hours increase beyond the 65-hour maximum for more than two weeks, the sponsor, in consultation with the host entity, must require the exchange visitor to reduce his or her hours. The exchange visitor may opt out of the 32-hour weekly minimum work requirement if requested in writing by the exchange visitor and acknowledged by the sponsor after consultation with the host entity.

(ii) A sponsor may place an exchange visitor with no more than two host entities at the same time to meet the 32-hour minimum and 65-hour maximum requirements; the two host placements must be located in close proximity to each other. An exchange visitor may, if he or she so desires, take on additional sponsor-authorized work placements above the 32-hour minimum and below the 65-hour maximum per week work requirement, that conform to all applicable requirements of this Part.

(iii) A sponsor must ensure that a host entity provides the exchange visitor two-weeks' notice if the exchange visitor's job placement will (A) conclude earlier than the end-date indicated on Form DS-7007 or (B) fall below a total of 32-hours per week averaged over a two-week period. The two-week notice provision does not apply to host entities in cases where the exchange visitor fails to report to work for a sustained period (i.e., more than 10 consecutive workdays and without contacting the sponsor or host entity supervisor and receiving permission to be absent). In such cases, the sponsor must fully document the issue that caused the exchange visitor's hours to be reduced or the exchange visitor to be dismissed; the sponsor must assess information provided by the exchange visitor and host entity objectively. A sponsor must inform the Department of such incident within 24-hours of its notification.

(iv) A sponsor must ensure that the exchange visitor gives the host entity two weeks' notice if the exchange visitor's host placement will (A) conclude earlier than the end-date indicated on Form DS-7007 or (B) fall below the 32-hour weekly minimum averaged over a two-week period (if the exchange visitor has not formally opted out of the 32-hour requirement). The two-week notice provision does not apply to exchange visitors in cases where the exchange visitor can credibly allege workplace abuse, sexual

abuse, sexual harassment, bullying, exploitation, wage violations, criminal activity, and instances of retaliation against the exchange visitor for reporting problems in the workplace; a sponsor must inform the Department of such incident within 24-hours of its being notified.

(5) *Notification.* A sponsor must ensure that host entities notify the exchange visitor and sponsor within 24-hours of exigent circumstances affecting the exchange visitor's placement.

(6) *Compensation.* A sponsor must only place the exchange visitor in a host placement that compensates the exchange visitor:

(i) At not less than the federal, state, or local minimum wage, whichever is higher, for all hours worked (including overtime hours worked and applicable overtime wage), in conformance with applicable federal, state, and local laws, including the Fair Labor Standards Act; and

(ii) With pay and benefits commensurate with those offered to their U.S. counterparts and/or those on another class of nonimmigrant visa, as applicable, doing the same or similar work in the same work setting. Host entities may reasonably offer different wages to an employee commensurate with a qualified, experienced, or fully competent worker only after considering the experience, education, and skill requirements of the position.

(7) A sponsor must inform its host entities that, when hosting an exchange visitor, they are required by law to follow applicable employer recordkeeping requirements under federal, state, and local law, including the Fair Labor Standards Act and Department of Labor regulations (e.g., 29 CFR Part 516);

(8) A sponsor must ensure that host entities provide exchange visitors, without charge or deposit, all uniforms, tools, supplies, and equipment needed to perform placement-required activities.

(9) Prior to placing an exchange visitor at a host entity, the sponsor must inquire whether the host entity has displaced or intends to displace a U.S. worker with an exchange visitor. Sponsors must ensure that host entities have not rejected qualified U.S. applicants for the same position within 90 days of the date on which the sponsor has confirmed the host entity's formal acceptance of that exchange visitor for the host placement as indicated on Form DS-7007.

(10) A sponsor must reimburse exchange visitors for any union dues required by their host placement.

(11) A sponsor must ensure that exchange visitors are not charged for any host entity promotional material used by the exchange visitor on the job, and must compensate, or ensure that the exchange visitor's host entity compensates, the exchange visitor for travel time from the site of activity to any training site, and for the time spent in training; if the sponsor or host entity holds the training in a city that is farther than 60 miles away from the exchange visitor's site of activity, or the sponsor or host entity requires the exchange visitor to stay overnight at the training site, then the sponsor or host entity must pay the exchange visitor for the cost of lodging.

(g) *Door-to-door sales placements:* A sponsor placing an exchange visitor in a door-to-door sales position must, in addition to the requirements set forth in §62.32(f):

(1) Fully execute an agreement that explains in detail the exchange visitor's placement duties and expectations, who will obtain and pay or reimburse the exchange visitor for

any necessary state or local permits, the geographic area the host placement encompasses, and how exchange visitors, while traveling, may access housing that has been pre-arranged by the sponsor or host entity. The agreement must be included as an appendix to Form DS-7007 and must be accepted in writing by the exchange visitor before he or she receives a Form DS-2019.

(2) Ensure that:

(i) The host entity provides the exchange visitor with a post-arrival orientation that, at a minimum, includes information on safety considerations while selling door-to-door; how to contact a supervisor while traveling on duty; how to react when faced with possible adverse situations; how exchange visitors will be reimbursed for housing costs incurred while traveling on behalf of their host entity; and how products will be delivered to customers;

(ii) The exchange visitor in each calendar week of his or her program, averaged over a two-week period, earns not less than the equivalent of the applicable federal, state, or local minimum wage per hour through hourly pay or sales profits, in conformance with applicable federal, state, and local laws, including the Fair Labor Standards Act, and receives pay and benefits commensurate with those offered to his or her U.S. counterparts and/or those on another class of nonimmigrant visa doing the same or similar work in the same work setting and having similar qualifications and experience. Hours that an exchange visitor spends in orientation constitute hours worked;

(iii) Customers make all checks and other forms of payment directly payable to the host entity, not to the exchange visitor, for sponsor or host entity products; and

(iv) The exchange visitor begins selling door-to-door no earlier than 9:00 a.m. and finishes his/her last sales call no later than 8:00 p.m. in the time zone covering his or her location.

(3) Permit an exchange visitor's reasonable request for re-placement at a non-door-to-door assignment and issue the exchange visitor a new Form DS-7007.

(4) Pre-authorize and document on the appendix to the DS-7007 any additional types of exchange visitor sales activities.

(h) *Exchange visitor host re-placement.* A sponsor must:

(1) Find and fully vet a new host entity for the exchange visitor (i.e., verify, at a minimum, the terms and conditions of the exchange visitor's employment at that host entity) within three business days in response to an exchange visitor's reasonable request to change host placements, provided the request is made before the final four weeks of the exchange visitor's program. Considerations in determining the reasonableness of a request may include whether the new placement would be consistent with the exchange visitor's abilities, is located in the same city or a nearby city to the previous placement, and is within an economic sector where host entities are hiring. Sponsors may not charge the exchange visitor a fee for re-placement.

(2) Ensure that a host re-placement meets the requirements applicable to the original placement(s).

(3) Complete and secure the requisite signatures on a new Form DS-7007 prior to the exchange visitor's beginning work at a host re-placement.

(i) *Sponsor vetting of host entities.* A sponsor must:

(1) Exercise due diligence in vetting a host entity, its owners, and its managers and supervisors who work with exchange visitors. In conducting such vetting, a sponsor must confirm that a host entity is a legitimate and reputable business by taking, at a minimum, the following steps annually:

(i) Check, through direct contact in person or by telephone, the names of the entity's owner(s), and manager(s), names of the supervisor(s) for the exchange visitor, business telephone numbers, e-mail addresses, street addresses, and professional activities;

(ii) Use publicly available information (e.g., state registries, advertisements, brochures, websites, court registries, state sex-offender registries) and available information from prior exchange visitor placements to confirm that all host entities and their owners are of good reputation and financially viable, and that all managers and supervisors of the exchange visitor are reputable and have each undergone a criminal background check that the sponsor may review;

(iii) Record a potential host entity's Employer Identification Number (EIN) and obtain copies of its current business or professional license or permit, or certificate issued by the jurisdiction where the business operates, granting the host entity the right to operate in that jurisdiction;

(iv) Check whether the host entity will use any third parties (including staffing agencies) to conduct the exchange visitor program and verify using publicly available information (e.g., the kind of information noted in subparagraph (i)(1)(i)) to check whether such third parties are legitimate and reputable and that their managers and supervisors working with exchange visitors have each had a criminal background check

that the sponsor may review. Failure of a third party engaged by a sponsor's host entity to comply with the regulations governing administration of the Exchange Visitor Program will be imputed to the sponsor, whether or not such third party has been disclosed by the host entity to the sponsor.

(v) Verify that each potential host entity will have Workers' Compensation Insurance coverage or its equivalent, as applicable, in the appropriate U.S. state during the time when the exchange visitor will be placed there, or, if applicable, evidence of that state's exemption from requirement of such coverage;

(vi) Obtain verification at the beginning of each season that a host entity with which an exchange visitor is planned to be placed will not displace U.S. workers, has not experienced layoffs in the past 120 days, and does not have workers on lockout or strike; and

(vii) Review the U.S. Department of Labor website and state resources for judgments and debarments and revocations pertaining to the host entity or business owner.

(2) Discontinue cooperation with a host entity that fails to disclose information that may affect exchange visitor health, safety, or welfare, or bring the Exchange Visitor Program into notoriety or disrepute.

(j) *Host entity cooperation.*

(1) A sponsor must inform a host entity and its relevant managers and supervisors of program regulations, regularly monitor the host entity's compliance with such regulations, and take action if it becomes aware of a violation.

(2) A sponsor must inform a host entity that it may be required to arrange cross-cultural activities for its exchange visitor, or that it must permit time for the exchange visitor to engage in sponsor-arranged cross-cultural activities, as defined in §62.2.

(3) Failure by any host entity (or any disclosed or undisclosed third party) to follow the requirements governing administration of the Exchange Visitor Program will be imputed to the sponsor.

(4) A sponsor must require a host entity to notify it within 24-hours of the following events:

(i) The exchange visitor arrives at his/her site of activity to begin his/her program;

(ii) There are significant deviations in the host placement during an exchange visitor's program;

(iii) The exchange visitor is not meeting the requirements of his/her host placement as detailed on Form DS-7007;

(iv) The exchange visitor leaves his/her position ahead of the planned departure;

(v) There are serious incidents involving an exchange visitor, including any situations that have or could have the effect of endangering his or her health, safety, or welfare.

(5) No sponsor or host entity may prevent communication between an exchange visitor and his or her sponsor, family or friends, or any other person while the exchange visitor is not on duty;

(6) A sponsor shall terminate the participation of a host entity that is found to have, without the exchange visitor's advance written permission, held or withheld the exchange visitor's money, identification (including passport and social security card), cell-phone,

flight tickets, or other personal property during his or her program; or held or withheld an exchange visitor's Forms DS-2019 or DS-7007. Any exchange visitor who wishes the sponsor or sponsor's host entity to retain important documents must make this request in writing, including an itemized list of the documents. The exchange visitor may revoke this authorization in writing at any time, whereupon such documents or property must be returned within 48-hours of the written revocation's documented submission to the sponsor.

(k) *Program exclusions.* A sponsor must not place an exchange visitor in a host placement that is:

- (1) Inconsistent with U.S. law or that could bring notoriety or disrepute to the Department or to the Exchange Visitor Program, as determined by the Department;
- (2) Lacking acceptable housing and local transportation, (as set forth in §62.32(l)), including safe local transportation that is accessible during late night or early morning hours if the exchange visitor will work during such hours;
- (3) Requiring more than four hours of work between 10:00 p.m. and 6:00 a.m.;
- (4) In locations where telephone and Internet communication is not accessible;
- (5) Requiring licensing of the exchange visitor;
- (6) Compensating the exchange visitor on a "piece work basis" (i.e., based on the number of objects produced or rooms cleaned);
- (7) Resulting in the exchange visitor being supervised by a staffing agency, unless the sponsor vets the staffing agency as well as the host entity where that agency places exchange visitors, and the staffing agency's role meets the following criteria:

- (i) The staffing agency provides daily supervision and primary onsite monitoring of the exchange visitor's work environment at his or her host entity;
 - (ii) The exchange visitor is an employee of, and paid by, the staffing agency; and
 - (iii) The staffing agency effectively controls the host placement (i.e., has hands-on management responsibility for the exchange visitor at his or her site of activity);
- (8) Entailing domestic help in private homes (e.g., child care provider, elder care provider, housekeeper, gardener, chauffeur);
- (9) Requiring the exchange visitor to operate or drive a pedicab, rolling chair, or other vehicle powered by physical exercise;
- (10) Requiring the exchange visitor to operate or drive a vehicle or vessel for which a driver's license is required, regardless of whether the vehicle carries passengers;
- (11) Related to clinical care that involves physical contact with patients;
- (12) In the adult entertainment industry or the commercial sex trade (e.g., placements at escort services, adult book or video stores, strip or exotic dance clubs);
- (13) Requiring the exchange visitor to engage in work that is declared hazardous to youth by the Secretary of Labor at Subpart E of 29 CFR Part 570;
- (14) Requiring sustained physical contact with other people (e.g., hair care, manicure, henna tattooing) and/or adherence to the Centers for Disease Control and Prevention's Universal Blood and Body Fluid Precautions guidelines;
- (15) Requiring the exchange visitor to operate gaming, gambling, wagering, or betting activities;
- (16) In chemical pest control, warehousing, or a catalogue/online order distribution center;

- (17) In the mobile amusement and itinerant concessionaires industries;
- (18) Meeting the criteria of another Exchange Visitor Program category (e.g., camp counselor, intern, trainee);
- (19) In the North American Industry Classification System's (NAICS) Goods-Producing Industries occupational categories industry sectors 11, 21, 23, 31-33 numbers (set forth at <http://www.bls.gov/bls/naics.htm>); see <http://siccode.com/en/naicscode/list/directory> for code look-up;
- (20) Employing the exchange visitor as a mover or in any position where the primary work duty is the movement of household or office goods;
- (21) Employing the exchange visitor in a position requiring repetitive motion such as that found on an assembly line or in certain factory-like settings;
- (22) Employing the exchange visitor in waste management, janitorial, or custodial positions, or in any position where more than five percent of the duties as defined by time spent involve waste management or keeping the premises of a building and supplementary machinery (e.g., heating, air-conditioning) clean and in working order, or involve making building repairs;
- (23) In a position with a host entity that participates in the Summer Work Travel Program on a basis other than seasonal or temporary (e.g., for more than two seasons during the year, or that covers a total period of employment longer than eight months in a single calendar year);
- (24) In a position where an exchange visitor is solely responsible for the safety of others (e.g., as a lifeguard); does not have regular on-site or timely on-call supervision by the host entity and/or would be without reasonable time off for breaks and meals; or

(25) In a position with a host entity that does not inform the exchange visitor about, and enforce the use of, applicable workplace health and safety laws (e.g., regulations issued by the Occupational Safety and Health Administration), does not provide equipment that meets relevant safety standards, or otherwise fails to take reasonable precautions to safeguard the health, safety or welfare of an exchange visitor.

(1) *Exchange visitor housing and local transportation.*

(1) Every sponsor-approved placement must include identification of acceptable housing and local transportation before that sponsor approves the placement and issues a Form DS-2019. Housing must be fully and accurately described on the Housing Addendum of Form DS-7007 in accordance with §62.32(m).

(2) Acceptable housing must meet all applicable housing codes and ordinances and be:

(i) affordable for the exchange visitor;

(ii) provided in compliance with applicable federal, state, and local laws, including 29 CFR Part 531 (if the host entity plans to deduct housing costs from the exchange visitor's wages);

(iii) in a safe location;

(iv) within a reasonable distance of the exchange visitor's site of activity at the host entity(ies);

(v) in an area with regular, safe and affordable local transportation options to commercial infrastructure and to his or her site of activity at the host entity; and

(vi) in a location that is neither isolated, nor difficult to access.

(3) The requirements in subparagraphs (iv), (v) and (vi) above are waived if the sponsor or host entity provides reliable, safe, and affordable local transportation to the exchange

visitor during his/her on- and off-hours, and has a transportation plan in case of emergency. A sponsor placing an exchange visitor in a remote national park, ski or mountain resort, or summer camp must document the host entity's written arrangement for transportation for that exchange visitor during his/her off hours and in case of emergency.

(4) Neither a sponsor nor its host entity is permitted to require an exchange visitor to pay a separate fee to identify housing in excess of any fee charged for the exchange visitor's placement at the host entity.

(5) In the event that the exchange visitor chooses to secure his or her own housing, both the sponsor and the exchange visitor must document such choice in writing and the sponsor must verify compliance with the requirements of paragraph (2) prior to the exchange visitor's arrival in the United States, or the sponsor may deny the housing or the entire host placement.

(6) If either the sponsor or the Department determines that an exchange visitor's housing situation is unacceptable or otherwise problematic (e.g., excessive noise, serious conflict among housemates), the sponsor must identify new acceptable housing and notify the exchange visitor of that alternative within one week of this determination; if the exchange visitor opts not to accept the new housing, the sponsor may determine that the placement is in violation of this regulation.

(7) If an exchange visitor bicycles to and from the host entity or to reach commercial infrastructure, his or her sponsor must ensure that the exchange visitor is informed that he or she must wear a helmet and other appropriate protective gear and that he or she must check that the bicycle is in working order (e.g., brakes functional, frame not bent, all tires

inflated properly, bicycle chain and gears functional). All sponsors must provide exchange visitors in pre-arrival materials and during orientation with bicycle safety information, including the Department-generated bicycle safety flyer, and place the Department-generated bicycle safety video on their website. No exchange visitor should be expected by his or her sponsor or host entity to ride a bicycle to his or her site of activity at the host entity if he or she chooses not to do so, or be expected to ride a bicycle to his or her site of activity on a highway or other major road without bicycle lanes; likewise, no exchange visitor should be expected to ride a bicycle over distances of longer than a total of eight miles per day in order to travel to and from the host entity or reach commercial infrastructure.

(m) Form DS-7007 (Host Placement Certification). The purpose of this form is to ensure a common understanding among all parties (through required signature of the sponsor, exchange visitor, and host entity) about the terms of the host placement and arranged housing before the exchange visitor begins work at his or her host entity.

(1) A sponsor must:

(i) Fully complete a Form DS-7007 for each exchange visitor placement, which must include: location and description of the host entity; number of employees and other exchange visitors on location; hours of work each week that will be offered the exchange visitor; duties, wages (including expectations for overtime), expected training period, if any; physical demands of the host placement; any placement-related benefits or amenities; total itemized fees charged by sponsors, host entities, and third parties, that the exchange visitor will incur, identifying clearly which are mandatory and which are optional; other estimated costs to the exchange visitor of the placement at the host entity

or for other aspects of the program (e.g., costs and deductions for benefits, mandatory and optional deductions, meals included at host entity). Deductions taken from wages must be disclosed in advance to the exchange visitor. A DS-7007 must be executed for each placement the exchange visitor accepts and be updated according to Department guidance if the terms of a placement change significantly;

(ii) Fully execute a Form DS-7007 (excluding Housing Addendum) before completing and signing a Form DS-2019 for each exchange visitor;

(iii) Provide each signatory an executed copy of the Form DS-7007 (excluding Housing Addendum) before the exchange visitor makes his or her visa application; and

(iv) Inform the exchange visitor that he or she must have his or her fully-executed Form DS-7007 (excluding Housing Addendum) available (along with his or her Form DS-2019) for the visa interview.

(2) A sponsor must ensure that the Housing Addendum of the Form DS-7007 is completed (including by the host entity), if relevant, and that a copy is sent to the exchange visitor prior to the exchange visitor's departure to the United States and if the exchange visitor changes housing. A sponsor must include a description of the housing; information about local transportation type and cost, and distance to the host entity; cost of housing (either weekly or monthly); need for an exchange visitor housing deposit; utilities covered in rent and those that the exchange visitor must pay separately; whether deductions for housing or local transportation will be taken from exchange visitors' wages; number of other tenants; housing features and description (including numbers of bedrooms and bathrooms); and whether there is a firm contract for the housing that the exchange visitor must sign for a fixed period of time. The Housing Addendum page must

state the market value of housing and/or local transportation. Deductions from wages may only be made in accordance with Fair Labor Standards Act regulations set forth at 29 CFR Part 531.

(3) A sponsor must give each exchange visitor 72-hours to consider any substantive additional requirements or changes made by his or her host entity to the host placement after the DS-7007 or Housing Addendum is initially executed; a sponsor must require the exchange visitor and host entity to sign a new Form DS-7007 if the exchange visitor agrees to the changes. If an exchange visitor determines that he or she does not wish to add requirements or make changes, or is unresponsive, he or she must be allowed to continue to do those tasks at the host entity specified on his or her most recent DS-7007, unless the host entity makes a request to the sponsor that the exchange visitor be placed elsewhere, in which case, the exchange visitor must be given two-weeks' notice of program termination. An exception to the 72-hour rule may be made if such changes must be implemented before 72-hours to protect the health, safety, and welfare of the exchange visitor.

(4) A sponsor must keep each DS-7007 on file for three years.

(n) Exchange visitor pre-departure orientation and documentation.

(1) In addition to satisfying the requirements set forth at §62.10(b)-(c), a sponsor must provide to each exchange visitor prior to departure from his or her home country, an orientation in-person, online, or a combination of both that includes the following information and documentation:

(i) An explanation of the sponsor's role during the program, including monitoring, and of host entity responsibilities;

(ii) The Department of State's Summer Work Travel Exchange Visitor Welcome Letter and Diversity Flyer;

(iii) The sponsor's 24/7 immediate (i.e., non-answering machine) contact telephone number;

(iv) A description of exchange visitor and host entity obligations and responsibilities, including a list of program obligations and responsibilities as set forth in subparagraph (2) below;

(v) Information explaining the cross-cultural component of the Summer Work Travel program, including the exchange visitor's obligation to participate in sponsor- and host entity-arranged cross-cultural activities, and how best to experience local or national U.S. culture;

(vi) Information on how to identify and report workplace abuse, sexual abuse, sexual harassment, bullying, exploitation, wage violations, housing violations, poor housing conditions, and instances of retaliation against the exchange visitor for reporting problems, including how to access whistleblower protection. The orientation also must include information for exchange visitors on the sponsor monitoring process, and inform exchange visitors that they must notify their sponsor within ten days of arrival in the United States and of any changes to the terms agreed to in Form DS-7007;

(vii) Information on general personal, pedestrian, and transportation safety, including bicycle safety information (i.e., providing the Department-generated bicycle safety flyer and placing a bicycle safety video on the sponsor's website);

(viii) An identification card with a photo of the exchange visitor listing the exchange visitor's name, the sponsor's name, and main office and emergency telephone

numbers, 911, the telephone number of the Department's J-1 visa toll-free emergency help line, the J-1 visa e-mail address, and the name and policy number of the sponsor's health insurance provider, if applicable; and

(ix) Information on medical care in the United States (e.g., information on insurance deductibles, differences between emergency room visits and regular hospital visits, how generally to seek medical care in the United States) and locations of the nearest medical facilities.

(2) Information on exchange visitor and host entity obligations and responsibilities must include the following:

(i) The exchange visitor must notify his or her sponsor within ten days of arrival in the United States, as set forth in §62.10(c)(9);

(ii) The exchange visitor must notify his or her sponsor of any changes to the terms agreed to in Form DS-7007, as set forth in §62.32(m)(1)(i);

(iii) An exchange visitor must not change his or her host site of activity at the host entity, type of position within his or her current host placement, or residence without first notifying the sponsor, as set forth in §62.32(d)(11);

(iv) The host entity must not permit an exchange visitor to begin working for an additional host entity, or at a different host entity, until the sponsor has vetted such host entity, as set forth at §62.32(i), and provided the exchange visitor and host entity a fully executed Form DS-7007 for such a placement in accordance with paragraph (m);

(v) A description of the circumstances that may lead to termination of the exchange visitor's program under rules governing the program, including, but not limited to, the following: Engaging in more than three Summer Work Travel programs during the

exchange visitor's academic career; failure of an exchange visitor to report to his or her sponsor within ten days of arrival in the United States; failure to appear timely at the initial host placement without notifying the sponsor in advance of any inability to appear on time; beginning employment at a non-vetted host entity or at a host placement on the program exclusions list set forth at paragraph (k); engaging in illegal activities (e.g., fraud, distribution of illegal substances); failure to give two-weeks' notice of departure to the current host entity, except in cases where health, safety, or welfare of the exchange visitor is endangered; failure to report change of position or change of title within the current host placement or change of residence; a pattern of unresponsiveness to sponsor communications; and violation of sponsor-specific rules regarding the exchange visitor program;

(vi) The circumstances that may lead to program termination of the host entity; and

(vii) The exchange visitor is prohibited from engaging in any activities that could bring the Exchange Visitor Program into notoriety or disrepute.

(o) *Cross-cultural activities.* A sponsor must:

(1) Ensure that the exchange visitor's placement at the host entity requires regular interaction with co-workers and customers and that the exchange visitor's host entity also facilitates the regular interaction of the exchange visitor with U.S. persons during the workday portion of their program;

(2) Plan and initiate cross-cultural activities, and/or act as a resource for host entities, domestic third parties, or local community groups in arranging cross-cultural activities that provide the exchange visitor exposure to U.S. culture and/or interaction with U.S. persons throughout his or her program;

- (3) Ensure that, at a minimum, it or its host entity or entities arrange one cross-cultural activity within each calendar month for the exchange visitor; and
- (4) Facilitate additional cross-cultural activities throughout the duration of the exchange visitor's program, and document such activities.

(p) *Exchange visitor monitoring and assistance.* A sponsor must:

- (1) Maintain, at a minimum, monthly personal contacts with the exchange visitor. Such sponsor contact is permitted to be in-person, by telephone, or via exchanges of e-mail (communications via e-mail and voicemail messages must elicit a response from the exchange visitor that provides information on the exchange visitor's well-being);
- (2) Gauge the exchange visitor's overall health, safety, and welfare and appropriately address issues identified through monitoring that involve the suitability of employment, housing and transportation, and any other issues affecting, or that could affect, the exchange visitor's health, safety, and welfare;
- (3) Be available to the exchange visitor as a facilitator, counselor, and information resource and provide appropriate assistance on an as-needed basis;
- (4) Document all efforts to resolve any issue that could result in program termination, including problematic placements and inability to contact a non-responsive exchange visitor, before pursuing program termination;
- (5) Prepare any host entity to facilitate Department oversight and visits to placement locations; and
- (6) Incorporate additional monitoring steps at the suggestion of the Department in the case of Department-noted problems in the sponsor's Summer Work Travel program.

(q) Sponsor use of foreign third parties. A sponsor must, in addition to the description set forth in §62.2 in the definition of *Third party*, satisfy the following requirements if it elects to use a foreign third party:

(1) Select only a foreign third party that:

(i) the sponsor has vetted in accordance with §62.32(r);

(ii) has a fixed office address, employees with professional experience in the service(s) the foreign third party provides, an organizational mission applicable to cultural and educational exchange, and a secure system to collect, protect, and dispose of the personal data of potential and actual exchange visitors;

(iii) markets the Summer Work Travel program as a cultural and educational program with a work component;

(iv) has fees and other charges that are permissible under this Part, transparent, justifiable in terms of services provided, and legal;

and

(v) would not bring the Exchange Visitor Program into notoriety or dispute, or engage in actions that would endanger the health, safety or welfare of an exchange visitor;

(2) Fully execute a written agreement, with documented review every three years, with the foreign third party and work only with foreign third parties with which the sponsor has concluded such written agreements; agreements must specifically authorize the foreign third party to carry out certain program functions;

- (3) Adequately orient any foreign third party it engages on the purpose of the Exchange Visitor Program and all applicable regulations in this Part and updates and related guidance;
- (4) Require, review, and approve annually the third party's marketing materials, including updated price lists based on any Department-required template, for programs marketed on the sponsor's behalf. The price lists must include itemization of all fees charged to the exchange visitor and estimated costs the exchange visitor might incur, as set forth in §62.9(d)(3);
- (5) Ensure that the foreign third party does not permit the use of any other third party (including staffing or employment agencies or subcontractors) to work directly with any prospective or current exchange visitor for the purpose of programmatic planning, or otherwise cooperate or contract with any such other third party;
- (6) Place information about each of its foreign third parties on the sponsor's main website, including the official name, headquarters address, and specific program functions performed;
- (7) Establish and implement internal controls to ensure that each foreign third party complies with the terms of its agreement with the sponsor;
- (8) Ensure the foreign third party knows and complies with all applicable provisions of these regulations. Failure by any foreign third party to comply with the regulations will be imputed to the sponsor; and
- (9) Not use a foreign third party if the Department has determined and informed that sponsor that the third party does not meet the requirements of subparagraph (1).
- (r) *Sponsor vetting of foreign third parties.*** A sponsor must:

(1) Ensure that any foreign third party it utilizes or intends to utilize is legitimate and employs only reputable individuals or organizations qualified to perform agreed program functions;

(2) At a minimum, review annually current documentation for each of its foreign third parties, including:

(i) Proof that it is legally authorized to conduct business in every location in which it operates;

(ii) Any bankruptcy filing, adverse legal judgment, or pending legal action or complaint against such foreign third party relevant to its conduct of the exchange visitor program;

(iii) Written references from three current business associates or partner organizations;

(iv) A criminal background-check report (including originals and English translations, as applicable) for each owner and officer of the foreign third party; and

(v) A copy of the foreign third party's recent financial statements certified by an independent public accountant.

(s) *Sponsor use of domestic third parties.*

A sponsor must, in addition to the description set forth in §62.2 (definition of *Third party*), satisfy the following requirements if it elects to use a domestic third party:

(1) Select only a domestic third party that:

(i) the sponsor has vetted in accordance with §62.32(t), unless the selected entity serving as a domestic third party is another designated sponsor; in that case, the sponsor

must require that the domestic third party sponsor provide proof of current Department designation;

(ii) has a fixed office address, employees with professional experience in the service(s) the domestic third party provides, an organizational mission applicable to cultural and educational exchange, and a secure system to collect, protect, and dispose of the personal data of potential and actual exchange visitors;

(iii) has fees and other charges that are permissible under this Part, transparent, justifiable in terms of services provided, and legal; and

(iv) would not bring the Exchange Visitor Program into notoriety or dispute, or engage in actions that would endanger the health, safety, or welfare of exchange visitors.

(2) Fully execute a written agreement, with documented review every three years, with the domestic third party and work only with domestic third parties with which the sponsor has concluded such written agreements;

(3) Orient adequately any domestic third party it engages on the purpose of the Exchange Visitor Program and all applicable regulations in this Part and updates and related guidance;

(4) Place information about each domestic third party it engages on the sponsor's main website, including its official name, headquarters address, and specific program functions performed;

(5) Establish and implement controls to ensure that the domestic third party complies with the terms of its agreement with the sponsor;

(6) Ensure the domestic third party knows and complies with all applicable provisions of these regulations. Failure by any domestic third party to comply with the regulations will be imputed to the sponsor; and

(7) Not use a domestic third party if the Department has determined and informed that sponsor that the third party does not meet the requirements of subparagraph(1).

(t) *Sponsor vetting of domestic third parties.* A sponsor must:

(1) Ensure that any domestic third party it utilizes or intends to utilize is legitimate and employs only reputable individuals or organizations qualified to perform agreed program functions; and

(2) At a minimum, review annually current documentation for each of its domestic third parties:

(i) Proof that it is legally authorized to conduct business in every location in which it operates;

(ii) Any bankruptcy filing, adverse legal judgment, or pending legal action or complaint against such domestic third party relevant to its conduct of the exchange visitor program; and

(iii) Proof of sufficient liability insurance to cover the activities provided to the sponsor.

(u) *Reporting requirements.*

(1) *Foreign third party reporting:* Within 30 days of its conclusion of a new written agreement with a foreign third party, a sponsor must provide the Department with that third party's name and contact information (i.e., telephone number, e-mail address, street address, city address, point of contact, and website address). The sponsor also must

provide the Department with updated contact information for its foreign third party within 30 days after receiving notice of any change in that party's contact information. A sponsor also must notify the Department no later than 30 days after ceasing to work with a foreign third party previously reported.

(2) *Price lists:* A sponsor must submit to the Department each year, no later than December 1, itemized exchange visitor price lists (in accordance with any Department template) which identify the costs that exchange visitors must pay each sponsor and foreign third party on a country-specific basis in order to participate in the program.

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