

NAFSA 2017 Conference Session Summary

U.S. Department of State and Exchange Visitors: Current Issues (Wed. May 31, 2017)

Summary of Questions and Responses from the Session

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Session Description

NAFSA 2017 Annual Conference & Expo
Expanding Community, Strengthening Connections
May 28, 2017 – June 2, 2017, Los Angeles, CA

U.S. Department of State and Exchange Visitors: Current Issues

Wednesday, May 31, 2017
 11:45 AM - 12:45 PM
 LACC, Room 151

Presenters and officials from the U.S. Department of State (DOS) Bureau of Educational and Cultural Affairs discuss current issues, trends, and best practices related to hosting J-1 students and scholars at academic institutions. Officials from DOS have been invited to participate.

Learning Objectives:

- Obtain updated information regarding current U.S. government regulations, policies and trends affecting J-1 Exchange Visitors.
- Obtain tips and learn best practices for advising J-1 students and scholars.
- Use information presented to develop and or revise policies and practices at your own institutions, to improve the administration of their exchange programs to better meet regulatory requirements, and to improve services to J-1 Exchange Visitors.

Chair: Richard Porter, Ed.D., Director of International Student and Scholar Services, Texas Tech University

NAFSA Presenter: Asenath Dande, M.Ed, Associate Director for Faculty and Scholar Services, Rutgers University-New Brunswick, Center for Global Services

1. What impact would a board member who is not a U.S. citizen or permanent resident have on a re-designation application?

Sponsors are permitted to have non-U.S. citizens and/or permanent residents on their board as long as the board remains a United States Person. Per 22 CFR §62.2 Definitions, a United States Person (legal entity), is one in which the “majority of whose officers and a majority of whose members of its Board of Directors, Board of Trustees or other like body vested with its management are United States persons.”

2. When does an RO/ARO need to change the date or send a new DS-2019 to a scholar when the start date passes when they are applying for a visa?

The Sponsor should update the date in SEVIS immediately and provide the exchange visitor a corrected Form DS-2019.

3. Can you give us a best practice for standard, English language proficiency testing?

English language proficiency requirements are outlined in 22 CFR §62.10(a)(2) Program Administration, and apply to all categories in the J-1 Exchange Visitor Program. Additionally, English language proficiency for student interns is addressed in §62.23(i)(1)(i) College and university students. We understand that colleges and universities have internal English language requirements for non-native speakers of English (such as TOEFL, IELTS, and other standardized tests) for admission and enrollment – sharing that information is helpful during the review process. For other non-native speakers of English who have not submitted English proficiency testing scores, regulations provide for documentation of proficiency from an English language school, an academic institution, or a documented interview. We recommend that sponsors retain documentation that verifies the sponsor’s review of English language proficiency as part of the exchange visitor’s file.

4. Are sponsors required to evaluate insurance policies or just inform scholars of the EV program minimum requirements?

The sponsor must monitor and ensure that the exchange visitor and his or her dependents have insurance throughout the program duration (dependents must have insurance while they are in the United States). §62.14(j) Insurance states “Sponsors must terminate an exchange visitor's participation in their program if the sponsor determines that the exchange visitor or any accompanying spouse or dependent willfully fails to remain in compliance with this section.”

5. Do you have best practices for documenting insurance for J-2s who come in and out of the United States at random times?

The Department does not provide best practices for monitoring insurance of J-2 dependents. However, sponsors are required to ensure exchange visitors and their dependents maintain regulatory compliance throughout the duration of the program that meets the minimum coverage indicated under 22 CFR §62.14 Insurance.

6. Is it possible to add an on-site vendor employee as an ARO?

Sponsors may only add an on-site vendor employee as an ARO if the individual is an employee of the sponsor.

7. Can you comment on the process to request more than the maximum number of AROs currently allotted per program? Is it more of a formality or when or why would a request be denied?

The Department requests sponsors provide written justification if more than ten Alternate Responsible Officers is needed. Each request will be reviewed on a case by case basis. Per 22 CFR §62.9 General obligations of sponsors (g)(1), "Upon written sponsor request, the Department of State may, in its sole discretion, permit a sponsor to appoint more than ten Alternate Responsible Officers."

8. Can you please describe how we can best document a J-1 transfer with a different subject field code, but the academic departments and PIs confirm it is the same research?

The Department does not permit the subject field code listed on Form DS-2019 to be changed during a transfer.

9. For the DS-7002, is an electronic signature from the phase supervisor sufficient or is an original on a hard copy of the form required?

The phase supervisor must sign a hard copy of the Form DS-7002. In the future, the T/IPP process in SEVIS will be enhanced to allow electronic signatures.

10. Can you talk about the recent email from DAS, Acting G.K. Saba about the four points of program alignment? Will more information be coming from your office?

Acting DAS Saba's May 30 email was just an attempt to identify for you emerging priorities. These priorities were not raised in the context of any of our existing programs but simply overarching objectives of the Administration. While we in the Office of Private Sector Exchange think our exchange programs fit nicely into these priorities, he simply wanted to share them with you to give you some insight as to current thinking.

11. Could more information on "friendly" versus "compliance" visits be shared? What are the expectations and what type of information is needed?

The Office of Designation conducts sponsor Meet and Greets to introduce office staff to Responsible and Alternate Responsible Officers and provide information.

12. Can advisory opinion requests be submitted in soft copy? If so, where do we submit?

Please contact the Visa Waiver Division at 212ewaiver@state.gov.

13. I'm new to the field and heard that DOS recommends post-doc positions, due to its training nature, to be sponsored on J-1 visas instead of H-1Bs. Is this true?

The Office of Designation is not authorized to recommend different visa types or provide guidance on visas other than the J-1.

14. Can a DS-2019 for the student category be extended after a 212(e) is approved?

No, once an exchange visitor receives a waiver of the 212(e), the current J-1 program cannot be extended.

15. Question on DOS Guidance Directive 2016-03 (9 FAM 403-11-5(B)(C)), Prudential Visa Revocation for DUI Arrests or Convictions

DOS Guidance Directive 2016-03 (9 FAM 403-11-5(B)(C)), Prudential Visa Revocation for DUI Arrests or Convictions doesn't seem to take into consideration the impact of prudential visa revocation on J-1 Research Scholar and Professor categories and the 24-month bar on repeat participation. If the visa is revoked, it would leave the EV unable to complete her J-1 program. Was the 24 month bar taken into consideration? If not, are there plans to update the Guidance Directive to address this issue?

The Office of Private Sector Exchange does not have plans to update Guidance Directive 2016-03 9 FAM 403.11-3 Visa Revocation. Questions regarding the process should be directed to Consular Affairs. However, an exchange visitor is permitted to continue the J-1 program after visa revocation, providing that the individual does not exit the United States.

16. Can we expect additional scrutiny/visa issuance delays for visitors applying for J-1 visas in China for unpaid (and paid) research positions?

Sponsors should contact Consular Affairs for guidance.

17. What are your recommendations for exchange visitors for whom the Turkish government cancelled funding and passports? What should the student do for an expired passport that Turkey will not renew?

Exchange visitors affected by such actions may wish to seek private legal counsel. We also suggest contacting the State Department's Bureau of Consular Affairs and the Department of Homeland Security to discuss these questions.

18. Question on EV signature on DS-2019 and release of personally identifiable information

OPA has previously provided guidance stating that an exchange visitor's (EV) signature on the form DS-2019 serves as permission for the sponsor to provide the EV's personally identifiable information (PII) when reporting incidents. However, some incidents, such as sexual assault, are highly sensitive and the release of PII related to these incidents is restricted by other laws. What is the Department's justification for collecting this information when other laws such as Title IX and the Violence Against Women Act of 1994 require many colleges and universities to protect it?

Department-designated sponsors of the Exchange Visitor Program must inform the Department of certain kinds of incidents pursuant to 22 C.F.R. §62.13(d) (Serious problem or controversy). Sponsors should maintain as confidential any accommodations or protective measures provided to the exchange visitor, to the extent that maintaining such confidentiality would not impair the ability of the sponsor or, when necessary, the Department to provide accommodations or protective measures to ensure the exchange visitor's health, safety, and welfare. Incident reports should include sufficient detail such as dates and locations and, where appropriate, personally identifiable information. This is important so the Department may consider the exchange visitor's health, safety, and welfare in a timely manner and to ensure that all incidents are counted and to avoid double counting incidents.

19. What is the responsibility of a host organization, as opposed to a program sponsor, in reporting incidents?

Regardless of where an exchange participant is hosted, sponsors are responsible for monitoring the site of activity and the progress and welfare of their exchange visitors. See 22 C.F.R. §62.10(d)(2). The Office of Private Sector Exchange Program Administration (OPA) encourages sponsors to discuss the incident reporting process with any host institutions before an exchange visitor's program begins.

In addition, if your institution is hosting another sponsor's exchange visitors, and you are aware of reportable incidents or have other concerns about the exchange visitors, you should report that information to the sponsor as quickly as possible.

20. What incidents need to be reported? And, does having a high number of incidents bring a bad reputation for our program? Some problems are due to the city/environment, not our program or university.

Per 22 C.F.R. §62.13(d), sponsors must inform the Department of State on or before the next business day of any investigations of an exchange visitor's site of activity or serious problem or controversy that could be expected to bring the Department of State, the Exchange Visitor Program, or the sponsor's exchange visitor program into notoriety or disrepute, including any potential litigation related to a sponsor's exchange visitor program, in which the sponsor or an exchange visitor may be a named party.

21. Question on scope of OPA Incident Reporting Rubric

OPA has produced a rubric designed to help sponsors know when and what to report. We encourage sponsors to download a copy of the Incident Reporting Rubric via the academic sponsors section of the J1visa.state.gov website (<http://j1visa.state.gov/academic-program-sponsors/>). Examples of reportable incidents include: death or serious injury of an exchange visitor, sexual or other physical abuse (victim or alleged perpetrator), arrest of an exchange visitor or involvement of an exchange visitor as a victim of a serious crime, or any other event that could bring the Department or the Exchange Visitor Program into notoriety or disrepute.

OPA does not automatically consider a high number of incidents as a reflection of a sponsor's management of its program. In fact, many sponsors have robust procedures in place for appropriately handling serious incidents. Rather, there are three important areas where the Department uses incident data:

Public Diplomacy Goals: The Exchange Visitor Program is a public diplomacy program. In the case of serious problems affecting exchange visitors, the Department often receives urgent inquiries from the exchange visitor's home country government. The Department needs to be promptly informed of these incidents in order to respond appropriately.

Metrics: The Department uses national trends to more effectively write and revise policies that address exchange visitor health, safety, and welfare concerns. The better we understand the types and numbers of incidents affecting our exchange visitor population, the better we can assess current and future guidance. OPA may also report

statistics about incidents and complaints it receives. We believe it is helpful for sponsors to learn about these national trends so that sponsors can be proactive in helping exchange visitors have a better experience in the U.S.

Resources for Sponsors: The Department may be able to provide guidance and/or resources that the sponsor might not have considered when responding to an incident. For example, the Department may be able to assist in obtaining expedited processing of visa requests for the family members of an exchange visitor in certain situations.

22. What is a sponsor obligated to do if there is no record of an exchange visitor departing the U.S. within (or beyond) the 30-day grace period?

If an exchange visitor is deemed to be missing or has expressed a desire to delay his/her return beyond the 30 days after the end of the program allowed by 8 C.F.R. §214.2(j)(1)(ii), the sponsor should report it as an incident to OPA.

When a sponsor becomes aware of lost or stolen J-1 or J-2 visas, they should also report it as an incident to OPA. The exchange visitor should also report the lost or stolen visa by email to the Consular Section at the U.S. Embassy or Consulate outside the United States that issued the visa. Additional actions can be found on the Bureau of Consular Affairs website located here: <https://travel.state.gov/content/visas/en/general/lost-or-stolen-travel-documents.html>.

23. Regarding reporting serious illnesses, HIPAA prohibits disclosing details. Why do you insist? Why do you need medical details?

If your institution is a “covered entity” for purposes of HIPAA, we ask that you seek authorization from an exchange visitor to disclose the exchange visitor’s medical information to the Department pursuant to 22 C.F.R. §62.13(d) as appropriate.

With regard to other forms of privacy protection, sponsors obtain advance consent from exchange visitors to release information to the Department via the Form DS-2019. Specifically, item 2 on page 2, entitled “Exchange Visitor Certification,” includes the following statement: “For the purpose of 20 U.S.C. 1232g and 22 C.F.R. §62, I authorize the U.S. Department of State-designated sponsor and any educational institution named on the Form DS-2019 to release information to the US Department of State relating to compliance with Exchange Visitor Program regulations.”

Per 22 C.F.R. §62.13(d), sponsors should report all exchange visitor serious illnesses or injuries, including hospitalization incidents lasting 48 hours or more, to OPA. It is very important for the Department to be informed of serious illnesses or injuries, and to ascertain what steps the sponsor has taken to ensure the health, safety, and welfare of the exchange visitor.

Sponsors should use their best judgment as to whether a particular illness or injury needs to be reported. OPA’s primary goal in knowing about a serious illness or injury is an assessment of whether the exchange visitor is able to continue his or her original program, and whether additional steps are necessary to protect the exchange visitor’s health, safety, and welfare. For example, communicable diseases that require an exchange visitor to be hospitalized or quarantined should be reported. Less serious diseases that are not expected to inhibit the

exchange visitor's continuation of his or her program may not need to be reported. When in doubt, sponsors should err on the side of reporting.

It is also important for the Department to be informed when an exchange visitor's illness may extend beyond his or her program end date. Among other things, the Department may need this information in order to respond to inquiries from the exchange visitor's home country government.

24. What is the Department's justification for collecting personal information on highly sensitive incidents such as sexual assault when other laws may require many colleges and universities to protect it?

As stated above, when an exchange visitor signs the Form DS-2019, he or she consents to the sharing of such information. Department-designated sponsors of the Exchange Visitor Program must inform the Department of certain kinds of incidents pursuant to 22 C.F.R. §62.13(d) (Serious problem or controversy). Sponsors should maintain as confidential any protective measures provided to the exchange visitor, to the extent that maintaining such confidentiality would not impair the ability of the sponsor or, when necessary, the Department to provide accommodations or protective measures to ensure the exchange visitor's health, safety, and welfare. Incident reports should include sufficient detail such as dates and locations and, where appropriate, personal information. This is important so the Department may consider the exchange visitor's health, safety, and welfare in a timely manner and to ensure that all incidents are counted and to avoid double counting incidents. The Department will work with sponsors to accommodate concerns over protecting the personal information of exchange visitors.