November 20, 2009

Mr. Stanley Colvin
Deputy Assistant Secretary
Office of Private Sector Exchanges
Bureau of Educational and Cultural Affairs
U.S. Department of State
Washington, D.C. 20547

Via email: jexchanges@state.gov

Re: RIN 1400-AC36; Exchange Visitor Program-General Provisions

Dear Secretary Colvin:

We write on behalf of NAFSA: Association of International Educators, the world's largest association of international education professionals with 10,000 members at approximately 3,500 colleges and universities throughout the United States and abroad, and the Association of International Education Administrators (AIEA), the leading membership association representing senior international officers at U.S. colleges and universities, in response to the proposed rule published in the Federal Register on September 22, 2009, entitled "Exchange Visitor Program-General Provisions." We appreciate the opportunity to comment on these proposed changes. Our collective membership includes responsible officers (RO) and alternative responsible officers (ARO) at institutions of higher education in the United States that enroll significant numbers of international students, professors, and researchers. The strength of this country's research community, which resides to a great extent at these institutions, depends heavily on the Department's Exchange Visitor Program.

We have a number of concerns regarding many of the changes in the proposed rule and urge they be addressed in advance of the issuance of a final rule. We have attached a detailed addendum outlining these concerns, but highlight a few key overriding issues below.

Spirit of Exchange and Public Diplomacy is Missing

Hundreds of thousands of exchange visitor program participants, from high school and college students to mid-career professionals and research scholars, travel to the United States every year to participate in exchange programs. Both the current and previous

administrations have highlighted the importance of exchange programs as proven tools for strengthening ties between the United States and other countries, regularly showcasing exchanges as one of the nation's greatest foreign policy assets. Yet, such a message is hard to find in the text of this proposed rule. Instead of regulations that seek to foster greater mutual understanding between countries through educational exchange, the proposed rule is heavily weighted toward greater enforcement, such as the added requirement of criminal background checks for all ROs and AROs, leaving the impression that all exchange visitors are national security risks and every exchange sponsor is negligent in their duties. That is simply not the case.

We recognize the need for compliance and acknowledge that there are legitimate concerns regarding programs that involve minors or that require interaction with children or young people. We strongly support addressing individual cases of negligence or abuse. Yet overall, the Exchange Visitor Program has been and continues to be a hugely successful program across all categories. As the Department moves to finalize this rule, we urge that it strike a better balance between its mission of fostering global understanding through educational exchange and ensuring compliance to better protect programs and their participants.

Ongoing Lack of Interagency Coordination between State and DHS

The State Department's Office of Private Sector Exchanges is responsible for the development of regulations to ensure proper management and administration of exchange programs in the academic, government, and private sector. One of the most significant changes experienced by the field in the past 17 years since these regulations were last updated has been the development and implementation of the SEVIS database. SEVIS has become an integral component of the Exchange Visitor Program; outside of SEVIS, exchange visitors cannot acquire J nonimmigrant classification. However, as the Department of Homeland Security (DHS) is the agency with direct management over SEVIS, this requires the Office of Private Sector Exchanges to work closely with those at DHS to ensure SEVIS functions are compatible with program requirements. Yet the proposed rule does not reflect the type of interagency coordination needed to take advantage of SEVIS's capacity to interface with other government data systems and ensure that the Exchange Visitor Program regulations and SEVIS II are coordinated.

The proposed rule requires sponsors to directly collect J-2 Employment Authorization Document (EAD) information and to input it into SEVIS. This requirement is unnecessarily burdensome and duplicative, as EAD information is already collected by DHS, specifically by the U.S. Citizenship and Immigration Service (USCIS) via the CLAIMS database system. Instead of relying on manual input by the sponsor, the Department should instead work with DHS to establish a CLAIMS-SEVIS interface to capture this information, a process that will be far more accurate and reliable.

The proposed rule also requires sponsors to track dependent departure from the United States if prior to the exchange visitor's departure. Again, this is unnecessary and

duplicative, as the Department is able to capture this information in SEVIS through direct electronic interfaces with appropriate DHS Customs and Border Patrol (CBP) systems. CBP already captures departure data via I-94 issuance and return, and establishing a data interface between SEVIS and CBP systems is far more accurate than relying on third party reporting. Working together with DHS in this manner is a better use of available resources and technology, to the greater benefit of both the Exchange Visitor Program and the academic sponsor community.

DHS is currently undertaking a redesign of SEVIS. The proposed rule prefaces that the SEVIS II system redesign “has no immediate impact on this proposed rule.” This is technically correct; however, SEVIS II will be implemented in phases over the course of the current and next fiscal years. SEVIS II will introduce important new data paradigms, such as the “customer account” system, which will require nonimmigrants to manage their own personal data and address information. It also will establish a “paperless” environment, where the DS-2019 will be a fully electronic record integral to all immigration aspects of the exchange process. The proposed rule, however, makes no reference either to the impending paperless environment (for example, §62.12 “Control of Forms DS-2019” assumes a paper-based system), or to the new "customer account" paradigm (it requires sponsors to update SEVIS with any changes in an exchange visitor’s address, telephone, or email.) We urge the Department to acknowledge these forthcoming changes and ensure the final rule includes reference to these impending electronic outcomes, so that SEVIS can be programmed to implement Exchange Visitor Program regulations, rather than expecting the regulations to be amended later in response to SEVIS programming.

Different Programs Necessitate Different Requirements

The Exchange Visitor Program covers a wide range of sponsor types and exchange activities, from au pair and summer work/travel to teacher and college and university exchanges, just to name a few. We appreciate the desire to streamline program requirements as much as possible, but given this range of sponsor types and the different types of participants who are served, not every program requirement makes sense for all sponsors across all categories. We strongly believe that program requirements, particularly in the areas of designation and redesignation, should be further tailored and refined to reflect the different sponsor types. For example, the proposed rule requires that for designation and redesignation, U.S. colleges and universities submit not only evidence of current accreditation, but also a Dun & Bradstreet report, the names, addresses and citizenship of the school's Board of Trustees, and a Certificate of Good Standing or Certificate of Existence. Colleges and universities already undergo a rigorous accreditation process; proof of current accreditation should be all that is required to demonstrate that their institutions are maintaining suitable standards and to prove their eligibility to serve as program sponsors. Tailoring requirements according to sponsor type acknowledges the diversity of programming within the Exchange Visitor Program and makes for better policy overall.

Conclusion

Much has changed in the field since 1993, and we agree these important Exchange Visitor Program regulations need to be improved and updated. However, as outlined both above and in the attached, we have many concerns with the changes proposed in the rule and ask that you give them full consideration before moving to issue a final rule. NAFSA and AIEA are ready and willing to work with the Department to ensure the continued success of the Exchange Visitor Program.

Sincerely,

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Addendum to NAFSA and AIEA Comment Letter

Re: RIN 1400-AC36

November 20, 2009

NAFSA: Association of International Educators

AIEA: Association of International Education Administrators

This addendum is attached to NAFSA and AIEA's comment letter on the Department of State's (the Department) proposed rule RIN 1400-AC36, "Exchange Visitor Program – General Provisions," published at 74 Fed.Reg. 48177 on September 22, 2009. NAFSA's and AIEA's letter and this addendum constitute NAFSA's and AIEA's comments to the proposed rule.

Summary of the addendum

In this more technical addendum, NAFSA and AIEA focus on:

- The need to take into account the new data paradigms of SEVIS II, including the "paperless" environment of the future, and the SEVIS II "customer account" that will make individual nonimmigrants responsible for reporting name and address changes.
- The need for SEVIS to leverage data that is already in other U.S. government data systems, to avoid duplicative data entry efforts and improve the quality of data in SEVIS.
- The need to grant exchange program sponsor the level of discretion appropriate to manage their programs.
- The need to rely on measures of program quality and review that already exist in a program sponsor's industry, rather than creating parallel or additional structures that are expensive and do not add to program integrity or security.
- The need to incorporate public comment into future changes to minimum health insurance coverage levels, and to provide time to transition current plans into the new coverage levels.
- The need for regulatory and policy clarity.

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SEVIS and Data Collection

SEVIS

The Student and Exchange Visitor Information System (SEVIS) is an essential portal through which an exchange visitor must pass in order to acquire J nonimmigrant classification. Outside of SEVIS, J classification cannot be acquired, and participation in an exchange visitor program cannot begin.

The Department prefaces the proposed rule with the statement that the multi-million dollar SEVIS II system redesign currently underway "has no immediate impact on this proposed rule." [48177]

While SEVIS II's impact may not be immediate at the time the proposed rule was published, the system will be implemented in phases over the course of this Fiscal Year and next Fiscal Year. SEVIS II will introduce important new data paradigms, such as the "customer account" system that will have aliens manage their own personal data and address information. The customer accounts planned for SEVIS II will also serve as a model for the direction that DHS is planning for all immigration records (see USCIS Transformation project). SEVIS II will also move the J category into a more paperless future, where the DS-2019 certificate of eligibility will be an electronic, rather than a paper document.

Proceeding with new requirements that would have to be changed once SEVIS II is implemented is not in the Department's interest, or the interest of the exchange community.

On a related note, the Department proposes adding exchange visitor telephone numbers as a data element to be reported in SEVIS, but there is currently no "telephone number" data field in SEVIS. While NAFSA and AIEA agree that the regulations should drive what is in SEVIS, rather than SEVIS driving what appears in the regulations, provisions that add or change SEVIS data reporting requirements should make clear that such data is required to be reported only after SEVIS has been updated to receive it. To do so otherwise would require "work-around" instructions, and the use of SEVIS fields that are not designed for such elements.

Paper to paperless

One of the hallmarks of the SEVIS II plan is to implement a "paperless" environment as nearly as possible. Paper Forms DS-2019 will no longer exist in the SEVIS II environment, except for an optional "domestic" form that would assist in obtaining domestic benefits such as a driver's license or a social security number. In SEVIS II, the DS-2019 will be an electronic record that will be integral to all immigration aspects of the exchange process, including issuance of a J visa, admission to the United States, and all individual reporting during the course of an exchange visitor's and his or her dependents' stay in the United States.

The proposed rule makes no reference to the impending paperless environment, even though guidance within other parts of the Department of State clearly contemplate a paperless process (see, e.g., 9 FAM 41.62 N3.1(c), which states, "A new version of SEVIS, expected to be released by spring 2010, will remove the requirement for the paper forms.")

The Department should either withdraw all changes relating to the use of paper Forms DS-2019, or amend its proposal to include reference to the desired electronic outcome, so that SEVIS can be programmed to implement regulations, rather than having regulations that have to be amended later to implement SEVIS programming that has already occurred.

Data management and duplicative efforts

Data should be input to SEVIS by the custodian of that data, and not by a third party. The proposed rule would place responsibility on the RO/ARO to update SEVIS with the following information:

- J-2 EAD information, of which USCIS has direct custody
- J-1 and J-2 U.S. "actual and current address" and e-mail address, of which the nonimmigrant him or herself has direct custody, and which will be reported directly to SEVIS II by the nonimmigrant.
- Providing J-2 departure information, of which CBP has direct custody

This duplicative data entry process is not only burdensome and unnecessary, but it also compromises the integrity of the data by increasing the potential for error as a result of third-party data entry.

The future: DHS Customer Accounts

DHS, in developing the Customer Account paradigm for SEVIS II and its USCIS Transformation project, has recognized the importance of having data entered directly by the custodian of that data, and will shift the responsibility to the exchange visitor and his or her dependents, as the owners of the data, to enter personal information and updates to U.S. address.

Several notification requirements relate to data that will be submitted directly to SEVIS by exchange visitors and their dependents through SEVIS II's Customer Accounts. For

example, the proposed rule would require exchange visitors or their dependents to report the following items to the program sponsor, and then for the program sponsor to update SEVIS:

- 62.13(b)(1) would require a sponsor to update SEVIS with any changes in an exchange visitor's actual and current U.S. addresses within 10 calendar days of being notified of the change by the exchange visitor, and subject the sponsor to possible program revocation for failure to do so.
- 62.10(d)(3) – (5) would require a sponsor to update SEVIS within 10 calendar days of being notified of a change to the actual and current U.S. address of an exchange visitor or dependent, and any changes to telephone number, e-mail addresses of an exchange visitor.

To address this, the Department could amend the language to take into account that exchange visitors and their dependents will report this information directly into SEVIS in the SEVIS II system. Otherwise, the Department will have to rewrite the regulations once the SEVIS II Customer Accounts are implemented. We encourage the Department to rework the sections of the proposed rule that relate to SEVIS to ensure that the requirements of the regulations will be implementable in the SEVIS II environment and to reconcile the language in the entirety of the regulations.

Validation of J-2 records

In sections 62.13(a)(1) and 62.10(b)(8), the Department proposes extending the SEVIS validation procedure to each individual J-2 dependent, in addition to the J-1 program participant. NAFSA and AIEA believe that this goes beyond statutory requirements, and is unnecessary.

The Validate Program Participation process in SEVIS implements the statutory mandate of IIRIRA 641(a)(4), which requires an exchange visitor program to report "not later than 30 days after the … scheduled commencement of participation by an alien in a designated exchange visitor program…any failure of the alien to … commence participation."

The purpose of the J-2 category is to allow the entry to the United States of a J-1 exchange visitor's family "if accompanying him or following to join him." [INA 101(a)(15)(J)]. The purpose of that category, then, is not to participate in the sponsor's program, but rather to preserve family unity during the J-1 exchange visitor's program. As the Department notes in section 62.2, it is the exchange visitor, not the accompanying spouse and dependents, who is coming "to participate in an exchange visitor program."

NAFSA and AIEA therefore recommend that the current rule not be changed on this point. The Department can satisfactorily track J-2 dependent entry and exit data in SEVIS through direct electronic interfaces with the appropriate CBP systems. J-2 name and address can be managed through the current SEVIS system under the regulations now in effect, and in the future SEVIS II system under new regulations that implement the individual Customer Account planned for that system.

If the Department insists on keeping the requirement to Validate each individual J-2 dependent record, then SEVIS should be programmed to not apply SEVIS record cancellation or termination actions associated with the validation process to such records, since the purpose of that is to implement the IIRIRA requirement of reporting program participants who have entered the United States but failed to commence their program participation. Since J-2 dependents are by definition not considered “exchange visitors,” they have no program to commence.

Collecting J-2 EAD information

Under both the current and proposed DOS rule [22 CFR 62.16(c)], employment by a J-2 dependent “is governed by” Department of Homeland Security regulations. J-2 dependents can apply to USCIS for an Employment Authorization Document (EAD) [8 CFR 214.2(j)(1)(v)(A)-(B) and 274a.12(c)(5)], which USCIS issues for a particular validity period. The Department proposes at 62.10(d)(6) and 62.16(c) a cumbersome 5-party method for collecting this USCIS-generated J-2 EAD information and adding it to SEVIS, whereby party 1 (USCIS) issues the EAD to party 2 (the J-2 dependent), who then communicates the EAD data to party 3 (the J-1 exchange visitor), who then reports the EAD data to party 4 (the program sponsor) who then transcribes that data by hand into party 5 (SEVIS).

If the Department is interested in EAD information, the best way to obtain it is through a direct USCIS to SEVIS data exchange. In such an exchange, the data both originates in a DHS system (CLAIMS 3), and is collected in a DHS system (SEVIS). Passing the data through three other parties, in a process that relies on manual input, is overly burdensome and will likely result in inaccurate and incomplete data in SEVIS. The Department should eliminate this proposal, and instead work with DHS to collect this data through a direct CLAIMS-SEVIS interface.

Relying on a direct CLAIMS-SEVIS interface will also dovetail with DHS efforts to expand the use of E-Verify, which will rely on similar system-to-system data exchanges.

Dependent departure information

62.13(a)(4) proposes that sponsors report in SEVIS when a dependent departs from the United States prior to the exchange visitor’s departure date. This requirement is both overly burdensome and unclear.

If the Department is interested in J-2 departure information, the best way to obtain it is through a direct CBP to SEVIS data exchange. In such an exchange, the data both originates in a DHS system (APIS), and is collected in a DHS system (SEVIS). Passing the data through other parties, in a process that relies on manual input that cannot be verified before being input, is overly burdensome and will likely result in inaccurate and incomplete data in SEVIS. The Department should eliminate this proposal, and instead work with DHS to collect this data through a direct CBP-SEVIS interface. Relying on a direct CLAIMS-SEVIS interface will also dovetail with DHS efforts to collect departure data on all aliens.

62.10(c)(8) - Requirement for program sponsors to advise EVs of their requirement to promptly report changes in contact information. If the SEVIS II system will require dependents to provide contact information updates separately from the exchange visitor, the orientation programming should advise dependents of this requirement as well.

Program Differentiation

Accredited academic institutions already go through a significant and rigorous state-level accreditation process performed by authorized accrediting agencies and associations recognized by the U.S. Secretary of Education as a “reliable authority as to the quality of postsecondary education” within the meaning of the Higher Education Act of 1965, as amended (HEA), to demonstrate that the institution is maintaining suitable standards.

Redesignation requirements

The redesignation process under Section 62.7 places burdensome redesignation requirements on accredited institutions. There already exist rigorous checks and balances and critical devices to ensure accountability for postsecondary academic institutions.

In the designation / re-designation process the program sponsors should know when to expect the approval in order to act responsibly as an EV sponsor. The State Department Waiver Review Office is one example of how The Department might use a tracking system that schools could monitor to know when they will be re-designated.

Sections 62.7(c)(1) and (2) of the proposed rule list the supporting documents that must accompany an application for redesignation. NAFSA and AIEA have the following comments on several of the specific elements:

Dun & Bradstreet BIRs

Section 62.7(c)(1) of the proposed rule states that an application for redesignation must include a Dun & Bradstreet report on the sponsor. Further, section 62.7(c)(2) requires “a list of all third parties (foreign and domestic) with whom the sponsor has executed a written agreement for the person or entity to act on behalf of the sponsor in the conduct of the sponsor’s exchange visitor program and, if requested by the Department of State, a separate certification that the sponsor has obtained a Dun & Bradstreet Business Information Report for each third party.” We suggest eliminating this requirement, in general, or in the alternative, for post-secondary academic sponsors. This requirement does not raise accountability, and the benefit of a Dun & Bradstreet report is hard to quantify. More effective would be a provision modeled after the proposed *Selection of exchange visitors* provision at 62.10(a), which requires that sponsors “establish and utilize a method to screen and select prospective visitors.” Suggested changes to the proposal to accomplish this would be:

> *62.7(c)(2) A list of all third parties (foreign and domestic) with whom the sponsor has executed a written agreement for the person or entity to act on behalf of the sponsor in the conduct of the sponsor's exchange visitor program and, if requested by the Department of State,* ***a statement of the method that the sponsor uses to screen and select prospective third parties****. The list should include the name of the third party organization, address of the third party organization, purpose for agreement, and contact information;*

If the Department decides nonetheless to retain the Dun & Bradstreet requirement, then it should clarify that section 62.7(c)(2) should not be read to establish a new substantive Dun & Bradstreet requirement for all third parties, because the substantive program specific provisions in Subpart B of Part 62 require sponsors to obtain Dun & Bradstreet reports only on certain specifically identified third parties. The main focus of program redesignation should be to assess a sponsor's compliance with such specific regulatory requirements. The Department could further clarify proposed section 62.7(c)(2) to read,

> *62.7(c)(2) A list of all third parties (foreign and domestic) with whom the sponsor has executed a written agreement for the person or entity to act on behalf of the sponsor in the conduct of the sponsor's exchange visitor program and, if requested by the Department of State, a separate certification that the sponsor has obtained a Dun & Bradstreet Business Information Report for each third party* ***for whom such report is required under the specific program provisions in Subpart B of this Part****. The list should include the name of the third party organization, address of the third party organization, purpose for agreement, and contact information;*

Board of Directors information

In addition, we also recommend the elimination of Section 62.7(c) (5) for accredited post-secondary academic institutions requiring a "list of the names, addresses and citizenship of the current members of its Board of Directors or the Board of Trustees or other like body, vested with the management of the organization or partnership, and/or the percentage of stocks/shares held, as applicable". As stated supra, there already exist rigorous checks and balances and critical devices in place at these institutions to ensure accountability.

Two-year designation and redesignation periods

In the summary to the proposal, the Department notes that designation and redesignation periods were being changed from five to two years, to conform to the Enhanced Border Security and Visa Entry Reform Act of 2002. However, 62.6(a) proposes that the initial designation of all "newly formed" organizations will be limited to one year, and that the Department can decide to grant initial designation to established organizations "for one or two years at the sole discretion of the Department." 62.7(d) proposes similar discretionary periods of one or two years for redesignation as well.

NAFSA and AIEA recommend two-year designation and redesignation periods for all programs. Section 502 of the referenced Act requires the Department to review programs "every two years." In identifying a two-year review cycle, Congress balanced the need for regular review of sponsor compliance with the INA and IIRIRA, with the burden on sponsors to respond to such reviews, and the burden on the Department to conduct them. Reviewing a program more frequently than every two years goes beyond what is required by statute, and is overly burdensome on and expensive to sponsors who are designated or redesignated for only one year.

A two-year initial designation would also be more reasonable for a new organization to establish itself. During a standardized two-year designation and redesignation period, the Department can address its concerns thorough review of a program's annual report. Furthermore, the program sanctions and revocation provisions at Part 62 Subpart D already allow the Department to otherwise limit, sanction, or terminate a program at any time if the program is not operating in compliance with regulations. If the Department would like to include limiting a designation period to less than two years, it could consider adding that to the list of possible sanctions at 62.50(b). Doing so would balance the Department's needs with the due process that Subpart D to sponsors.

Signature requirements

Section 62.7(b) (1) states that for redesignation purposes, Form DS-3036 must be completed and "signed by the sponsor's Chief Financial Officer, President or equivalent. Postsecondary academic institutions have vested and entrusted the responsibility and authority for the daily management of the Exchange Visitor Program to their respective RO or ARO. It is therefore incumbent on the Department of State to require such signature from the RO or ARO in the redesignation process, as they possess first-hand knowledge and are the true managers of the Exchange Visitor Program.

62.15(e) - Certification signature on annual report. If the CEO, President or equivalent can sign for designation or redesignation, why must only the CFO certify the annual report? If the annual report will be submitted in SEVIS, must the CFO be an ARO and therefore fully trained in J regulations and relevant requirements as well?

Designation

Proposed section 62.5(c) would require secondary and postsecondary academic institutions to supply both a Certificate of Good Standing or Certificate of Existence [paragraph (c)(4)] *and* evidence of current accreditation [paragraph (c)(7)]. A Certificate of Good Standing or Existence should not be necessary for accredited academic institutions, since they have already been accredited by the State or Regional Commission on Institutions of Higher Education. Additional acknowledgement from the commonwealth or state's Department of State is unnecessary. We suggest deleting proposed 62.5(c)(7), and modifying 62.5(c)(4) to read as follows:

> *(4) A current Certificate of Good Standing or Certificate of Existence, **if the applicant is not a secondary or post-secondary academic institution**;*

Timing

Reduction of reporting window from 21 to 10 days

62.10(d)(4) requires that a sponsor report in SEVIS within 10 calendar days specific informational changes, such as "actual and current U.S. addresses, telephone numbers, and e-mail addresses" of an exchange visitor and accompanying spouse and dependents. Ten calendar days is not sufficient time to comply with this requirement, when considering the large numbers of exchange visitor participants in certain programs, as well as the varying academic calendars of individual institutions. This provision of the regulation should not be altered, but should retain the current 21 days requirement.

The reduced period of 10 calendar days proposed in sections 62.10 and 62.13 may also not be feasible without forcing some AROs to work during regular breaks such as weekends, federal, state and University holidays. (e.g., some offices are closed between Christmas and New Years).

Insurance

The Department proposes raising the minimum levels of health insurance that exchange visitors and their family members must maintain. NAFSA and AIEA applaud the Department for addressing the issue of minimum coverage amounts; however, these levels should be implemented taking into account the fact that health plans have already been negotiated and purchased based on the current coverage levels. The Department should add a "grandfather" provision to the final rule that accepts plans purchased by exchange visitors and their families prior to the effective date of the final rule, for the duration of the validity period of that plan. The final rule should also provide for adequate transition time for the implementation of proposed insurance level requirements for plans that were negotiated before the final rule's effective date.

Proposed section 62.14(j) also proposes giving the Secretary of State authority to update the minimum levels of coverage "at any time," by notice in "guidance documents," without going through the public notice and comment process. While NAFSA AND AIEA welcome the Department creating and disseminating clear and accessible policy guidance in general, we believe that the use of "guidance documents" alone is not sufficient, and that the best way to notify the public, including program sponsors, insurance brokers, and exchange visitors about new requirements as important as health insurance levels is through the Federal Register notice and comment process. Coverage amounts are important not only to program sponsors, participants, and prospective participants, but also to insurance providers who base the cost for coverage in large part on what the policy will provide.

In addition, the Department should clarify that by "coverage levels," it means only the dollar amount of the coverage types listed at 62.14(a)(1)-(4), not the type of coverage that must be provided.

Department of State Obligations

Although NAFSA and AIEA understand the need for compliance, the tone of the regulations should be more collaborative. If the Department will hold sponsors to shorter, tighter deadlines (10 day reporting, 1-2 year recertification periods), it should also strive to support sponsors by instituting timelines for their responses to sponsors regarding program issues, and be otherwise available in appropriate forums to answer questions, discuss areas of confusion, etc.

ARO limit and sponsor obligation to resource the program appropriately

Although the Department proposes in 62.9(f)(1) that a sponsor must ensure that "adequate staffing and support services are provided to administer its exchange visitor program," it continues to retain in the proposed rule at 62.9(g) the same limit of 10 Alternate Responsible Officers (AROs) that the current regulation specifies at 62.72. Limiting the number of AROs to 10 places an artificial cap on the size of a program, because one can assume that at some point of growth, the ARO to exchange visitor ratio would no longer be adequate for the sponsor to manage its program. It also would prevent a larger program from making the program decision to maintain a better than average ARO to exchange visitor ratio for the benefit of its exchange visitors.

A solution to this artificial limit would be to set 10 AROs as the standard limit, but to have a provision that allows sponsors to apply to the Department for more than 10 AROs based on business justification. Just as the current rule allows the Department to "limit the number of alternate responsible officers appointed by the sponsor at its discretion," the new rule should allow the Department to "exercise its discretion to increase the number of alternate responsible officers appointed by the sponsor." Requests for more than 10 AROs based on expansion of program could be analyzed using the same standards that would be used in the "Expansion of Program" provision proposed at 62.12(d)(2). Other business reasons, such as a dedication to special attention to exchange visitors, might also be persuasive. The Department should also consult with DHS on how DHS is planning to address numbers of DSOs for the F-1 and M-1 student programs. For example, we understand that under SEVIS II, DHS is considering functionality that would allow the PDSO to assign different permission levels to individual DSOs.

Part 62 navigation and connections

Activities of research scholars and the connection of Subpart A to Subpart B

The Department proposes to delete the word "teach" from the description of permissible activities for a research scholar in section 62.4(f). NAFSA and AIEA recommend that the word "teach" not be deleted from section 62.4(f). The distinction between "teach" and "lecture" has great meaning in the academic world, and it should be made clear that a research scholar can not only lecture, but also teach a full class if that is consistent with the sponsor's exchange program. Not allowing a gifted researcher to also teach a class during his or her program would be a great loss to exchanges in general.

It is understood that a research scholar's primary activity is research, but in academia there is often a secondary activity of teaching. The Department acknowledges this on the Professor side (proposed section 62.4(e), which continues to allow professors to conduct research) and the inverse is true for the research scholar who may also need to teach. The current rule at section 62.20(h) also recognizes that the activities of teaching and research "are intertwined" in the case of professors and research scholars.

Subpart A should also address in general the ambiguous relationship that Subpart A section 62.4 has with the specific program provisions in current Subpart B, and with the J SEVIS categories that implement the regulatory program categories.

There are several instances where section 62.4 and Subpart B talk about exchange visitor categories in different ways. This can lead sponsors to an interpretive dilemma in which they must sometimes construct a list of requirements that is a composite of both provisions.

This can be illustrated by returning to the example of the description of research scholar. Proposed section 62.4(f) in Subpart A would state that in addition to "conducting research, observing, or consulting in connection with a research project," a research scholar "may also *lecture*, unless disallowed by the sponsor." Current Subpart B, however, which addresses the professor and research scholar categories in a single section, 62.20, states that "professors may freely engage in research and research scholars may freely engage in *teaching and lecturing*" [62.20(h)]. And so, if proposed Subpart A is finalized without change, Subpart A would allow research scholars only to "lecture," whereas Subpart B would allow them to engage in both "teaching and lecturing."

Another example of the ambiguity between the category descriptions in section 62.4 of Subpart A and the specific program provisions of Subpart B is the description of "alien physician" at proposed section 62.4(h)(1). The proposed language applies the description of "alien physician" to medical graduates who will be receiving graduate medical education or training. Subpart B, however, also uses the term "alien physician" in an undefined sense when referring to non-clinical exchanges done for the purposes of "observation, consultation, teaching, or research" in sections 62.27(c) and (d).

Consolidation of SEVIS regulations

The Department states in the preamble at page 48179 that the proposed rule "moves requirements previously in Subpart F to Subpart A." It also states at page 48177 that the proposed rule "ties all regulatory requirements together and consolidates the requirements set forth in the SEVIS reporting requirements regulations into the General Provisions." However, the proposed rule contains no amendatory language [48180] to remove or otherwise amend or incorporate the current paragraphs of 22 CFR Subpart F, Student and Exchange Visitor Information System (SEVIS). Provisions in current Subpart F should be consolidated with other relevant Subparts, and then Subpart F should be removed to avoid any ambiguity or overlap. Particularly:

- 62.70 – 62.72 should be consolidated with Subpart A
- 62.73 and 62.74 should be consolidated with Subpart B (at 62.23)
- 62.75 – 62.77 should be consolidated with Subpart C

- 62.78 and 62.79 should be consolidated with Subpart E

English language proficiency

62.10(a)(2) adds a requirement that a sponsor measure a prospective exchange visitor's English language proficiency "by an objective measurement of English language proficiency…"

NAFSA and AIEA believe that the phrase "as measured by an objective measurement of English language proficiency" that the Department proposes adding to section 62.10(a)(2) is redundant and unnecessary, given that the proposed language at section 62.10(a) would already require the sponsor to "establish and utilize a method" to select and evaluate prospective exchange visitors, including ensuring that the program is suitable and that their proficiency in English is sufficient.

Distinguished government officials, professors, and researchers have been able to fulfill their J program objective without defined and specified "objective measurement" of English language proficiency. There have been exchange visitors who come to the US without English, including in the Department's own International Visitor category, and use interpreters to successfully participate in their program.

There is also the element of reciprocity in exchange. If all U.S. citizens participating in exchange programs in other countries were required to meet an objective measurement of the host country language we would have a much more difficult time finding participants for these programs.

NAFSA and AIEA recommend retaining most of the current provision's language, and revising proposed section 62.10(a)(2) to read, "The exchange visitor possesses sufficient proficiency in the English language to participate successfully in his or her exchange visitor program."

Regulatory and Policy Clarity

Foreign medical graduate

NAFSA and AIEA appreciate the Department's decision to clarify the definition of "foreign medical graduate." However, we ask that the newly proposed definition be revised to locate the definition within section 62.27 (the only section in Part 62 that uses this term), and to clarify how the definition applies to non-clinical exchange programs.

Since the proposed definition contains requirements that could be construed as substantive, locating it in section 62.27 would place it within the context of that section's other substantive requirements. Including it only in the definitions section may impede a program's understanding of what the requirements actually are.

Second, the wording of the proposed definition is ambiguous in how it applies to alien physicians coming to engage principally in observation, teaching, consultation, or research (i.e., non-clinical programs).

The language of the proposed definition appears to be based on language from the ground of inadmissibility set forth at INA 212(a)(5)(B).[1]" Whereas the INA 212(a)(5)(B) ground of inadmissibility applies only to medical graduates who are coming principally to perform services as a member of the medical profession, the Department's proposed definition of foreign medical graduate can be read to apply not only to medical graduates entering "for the purpose of seeking to pursue graduate medical education or training," but to medical graduates seeking to enter for the purposes of nonclinical "observation, consultation, teaching, or research" as well.

NAFSA and AIEA ask that the Department amend this definition in two ways. First, by defining foreign medical graduate with reference to the relevant substantive provisions of section 62.27, and relocating the substantive language in section 62.27 itself. Second, by clarifying that physicians coming to participate in non-clinical exchanges under 62.27(c) and (d) should not be subject to the medical school accreditation or NBME conditions outlined in the proposed definition.

Suggested amended language in the definitions section 62.4:

> *Foreign Medical Graduate.* A foreign national that is a graduate of a school of medicine, regardless of whether such school of medicine is in the United States. Participation by foreign medical graduates in clinical exchange programs is governed by section 62.27(b) of this Part. Participation by foreign medical graduates in non-clinical exchange programs is governed by sections 62.27(c) and 62.27(d) of this Part.

The Department could then place the substantive provisions regarding restrictions on clinical vs. non-clinical exchange programs in their respective paragraphs in section 62.27. Regardless of whether the Department places the substantive provisions in Subpart B, or keeps them in the definitions section of Subpart A, those provisions should clarify that the requirement of either medical school accreditation or passing the NBME applies only to physicians who are coming to engage in a clinical exchange program under 62.27(b), and that physicians coming to participate in non-clinical exchanges under 62.27(c) and (d) should not be

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[1] *INA 212(a)(5)(B) provides that certain "unqualified physicians" are inadmissible to the United States if they are a "graduate of a medical school not accredited by a body or bodies approved for the purpose by the secretary of education (regardless of whether such school of medicine is in the United States)," and are "coming to the United States principally to perform services as a member of the medical profession." INA 212(a)(5)(B) further provides that an alien can overcome inadmissibility on this basis, if he or she "(i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English." It is also important to note that this ground of inadmissibility does not apply to an alien graduate of a medical school coming to the United States principally for reasons other than performing services as a member of the medical profession (e.g., observation, consultation, teaching, or research), or to aliens who "are of national or international renown in the field of medicine." [INA 101(a)(41)]*

subject to the conditions outlined in the proposed definition. One way to do this is to precisely cite the type of exchange that would be subject to the conditions, for example:

> *To participate in a clinical exchange program governed by section 62.27(b), a foreign medical graduate must have either:*
>
> *(1) Graduated from a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States); or,*
>
> *(2) Passed Parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services); Have competency in oral and written English; be able to adapt to the educational environment in which he or she will be receiving his/her education or training; and have adequate prior education and training to participate satisfactorily in the program for which he/she is coming to the United States.*

Use of examples

In proposed section 62.10(b), the Department gives significant lists of examples to illustrate the type of pre-arrival information that a sponsor must provide to an exchange visitor. Although such lists of examples are helpful, placing them in the regulatory language itself may have the effect of sponsors reading these detailed examples as requirements rather than examples. The Department should consider simplifying this provision by discussing examples in the supplementary information, or to otherwise convert the examples into clear requirements, if the Department would view a sponsor's failure to include one or more of the examples as noncompliance with the pre-arrival information provisions.

Also, some of the examples might be better discussed in the context of the "orientation" provisions at proposed section 62.10(c). For instance, examples included at proposed section 62.10(b)(9) such as how and when to apply for a social security number or driver's license might be better presented at an orientation program once the individual has arrived.

Use of definitions

The definitions of *full course of study* and *prescribed course of study* in Section 62.2 may be read to contain substantive regulatory provisions that may be better located in the relevant sections in Subpart F, rather than in the definitions section.

The definition of Form DS-2019 in Section 62.2 should be revised to include dependents ("A certificate of Eligibility for Exchange Visitor (J-1) and Exchange Visitor Dependent (J-2) status"), unless the Department of State anticipates eliminating DS-2019s for dependents.

The definition of Internship Program should specify that this is a distinct category separate from Student Intern category.

The definition of Student Internship Program should specify that this is a part of the Student category.

The term "Accredited Academic Institution" is defined, in part, as "Any publicly or privately operated primary secondary or post-secondary institution in the United States…" While the actual definition states "in the United States" the term "educational institution" has been changed to academic institution, even when referring to foreign schools, throughout the body of the proposal. Higher education in other countries can be structured quite differently than in the U.S. A bona fide post-secondary education in other countries may include both vocational and university programs. These accredited and well-regard higher education options for students should not be excluded from participating in summer work travel, traineeships, etc. for not falling into the definition of academic institution in the US.

The proposed rule would insert the parenthetical "(J visa)" to the definition of "Home-country physical presence requirement." Many exchange visitors do not have a J visa, as is the case with Canadians, or those who changed status in the US. NAFSA and AIEA recommend that the proposed insertion of "J visa" be removed.

"Country of nationality or last legal permanent residence." Is defined as "the country of which the exchange visitor is a national at the time status as an exchange visitor was acquired or the last foreign country in which the visitor had a legal permanent residence before acquiring status as an exchange visitor." The conjunction "or" used to link two alternatives does not tell us which takes precedence. Also, the language does not define the meaning of the term legal permanent residence.

Familiarity with policy materials and guidance other than federal regulations

Proposed sec. 62.11 would require ROs and AROs not only to be thoroughly familiar with the Exchange Visitor Program regulations and DOS codes required for issuing Form DS-2019, but also to be thoroughly familiar with "all federal and state regulations pertaining to the administration of its exchange visitor program, including the Department of State's and the Department of Homeland Security's policies, manuals, instructions, guidance and SEVIS operations relevant to the Exchange Visitor Program."

NAFSA and AIEA members appreciate any guidance issued by the Department, and NAFSA and AIEA encourage the Department to develop clear policy and interpretive guidance and to make that guidance easily available to program sponsors. However, NAFSA and AIEA suggest that if the Department wishes to hold ROs and AROs to familiarity with such "policies, manuals, instructions, guidance and SEVIS operations," that it state in the rule where an RO/ARO can go to find those materials. This could be a Department Web site or Web sites on which the Department maintains an easily

accessible repository (e.g., an up-to-date Web-based library) that contains each item with which the Department wishes ROs and AROs to be familiar.

Notification Requirements

Reporting early end of the exchange visitor's program

The current rule at section 62.13(c)(1) requires sponsor to update SEVIS if the exchange visitor "has withdrawn from or completed a program thirty (30) or more days prior to the ending date on his or her Form DS-2019." The Department proposes at section 62.13(a)(1) to eliminate the 30-day period referenced in the current rule. Reducing the reporting window to 10 calendar days and requiring all early ends to program to be reported via SEVIS adds to the administrative burden of operating cultural exchange programs. The current rule balances the needs of the Department with the needs of program sponsors, and early departures can also be tracked through an electronic interface with CBP departure data systems. NAFSA and AIEA recommend restoring the language of current section 62.13(c)(1) to proposed section 62.13(a)(1).

Site of activity

The specifics of determining what constitutes a "site of activity" under proposed 62.13(b)(2) may need to be clarified. For example, given multiple sites of activity, how would a sponsor manage reporting for people whose research is conducted in a different location from their offices? How much time in which place counts as a site?

Change in Sponsor's circumstances

62.13(c)(8) would require a sponsor to report the SEVIS ID# of any Forms DS-2019 that are lost or stolen. The current regulation was written in pre-SEVIS days, when each Form DS-2019 was an individually-numbered controlled form, and the purpose of that rule was to prevent that particular document from being used by someone else, in addition to accounting for the Form number itself. In the electronic SEVIS system, Forms DS-2019 no longer have individual document numbers. What impact will reporting the SEVIS ID # of the exchange visitor that experienced the loss or theft have on that exchange visitor's ability to travel, secure visas, gain readmission to the United States? Also, under SEVIS II there will no longer be a paper Form DS-2019, only a domestic version of that form to be used for non-immigration purposes.

Reporting Requirements (annual report)

The hybrid annual report requirement can be confusing. NAFSA and AIEA recommend that the rule make clear that all statistics set forth at proposed section 62.15 is something that is generated directly by SEVIS, and that the statistical component appear on the printed annual report form generated by SEVIS.

The Department proposes at 62.15(e) that the Chief Financial Officer certify that the program has adequate staff and resources and has internal controls to ensure regulatory compliance. NAFSA and AIEA believe that it is not necessary to add the CFO to the redesignation process. First, this is the same type of statement that the Chief

Executive Officer, President or equivalent must certify in the initial designation process [see proposed 62.5(c)(9)]. Second, the CFO cannot usually certify how money will be spent (i.e. on giving programs the resources they need). It is the Board of Directors or Board of Trustees that does this, and more logically, the senior officer would be the president or provost.

Background checks

We recognize that the Department has legitimate concerns about program sponsors, program hosts and exchange visitor participants. However, the requirement that program sponsors obtain criminal background checks on potential ROs and AROs does not seem to add any value to the national security interest cited in the proposed regulation.

A wide variety of employers and program sponsors already have background checks in place for evaluating employees who will eventually serve as ROs and AROs. For example, the university police department of many universities handles such checks for the school. If this requirement is retained, the Department should amend the language to indicate that background checks conducted by an organization's internal unit capable of conducting such checks also constitute a "bona fide background screener."

We also ask the Department to clarify in proposed section 62.7 that the background check requirement, if the Department insists on keeping it, arises only in connection with an employee being appointed as an RO or ARO by the sponsor; that it is not a recurring requirement, and that ROs and AROs who were appointed before the effective date of this rule are not subject to the background check requirement in order to continue in their current role as RO or ARO. To accomplish this, section 62.7(c)(8) could be reworded as follows:

> *"(8) A statement signed by the Chief Executive Officer, President, or equivalent certifying that prior to appointing any RO or ARO on or after [insert the effective date of this rule], the sponsor has completed a criminal background check in compliance with section 62.9(g) of this Part."*

RO/ARO Issues

62.9.(g)(3) – proposes that a replacement RO or ARO must be named within 10 days of the previous RO or ARO leaving; this should apply to AROs only if the sponsor has no other ARO, since proposed section 62.9(g)(1) requires there to be an RO and at least one ARO, and additional AROs are at the discretion of the sponsor. This could be achieved by rewording the regulation as follows:

> *"(3) In the event of the departure of a RO, or in the event of the departure of an ARO where the sponsor only has one ARO, the sponsor must file a request for the approval of a replacement in SEVIS and forward the required documentation to the Department of State within ten (10) calendar days from the date of the RO's or ARO's departure."*

62.9(g)(5) – The Department proposes that it "reserves the right, in its sole discretion, to deny the appointment of an RO or ARO." Careful hiring decisions are made prior to seeking DOS approval for RO/AROs; denying RO/ARO appointments without the possibility of recourse for the sponsor to overcome the objection or concern hinders the program sponsor's ability to run their exchange program. NAFSA and AIEA ask the Department to consider a review procedure similar to the one identified in section 62.50(f) if it intends to deny an RO or ARO appointment.

Financial Implications

Under the proposed rule, sponsors will bear financial responsible for the cost of: "site" visits for new sponsors; background checks; independent audits; Certificates of Good Standing; Dun & Bradstreet Business Information Reports for both sponsor and third parties. These requirements will have a significant financial impact on secondary and post secondary institutions without contributing in any significant way to national security.

Section 62.5(c)(3) would require an entity applying for initial designation to provide an audit report prepared by an independent certified public accounting firm. Colleges and Universities usually have an internal audit department and/or year-end university treasurer's reports that are generally audited by a CPA firm. In the case of State universities, their internal audit is also audited by the state comptroller's office. Having to secure an independent audit by a CPA firm would be very costly when an audit mechanism for colleges and universities is already in place. DOS should revise the language in 62.5(c)(3)(i) to either exempt academic sponsors from this requirement or allow internal audits to satisfy the requirement.

Technical corrections

62.12(e)(4) – destroy damaged forms after making a record of them. We recommend changing the language to "Destroy damaged and unusable Forms DS-2019 on the sponsor's premises." It seems unnecessary to make a record of forms damaged by a printer or reprinted because the printer ran out of ink, since they have the same SEVIS ID # and do not differ in any way from other DS-2019 forms printed for the same EV. The A/RO would simply print a new form and shred the unusable on one.

62.16(c) – Change the spelling of "dependant" to "dependent."

62.4(a)(4) – Change "accredited educational institution" to "accredited academic institution."

62.7(c)(7) would require applicants for redesignation to supply "Such additional information or documentation that the Department of State may request." 62.7(c)(9) would require applicants for redesignation to supply "Such additional information or documentation that the Department of State may deem necessary to evaluate the application." NAFSA and AIEA suggest that proposed 62.7(c)(7) be deleted as redundant.

Authorized purposes of Form DS-2019 issuance

At 62.12(a)(3) the Department proposes deleting several reasons for issuing Form DS-2019. In particular, since J-2 dependents can also enter the United States separately, whether to follow to join the J-1 who entered first, or to travel and reenter separately after the initial entry, the Department should add the following provision back into 62.12(a)(3):

> "To facilitate entry of an exchange visitor's dependents into the United States separately."

Also, can the Department consider adding "Academic Training" as a reason for which a DS-2019 can be issued?