

Security's Student and Exchange Visitor Information System (SEVIS). Supporting documentation must be submitted to the Department on the sponsor's organizational letterhead and contain the following information:

(1) Au pair's name, SEVIS identification number, date of birth, the length of the extension period being requested;

(2) Verification that the au pair completed the educational requirements of the initial program; and

(3) Payment of the required non-refundable fee (see 22 CFR 62.90) via Pay.gov.

(p) *Repeat participation.* A foreign national who enters the United States as an au pair Exchange Visitor Program participant and who has successfully completed his or her program is eligible to participate again as an au pair participant, provided that he or she has resided outside the United States for at least two years following completion of his or her initial au pair program.

[60 FR 8552, Feb. 15, 1995, as amended at 62 FR 34633, June 27, 1997; 64 FR 53930, Oct. 5, 1999. Redesignated at 64 FR 54539, Oct. 7, 1999; 66 FR 43087, Aug. 17, 2001; 71 FR 33238, June 8, 2006; 73 FR 34862, June 19, 2008]

§ 62.32 Summer work travel.

(a) *Introduction.* The regulations in this section (in combination with any other provisions of 22 CFR part 62, as applicable) govern participation in Summer Work Travel programs conducted by Department of State-designated sponsors pursuant to the authority granted the Department of State under Public Law 105-277.

(b) *Purpose.* The purpose of this program is to provide foreign college and university students with opportunities to interact with U.S. citizens, experience U.S. culture while sharing their own cultures with Americans they meet, travel in the United States, and work in jobs that require minimal training and are seasonal or temporary in order to earn funds to help defray a portion of their expenses. Employment is of a seasonal nature when the required service is tied to a certain time of the year by an event or pattern and requires labor levels above and beyond existing worker levels. Employment is of a temporary nature when an employ-

er's need for the duties to be performed is a one-time occurrence, a peak load need, or an intermittent need. It is the nature of employers' needs, not the nature of the duties that is controlling.

(c) *Duration of participation.* Summer Work Travel participants are authorized to participate in the Exchange Visitor Program for up to four months during the long break between academic years as determined by the Department of State. Extensions of program participation are not permitted.

(d) *Participant screening and selection.* In addition to satisfying the requirements set forth at § 62.10(a), sponsors are solely responsible for adequately screening and making the final selection. The screening process requires that sponsors (or vetted foreign entities acting on their behalf) at a minimum must:

(1) Conduct and document interviews with potential participants either in-person or by video-conference;

(2) Verify proficiency in conversational English and reading comprehension through either recognized language tests administered by academic institutions or English language schools or through the required documented interviews;

(3) Select applicants who demonstrate their intention to participate in the cultural aspects of the Summer Work Travel Program.

(4) Confirm that at the time of application, applicants (including final year students) are enrolled full-time and pursuing studies at accredited post-secondary, classroom-based, academic institutions physically located outside of the United States and have successfully completed at least one semester, or equivalent, of post-secondary academic study.

(e) *Participant orientation.* In addition to satisfying the requirements set forth at § 62.10(b) and (c), sponsors must provide program participants, prior to participants' departures from their home countries, the following information and/or documentation:

(1) A copy of the Department of State's Summer Work Travel Participant Letter;

(2) A copy of the Department of State's Summer Work Travel Program Brochure;

(3) The Department of State's toll-free help line telephone number;

(4) The sponsor's 24/7 immediate contact telephone number;

(5) Information advising participants of their obligations to notify their sponsors within ten days after they arrive in the United States and within ten days after they initially secure or change residences;

(6) Information advising participants that they may not begin working at initial, replacement, or additional jobs until their sponsors have verified the terms and conditions of such employment and fully vetted their host employers as set forth at paragraph (n) of this section;

(7) For participants with jobs secured prior to departing from selected home countries, documentation explaining the terms and conditions of such jobs and providing information about available housing and transportation to and from work;

(8) Information explaining the cultural component of the Summer Work Travel Program, including guidance on how to best experience U.S. culture and/or descriptions of cultural opportunities arranged by the sponsor; and

(9) Information explaining that sponsors will terminate the programs of participants who fail to comply with enumerated program regulations (*i.e.*, reporting their arrivals, reporting changes of residence, not starting work at unverified jobs, responding to sponsor monthly outreach/monitoring efforts).

(f) *Cultural exchange.* (1) Sponsors must ensure that all participants have opportunities to work alongside U.S. citizens and interact regularly with U.S. citizens to experience U.S. culture during the workday portion of their Summer Work Travel programs; and

(2) Sponsors must ensure that all participants have opportunities to engage in cultural activities or events outside of work by planning, initializing, and carrying out events or other activities that provide participants' exposure to U.S. culture.

(g) *Participant placement.* (1) Sponsors and third parties acting on their behalf may not pay or otherwise provide any incentive to employers to accept pro-

gram participants for job placements with such employers.

(2) Sponsors must confirm initial, replacement, and additional jobs placements of all Summer Work Travel Program participants before participants may start work by verifying, at a minimum, the terms and conditions of such employment and fully vetting their host employers as set forth at paragraph (n) of this section. Once participants have arrived in the United States and identified initial, replacement, or additional jobs, sponsors must vet such jobs within 72 hours.

(3) Sponsors must not pose obstacles to job changes, but must offer reasonable assistance to participants wishing to change jobs regardless of whether their jobs were secured by the sponsors (direct-placed) or by the participants (self-placed).

(4) Sponsors may place participants only in jobs that:

(i) Are seasonal or temporary as defined in paragraph (b) of this section; and

(ii) Provide opportunities for regular communication and interaction with U.S. citizens and allow participants to experience U.S. culture.

(5) Sponsors may not place participants in jobs:

(i) That require licensing;

(ii) That are on the program exclusion list set forth at paragraph (h) of this section; or

(iii) For which there is another specific J visa category (e.g., Camp Counselor, Trainee, Intern).

(6) Sponsors may not place participants with staffing agencies unless the placements meet the following three criteria:

(i) Participants must be employees of and paid by the staffing agencies;

(ii) Staffing agencies must provide full-time, primary, on-site supervision of the participants;

(iii) Staffing agencies must effectively control the work sites, e.g., have hands-on management responsibility for the participants.

(7) Sponsors may not place participants with employers that fill non-seasonal or non-temporary job openings with exchange visitors with staggered vacation schedules.

(8) Sponsors must use extra caution when placing students in positions at employers in lines of business that are frequently associated with trafficking persons (e.g., modeling agencies, house-keeping, janitorial services).

(9) Sponsors must consider the availability of suitable, affordable housing (e.g., that meets local codes and ordinances) and reliable, affordable, and convenient transportation to and from work when making job placements.

(i) If employers do not provide or arrange housing and/or transportation, or if participants decline employer-provided housing or transportation, sponsors must actively and immediately assist participants with arranging appropriate housing and transportation.

(ii) If employers provide housing and/or transportation to and from work, job offers must include details of all such arrangements, including the cost to participants; whether such arrangements deduct such costs from participants' wages; and the market value of housing and/or transportation in accordance with the Fair Labor Standards Act regulations set forth at 29 CFR part 531, if they are considered part of the compensation packages.

(10) For participants who are nationals of non-Visa Waiver Program countries and participants who are nationals of Visa Waiver Program countries with job placements screened in advance by the sponsors (direct placement) or jobs found by the participants (self-placement), prior to issuing Form DS-2019, sponsors must vet the potential employers as set forth at paragraph (n) of this section, confirm the terms and conditions of the job offers, and input complete and correct data into the Student and Exchange Visitor Information System (SEVIS) pursuant to the requirements set forth in § 62.70(f).

(11) Sponsors of applicants who are nationals of Visa Waiver Program countries and who have not secured jobs prior to departing from their home countries must:

(i) Ensure that such participants receive pre-departure information that explains how to seek employment and secure lodging in the United States, and clearly identifies the criteria for appropriate jobs set forth at paragraph

(g) of this section and the categories of employment and positions that are on the program exclusion list set forth at paragraph (h) of this section;

(ii) Ensure that such participants have sufficient financial resources to support themselves during their searches for employment;

(iii) Assist participants who have not found suitable employment within one week of commencing their job searches;

(iv) Instruct participants of their obligation to notify their sponsors when they obtain job offers (and that they cannot start such jobs until the sponsors vet them); and

(v) Promptly (*i.e.*, within 72 hours) confirm the initial jobs of such participants, at a minimum, by verifying the terms and conditions of such employment and fully vetting their host employers as set forth at paragraph (n) of this section.

(h) *Program exclusions.* Sponsors must not place participants:

(1) In positions that could bring notoriety or disrepute to the Exchange Visitor Program;

(2) In sales positions that require participants to purchase inventory that they must sell in order to support themselves;

(3) In domestic help positions in private homes (e.g., child care, elder care, gardener, chauffeur);

(4) As pedicab or rolling chair drivers or operators;

(5) As operators or drivers of vehicles or vessels for which drivers' licenses are required regardless of whether they carry passengers or not;

(6) In positions related to clinical care that involves patient contact;

(7) In any position in the adult entertainment industry (including, but not limited to jobs with escort services, adult book/video stores, and strip clubs);

(8) In positions requiring work hours that fall predominantly between 10:00 p.m. and 6:00 a.m.;

(9) In positions declared hazardous to youth by the Secretary of Labor at Subpart E of 29 CFR part 570;

(10) In positions that require sustained physical contact with other people and/or adherence to the Centers for

Disease Control and Prevention's Universal Blood and Body Fluid Precautions guidelines (e.g., body piercing, tattooing, massage, manicure);

(11) In positions that are substantially commission-based and thus do not guarantee that participants will be paid minimum wage in accordance with federal and state standards;

(12) In positions involved in gaming and gambling that include direct participation in wagering and/or betting;

(13) In positions in chemical pest control, warehousing, catalogue/online order distribution centers;

(14) In positions with travelling fairs or itinerant concessionaires;

(15) In positions for which there is another specific J category (e.g., camp counselor, intern, trainee); or

(16) After November 1, 2012, in positions 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/iag/tgs/iag_index_naics.htm).

(i) *Participant compensation.* (1) Sponsors must inform program participants of Federal, State, and Local Minimum Wage requirements, and ensure that at a minimum, participants are compensated at the higher of:

(i) The applicable Federal, State, or Local Minimum Wage (including overtime); or

(ii) Pay and benefits commensurate with those offered to their similarly situated U.S. counterparts.

(2) Sponsors must demonstrate that participants are also compensated according to the above standards in the following (and similar) situations:

(i) The host employers provide housing and/or transportation as part of participants' compensation, but the compensation package does not explain that the lower hourly wage reflects such benefits; or

(ii) The employers compensate participants on a "piece" basis (e.g., number of rooms cleaned). If at the end of each pay period, the participant's earnings under the piece rate do not equal at least the amount the participant would have earned had the participant been paid the predominant local wage as provided in subparagraph (1), the

participant's pay must be supplemented at that time so that the participant's earnings are at least as much as the required local wage as provided in subparagraph (1).

(3) Sponsors must ensure that appropriate assistance is provided to participants on an as-needed basis and that sponsors are available to participants (and host employers) to assist as facilitators, counselors, and information resources.

(j) *Monitoring.* Sponsors must:

(1) Maintain, at a minimum, monthly personal contacts with program participants. Such contact may be in-person, by telephone, or via exchanges of electronic mail (including a response from the participant) and must be properly documented. Sponsors must promptly and appropriately address issues affecting the participants' health, safety, and welfare identified through such contacts; and

(2) Provide appropriate assistance to participants on an as-needed basis and be available to participants (and host employers) to assist as facilitators, counselors, and information resources.

(k) *Internal controls.* Sponsors must utilize organization-specific standard operating procedures for training and supervising all organization employees. In addition, sponsors must establish internal controls to ensure that employers and/or foreign entities comply with the terms of agreements with such third parties involved in the administration of the sponsors' exchange visitor programs (*i.e.*, affect the core programmatic functions).

(l) *Sponsors' use of third parties.* (1) If sponsors utilize foreign third party entities to assist in fulfilling the core programmatic functions of screening and orientation that may be conducted outside the United States, they must first obtain written and executed agreements with such third parties. For the purpose of this section, U.S. entities operating outside the United States (or its possessions or territories) are considered foreign entities. At a minimum, these written agreements must:

(i) Outline the obligations and full relationship between the sponsors and

such third parties on all matters involving the administration of the sponsors' exchange visitor programs;

(ii) Delineate the parties' respective responsibilities;

(iii) Include annually updated price lists for Summer Work Travel Programs marketed by the foreign entities including itemizations of all costs charged to participants;

(iv) Contain representations that such foreign entities will not engage in, permit the use of, or otherwise cooperate or contract with other third parties (including staffing or employment agencies or subcontractors) for the purpose of outsourcing any core programmatic functions of screening and orientation covered by the agreement; and

(v) Confirm that the foreign entities agree not to pay or provide incentives to employers in the United States to accept program participants for job placements.

(2) If sponsors utilize domestic third party entities to assist in fulfilling the core programmatic functions of orientation and promoting mutual understanding, they must first obtain written and executed agreements with such third parties. Domestic third parties engaged by sponsors may not engage or subcontract any other parties to assist in fulfilling these core programmatic functions. Only host employers may assist in providing orientation to program participants. At a minimum, these written agreements must:

(i) Outline the obligations and full relationship between the sponsors and such third parties on all matters involving the administration of the sponsors' exchange visitor programs; and

(ii) Delineate the parties' respective responsibilities.

(m) *Vetting third party foreign entities.* Sponsors must undertake appropriate due diligence in the review of potential overseas agents or partners (*i.e.*, foreign entities) who assist in fulfilling the sponsors' core programmatic functions that may be conducted outside the United States (*i.e.*, screening and orientation) and must, at a minimum, annually review and maintain the following documentation for potential or existing foreign entities:

(1) Proof of business licensing and/or registration to enable them to conduct business in the venue(s) where they operate;

(2) Disclosure of any previous bankruptcy and of any pending legal actions or complaints against such an entity on file with local authorities;

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

(4) Summary of previous experience conducting J-1 Exchange Visitor Program activities;

(5) Criminal background check reports (including original and English translations) for all owners and officers of the organizations;

(6) A copy of the sponsor-approved advertising materials the foreign entities intend to use to market the sponsors' programs (including original and English translations); and

(7) A copy of the foreign entity's notarized recent financial statements.

(n) *Vetting domestic third party entities.* Annually, sponsors must undertake appropriate due diligence in the vetting of domestic third parties who assist in the promotion of mutual understanding and potential host employers.

(1) Sponsors must ensure that third parties assisting in promoting mutual understanding (*i.e.*, providing opportunities for participants to engage in cultural activities) are reputable individuals or organizations that are qualified to perform the activities agreed to and that they have sufficient liability insurance, if appropriate. All third parties that are registered business entities must be vetted according to the host employer procedures set forth in paragraphs (n)(2)(i) through (iii) of this section.

(2) Sponsors must ensure that potential host employers are legitimate and reputable businesses by, at a minimum:

(i) Making direct contact in person or by telephone with potential employers to verify the business owners' and/or managers' names, telephone numbers, email addresses, street addresses, and professional activities;

(ii) Utilizing publicly available information, for example, but not limited to, state registries, advertisements, brochures, Web sites, and/or feedback from prior participants to confirm that

§ 62.32

22 CFR Ch. I (4–1–13 Edition)

all job offers have been made by viable business entities;

(iii) Obtaining potential host employers' Employer Identification Numbers and copies of their current business licenses; and

(iv) Verifying the potential host employers' Worker's Compensation Insurance Policy or equivalent in each state where a participant will be placed or, if applicable, evidence of that state's exemption from requirement of such coverage.

(3) At the beginning of each placement season, sponsors must confirm:

(i) The number of job placements available with host employers;

(ii) That host employers will not displace domestic U.S. workers at work-sites where they will place program participants; and

(iii) That host employers have not experienced layoffs in the past 120 days and do not have workers on lockout or on strike.

(o) *Host employer cooperation.* Sponsors may place participants only with host employers that agree to:

(1) Make good faith efforts to provide participants the number of hours of paid employment per week as identified on their job offers and agreed to when the sponsors vetted the jobs;

(2) Pay eligible participants for overtime worked in accordance with applicable State or Federal law;

(3) Notify sponsors promptly when participants arrive at the work sites to begin their programs; when there are any changes or deviations in the job placements during the participants' programs; when participants are not meeting the requirements of their job placements; or when participants leave their positions ahead of their planned departures;

(4) Contact sponsors immediately in the event of any emergency involving participants or any situations that impact their health, safety, or welfare; and

(5) In those instances when the employer provides housing or transportation, agree to provide suitable and acceptable accommodations and/or reliable, affordable, and convenient transportation.

(p) *Reporting requirements.* Sponsors must electronically comply with the

following reporting requirements utilizing Department-provided templates:

(1) Submit placement reports on January 31 and July 31 of each year, identifying all Summer Work Travel Program participants who began exchange programs during the preceding six-month period. The reports must include the exchange visitors' names, SEVIS Identification Numbers, countries of citizenship or legal permanent residence, names of host employers, and the length of time it took non-preplaced participants to secure job placements. For participants who change jobs or have multiple jobs during their programs, the report must include all such placements;

(2) Maintain listings of all active foreign agents or partners on the Foreign Entity Report by promptly informing the Department of any additions, deletions, or changes to foreign entity information by submitting new versions of their reports that reflect all current information. Reports must include the names, addresses, and contact information, including physical and mailing addresses, telephone numbers, and email addresses of all foreign entities that assist the sponsors in fulfilling the provision of core programmatic services. Sponsors must utilize only vetted foreign entities identified in the Foreign Entity Report to assist in fulfilling the sponsors' core programmatic functions outside the United States, and they must inform the Department promptly when and why they have cancelled contractual arrangements with foreign entities; and

(3) Submit annual participant price lists to the Department on January 31 of each year in a format approved by the Department to provide itemized breakdowns of the costs that exchange visitors must pay to both foreign agents and sponsors to participate in the Summer Work Travel Program on a country-specific (and, if appropriate, foreign agent-specific) basis.

[77 FR 27609, May 11, 2012]