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Subpart A—General Provisions

§ 62.1 Purpose.

(a) The regulations set forth in this part implement the Mutual Educational and Cultural Exchange Act of 1961 (the “Act”), as amended, Public Law 87–256, 22 U.S.C. 2451, *et seq.* (1988). The purpose of the Act is to increase mutual understanding between the people of the United States and the people

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of other countries by means of educational and cultural exchanges. Educational and cultural exchanges assist the Department of State in furthering the foreign policy objectives of the United States. These exchanges are defined by section 102 of the Act, 22 U.S.C. 2452, and section 101(a)(15)(J) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(15)(J).

(b) The Secretary of State of the Department of State facilitates activities specified in the Act, in part, by designating public and private entities to act as sponsors of the Exchange Visitor Program. Sponsors may act independently or with the assistance of third parties. The purpose of the Program is to provide foreign nationals with opportunities to participate in educational and cultural programs in the United States and return home to share their experiences, and to encourage Americans to participate in educational and cultural programs in other countries. Exchange visitors enter the United States on a J visa. The regulations set forth in this subpart are applicable to all sponsors.

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

[79 FR 60307, Oct. 6, 2014]

§ 62.2 Definitions.

The following definitions apply to this part:

Academic institution. Any publicly or privately operated primary, secondary, or post-secondary institution in the

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

Accompanying spouse and dependents. The alien spouse and/or minor unmarried child(ren), if any, of an exchange visitor who are accompanying or following to join the exchange visitor and who seek to enter or have entered the United States temporarily on non-immigrant J-2 visas or seek to acquire or have acquired such status after admission. For the purpose of these regulations, a minor is a person under the age of 21 years old.

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

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

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

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

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

Good Standing is also known as a Certificate of Authorization or a Certificate of Existence.

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

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

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

Cross-cultural activity. An activity designed to promote exposure and interchange between exchange visitors and Americans so as to increase their mutual understanding of each other's society, culture, and institutions.

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

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

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

Exchange visitor. A foreign national who has been selected by a sponsor to participate in an exchange visitor program, and who is seeking to enter or

has entered the United States temporarily on a non-immigrant J-1 visa or who has obtained J status in the United States based on a Form DS-2019 issued by the sponsor. The term does not include the accompanying spouse and dependents of the exchange visitor.

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

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

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

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

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

Form DS-3037, Update of Information on a Sponsor’s Exchange Visitor Program. A controlled document of the Department of State that a sponsor uses to

update information on its exchange visitor programs in SEVIS.

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

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

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

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

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

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

Home-country physical presence requirement. The requirement that an exchange visitor, and any accompanying spouse and dependents, who are within the purview of section 212(e) of the Immigration and Nationality Act, as amended, or Public Law 94-484 (substantially quoted in 22 CFR 41.63), must reside and be physically present in the country of nationality or last legal permanent residence for an aggregate of at least two years following departure from the United States before the exchange visitor is eligible to apply for

an immigrant visa or permanent residence, a non-immigrant K visa as the fiancé(e) of a U.S. citizen, a non-immigrant H visa as a temporary worker or trainee, or a non-immigrant L visa as an intracompany transferee, or a non-immigrant H or L visa as the spouse or minor child of a person who has been granted status in H or L non-immigrant classification as a temporary worker or trainee or an intracompany transferee.

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

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

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

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

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

Office of Exchange Coordination and Compliance. The Department of State, Bureau of Educational and Cultural Affairs office assigned to oversee sponsor

compliance with 22 CFR part 62 and, as appropriate, impose sanctions.

Office of Private Sector Exchange Administration. The Department of State, Bureau of Educational and Cultural Affairs office assigned to monitor administration of each sponsor's exchange visitor program.

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

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

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

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

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

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

or exchange visitor's stay in the United States.

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

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

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

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

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

plicable provisions of these regulations.

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

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

United States Person (legal entity).

(1) A general or limited partnership created or organized under the laws of the United States, or of any state, the District of Columbia, or any territory or outlying possession of the United States, of which a majority of the partners are United States persons:

(i) Which has its principal place of business in the United States; and

(ii) In instances where the partnership is additionally governed by a Board, the majority of whose officers are United States persons.

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

(i) Whose shares or voting interests are publicly traded on a U.S. stock exchange; or

(ii) A majority of whose officers, a majority of whose shareholders, and a majority of whose members of its Board of Directors are United States persons and collectively hold a majority of the shares or stock (*i.e.*, the *de jure* controlling interest); or

(3) A non-profit corporation, association, or other legal entity created or organized under the laws of the United

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States, or any state, the District of Columbia, or any territory or outlying possession of the United States; and

(i) Whose principal place of business is located in the United States; and

(ii) A majority of whose officers and a majority of whose members of its Board of Directors, Board of Trustees or other like body vested with its management are United States persons; or

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

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

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

[79 FR 60307, Oct. 6, 2014]

§ 62.3 Sponsor eligibility.

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

(1) U.S. local, state, and federal government agencies to include the District of Columbia; and government agencies of any U.S. territories and outlying possessions;

(2) International agencies or organizations of which the United States is a member and that have an office in the United States; or

(3) Reputable organizations that are United States Persons.

(b) To be eligible for designation as a sponsor, an entity is required to:

(1) Demonstrate, to the Department of State's satisfaction, its ability to comply and remain in continual compliance with all applicable provisions of this part;

(2) Meet at all times its financial obligations and responsibilities attendant to successful sponsorship of its exchange visitor program; and

(3) Demonstrate that the organization or its proposed Responsible Officer has no fewer than three years' experience in international exchange.

[79 FR 60307, Oct. 6, 2014]

§ 62.4 Categories of participant eligibility.

Sponsors select foreign nationals to participate in exchange visitor program(s) in the United States. Participation is limited to foreign nationals who meet the following criteria for each of the following categories:

(a) *Student.* A foreign national who is:

(1) Studying in the United States and:

(i) Pursuing a full course of study at a secondary accredited academic institution;

(ii) Pursuing a full course of study leading to or culminating in the award of a U.S. degree from a post-secondary accredited academic institution; or

(iii) Engaged full-time in a prescribed course of study of up to 24 months (non-degree) duration conducted by:

(A) A post-secondary accredited academic institution; or

(B) An institute approved by or acceptable to the post-secondary accredited academic institution, where the student is to be enrolled upon completion of the non-degree program;

(2) Engaged in academic training as permitted in § 62.23(f);

(3) Engaged in English language training at:

(i) A post-secondary accredited academic institution, or

(ii) An institute approved by or acceptable to the post-secondary accredited academic institution where the college or university student is to be enrolled upon completion of the language training; or

(4) Engaged full-time in a student internship program conducted by a post-secondary accredited academic institution.

(b) *Short-term scholar.* A foreign national who is a professor, research scholar, or person with similar education or accomplishments who enters the United States for a short-term visit