Alliance for International Educational and Cultural Exchange

Exchange Visitor Program chronology – specific to Subpart A (2009-2013)

Key State/ECA actions:

- **Intensive new focus on regulation and compliance**
- **More attention at policy level, change in leadership at DAS level**
- **Significant growth in staffing, including creation of a new office**
- **New rulemaking in several categories, with more promised**
- **Coordinated and intensive enforcement activity, including structured visits to sponsors and program sites**
- **Program strengthening through new emphasis on cultural component, engagement with U.S. host communities, sustaining alumni connections**

The Alliance has supported these initiatives to strengthen the programs.

Sept. 9, 2009 – Subpart A proposed rule published.

May 3, 2010 – High school proposed rule published.
Includes strengthening local coordinator networks, enhancing screening requirements for host families, and placing restrictions on promotional materials to enhance student safety ('photo rule').

October 27, 2010 – High school final rule published.
Adoption of photo rule, new requirement regarding training for all organizational representatives placing/monitoring students and host families.

2011 – Launch of mandatory high school coordinator certification program, jointly developed by ECA and the sponsor community.

2011 – SWT Pilot Program instituted (Russia, Ukraine, Belarus, Moldova, Bulgaria, Romania), with enhanced rules including full job vetting, required pre-placement, and restricted role for overseas agents that partner with American sponsors.

April 26, 2011 – Interim-Final rule on Summer Work Travel Program published. Extends Pilot Program rules worldwide, includes list of prohibited jobs and requirement for monthly monitoring of participants.

2011 – SWT program capped at 2011 levels.

May 11, 2012 – Interim-Final rule on Summer Work Travel Program published. Establishes cultural component, prohibits additional jobs, expands vetting of foreign partners.

May 2, 2013 - Proposed rule on Teacher Program published.
Focuses on program eligibility and selection.

2013 – Exchange community working with ECA to develop stronger, more consistent criminal background checks for high school.

Current

- New rules in process on Summer Work-Travel, Training-Intern, and Au Pair.

- New emphasis on foreign partners, with DAS requesting separate sessions with overseas agents at major international conferences in 2012 and 2013.

Alliance
for International Educational and
Cultural Exchange

November 20, 2009

Mr. Stanley Colvin
Deputy Assistant Secretary
Office of Private Sector Exchanges
Bureau of Educational and Cultural Affairs
Department of State
Washington, D.C. 20522-0505

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

Dear Secretary Colvin:

This letter constitutes the formal response of the Alliance for International Educational and Cultural Exchange on the Department of State's proposed rule revising the general provisions (Subpart A) of the Exchange Visitor Program regulations, published September 22, 2009, in the Federal Register. The Alliance, an association of 79 U.S.-based nongovernmental organizations that conduct exchange programs of all types, serves as the collective policy voice of the U.S. exchange community. We welcome the opportunity to comment on this far-reaching rulemaking, the first update of the general provisions since 1993. For your information, a list of our member organizations is attached to this letter.

While we appreciate the need for updating these regulations, we are concerned that several provisions included in the rulemaking will have serious inhibiting effects on exchange programs. Proposed restrictions on DS-2019 issuance would complicate visa issuance and reduce participation. Sponsors would face new and costly burdens from program audits, which we support, and from Dun & Bradstreet requirements, which we do not. The Dun & Bradstreet provisions would also adversely affect U.S. small businesses that host J-1 participants. Proposed new restrictions on third parties would disrupt successful existing recruitment networks overseas, again adding cost and impairing programs.

Taken together, these provisions will create a nexus of negative impacts. A more difficult visa process, increasing program costs, and impaired recruiting networks will discourage participation. Fewer participants and rising administrative costs will weigh heavily on U.S. sponsors, host employers, and overseas partners. The near-inevitable results will be less public diplomacy impact and the loss of American jobs at sponsor organizations. Reducing the exchange community's capacity will, in turn, become a long-term factor in diminished exchange flows.

Comments on specific provisions of the rule follow.

DS-2019 issuance

In section 62.12 (b), the proposed rule states the following:

"(b) Verification. (1) Prior to issuing Forms DS-2019, a sponsor must verify that each prospective exchange visitor:

(i) Is eligible, qualified, and accepted for the program in which he or she will participate (e.g., has an offer letter from a camp, a written acceptance from a secondary school); . . ."

A similar provision was removed during the 2005 high school rulemaking, after extensive comment from sponsors on its impact on the high school category. The provision's potential for very serious damage to high school exchanges remains, but the Department's more expansive language, applying the requirement to all J categories, would extend its severely negative impact to the summer work/travel and camp counselor programs, as well as some of the State Department's funded exchange programs.

In each of these three Exchange Visitor Program categories, sponsors estimate that this single provision will reduce participation by 30-60 per cent, result in many late arrivals, and burden our embassies by virtually eliminating the early-in-the-season J-1 visa interviews that help consular officers manage their often crushing workloads. Over the past five years, the Alliance has visited more than 40 U.S. embassies around the world, many multiple times. Worldwide, the single most consistent request from consular officers is to get J-1 candidates in as early as possible.

This single provision makes it impossible for sponsors to be responsive to that request. The requirement to wait until all placement details are finalized would push nearly all interviews in these categories further back on the calendar, creating an overload of interview requests at our busiest posts. Paradoxically, this regulation would increase consular workloads at the busiest time of the visa year and at the same time reduce exchange flows.

The nature of **high school exchange** is that placements usually come together late in the program cycle. American families typically do not make a commitment to host a student until mid- to late summer. A CSIET study issued in March 2009 confirms this long-held perception: 57.4 per cent of all placements are finalized in June, July, or August, and 42.4 per cent of all placements occur in July and August. School permission forms cannot be secured without a confirmed host family that resides in the school district. Regulations and standards already in place require school permission to be secured in writing before a student's departure to the United States.

If the Department requires, in effect, that the majority of high school DS-2019 forms be issued in July and August, there will simply not be enough time to move students through the visa process for arrival in the United States for the start of school. In addition to a likely decrease in participation, the high school program will be further diminished by many late arrivals.

This provision would disproportionately affect the Department's official high school exchange programs, including YES, FLEX, and A-SMYLE. Each of these effective and popular programs, which enjoy strong bipartisan Congressional support, brings varying numbers of Muslim participants to the U.S. Many American families are reluctant to host Muslim students and require time to be convinced to do so, meaning that placements come particularly late. In several important countries, YES participants must undergo security screening that can take up to three months. Maintaining this provision would certainly mean that Muslim high school exchanges would shrink in most participating countries. This same factor also applies to Muslim participants in other exchanges funded by the Department of State, and these programs would also be adversely affected.

In addition, the provision would add significant cost and administrative difficulty to the FLEX, Global Undergraduate Exchange, and Muskie programs, which serve Russia and the former Soviet republics. In the cases of all these programs, participants are selected and visa processing begun prior to confirmation of final placements. In several of these countries, distances are vast, and the clear programmatic goal of achieving geographic diversity among its participants means that many participants travel long distances for visa interviews. Sponsors currently economize by combining visa interviews with program orientation sessions. Later visa interviews, the inevitable result of this provision, would mean a second trip and a second stay in the consulate city for many participants, adding significantly to program costs.

In the **summer work/travel** and **camp counselor** categories, sponsors typically issue DS-2019 forms before most participants are placed. This allows significant numbers within these high volume programs to have early visa interviews and permits the large number of participants in these programs to complete the visa process in time for their program start dates. In turn, this ensures American employers of a reliable pool of candidates. In these categories as well, the timing of this process is important to U.S. embassies. Many large sending posts annually press sponsors to provide as many early applicants as possible.

Sponsors fear that the proposed new requirement could encourage prospective work/travel participants to accept the first job offered – regardless of its appeal – to get through the visa process quickly. These students are likely to be much less committed to their placement, more likely to move, and thus more likely to generate compliance issues around monitoring.

It is also worth noting that this provision appears to override regulatory practice of over a decade, which permits 50 per cent of work/travel students to arrive unplaced. It also would presumably apply to participants in the Department's new "Intern Work and Travel" programs, such as WEST.

The exchange community is uncertain of the Department's goal in including this provision. We are not aware of any significant problem concerning unplaced participants arriving in the U.S. in violation of existing regulations, and the Department already has ample tools at its disposal to hold sponsors accountable in any such instances.

Recommendation: That the Department eliminate the verification provision of 62.12(b), and replace it with language stating that sponsors will not facilitate the arrival in the United States of unplaced J-1 participants, except in those cases permitted by the regulations of individual program categories.

Audits

The Alliance has long encouraged the Department to institute its own compliance audits in the various J-1 categories. Most sponsors believe that this step will improve programs, as it has done in the au pair category.

Based on the experience of au pair sponsors, however, the Department's cost estimate of $6,000-10,000 per audit appears low, particularly for sponsors located in major cities. Most au pair sponsors report annual audit expenses of approximately $15,000, and some sponsors report a cost of over $20,000. For all sponsors, and particularly for those with multiple designations, the Department is imposing a significant additional administrative cost.

Under the rule, a single sponsor with three designations (e.g., summer work/travel, intern, camp) would be liable for a new annual expense of between $45,000 and $60,000. To ease this financial burden, the Alliance recommends that the Department institute audits on a biennial basis, i.e., every two years. While no schedule will be perfect for all sponsors, we suggest that the Department implement the six audits to be required (au pair, high school, summer work/travel, camp counselor, training, and intern) on a regular schedule with three categories audited per year.

In return for such large investments by sponsors, we urge the Department to provide feedback from the audits to individual sponsors. If the goal of audits is to improve sponsor performance, sponsors need to receive specific feedback on their own performance. While most agree that the au pair audits have strengthened that program, the Department has not taken full advantage of those audits by providing consistent feedback to sponsors.

Sponsors should be involved in the creation of audit templates for each category. Sponsors created both the au pair audit template and the high school template currently being used by CSIET and its members. These templates have been effective, and the high school template currently in use could easily be adopted by the Department, with no more than minor changes. Sponsor participation will allow the audit process to benefit from the on-the-ground operational expertise of sponsors. The Alliance is prepared to work with the Department, which, like the sponsor community, brings its own unique perspective, to develop representative working groups from the various categories to work on this project.

Finally, given the complexity of establishing five separate audits, we encourage the Department to establish and circulate a timetable for instituting audits. A public, predictable, and widely understood timeline will reassure sponsors of an orderly process, and help them devise their own schedules for related organizational activities.

Recommendation: That the Department institute biennial – rather than annual – audits, commit to providing feedback to individual sponsors on audit results, engage the sponsor community in the development of audit templates, and provide a timetable for the entire implementation process for affected program categories.

Dun & Bradstreet

In Section 62.7(c)(2), the proposed rule states that sponsors must provide with their application for re-designation:

"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. . .**"

With this provision, the Department proposes to impose another very significant expense on sponsors. If this requirement is interpreted to apply to every foreign partner and every host employer, a medium to large-size sponsor with multiple designations would be liable for new costs that could easily exceed $100,000 – even with the Department's negotiated rate of $65 per report. Smaller sponsors will also pay a high price, and a conservative estimate of the field-wide cost of this provision alone could easily be placed at millions of dollars.

As an example, a large sponsor (but far from the largest) with multiple designations estimated its projected costs at the Alliance's request. **For all of its overseas partners and U.S. placement sites, the cost of Dun & Bradstreet reports would exceed $300,000**. Adding this to the cost of perhaps four annual audits, the rule as written would impose nearly $400,000 in additional expense on this single organization.

These costs imposed on sponsors will inevitably raise the price of programs, providing a disincentive to participation in J-1 exchanges. The rulemaking, however, does not provide a persuasive argument for the new requirements. If there is a widespread problem with inappropriate placements, the Department has not yet shared this information with the exchange community. And, if such a problem does exist, there is no evidence to suggest that D&B reporting would ameliorate these issues.

The rule's Supplementary Information includes the assertion the D&B reports **"will help to ensure that sponsors are working with and/or placing exchange visitors with viable third party entities."** The sponsor community supports the concept of ensuring appropriate and viable placements and of vetting program sites and partners as necessary. But does doing so require that multiple sponsors each expend $65 for a D&B report on well-known American corporations such as Marriott, Busch Gardens, or Intel? And for less well known employers, is there no more cost-effective way to meet this shared goal?

Sponsor experience with Dun & Bradstreet Business Information Reports suggests that the reports are, at best, of inconsistent value in assessing a host employer. Data included in these

reports are provided by the company itself, and are not generally subject to verification or further analysis by D&B. Alliance members that have checked their own reports advise that the data presented by D&B are inconsistent, with some entries incomplete, out of date, or simply inaccurate.

Moreover, the one-size-fits-all approach adopted in the proposed rule – every organization (large or small, foreign or domestic) needs a D&B number and report – also appears to run counter to the broad purposes of the Exchange Visitor Program. Requiring D&B registration and reports of all overseas partners imposes a very American approach on a very diverse world. Many foreign partners are indeed businesses, but many others are universities, NGOs, government offices, or even individuals, and partners of all types operate in developing countries where D&B is not readily available. We cannot believe that the Department intends for some countries and entire classes of organizations – including many who have records of long and successful collaboration with the U.S. – to be excluded from the Exchange Visitor Program for lack of a Dun & Bradstreet number and report.

Sponsors also report resentment among smaller American businesses over the current requirement for a Dun & Bradstreet number in the training and intern categories. To our knowledge, there is no other federal agency that mandates a Dun & Bradstreet number, and many smaller businesses have expressed frustration at the requirement that they undertake the administrative burden of securing a number.

In the intern and training categories, sponsors have found the requirement for a D&B number to add no value to the vetting process. Sponsors point out that online resources, such as those found on the Secretary of State web sites of various states, provide more complete and reliable information at no cost. Hoover's, owned by Dun & Bradstreet, provides better reporting than D&B, at much lower costs.

With the requirement for D&B numbers and reports, the Department proposes to add enormous costs to exchange programs. These requirements will make exchanges more expensive, reduce participation, and add significant administrative and financial burdens for sponsors. But they will add very little value.

We suggest instead that the Department require that all sponsors have in place a set of vetting procedures for each category in which they hold a designation, and that review and verification of these procedures be made part of designation and re-designation applications. These could also be an element in the compliance audits. Dun & Bradstreet numbers and reports can be an optional part of this process, but should not be required.

Recommendation: That the Department eliminate language requiring Dun & Bradstreet numbers and reports, and substitute language requiring that all sponsors maintain vetting procedures. Sponsors will be held accountable for their procedures through Department review during designation and re-designation, audits, and through the Department's other ongoing compliance activities.

Use of Third Parties

The proposed rule defines 'third parties' as:

"A person or legal entity with whom a 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. A third party under contract with a sponsor may not subcontract or delegate its Exchange Visitor Program obligations to another party."

As this definition applies to overseas partners, exchange sponsors are concerned about the inability of a third party to subcontract or delegate its responsibilities, a common practice in the world of exchange.

As an example, in a country like Brazil, an American sponsor may have a local partner based in Sao Paolo that maintains its own contractual relationships with individuals or entities in Brasilia, Recife, etc., to screen and select J-1 participants. This practice is efficient in terms of costs and outcomes. Local organizations recruit on their home turf, and program costs are less than if the partner in Sao Paolo had to maintain its own offices and staff across Brazil, or maintain a larger headquarters staff to travel for recruitment.

The exchange community accepts and supports the Department's view that while sponsors may enter into relationships with others to administer their programs, the responsibility for program compliance and quality rests entirely with the American sponsor.

We believe that the change in practice mandated by this definition, however, will significantly inhibit recruiting and increase program costs. Sponsors and programs should by and large be judged by outcomes, and current practice with local partners around the world is effective in supporting successful programs.

If the Department intended this revised definition to address a more specific issue, we recommend that specificity be added to ensure that disrupting existing overseas networks is not an unintended consequence of this rulemaking.

Recommendation: That the Department eliminate language that would prohibit overseas partners from subcontracting.

Accredited U.S. Institutions

The Department uses the rulemaking to revise the concept of 'accredited U.S. institutions,' replacing the adjective 'educational' with 'academic.' The rule's supplementary information outlines the clear intent to eliminate primarily vocational and technical institutions from the Exchange Visitor Program.

The rule's definitions of institutional character – which hinge on whether 'primarily academic' or 'primarily technical or vocational' programs are offered – provide little useful guidance to sponsors and are likely to bedevil compliance efforts within the U.S. None of the key words –

'primarily,' 'academic,' 'vocational,' or 'technical' – is defined, making enforcement of the rule entirely subjective. A sponsor acting fully in good faith might place a participant at an accredited U.S. institution that an ECA compliance officer may view, just as honestly, as 'primarily technical.'

This change will muddy the compliance waters for the au pair program's educational component and will certainly reduce the number of available options for fulfilling this regulatory requirement. Because the educational component will be reviewed and possibly revised in the coming year, we recommend that this definitional change be eliminated and considered in the context of a fuller, program-specific review.

We also note, however, that while the definition refers only to 'accredited U.S. institutions,' the language in 62.4 ('Categories of Participant Eligibility') extends its conceptual reach globally by defining participant eligibility based on experience or enrollment in foreign accredited 'academic' institutions. This definition, applied across the range of the Exchange Visitor Program, will eliminate many worthwhile activities, and because of the complete subjectivity of the criteria, virtually ensures needless hours of debate between the Department and its stakeholder community about the validity and appropriateness of individual programs and institutions.

Beyond the lack of clear definitions, the emphasis on 'academic' institutions instead of 'educational' or 'post-secondary' seems to impose an American model of tertiary education on other national systems. For example, Australia's TAFE (Technical and Further Education) system could easily be judged as 'technical,' rendering its students ineligible for J-1 exchanges. While many TAFE courses are in subject matter that most would agree are not suitable for training and intern programs, TAFE curricula also include clearly academic offerings in fields such as nursing, library science, film, telecommunications, and human resources, all of which are taught as degree programs at leading U.S. universities. Excluding these students from J-1 participation would be roughly equivalent to applying the rule's definition to exclude U.S. community colleges and their students.

Because institutions and educational systems around the world vary so widely – and because educational systems globally are changing so rapidly in response to growing demand – the Department's approach of determining participant eligibility based on institutional affiliation appears both inflexible and inappropriate. Participants' actual coursework serves as a much more valid criterion for judging whether their programmatic goals can be met through the Exchange Visitor Program.

With occasional differences but general success, the Department, sponsors, and U.S. consular officers have navigated these waters for years in hotel and hospitality programs. Some international programs – Swiss culinary schools are a prominent example – clearly have an academic dimension and should be included in the program, while others are less appropriate. The large volume of valid training and internship programs in this category would be jeopardized

unnecessarily by this rule change, to the detriment not only of participants but also leading U.S. corporations who use these programs to identify, train, and develop international staff.

The rapidly changing global education landscape is far too large and complex to be monitored, evaluated, or managed from Washington, and a rulemaking setting a single, inflexible criterion for eligibility is certain to fail the Fulbright-Hays Act's mandate of promoting and facilitating exchange. Consular officers are in most cases the best judges of the institutions and individuals in their own consular districts that meet the criteria of the Exchange Visitor Program, and we urge the Department to continue to rely on their judgment.

Recommendation: That the Department eliminate the new definition of 'Accredited U.S. Institution', and revise language in 62.4 'Categories of Participant Eligibility' to be more inclusive, e.g., substituting 'educational' for 'academic.'

"High Risk" Exchanges

Many sponsors have expressed concern and disappointment over the Department's characterization of high school, summer work/travel, training, au pair, intern, teacher, and camp counselor exchanges as 'high risk.' While the exchange community understands the special vigilance required in the high school program, where participants are minors, the Department has publicly noted on several occasions that the number of incidents is low for a category with nearly 30,000 participants.

This comment is not intended to suggest that any such incidents are acceptable. But in any exchange program, or any other visa category, problems will occasionally occur, regardless of the regulatory regime. Based on the community's experience and its interactions over time with the Exchange Visitor Program staff, we believe that there are relatively few incidents in the categories singled out in the rulemaking. Using this language, however, creates a very different impression for the general public, policymakers, and U.S. embassy staff, who may not always be as conversant with these programs.

Recommendation: That the Department eliminate from the rule language describing Exchange Visitor program categories as 'high risk.'

Insurance

Although health care costs have risen since the time of the last revision of Subpart A, there is no history of any J visa program participant being denied health care services due to inadequate coverage during an emergency. In emergencies, hospitals by law provide services. In elective cases, participants can return home, where in almost all cases they have national health care, for services.

As individual Alliance member have considerable experience in these areas, they will comment individually. The Alliance believes that more needs to be addressed in this area, and more carefully, than the proposed language now covers. One approach might be that the new regulations could establish a firm minimum coverage requirement of $100,000, which sponsors could choose to exceed based on their own program needs and practices.

There is also more to insurance than establishing a required level of coverage. Careful specification of the type and kinds of insurance organizations that can provide coverage, allowable exclusions, and coverable periods are among the other issues that demand discussion and review.

Recommendation: That the Department establish the minimum level of coverage at $100,000, and review in detail the other issues described above, based on comments from individual Alliance member organizations.

Additional comments:

J-2 Validation

Sponsors appreciate the inclusion of a definition for *validation.* The regulations as written, however, do not provide guidance for review of information relating to J-2 validation nor do they indicate the consequences for non-compliance.

New requirements related to J-2 employment

For J-2 employment, since authorization is subject to DHS approval, we question whether this is simply a data entry requirement or whether standards will be established for the review of this information once the sponsor collects it from the Exchange Visitor.

Monitoring of Exchange Visitors

We point out that the regulations as written do not make note of the new Customer Account where both J-1 and J-2 participants will be responsible for reporting their address information directly to DHS' SEVIS. As written, exchange visitors must now report to sponsors within 10 days of any telephone number, email, residence, or site of activity address change. Sponsors then have 10 days to report the changes in SEVIS. There are no guidelines for J-2s reporting such changes to sponsors yet sponsors have this new data entry responsibility for J-2s. Additional guidance needs to be provided in order to determine exactly what information and within what time frame constitute acceptable data entry and whether such data entry will override the direct participant data entry. Sponsors also need guidance as to the consequences for non-compliance by the J-2.

Control of Forms DS-2019

Section 62.12 still assumes a paper-based system for exchanges. Further, there are references throughout Subpart A to the issuance of Forms DS-2019 and DS-7002. These references do not take into account SEVIS II. DHS and DOS have already given sponsors the details of the new SEVIS II paperless environment. There is no reference to or guidance for the corresponding domestic Form DS-2019 that sponsors will have to produce and provide to their participants once SEVIS II is fully operational.

Conclusion

We understand and support the Department's overall effort to improve the Exchange Visitor Program regulations. We are convinced, however, that some provisions in this rulemaking will do nothing to improve program quality. They will only add costs and administrative burdens while reducing program numbers.

The strong and consistent bipartisan support for the State Department's exchange programs makes a powerful case for increasing, not reducing, exchange, as does the enthusiasm for these programs in Congress and at U.S. embassies around the world. As the Department considers its proposed rule in light of public comments, we hope it will strike a better balance between the need to strengthen its compliance regime and its mandate to facilitate these valuable programs that support the national interest.

We appreciate the opportunity to comment on this rule. Indeed, if we are to both strengthen compliance and enhance the impact of exchange programs, intensified dialogue between the Department and the exchange community is the best place to start.

Sincerely,

Michael McCarry
Executive Director

Attachment: 2009 Alliance membership list

Alliance
for International Educational and Cultural Exchange

The **Alliance for International Educational and Cultural Exchange** is an association of 79 organizations comprising the international educational and cultural exchange community in the United States. Its mission is to formulate and promote public policies that support the growth and well-being of international exchanges between the people of the United States and other nations. Alliance member organizations administer or facilitate exchange programs that put a human face on American foreign policy, transmit America's democratic values, foster economic ties with overseas markets, engage millions of Americans in our foreign affairs, and develop foreign language, cross-cultural, and area studies expertise of American citizens.

MEMBER ORGANIZATIONS

Academic Year in America
Academy for Educational Development
AFS Intercultural Programs-USA
AIESEC United States
Alliance Abroad Group
American Association of Community Colleges
American Association of Intensive English Programs
American Council for International Studies
American Council on Education
American Council on International Personnel
American Councils for International Education: ACTR/ACCELS
American Immigration Council
American Institute for Foreign Study Foundation
American Institute for Foreign Study, Inc.
American-Scandinavian Foundation
American Secondary Schools for International Students and Teachers
AMIDEAST
Amity Institute
ASSE International Student Exchange Programs
ASSE Work Experience Programs
Association for International Practical Training
Association of International Education Administrators
Association of Public and Land-Grant Universities
AuPairCare
Au Pair in America
AYUSA Global Youth Exchange
BUNAC
Camp America
CCUSA
CDS International
Center for Cultural Interchange
Children's International Summer Villages, Inc.
The College Board
Communicating for Agriculture
Concordia Language Villages
Cordell Hull Foundation for International Education
Council for Educational Travel, USA
Council of Graduate Schools
Council of International Programs USA
Council on International Educational Exchange
Council on Standards for International Educational Travel
Cultural Care Au Pair
Cultural Exchange Network
Cultural Homestay International
Educational and Cultural Interactions, Inc.
Educational Testing Service
EF Foundation for Foreign Study
EurAupair
French – American Chamber of Commerce
Fulbright Association
GeoVisions
German American Chamber of Commerce
goAUPAIR
iEARN-USA
Institute of International Education
InterExchange
International Cultural Exchange Organization
International Cultural Exchange Services
International Exchange of North America
Intrax Cultural Exchange
IREX: International Research & Exchanges Board
LASPAU: Academic and Professional Programs for the Americas
MAST International
Meridian International Center
NAFSA: Association of International Educators
National Council for Eurasian and East European Research
National Council for International Visitors
Ohio Agricultural Intern Program
Pacific Intercultural Exchange
PAX – Program of Academic Exchange
People to People International
Sister Cities International
Summer Institute for the Gifted
University and College Intensive English Programs
World Education Services
World Heritage
World Learning
YMCA International
Youth For Understanding USA

Alliance
for International Educational and Cultural Exchange

December 3, 2012

Mr. Boris Bershteyn
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

Dear Mr. Bershteyn:

We understand that the Department of State's Bureau of Educational and Cultural Affairs (ECA) will soon seek to finalize the General Provisions of the Exchange Visitor Program (EVP) regulations (Subpart A) [RIN 1400-AC36; Exchange Visitor Program—General Provisions]. Because of both the long delay since the publication of the proposed rule (on September 22, 2009) and the many changes in the EVP over the past three years, we request that the current version of the rule be opened for public comment before being finalized.

The Alliance, an association of 80 U.S.-based exchange organizations, conducts policy and advocacy work to ensure that people-to-people exchange programs make the maximum contribution to long-term U.S. national interests. Given the importance of this rulemaking and the long interval since its publication, we believe those interests will be well served by allowing for public review and input.

The policy climate surrounding the Exchange Visitor Program has changed substantially since ECA published its proposed revisions of Subpart A in 2009. A major high school rule was published in 2010. We have seen an unprecedented burst of rulemaking for the Summer Work Travel Program, including two Interim Final rules within the space of 13 months, both of which went into effect without public comment. State Department officials have made clear in many public fora that other Exchange Visitor Program categories will be subject to similar scrutiny and possible rulemaking. ECA will significantly boost its staffing, and compliance enforcement will be increasingly intense and comprehensive.

The Alliance and its members share the State Department's goal of strengthening the Exchange Visitor Program. For years, we have urged ECA to adopt mandatory compliance audits for all non-academic program categories (audits are now only required for Au Pair programs), a provision that appeared in the proposed version of Subpart A. We have consistently encouraged the Bureau to improve its compliance enforcement, and to hold under-performing sponsors accountable.

1828 L STREET, NW, SUITE 1150 | WASHINGTON, DC 20036 | TEL 202-293-6141 | www.alliance-exchange.org

That said, ECA's Exchange Visitor Program is in the midst of a major transformation. That process, of which Subpart A is a key component, will be better informed and ultimately more successful if it accommodates public comment to the maximum possible extent. Given the long delay since publication and the significant changes in the interim, a public comment period for Subpart A would be a modest, prudent investment in the long-term health and success of the Exchange Visitor Program.

Sincerely,

Michael McCarry
Executive Director

United States Senate

WASHINGTON, DC 20510

December 16, 2009

The Honorable Hillary Clinton
Secretary of State
U.S. Department of State
Washington, D.C. 20520

Dear Secretary Clinton:

We write to express our concerns about the State Department's proposed revisions to the general provisions (Subpart A) of the Exchange Visitor Program regulations, published September 22, 2009, in the Federal Register. While we support the State Department's efforts to revise the regulations of the exchange programs, we believe that the current changes, as written, could have debilitating effects on future participation in the programs through increasing the costs to sponsors and possibly leading to the loss of American jobs.

Our first concern regards the new requirement that all exchange placement requirements be finalized before the student can apply for their exchange visitor visa. Because so many placements for these programs are confirmed only a short time before the program start date, delaying the visa process until a placement is confirmed could create a backlog of late summer visa applicants that would overwhelm our embassies and consulates and could cut participation in these programs by as much as 50 percent. We believe that this is an unnecessary burden that adds little value, if any, to the application process.

Our second concern regards the requirement that all exchange sponsor organizations purchase Dun & Bradstreet reports on all "third party entities" (including employers with whom they place participants and foreign partners with whom they work). Since a single report costs $65, many sponsors working with hundreds and possibly thousands of third party entities would face new costs ranging into the tens of thousands or hundreds of thousands of dollars. While we certainly support vetting all program hosts, the proposed rule could impose devastating new costs on sponsors that would seriously jeopardize their ability to sponsor exchange students.

We firmly believe that exchange programs offer valuable experiences for both the students and the sponsors, and we applaud the State Department's efforts to reform the regulations of these programs. The proposed rules described above as currently written could, however, adversely affect the future of exchange programs and significantly reduce participation in these programs. We urge you to consider our concerns about these proposed rules and to work with the sponsor organizations to create more effective and less costly methods of reform going forward.

Thank you for your timely attention to this critical matter.

Sincerely,

OLYMPIA J. SNOWE
United States Senator

SUSAN M. COLLINS
United States Senator

Congress of the United States
Washington, DC 20515

January 4, 2010

The Honorable Hillary Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Madame Secretary:

As you know, international student exchange programs are an invaluable component of U.S. smart power and public diplomacy. Student exchanges have proven to be important for young people and for cross-cultural learning. They have proven to be great resources for understanding different cultures, for foreign students to get a better sense of America, and for enhancing youth education. These programs are most effective when they are properly and efficiently regulated by the State Department. We fully support comprehensive oversight and regulation. We believe, however, that it must be done in a way that fully protects the students, without imposing overly burdensome costs or regulations on the U.S. organizations that administer exchange programs, or on the American businesses that legally employ exchange visitors.

On September 22, 2009, the Department of State published a proposed rule substantially revising the general provisions of the regulations governing the Exchange Visitor Program. The Exchange Visitor Program is a critical element of the Department's public diplomacy and annually facilitates the entry of tens of thousands of foreign participants for a variety of productive activities in the United States at very little cost to the taxpayers. We applaud the Department's effort to update and strengthen its oversight of these valuable programs.

We would like to draw your attention to two provisions included in this proposed rule that could inhibit the quality, reach, and impact of exchange programs.

The first of these provisions would require that all aspects of J-1 placements be fully confirmed before a U.S. sponsor may issue a DS-2019 form, which is required to apply for a visa. This new provision could seriously reduce participation in three important exchanges: high school, camp counselor, and summer work/travel. In each of these categories, practical operating procedures dictate that U.S. sponsors issue DS-2019 forms before placements are secured to ensure that participants can schedule interview appointments at our embassies and receive visas in a timely fashion.

In the high school program, most American families make the decision to host an exchange student in mid- to late summer, and a school placement cannot be secured until there is a committed host family. A CSIET study issued in March 2009 shows that 57.4 per cent of incoming students are placed in June, July, and August. If the majority of the approximately 30,000 students who come to the United States annually seek to apply for visas at in mid- to late summer, our embassies would face an extremely heavy processing burden, and many students would be unable to reach the United States in time for the start of the school year.

Moreover, such a requirement would be particularly harmful to federally funded high school exchanges such as YES, FLEX, and A-SMYLE. To varying degrees, each of these programs brings Muslim students, who typically are more difficult to place and who are more likely to encounter delays in the visa process. As you know, these programs enjoy strong bipartisan support in Congress. This provision would almost surely diminish these programs by reducing participant numbers and increasing late arrivals. We are certain these are not the outcomes the Department seeks to achieve.

This provision could also damage the summer work/travel and camp counselor programs. Sponsors advise us that the proposed restriction on DS-2019 issuance is likely to limit participation significantly and make exchange flows much less predictable, results that would diminish our public diplomacy and hurt American businesses. Summer work/travel and camp counselor participants exhibit high levels of satisfaction with their exchange experiences and develop lasting ties with the United States. In addition, American seasonal employers find these programs extremely valuable. We encourage you to review the provision concerning the DS-2019.

The second provision that could likely inhibit exchanges requires that U.S. sponsors purchase Dun and Bradstreet reports on all employers and other entities (including those overseas) with which they have a written agreement. The rule quotes the cost of a single report at $65. While we fully support a process to vet employer placements and partner organizations, the cost of such reports for a medium to large sponsor could total several hundred thousand dollars and would represent a significant new expense for every sponsor. The burden imposed on the entire exchange community would likely run into the millions of dollars.

We strongly believe that safety and proper placement through exchanges is achievable through balanced regulation. We encourage you to review the proposed regulations, and ensure that any new regulations achieve increased student safety and comprehensive oversight through provisions that are more cost-effective and will maintain high levels of participation.

Thank you for you attention to this matter.

Sincerely,