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## Guidance Directive 2010-08

### **Trainee and Intern Category: New Regulations and Work in Counter Service Positions**

A final rule amending the Exchange Visitor Program Trainee and Intern regulations was published in the Federal Register on August 11<sup>th</sup>. A copy of this publication is attached for your convenient reference.

As a Trainee and Intern program sponsor you are aware of your obligations in the selection of program participants to ensure that trainee and intern participants are adequately advanced in their fields of study and that they will therefore benefit fully from their training or internship program. Given this obligation, I ask that you review the regulations governing the Trainee and Intern categories of the Exchange Visitor Program, being particularly mindful of 22 CFR 62.22 (2)(b) *Purpose*.(1)(ii) which explains that:

Exchange Visitor Program training and internship programs must not be used as substitutes for ordinary employment or work purposes; nor may they be used under any circumstances to displace American workers. The requirements in these regulations for trainees are designed to distinguish between *bona fide* training, which is permitted, and merely gaining additional work experience, which is not permitted. The requirements in these regulations for interns are designed to distinguish between a period of work-based learning in the intern's academic field, which is permitted, and unskilled labor, which is not.

Also, I would like to call your attention to certain issues associated with the placement of program participants in fast food service restaurants, convenience stores, and in other similar counter service positions, a matter of some concern to the Department. As explained above, these placements are contrary to the program intent of the Intern and Trainee categories as the purpose of these exchange categories is to “enhance the skills and expertise of exchange visitors in their academic or occupational fields through participation in structured and guided work-based training and internship programs and to improve participants' knowledge of American techniques, methodologies, and expertise.”

We have identified a second concern that is related to the counter service issues outlined above. The Department is seeing questionable Forms DS-7002 – Training and Internship Placement Plans (T/IPPs) for exchange visitor participants pursuing training and internships in the hospitality and tourism fields. These T/IPPs raise a red flag as the required training rotations described in the T/IPPs do not demonstrate a progression in the development of enhanced skills by the exchange participant. Many activities appear to be entry-level or even casual labor. While entry level positions may be appropriate in many circumstances, the position must also provide an opportunity to improve

or acquire new skills and knowledge. Both the Office of Designation and the Office of Exchange Coordination and Compliance are monitoring this issue.

Finally, please find a link to the report of a recent U.S. Department of Labor investigation in Pittsburgh, PA involving a fast food restaurant franchise. You will note that the host organization was required by the Department of Labor to compensate 34 employees (all of whom were J-1 trainees or interns) for unpaid wages:

<http://www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=Northeast/20100121.xml>

Thank you for your continued commitment to exchanges and to the Department's mission.

Stanley S. Colvin  
Deputy Assistant Secretary  
for Private Sector Exchange