



June 3, 2011

## Guidance Directive 2011-02

### **Au Pair Exchange Visitor Program: Statutory Considerations of Continued Collection of “Performance Bonds”**

It has recently come to the Department’s attention that sponsors are in the practice of collecting performance bonds for au pair participants (i.e., security deposits, completion bonuses, etc.). This Guidance Directive is issued to all designated Au Pair sponsors to cease such practices in compliance with federal statutes.

In February 1995, with the publication of a Final Rule governing the Au Pair Program, the United States Information Agency rescinded the program guidelines governing au pair placements which included the requirement that au pair participants place with the au pair sponsor a bond in the amount of five hundred dollars to be returned to the au pair upon successful completion of the program. The following is an excerpt from the Federal Register publication/Volume 60 No. 31/ Wednesday, February 15, 1995:

#### ***Other Statutory Considerations***

*The program guidelines governing au-pair placements for the past eight years have required that the au-pair participants place with the au-pair sponsor a bond in the amount of five hundred dollars. This bond was forfeited if the au-pair participant failed to successfully complete the agreed upon one year program or failed to return to their home country.*

*In discussions with the Department of Labor regarding payment of minimum wage, the Agency was advised by the Department that this bond requirement was a minimum wage violation. For the reasons discussed above, under the Chevron doctrine, deference to Department of Labor’s interpretation is appropriate.*

*Additionally, the Agency’s subsequent review of this matter has led it to conclude that it is without statutory authority to impose a bond. Pursuant to provisions of the Immigration and Naturalization Act set forth at 8 U.S.C. 1184 (a) the Attorney General is vested with authority governing the admission of aliens into the United States and the giving of a bond to insure the aliens maintenance of status and departure from the United States.*

*The Director of USIA is without such authority and the regulatory provision set forth at 22 CFR 514.31(1) requiring a performance bond is therefore deleted.*

Please amend all program materials eliminating any reference to the collection of a bond, completion bonus, etc.

Stanley S. Colvin  
Deputy Assistant Secretary  
for Private Sector Exchange