

Commission action, the public interest, and bonding by the respondents for purposes of an initial determination on temporary relief, see §§ 210.61, 210.62, and 210.66(a). For purposes of the recommended determination required by § 210.42(a)(1)(ii), an administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons on the issues of appropriate Commission action and bonding by the respondents. Unless the Commission orders otherwise, an administrative law judge shall not take evidence on the issue of the public interest for purposes of the recommended determination under § 210.42(a)(1)(ii). If the Commission orders the administrative law judge to take evidence with respect to the public interest, the extent of the taking of discovery by the parties shall be at the discretion of the presiding administrative law judge.

\* \* \* \* \*  
 By order of the Commission.  
 Issued: September 27, 2010.

**Marilyn R. Abbott,**  
*Secretary to the Commission.*  
 [FR Doc. 2010-24563 Filed 9-30-10; 8:45 am]  
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**DEPARTMENT OF STATE**

**22 CFR Part 62**

[Public Notice: 7077]

RIN 1400-AC67

**Exchange Visitor Program—Fees and Charges**

**AGENCY:** U.S. Department of State.  
**ACTION:** Proposed rule with request for comment.

**SUMMARY:** The U.S. Department of State (Department) is proposing to revise its Fees and Charges assessed for providing Exchange Visitor Program (EVP) services to recoup the Department's costs associated with operating all aspects of the Exchange Visitor Program.  
**DATES:** The Department will accept comments from the public through November 30, 2010.

**ADDRESSES:** You may submit comments, identified by any of the following methods:

- Persons with access to the Internet will be able to view and comment on the rule and supporting documentation, including the supporting cost study, by going to the Regulations.gov Web site <http://www.regulations.gov/search/Regs/home.html#home>, and searching on docket ID DOS-2010-0214.
- *Mail (paper, disk, or CD-ROM submissions):* U.S. Department of State, Office of Designation, SA-5, Floor 5, 2200 C Street, NW., Washington, DC 20522
- *E-mail:* [JExchanges@state.gov](mailto:JExchanges@state.gov). You must include the title and RIN (1400-AC67) in the subject line of your message.

**FOR FURTHER INFORMATION CONTACT:** Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA-5, Floor 5, 2200 C Street, NW., Washington, DC 20522, 202-632-2805, or email at [jexchanges@state.gov](mailto:jexchanges@state.gov).

**SUPPLEMENTARY INFORMATION:** Under the authority of Section 810 of the United States Information and Educational Exchange Act of 1948, as amended, 22 U.S.C. 1475e, and the Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, and following the guidelines set forth in Office of Management and Budget (OMB)

Circular No. A-25, user fees for Exchange Visitor Program Services were adopted for the first time in 2000. Regulations adopting sufficient fees to recover the full cost of its administrative processing of requests for designation, redesignation, and for requests by program participants for certain services for which application is required were adopted. OMB Circular No. A-25 directs the Agency review of fees and services every two years.

The current fee for an application for designation or an application for redesignation is \$1,748.00 and the fee for foreign national exchange participants requesting individual program services, including a change of program category, program extension, reinstatement, etc. is currently \$246.00 per request. The Department proposes amendment of both fees to: \$2,700 and \$233.00 respectively. The new proposed fee for either program designation or redesignation will increase by \$952 (redesignation is required every two years) while the fee assessed program participants will decrease by \$13.00. The increase in program designation and redesignation requests is necessary to recoup the costs of application reviews, requests for amendments to program designations, and allotment requests, as well as the cost for enhanced compliance programs, regulatory review and development, outreach and general program administration, as explained below. These changes are necessary because the current fee for program designation and redesignation applications was calculated on a unit cost basis that assumed and projected a larger number of such applications than has proven to be received.

	Current	Proposed	Increase/Decrease
Designation/Redesignation .....	\$1,748.00	\$2,700.00	\$952
Individual Applications .....	246.00	233.00	-\$13

The U.S. Department of State designates U.S. government, academic, and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act), 22 U.S.C. 2451 *et seq.*; the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(J); the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105-277; as well as other statutory enactments, Reorganization Plans and

Executive Orders. Under those authorities, 1,226 sponsor organizations facilitate the entry of more than 300,000 exchange participants each year. The Fulbright-Hays Act is the organic legislation underpinning the entire Exchange Visitor Program. Section 101 of that Act sets forth the purpose of the Act, *viz.*, "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange \* \* \*." The Act authorizes the President to provide for

such exchanges when he considers that it would strengthen international cooperative relations. The language of the Act and its legislative history make it clear that Congress considered international educational and cultural exchanges to be a significant part of the public diplomacy efforts of the President in connection with his Constitutional prerogatives in conducting foreign affairs. On September 27, 1999, the United States Information Agency (USIA) issued an interim final rule on the adoption of fees for all requests for an

extension, change of category, reinstatement, or program designation as well as for non-routine requests for the then Form IAP-66. This rule was to be effective on January 1, 2000. The September 27, 1999 interim final rule was amended by a rule dated October 7, 1999 (4 FR 54538), and also by a second rule dated January 5, 2000 (65 FR 352). Those amendments were required due to the consolidation of USIA into the Department of State.

User fees were adopted for the first time under the authority of Section 810 of the United States Information and Educational Exchange Act of 1948, as amended, 22 U.S.C. 1475e, and the Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, and following the guidelines set forth in Office of Management and Budget (OMB) Circular No. A-25. Following the consolidation of USIA operations and two regulatory amendments, the Interim Final Rule and the fees established under this rule became Final on April 14, 2000, 65 FR 20083.

In 2006, the Department examined its current Exchange Visitor Program fee structure for compliance with applicable laws and policies, and to determine the appropriate level of fees given the expansion of the offices providing services. This analysis was grounded on the guiding principles set forth in the legislative framework and authorities cited above, namely, that user fees should be fair and reflect the full cost to perform the service; and that services performed on behalf of distinct, identifiable beneficiaries (versus the public at large) should, to the extent possible, be self-sustaining. As a result of the review, it was determined that both additional fee categories and increased fees were required, and the Department published a final rule on November 1, 2007 (72 FR 61800), which became effective December 3, 2007.

The 2007 fee rule identified the program redesignation process as a separate and identifiable service for which the cost of such service should be recouped. This fee is collected from some 1226 academic, governmental, and private sector sponsor organizations. This fee also includes the cost of services arising from a program sponsor's requests for amendments to programs, allotment requests, and updates of information, as well as the costs for program compliance, regulatory review and development, outreach, and general program administration. Also established in the 2007 fee rule were fees charged to foreign national exchange participants for services provided on an individual basis and for the sole benefit of the

exchange participant. (i.e., requests for exchange visitor status changes of program category, extension beyond maximum duration, requests for reinstatement, requests to update the Student and Exchange Visitor Information System (SEVIS) status, and similar requests). The fees received for these individual services also include an apportioned share of costs for regulatory review and development, outreach, and general program administration.

The Department began its biennial review of these established fees in 2009 by publishing a solicitation for services to conduct a fee study. Deloitte and Touche was awarded a contract. The new proposed fee structure was conducted under the guidelines set forth in OMB Circular A-25, as well as the Statement of Federal Finance and Accounting Standards No. 4 (SFFAS 4). In accordance with SFFAS 4, the Department used an "activity-based costing" (ABC) approach to develop a sustainable cost model to align the costs of the program to the specific services performed on behalf of program sponsors and other program stakeholders. Activity-based costing is a method of identifying the work that is performed, how resources are consumed by that work, and how that work contributes to the production of required outputs. The ABC methodology enabled the development of a bottom-up budget that factored in forecasts for expected demand of program services in the years when the fees are effective and would provide the program with adequate resources to meet that future program demand. This fee study relates only to services provided in the administration of the Exchange Visitor Program. The fee study is available for review at <http://exchanges.state.gov/jexchanges>.

### Results of Fiscal Year 2010 Fee Study

#### Full Cost

One of the most critical elements in building the cost models to determine user fees is to identify all of the sources and the appropriate amounts of costs to be included in the analysis. According to the legislative and regulatory guidance as documented in the legal framework, user charges should be based on the full cost to the government of providing the services or things of value. OMB Circular A-25 defines full cost as all direct and indirect costs to any part of the Federal government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement.
- Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment.
- Management and supervisory costs.
- Costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

The generally accepted government accounting practices for managerial cost accounting, published in SFFAS 4, provide the standards for cost definition, recognition, accumulation and assignment as they relate to the recognition of full cost. These standards have been applied to the determination of what costs to include in or exclude from the Exchange Visitor Program fees.

### Cost Model Structure

#### Model Overview

In summary, the Cost Accounting Model takes cost data input into the "Civilian Pay Cost Data", "Activity Model Cost Pools", and "Other Cost Pools" modules, assigns direct costs or allocates indirect and General and Administrative (G&A) costs using ratios derived from the "SEVIS & FTE (Full Time Equivalent) Data" module, and then uses the direct, indirect, and G&A cost pools to calculate the two recommended user fees for the Fiscal Year (FY) 2011-2012 time frame.

The Cost Accounting Model contains eleven modules described in detail in the following sections. Most modules include an FY 2011 tab and an FY 2012 tab, given the need to enter separate data for each fiscal year. The three modules that only have one tab are "Home", "SEVIS & FTE Data", and "Final EVP Fees FY 2011-2012". The modules are sequenced to follow the general flow of calculations performed by the model.

#### Home

The "Home" module is displayed when the user opens the model. This module also provides hyperlinks to support navigation to the other areas of the model.

#### Civilian Pay Cost Data FY 2011 & FY 2012

This module allows the user to enter Civilian Pay data for Private Sector Exchange personnel by General Schedule (GS) Level. The Civilian Pay data entered is then escalated for benefits. This calculation is detailed further in the Cost Accounting Model Data Sources section.

### Activity Model Cost Pools FY 2011 & FY 2012

This module allows the user to enter Labor Survey results by personnel position in the form of percentages. It then multiplies those percentages by the escalated salary calculated in the “Civilian Pay Cost Data” module to create Activity Model Cost Pools. Finally, this module includes a self-check feature to verify the completeness and accuracy of user entries.

### Other Cost Pools FY 2011 & FY 2012

This module allows the user to enter all other costs associated with the EVP, including the following:

- Bureau of Educational and Cultural Affairs, Private Sector Exchange (ECA/EC) non-labor costs
- Bureau of Educational and Cultural Affairs (ECA) labor costs
- Bureau of Educational and Cultural Affairs (ECA) non-labor costs
- Department of State labor costs
- Department of State non-labor costs

### SEVIS & FTE Data

There is only one tab for the “SEVIS & FTE Data” module. It allows the user to input SEVIS historical data for Calendar Year (CY) 2007 through CY 2009, as well as FY 2008 and FY 2009 FTE historical data for the following organizational areas:

- Bureau of Educational and Cultural Affairs, Private Sector Exchange, Office of Designation (ECA/EC/D) and Office of Exchange Coordination and Compliance (ECA/EC/ECC)
  - Human Resources
  - Support Services
- IIP Budget Office (Bureau of International Information Programs)
  - ECA Budget Office
  - Program Management Office
- Bureau of Educational and Cultural Affairs (ECA)
  - Department of State

It then uses these inputs to calculate SEVIS activity projections for Applications for Designation, Applications for Redesignation, and Exchange Visitor Administration Applications for CY 2010 through CY 2012, and FTE projections for FY 2011 and FY 2012. SEVIS and FTE data projections are necessary to create ratios for indirect and G&A cost allocation to each fee later in the model.

### Cost Assignment & Allocation FY 2011 & FY 2012

This module pulls the data from the previous modules in order to assign direct costs or allocate indirect or G&A costs to each fee. The method for allocating indirect and general and administrative (G&A) cost took into

account the volume of services supported by each user fee in terms of SEVIS activity counts. These activity counts can also be viewed as the services procured by the user fees. The method in which the cost is allocated varies by cost pool:

(1) For direct costs, the full cost is assigned to the fee for which it is determined to be a direct cost.

(2) For indirect costs, the full cost in each indirect cost pool is split and each portion is then assigned to the appropriate user fee. This splitting and assignment process is also referred to as cost allocation. This process is accomplished by multiplying the total indirect cost by the ratio of *Total Fee-Related SEVIS Activity Counts to Total SEVIS Activity Counts*. For example, in order to determine the amount of an indirect cost to be applied to the Application Fee, the full indirect cost was multiplied by the ratio of *Total Application Fee-Related SEVIS Activity Counts to Total Activity Counts*. This allocates the appropriate fraction of the total indirect cost to the Application Fee. The same would be done with the ratio of *Total Administrative Fee-Related SEVIS Activity Counts to Total Activity Counts* to determine the complimentary fraction of the indirect cost to be allocated to the Administrative Fee. In so doing, the full indirect cost is appropriately allocated to the two user fees.

For G&A cost, not all G&A cost is allocated to the two EVP user fees since G&A costs support the entire Department not just the cost of the activities supporting the EVP. Deloitte allocated appropriate portions of total G&A cost to the EVP by either FTE ratios or manual percentage as follows:

- For ECA/EC non-labor G&A costs, the full cost was multiplied by the ratio of *ECA/EC/D and ECA/EC/ECC FTEs plus the Bureau’s Executive Office FTEs to ECA FTEs*.
- For ECA labor G&A costs, two separate methods were applied:

- For ECA Front Office labor G&A costs, the ECA provided manual percentages, as these costs represent specific staff positions that support the EVP but not in a full-time capacity.
- For all other ECA labor G&A costs, the full G&A labor cost was multiplied by the ratio of *ECA/EC/D and ECA/EC/ECC FTEs to ECA FTEs minus three*. The ECA FTE number is subtracted by three because the cost for those three positions is already accounted for in the ECA Front Office labor G&A costs detailed above.

- For ECA non-labor G&A costs, the full non-labor G&A cost was multiplied

by the ratio of *ECA/EC/D and ECA/EC/ECC FTEs to ECA FTEs*.

- For Department labor and non-labor G&A costs, the full non-labor G&A cost was multiplied by the ratio of *ECA/EC/D and ECA/EC/ECC FTEs to Department FTEs*.

After completing the calculations just described, the resulting portions of the full G&A costs are allocated to each of the fees in the same way indirect costs are allocated, using SEVIS activity ratios.

The following information depicts the above described assignment and allocation of costs.

### User Fee Cost Pools FY 2011 & FY 2012

This module pulls data from the “Cost Assignment & Allocation” module and groups it into total direct, indirect, and G&A cost pools. It then divides each of those cost pool amounts by the total projected SEVIS activity units to determine each fee’s direct, indirect, and G&A components. It also sums each of these cost components to provide the total for each user fee for FY 2011 and FY 2012. Finally, this module includes a self-check feature to verify the completeness and accuracy of user entries.

### Final EVP Fees FY 2011–2012

This module adds the total costs and SEVIS Activity Units for FY 2011 and FY 2012 from the “User Fee Cost Pools” module in order to provide fees that are based on a two-year fee lifecycle consistent with the EVP regulatory framework requiring current Program Sponsors to apply for Redesignation status every two years. It also includes a self-check feature to verify the completeness and accuracy of user entries.

### Cost Accounting Model Data Sources

#### Civilian Pay Cost Data

For the data input in the “Civilian Pay Cost Data” module, ECA provided Deloitte with each ECA/EC/D and ECA/EC/ECC employee’s GS level, and then Deloitte used the Step 5 salary assumption for each level to determine the salary to be entered for each employee. This figure was then escalated by 36.25% to capture benefits. This percentage is the guidance given for average benefits escalation in *OMB Circular A–76 Performance of Commercial Activities, Attachment C—Calculating Public-Private Competition Costs*.

#### Activity Model Cost Pools

The only data input in the “Activity Model Cost Pools” module is the Labor Survey results. This input was

accomplished by converting the hours each respondent recorded for their position and for each activity they performed during the Labor Survey into percentages of FTEs.

#### Other Cost Pools

For the data input in the "Other Cost Pools" module, ECA provided Deloitte with budgetary data.

- Deloitte used the following methods to derive ECA/EC non-labor costs:

- Costs associated with the new On-site Review and Site Visit travel functions were identified in close consultation with ECA/EC senior management.

Appropriate estimates were developed for FY 2011 and FY 2012. See the On-site Review and Site Visit Travel Cost Estimate section below.

- ECA provided Deloitte with FY 2009 actual expenses for all other ECA/EC Non-Labor costs. The FY 2009 Actuals were then escalated by 3% per year to determine FY 2011 and FY 2012 cost estimates.

- Deloitte used the following methods to derive ECA labor costs:

- For ECA Front Office costs for the Deputy Assistant Secretary for Private Sector Exchange, the Senior Advisor to the Deputy Assistant Secretary, and the Special Assistant to the Deputy Assistant Secretary, Deloitte assumed CY 2010 SES-II pay for the DAS and GS15, Step 5 pay for the Senior Advisor and GS13, Step 5 for the Special Assistant. These salaries were escalated by 36.25% for benefits, and then escalated by 3% per year for CY 2011 and CY 2012 estimates.

- For all other ECA labor costs, Deloitte obtained the 2010 Total Department Budget from the *Department of State Budget in Brief—Fiscal Year 2010* and pro-rated that figure by FTEs, and escalated by 3% per year for FY 2011 and FY 2012 estimates.

- For ECA non-labor costs, ECA/EC approved the use of the FY 2010 estimates projected by Grant Thornton in its 2006 *Exchange Visitor Program Fee Study—Final Report (Draft)*. This figure was then escalated by 3% per year for FY 2011 and FY 2012 estimates.

- For Department labor costs, Deloitte assumed GS-15, Step 5 pay with 36.25% benefits escalation for all Categories. These figures were then escalated by 3% per year for FY 2011 and FY 2012 estimates.

- For Department non-labor costs, Deloitte obtained the Total Department-wide GSA Rents from the *Department of State Budget in Brief—Fiscal Year 2010*. This figure was then escalated by 3% per year for FY 2011 and FY 2012 estimates.

#### SEVIS & FTE Data

ECA/EC provided Deloitte with historical CY 2007 through CY 2009 SEVIS activity counts associated with each user fee, as well as historical ECA and ECA/EC FTE counts. Deloitte obtained historical Department FTE levels from the *Department of State Congressional Budget Justification—Fiscal Year 2010*. Deloitte used this data to determine projected SEVIS and FTE data in the following manner:

- For SEVIS data projections, the following method was developed and approved by ECA/EC:

- ECA/EC provided CY 2007 through CY 2009 data.

- CY 2009 data cutoff of 16 December 2009 required data adjustment from 350 to 365 days.

- CY 2007 through CY 2009 data was averaged and a 2% rate of growth was applied to determine CY 2010.

- CY 2011 and CY 2012 were each projected with a 2% growth rate over the previous year.

- For all FTE data projections, Deloitte obtained FY 2008–2010 Department FTE levels from the *Department of State Congressional Budget Justification—Fiscal Year 2010*. Deloitte calculated a 6.91% average growth rate from FY 2008 through FY 2010 for Department total FTEs. For fiscal years in each of the below organizational areas where FTE data was unavailable, each was projected using this 6.91% growth rate year over year. ECA/EC approved of this projection method.

- For ECA/EC/D and ECA/EC/ECC FTEs, ECA/EC provided FY 2009 through 2011 data; Deloitte used the above method to project FY 2012.

- For the ECA and International Information Programs (IIP) Support Offices (ECA-IIP/EX), the *ECA-IIP/EX Organizational Chart (September 2009)* provided FY 2009 data; Deloitte used the above method to project FY 2010 through FY 2012.

- For ECA FTEs, ECA provided FY 2009 data; Deloitte used the above method to project FY 2010 through FY 2012.

- For Department FTEs, the *Department of State Congressional Budget Justification—Fiscal Year 2010* provided FY 2008 through 2010 data; Deloitte used the above method to project FY 2011 through FY 2012.

#### Travel Cost Estimate

Deloitte, in close consultation with ECA/EC/D and ECA/EC/ECC, developed a travel cost estimate for Site Visits and On-site Reviews. These two general categories of travel by government officials to Program Sponsor locations

will be performed during the FY 2011 and FY 2012 time frame for which the user fees recommended in this report are effective. Site Visits are performed by government officials with entities applying for Designation as an EVP Sponsor. On-site Reviews will take the form of a Liaison Visit, a Redesignation Review, or a Compliance Review. These three types of On-site Reviews are covered in more detail below. Site Visits and On-site Reviews, which will be the responsibility of ECA/EC/D and ECA/EC/ECC respectively, require travel to the potential sponsor or sponsor's place of business. In addition to travel to the sponsors' offices, pre-planning analysis and post-travel reporting will be completed.

#### Site Visit Travel Cost Estimate

In developing the Site Visit Travel Cost Estimate, Deloitte took the top 25 states by Program Sponsor activity (exchange visitor participant) levels as recorded in SEVIS. In addition to using the top 25 states, Deloitte also included other states to provide an accurate picture across the United States. These assumptions were made because, unlike the On-site Review process, Site Visits are planned for entities applying for Designation. Since the cities and states where the potential Program Sponsors will come from are unknown, this method was developed to provide an accurate estimate for costs, while capturing most of the states.

Deloitte mapped appropriate city and state locations based on the above analysis and in consultation with ECA/EC for use in determining per diem, airfare, car rental, and miscellaneous costs in the same manner as the On-site Review Travel Cost Estimate. Deloitte escalated FY 2011 and FY 2012 by 3% to give a more accurate cost for those fiscal years.

Through discussions with ECA/EC, Deloitte set the number of Site Visit travelers to two per trip and concluded that the travelers would range from the GS 9 to 14 levels and include Program Specialists, Program Coordinators and Program Officers. Deloitte also concluded that procedures for pre-visit preparations would also be developed in close coordination with knowledgeable Program Officers and Compliance Officers.

#### On-site Review Travel Cost Estimate

The On-site Review travel cost estimate is based on visiting the top 20 Private Sector Program Sponsors and the top 20 Academic and Government Program Sponsors according to Program Sponsor activity (exchange visitor

participant) levels as documented in SEVIS.

Deloitte determined roundtrip airfare, per diem, rental car, and miscellaneous expense costs for single or multiple destination trips. Deloitte used the per diem rates for FY 2010 found on the GSA Web site. Deloitte also conducted research for roundtrip airfare and car rental prices using the *kayak.com* search engine. Deloitte added all costs, including a set cost for miscellaneous items to cover fees for airline tickets, copying, business calls, etc., to provide a total trip cost. Total trip costs were added together to provide a Total Travel Cost Estimate. Deloitte escalated FY 2011 and FY 2012 per diem rates as well as airfare and car rental prices by 3% each year to provide a more accurate cost for those fiscal years.

The number of travelers for On-site Reviews depends largely on the type of visit or the Program Sponsor. The three types of On-site Reviews that any given sponsor could receive are:

- Liaison Visits
- Redesignation Reviews
- Compliance Reviews.

The primary purpose of a Liaison Visit is to provide ECA/EC with an opportunity for outreach and consultation with Program Sponsors. GS levels of staff conducting these types of visits can vary depending on the purpose of visit and the size of the Program Sponsor. Liaison Visits should include meeting key Program Sponsor staff and touring facilities, and they may last from a half day to one full day. Staff conducting these visits may range from the GS 12 to GS 15 levels, depending on the primary purpose.

The primary purpose of a Redesignation Review is to determine the Program Sponsor's continued eligibility and/or suitability as a designated sponsor. Redesignation Reviews may last from one to two days and should require the participation of both one or more Program Officers and one or more Compliance Officers, usually at the GS 12 to 13 levels, but may also include the GS 9 to 11 levels and the GS 14 level.

The primary purpose of a Compliance Review is to visit Program Sponsors whose performance and compliance with program regulations has come under question. Experience shows that Compliance Reviews may last from two to five days and usually require the participation of both one or more Program Officers and one or more Compliance Officers, with perhaps a supporting Program Coordinator or Program Specialist.

## Regulatory Findings

### *Administrative Procedure Act*

The Department of State is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act (APA). The U.S. Government supervises programs that invite foreign nationals to come to the United States to participate in exchange visitor programs, either directly or through private sector program sponsors or grantees. When problems occur, the U.S. Government often has been, and likely will be, held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems.

The purpose of this rule is to set the fees that will fund the office Exchange Visitor Program services to 1,226 sponsor organizations and 350,000 exchange Visitor Program participants. These services include oversight and compliance with program requirements as well as the monitoring of programs to ensure the health, safety and well-being of foreign nationals entering the United States (these exchange programs and participants are often funded by the U.S. Government) under the aegis of the Exchange Visitor Program and in furtherance of its foreign relations mission. The Department of State represents that failure to protect the health and well-being of these foreign nationals and their appropriate placement with reputable organizations will have direct and substantial adverse effects on the foreign affairs of the United States.

Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule as a proposed rule, with a 60-day provision for public comment and without prejudice to its determination that the Exchange Visitor Program is a foreign affairs function.

### *Regulatory Flexibility Act/Executive Order 13272: Small Business*

As discussed above, the Department believes that this proposed rule is exempt from the provisions of 5 U.S.C. 553, and that no other law requires the Department to give notice of proposed rulemaking. Accordingly the Department believes that this proposed rule is not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or Executive Order 13272, § 3(b).

Nevertheless, the Department has examined the potential impact of this proposed rule on small entities. Entities conducting student exchange programs are classified under code number 6117.10 of the North American Industry Classification System. Some 5,573 for-profit and tax-exempt entities are listed as falling within this classification. Of this total number of so-classified entities, 1,226 are designated by the Department of State as sponsors of an exchange visitor program, designated as such to further the public diplomacy mission of the Department and U.S. Government through the conduct of people to people exchange visitor programs. Of these 1,226 Department designated entities, 933 are academic institutions and 293 are for-profit or tax-exempt entities. Of the 933 academic institutions designated by the Department, none are believed to meet the definition of small entity for Regulatory Flexibility Act analysis purposes. The RFA utilizes the SBA's definition of "small entities" for educational institutions, which are for-profit entities that have annual revenues of less than \$7 million. The RFA defines "small organizations" as any not-for-profit educational institution that is independently owned or operated and not dominant in its field. Of the 293 for-profit or tax-exempt entities designated by the Department, 131 have annual revenues of less than \$7 million, thereby falling within the analysis purview of the Regulatory Flexibility Act. Although, as stated above, the Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and, as such, that this proposed rule is exempt from the rulemaking provisions of section 553 of the APA, given the projected costs (detailed below) to the approximately 131 small entities designated to conduct exchange visitor programs, the Department has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Department asks the public to comment on the agency's estimates of the numbers of small entities and/or the economic impact of this rule on small businesses.

### *Unfunded Mandates Reform Act of 1995*

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the

Unfunded Mandates Reform Act of 1995.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*Executive Order 12866*

As discussed above, the Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has nevertheless reviewed this proposed regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order. The Department has examined the economic benefits, costs, and transfers associated with this proposed rule, and declares that educational and cultural exchanges are both the cornerstone of U.S. public diplomacy and an integral component of American foreign policy. Though the benefits of these exchanges to the United States and its people cannot be monetized, the Department is nonetheless of the opinion that these benefits outweigh the costs associated with this proposed rule. The Department projects the cost to the government of providing Exchange Visitor Program services to be \$3.4 million annually. This rule will provide an estimated \$3.4 million annually that will support the operations of the Office of Designation, including funds for designation and redesignation, for

individual exchange participant services, and the appropriate share of costs for regulatory review and development, outreach, and general program administration. These costs are divided amongst the 1,226 designated sponsors who will account for \$2.7 million of the total \$6.8 million over the next two years, with foreign national exchange participants requesting individual-based program services accounting for the remaining \$4.1 million. The actual increase in annual costs per designated sponsor is \$462 which represents a total annual increase of \$378,302. The cost to foreign national exchange participants requesting program services has been decreased by \$13 per transaction. Though the costs are borne by sponsors and exchange visitors, a benefit-cost study considers these costs to be economic transfers, since money is “transferred” from sponsors and applicants to the Department of State, but society as a whole has not gained or lost any resources in this transaction. Thus, the Department of State has identified \$3.4 million in economic transfers associated with this rule. The Department has not identified any monetized benefits or costs, though it believes that the revenue generated by these fees and charges will enable the Department to administer an effective program and is essential to continuing to support and strengthen the United States’ foreign policy goal of promoting mutual understanding between the people of the United States and other countries.

*Executive Order 12988*

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Orders 12372 and 13132*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

*Paperwork Reduction Act*

The information collection requirements contained in this proposed rulemaking are pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35 and OMB Control Number 1405–0147, expiring on September 30, 2010.

**List of Subjects in 22 CFR Part 62**

Cultural Exchange Program.

Accordingly, 22 CFR part 62 is proposed to be amended as follows:

**PART 62—EXCHANGE VISITOR PROGRAM**

1. The authority citation for part 62 is revised to read as follows:

**Authority:** 8 U.S.C. 1101(a)(15)(f), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451 *et seq.*; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, Div. G, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107–56, Sec. 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, 116 Stat. 543.

2. Section 62.17 is revised to read as follows:

**§ 62.17 Fees and charges.**

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 9701 must be submitted as directed by the Department and must be in the amount prescribed by law or regulation.

(b) *Amounts of fees.* The following fees are prescribed.

(1) For filing an application for program designation and/or redesignation (Form DS–3036)—\$2,700.00.

(2) For filing an application for exchange visitor status changes (*i.e.*, extension beyond the maximum duration, change of category, reinstatement, reinstatement-update, SEVIS status, ECFMG sponsorship authorization, and permission to issue)—\$233.00.

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