



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION



American
Immigration
Council

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U.S. Department of State
SA-5
5th Floor
2200 C Street NW
Washington, DC 20522

Submitted via <http://www.regulations.gov>

RE: 60-Day Notice of Proposed Information Collection: Exchange Visitor Program – Termination of Program Participation, Extension of Program and Reinstatement to Valid Program Status (Docket Number: DOS-2026-0859) Public Notice 13087, RIN:1400-AF23

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) and the American Immigration Council (Council) submit the following comments in response to the 60-Day Notice of Proposed Information Collection: Exchange Visitor Program – Termination of Program Participation, Extension of Program and Reinstatement to Valid Program Status.

Established in 1946, AILA is a voluntary bar association of more than 18,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. AILA's mission includes the advancement of the law pertaining to immigration and nationality, and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. The collective expertise and experience of our members make us especially well-qualified to offer comments on changes to J-1 Exchange Visitor Program rules and their impact on sponsors and participants.

The Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws and protect the legal rights of noncitizens. The Council frequently appears before federal courts on issues relating to the interpretation of the Immigration and Nationality Act (INA) and its implementing regulations.

AILA and the Council submit this comment in response to the Department of State's (DOS) 60-day notice of proposed information collection for "Exchange Visitor Program – Termination of Program Participation, Extension of Program and Reinstatement to Valid Program Status." While the Department of State views the changes as promoting "visitor welfare, program integrity, and national security," several of the proposed changes could lead to harsh results for program participants without leaving a practical opportunity to correct errors, allow for consideration of program priorities, or provide a grace period for departure. For the reasons stated below, AILA and the Council oppose the rule as proposed and urge DOS to revise it according to the recommendations below.

Termination of Program Participation

Under prior DOS regulations at 22 C.F.R. § 62.40, termination was limited to specified circumstances, including failure to pursue the authorized exchange activities, inability to continue participation, violations of Exchange Visitor Program regulations or sponsor rules, willful failure to maintain required insurance coverage, and unauthorized employment. The proposed rule creates a new ground for DOS to terminate Exchange Visitor Program participation if a participant engages in unauthorized work or "falsifies or fails to provide a full and truthful response, information, or documents as part of his or her exchange visitor application or during the ongoing exchange program."¹ This presents a challenge in some instances, because the proposed rule does not define "material omission," leaving open the possibility of inconsistent adjudications if officers fail to distinguish between fraud, harmless omissions, or information learned after issuance. The proposed rule also allows DOS to terminate a participants' J-1 status immediately if the Department of State or the Department of Homeland Security (DHS) revokes or cancels a participant's J-1 visa. In both scenarios, the proposed rule does not provide a practical timeframe or grounds for program participants to contest the termination or to depart the United States in a reasonable time following termination.

In the first scenario, if DOS terminates a person's program participation due to unauthorized work, incomplete information, or statements that are not fully truthful, then they must give the participant 30 days' notice.² The participant then gets a mere 10 days to submit a statement opposing the termination. Ten calendar days is not enough time for a participant to plan and submit a response, especially if the participant opts to seek expert advice or legal counsel prior to submitting a response. For example, if notice of termination is provided on a Friday, then the 10-day period for response could include two weekends and potentially, a federal holiday that would shorten the available time to respond. Instead, AILA and the Council encourage DOS to lengthen the period to submit a statement contesting termination to at least 30 days. Because submitting the statement contesting termination tolls the termination date, and the proposed rule does not provide a required

¹ *Exchange Visitor Program – Termination of Program Participation, Extension of Program and Reinstatement to Valid Program Status*, 91 Fed. Reg. 48021, 48026 (proposed Jul. 30, 2026) (to be codified 22 C.F.R. pt 62) (hereinafter referred to as "Proposed Exchange Visitor Rule" or "proposed rule").

² *Id.*

timeframe for DOS to act on the case after that, allowing more time does not interrupt the overall process but helps ensure that the program participant has adequate time to consider and submit a well-prepared response. On this same issue, the proposed rule prohibits the participant from arguing hardship or “other equitable considerations” in opposing their termination.³ The proposed rule does not define “other equitable considerations.” Given that the proposal does not provide a safe harbor for errors, changes in circumstance, or program priorities, DOS should eliminate the limitation on allowed defenses. Moreover, the proposed rule does not provide a procedure for DOS to follow when considering a contested termination under this section. The proposed rule provides no hearing, process for testing adverse evidence, independent review, standard of review, or burden of proof, which leaves program participants vulnerable to mistreatment.

In the second scenario, the proposed rule requires termination of an Exchange Visitor Program participant’s J-1 status “immediately,” if DOS or DHS revokes or cancels their J-1 visa.⁴ This proposal is unworkable and should be amended both to afford the participant a grace period for departure and to provide information about how DOS will notify affected participants of their visa revocation and status termination.

AILA and the Council encourage DOS to create at least a 30-day grace period for departure following an immediate status termination. Thirty days is the same grace period that follows J-1 program completion and would provide time for the program participant to receive notice and plan for departure. Individuals who have been residing in the United States in J-1 status have residences, personal property and vehicles to dispose of; they might have children enrolled in school and spouses who are employed. Immediate termination of status without notice or a grace period does not allow a practical timeframe to end a person’s stay in the United States. Without a grace period, terminated participants also are vulnerable to detention and removal when they otherwise would depart the United States willingly and voluntarily. Providing a reasonable grace period following termination provides an avenue for affected individuals to arrange their own departure.

Finally, AILA and the Council encourage DOS to confirm how they will notify participants of a visa revocation or cancellation and the resulting termination of status. The Department of State also should confirm that it will notify program sponsors of this action and provide guidance on how a sponsor should update SEVIS. Typically, DOS notifies individuals of visa revocations or cancellations via email and does not notify J-1 Exchange Visitor Programs of the action. Confirming the email method of notification and adding a requirement that DOS notify the Exchange Visitor Program of visa revocations or cancellations and the resulting status termination will avoid complications from lack of knowledge or conflicting information. In addition, DOS should issue guidance clarifying the sponsor's responsibility during DOS investigation periods.

³ *Id.*

⁴ *Id.*

Au Pair Extension Deadline

Under the existing D/S framework, au pairs may submit a request to extend their program participation within 30 days of their program end date.⁵ The proposed rule requires an extension request be made at least 90-days prior to the program end date, requiring an earlier submission than the current rule requiring extension requests within 30 days of the program end date.⁶ In addition, there are no exceptions for late filings.⁷ This means that au pairs and their host families have less time to decide whether an extension is unnecessary and can force au pairs and host families into rash or ill-considered decisions, because the submission period must occur 60-days earlier under the proposed rule, in order to timely file the request before the 90-day deadline. For au pairs, whether to extend their program participation depends on a variety of factors, including but not limited to host-family needs, personal plans, and the viability of a future family match. AILA and the Council urge DOS to retain the existing 30-day extension request period and/or to permit late filings for good cause.

The proposed 90-day extension request period also highlights a potential conflict with another part of the proposed rule that requires verification that the initial program's educational requirements are complete prior to submitting notice of extension.⁸ Taken together, the two requirements – proof of educational completion at the time of the earlier notice – unnecessarily shorten the time in which au pairs may complete their educational credits. Au pairs often participate in established educational programs to obtain the required credits, and undercutting the timeframe in which those programs may be completed by two to three months is disruptive and prejudicial to au pairs' ability to comply with the rules. AILA and the Council urge DOS to allow filings with proof that the educational requirements will be completed by the program completion date and/or prior to the effective date of the extension.

Conclusion

As written, the proposed rule is broad and fails to provide basic protections to J-1 exchange visitors who might be in a vulnerable position while faced with termination from their program. For all the reasons set forth in this comment, AILA and the Council encourage DOS to revise the proposed rule to make its provisions more practical for J-1 program participants and their sponsors.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION and
THE AMERICAN IMMIGRATION COUNCIL

⁵ 22 C.F.R. § 62.31(o).

⁶ Proposed Exchange Visitor Rule, at 48026.

⁷ *Id.*

⁸ *Id.*, at § 62.43(b)(2)(ii).