



# Freedom Network USA

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**RE: Comments on RIN 1400-AD14, Proposed Rule, “Exchange Visitor Program – Summer Work Travel,” 82 Fed. Reg. 4120 (Jan. 12, 2017), [Public Notice 9522]**

Dear Ms. Lowry,

I submit these comments on behalf of Freedom Network USA on RIN 1400-AD14, Proposed Rule, Exchange Visitor Program – Summer Work Travel, 82 Fed. Reg. 4120 (Jan. 12, 2017) (“Proposed Rule”). Freedom Network USA supports many of the Proposed Rule’s changes to J-1 Summer Work Travel (“SWT”) regulations, but the Proposed Rule does not go far enough to fix this deeply problematic program. The J-1 SWT Program has strayed far from its statutory mission of cultural exchange. Sponsors and employers are increasingly using the program to fill labor needs, transforming a program designed to foster international goodwill into a source of cheap, exploitable labor. The results have been devastating for many of the nearly 100,000 SWT workers who arrive to the United States on J-1 visas each year and the countless U.S. workers whom employers are passing over for jobs. The Proposed Rule falls short of accomplishing the overhaul the SWT program so desperately needs to curb the abuses.

In order to comply with the SWT program’s statutory mandate to promote cultural exchange and to stop the abuse of foreign and U.S. workers, the U.S. Department of State, in collaboration with the U.S. Department of Labor (DOL) and other labor and immigration agencies, should overhaul the program to:

- Eliminate the sponsor-based enforcement and monitoring structure and hold employers directly liable for compliance with the program rules. The current structure, which outsources program oversight to the sponsors, is ineffective and a core reason for the proliferation of abuses.
- Regulate the recruitment of J-1 workers to protect against fraud, excessive fees, and human trafficking. Prohibit designated J-1 sponsors from charging fees to workers, and also ban fees charged to workers by third party recruiters with whom sponsors engage, both in the U.S. and abroad. Create a recruiter registry identifying all actors in the chain of recruitment, between the sponsor and the SWT worker.

- Ensure the program is fulfilling its original mission of cultural exchange while guaranteeing that J-1 workers and U.S. workers have robust labor and employment protections. Ban placement in all low-wage jobs with no meaningful cultural exchange component. Require employers to recruit U.S. workers before hiring J-1 workers and to pay J-1 workers a DOL-issued prevailing wage comparable with the average wage for the occupation filled according to local wage standards.
- Provide a path to justice for J-1 workers by protecting them from retaliation, facilitating their ability to hold employers liable, and providing them with legal recourse when sponsors, employers, and recruiters violate their rights.
- Make information about the J-1 program publicly available and easily accessible to ensure that the program and its impact on the U.S. labor market can be monitored and that the regulating agencies can be held accountable by stakeholders and the public.

Freedom Network USA is the nation's largest alliance of experienced advocates advancing a human rights-based approach to human trafficking in the United States. Our members believe that empowering survivors with choices and support leads to transformative, meaningful change. Our members work directly with survivors whose insights and strengths inform our work. And through our national effort, we increase awareness of human trafficking and provide decision makers, legislators, and other stakeholders with the expertise and tools to make a positive and permanent impact in the lives of all survivors. Our members have worked with many individuals who entered the US on a J-1 visa, only to suffer abuse and exploitation at the hands of their employer.

Although the Proposed Rule does not accomplish the much needed overhaul discussed above, it takes steps to remedying the rampant abuse of the SWT program. We commend the Department for addressing these problems. As an anti-human trafficking organization, we value legitimate cultural exchange with other nations, and will not stand for the current administration's scapegoating of immigrants as the source of American workers' struggles. We will continue to fight for standards that elevate all workers. These comments, which discuss several provisions of the Proposed Rule that must be strengthened, reflect this goal.

## Comments

### **A. Definitions – 22 C.F.R. § 62.32(b)**

The Proposed Rule includes a definitional section new to the SWT regulations. The Section includes the definition of "Host Entity." The Host Entity is a "person or organization that employs an exchange visitor" – i.e., an employer. This euphemistic term for employer is problematic for two reasons: (1) it distorts the nature of the relationships between an employer and a J-1 visa holder, which is undeniably employment-based and; (2) it further obscures that employers are one of the program's main beneficiaries. The J-1 SWT program is a work-based exchange program. Although the Department wishes to elevate the cultural exchange aspects of the program, this will not happen via euphemistic regulatory drafting, but rather through comprehensive reform. The work components of the program are central to the J-1 workers' experience and provide a significant boon to participating employers. The work components

must be evaluated and regulated as such. Employers should be referred to as “Host Employers” or “Employers.”

## **B. General Sponsor Responsibilities – 22 C.F.R. § 62.32(d)**

Section 62.32(d) proposes to expand the list of sponsor responsibilities and limits what responsibilities can be outsourced to third parties. Rather than heaping more responsibilities on sponsors, the Department should eliminate the sponsor-based monitoring and enforcement model because it is inherently problematic. SWT workers generally pay hundreds, even thousands, of dollars to the sponsors to participate in the program and be placed with an employer. The sponsors have an incentive to maintain a smooth relationship with the employers to ensure they continue to hire the sponsor’s fee-paying SWT workers. Yet, under the regulations, sponsors are almost exclusively responsible for ensuring their own and their employer partners’ compliance with the program rules. The sponsor, a private entity that has an economic relationship with the host employers, has little incentive to self-police or regulate its business partners. The Department, in collaboration with DOL, should be empowered to directly monitor and sanction employers and other third parties involved in the program. Finally, the Department should also adjust the size of the program downward in order to conduct such monitoring meaningfully.

### **1. Sections 62.32(d)(1) and (2)**

To the extent the Department upholds the flawed sponsor-based enforcement model, the limitations placed on sponsor delegation of activities in Section 62.32(d)(1) and (2) are good. Abuse and deception tend to flourish when intermediaries (or “third parties”) are involved in the screening and vetting process. Sponsors should be prohibited from shifting this work to third parties. We agree employers should be oriented to the program but, for the reasons stated above, the Department, not sponsors, should provide this orientation for employers, contrary to the proposed Section 62.32(d)(1).

### **2. Sections 62.32(d)(3) and (4)**

Sponsors should not be allowed to delegate the responsibilities listed in Section 62.32(d)(3) and (4) to foreign and domestic third parties. In particular, recruitment, housing, and transportation assistance should not be outsourced. Those activities tend to provide opportunities for exploitation by the third parties who charge the SWT workers exorbitant and/or unauthorized fees for their services.<sup>1</sup>

### **3. Section 62.32(d)(5)**

Violations committed by third parties or employers should not be imputed solely onto the sponsor, as proposed in Section 62.32(d)(5) – the Department should hold the sponsor and the

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<sup>1</sup> See generally Southern Poverty Law Center, *Culture Shock: The Exploitation of J-1 Cultural Exchange Workers* (2014), [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/publication/j-1\\_report\\_v2\\_web.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/j-1_report_v2_web.pdf); International Labor Recruitment Working Group, *The American Dream Up for Sale, A Blueprint for Ending International Labor Recruitment Abuse*, (2013), [fairlaborrecruitment.files.wordpress.com/2013/01/the-american-dream-upfor-sale-a-blueprint-for-ending-international-labor-recruitment-abuse1.pdf](http://fairlaborrecruitment.files.wordpress.com/2013/01/the-american-dream-upfor-sale-a-blueprint-for-ending-international-labor-recruitment-abuse1.pdf).

employer jointly and strictly liable for any individual or entity that solicits, hires, purports to hire, processes, houses, and/or transports SWT workers. Employers are one of the main beneficiaries of this program; they should rightfully absorb liability as they are required to do when they hire workers through other guest worker programs.

#### **4. Section 62.32(d)(7)**

Section 62.32(d)(7) proposes that sponsors only be allowed to charge fees to SWT workers that are “legal” and “justifiable.” Sponsors should be prohibited from charging any fees to SWT workers. Agency fees are a catalyst to debt and human trafficking in the SWT program.<sup>2</sup> Any sponsor-assessed fees can and should be shifted to the employers that are benefitting from the program. At the very least, any fees should be capped by regulation at a nominal amount. The requirement that fees be “justifiable” is vague and unenforceable and provides no practical guidance to sponsors on acceptable fees rates.

The Proposed Rule also reiterates the prohibition on sponsors providing financial incentives to host employers at Section 62.32(d)(7). This provision should be maintained. It should also be expanded to include in the scope of “financial incentive” any sponsor-provided excursions for employers to join overseas recruiting trips. An all-expense paid for trip to an exotic locale can serve as an enticing incentive to employers and should be explicitly prohibited.

#### **5. Section 62.32(d)(9)**

We support Section 62.32(d)(9) in that it requires sponsors to place more information about their program on their websites. Such information should be on the public page of the sponsor’s website at the time of recruitment and throughout the SWT worker’s stay, and not merely accessible via a limited portal after the SWT worker has paid relevant fees. The Department should also require and publish a public record of fees charged by sponsors, and any other associated fees or costs that will be assessed as part of the program, on the Department’s website. Finally, this section’s prohibition on a sponsor or third party requiring a SWT worker to remit a portion of his or her earnings in the U.S. to an overseas recruiter should be expanded beyond “earnings.” An overseas private entity (or recruiter) should be prohibited from imposing any charges on SWT workers on the back-end of their exchange. This provision should include a ban on any collateral or other financial guarantee that the SWT worker is required to put forth as a condition of contracting with the overseas entity. For example, advocates have uncovered that some recruiters in the Dominican Republic and the Philippines are requiring workers to post collateral as part of the recruitment contract that is then seized by the recruiter if the worker does not return to his or her country before their visa expiration date.

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<sup>2</sup> See, e.g., U.S. DOJ, *Florida Man Convicted of Sex Trafficking in Connection with Human Trafficking Scheme Targeting Foreign University Students*, <https://www.justice.gov/usao-sdfl/pr/florida-man-convicted-sex-trafficking-connection-human-trafficking-scheme-targeting>; Polaris, *Labor Trafficking in the U.S.: A Closer Look at Temporary Work Visas* (2015) at 9, [https://polarisproject.org/sites/default/files/Temp%20Visa\\_v5%20\(1\).pdf](https://polarisproject.org/sites/default/files/Temp%20Visa_v5%20(1).pdf)

### **C. Exchange Visitor Screening and Selection – 22 C.F.R. § 62.32(e)**

We commend the Department for requiring that SWT workers be, at a minimum, 18 years of age by the program start date. 22 C.F.R. § 62.32(e)(1). This age requirement will cut down on abuses of youth who participate in the program.

### **D. Exchange Visitor Placement – 22 C.F.R. § 62.32(f)**

#### **1. Section 62.32(f)(1)**

Section 62.32(f)(1) requires sponsors to place workers in positions that entail “daily interactions with, and work alongside, American guests, customers, co-workers, and supervisors.” This section makes a cosmetic change to the 2012 Interim Final Rule (IFR), which required workers “to have opportunities to work alongside U.S. citizens and interact regularly with U.S. citizens” during the workday. 22 C.F.R. 62.32(f)(1) (2012). Though this provision attempts to address the common situation where SWT workers are isolated on a job that provides no cultural exchange whatsoever, it is still too vague to be enforceable. “Daily interaction” could include a single exchange with an American person on the job, which is not in line with the program’s purpose. In order to ensure SWT workers are getting meaningful, on-the-job cultural exchange, the Department should create a limited list of appropriate jobs and provide a clear benchmark for meaningful interactions with Americans on those jobs.

Section 62.32(f)(1)(xii) also requires sponsors to place workers at employers where the workers can be reached by the sponsor’s employees within eight hours. This provision will ensure better sponsor monitoring and should be maintained.

#### **2. Section 62.32(f)(2)**

Section 62.32(f)(2) proposes to require sponsors to disclose “whether a partial or full ownership relationship exists between the sponsor and the host entity.” The Department should prohibit, not condone, joint ownership between a sponsor and an employer. The Department relies on sponsors to act as independent monitors of employers; thus, this provision begs the question of how a sponsor that is also the employer will effectively perform such monitoring. This provision codifies the inherent problem with the Department’s sponsor-based enforcement model. J-1 sponsors must be expressly prohibited from also serving as SWT workers’ employers.

#### **3. Section 62.32(f)(3)**

In Section 62.32(f)(3) the Department prohibits sponsors from placing workers with employers where there is a strike, lockout, or other labor dispute “that the sponsor reasonably believes would have a negative impact on the exchange visitor’s program.” This provision will help to ensure that employers are not using SWT workers to undermine the efforts of U.S. workers and union members. However, we are concerned about sponsors using their subjective judgment to determine whether a labor dispute will have a negative impact on a worker’s program, especially when that determination requires the sponsor to remove the worker from the

job in question. This provision should be modified to state that it in no way prevents SWT workers from exercising their right to participate in a union at their host employer.

#### **4. Section 62.32(f)(4)**

Section 62.32(f)(4)(i) provides that SWT workers must have a minimum of 32 hours and a maximum of 65 hours per week, averaged over a two week period. Requiring SWT workers to have a minimum amount of work hours is a positive change and more closely aligns the SWT program with other guest worker programs that require a minimum hours guarantee. Absent such a guarantee, workers can easily be misled into paying thousands of dollars for a full-time job that, in reality, offers many fewer hours. Hours guarantees can also help to prevent conditions akin to debt servitude and human trafficking. A related provision – 62.32(f)(4)(iii) – unfortunately allows employers to circumvent this guarantee if they give the worker two weeks’ notice of the change. The employer should only be permitted to change the terms of the DS-7007, including the minimum hours guarantee, in limited and expressly defined circumstances, such as an act of God.

Section 62.32(f)(4)(i) also places a maximum of 65 hours per week, averaged over a two week period, on the SWT worker. We are concerned that this rigid maximum hours provision does not balance the myriad of competing concerns at play. A cap on the hours of work is needed to protect U.S. workers’ access to hours and to ensure that SWT workers have sufficient time (and energy) to experience American culture. That said, the program’s current structure, which often leaves workers saddled with debt as a result of fees, program costs, and deductions, can force workers to work excessive hours in order to make ends meet. We encourage the State Department to evaluate the maximum hours limit with these considerations in mind, and to specifically evaluate its impact on SWT workers given the program’s treatment of fees and program costs.

Section 62.32(f)(4)(iv) requires SWT workers to give sponsors two weeks’ notice if they plan to leave the employer early or reduce their hours. If the SWT worker does not provide this notice, then the sponsor can terminate the program. 22 C.F.R. § 62.32(n)(2)(v). This provision grants the sponsor too much control over the SWT worker’s program in instances when abusive working conditions might be at play. The provision’s exception for instances when the worker can “credibly allege” workplace abuse appears to leave any determination of “credibility” to the sponsor, which permits sponsor bias for the employer to enter into the calculation. Awaiting a determination of “credible” allegations also could implicate a lengthy delay. This requirement could inadvertently harm the workers the regulation seems designed to protect. Section 62.32(f)(4)(iv) should be removed.

#### **5. Section 62.32(f)(6)**

The Proposed Rule includes new language regarding SWT workers’ compensation. 22 C.F.R. § 62.32(f)(6). This provision retains much of the language from the 2012 IFR, with some minor modifications. Crucially, the provision still does not require SWT workers to be paid a DOL-issued prevailing wage, as is the case in similar, low-wage guest worker programs. This requirement exists in those programs to protect U.S. workers and make sure that local wage rates

are not undercut, and it should apply to J-1 SWT workers so that they are not exploited by employers who seek to underpay their SWT workers vis-à-vis local wage standards. The former and current language fails to provide any methodology or guidance to sponsors and employers for determining what a wage “commensurate with” U.S. counterparts would entail. Without a clearly established methodology, there can be no meaningful enforcement of the Proposed Rule’s wage provision.

The Compensation provision also requires employers to pay SWT workers a wage commensurate with workers on other nonimmigrant visas who are performing the same work. This provision, while ostensibly intended to secure the SWT workers the DOL-issued prevailing wage that must be paid to other guest workers, actually codifies one of the program’s most concerning problems – that is, employers utilizing multiple guest worker programs at once. Allowing employers to staff their jobsites with multiple classes of guest workers, such as H-2B and J-1 guest workers, who are performing the same work permits them to subvert the H-2B program’s cap. Given that employers do not have to pay J-1 workers the prevailing wage, do not have to engage in domestic recruitment efforts before hiring them, and do not have to pay federal employment taxes on them, employers have a clear incentive to supplement their job sites with SWT workers. To remedy this problem, the Department should ban employers from simultaneously using the SWT program and the H-2A and/or H-2B programs and from employing SWT participants if the employer has been certified for H-2B and/or H-2A workers to perform the same or similar work in the past three years. The compensation provision should not explicitly condone the hiring of other guest workers to work alongside SWT workers.

#### **6. Section 62.32(f)(8) and (11)**

Sections 62.32(f)(8) and (11) prohibit employers and sponsors from charging workers for promotional materials, on-the-job training and travel thereto, uniforms, tools, and other equipment needed for the job. Section 62.32(f)(7) also requires the sponsor to inform the employer of its recordkeeping requirements under the Fair Labor Standards Act. These provisions are consistent with existing law and are needed to protect SWT workers from excessive and unlawful deductions. They should be maintained.

#### **7. Section 62.32(f)(9)**

Section 62.32(f)(9) requires sponsors to ensure that employers have not rejected qualified U.S. worker applicants for the same position within 90 days of the date the sponsor confirmed the employer’s formal acceptance of the SWT worker. This provision seems designed to protect U.S. workers from displacement, but it falls short of accomplishing that goal. Employers must be required to recruit U.S. workers before filling jobs with J-1 workers, or else there cannot be a legitimate test of the labor market. U.S. workers must know about the open position in order to apply, which is a prerequisite to determining whether any qualified U.S. applicants were rejected, and employers should be required to hire any minimally qualified U.S. workers before hiring an SWT worker. The Department could easily and cheaply set up a centralized database and website where employers must send SWT job descriptions to, and require that all jobs be posted for no less than 30 days before an employer can work with a sponsor to hire an SWT worker for that specific position.

The 2017 Proposed Rule also inexplicably fails to factor in the more concrete consideration of the impact of unemployment rates on J-1 worker placement, which was at least mentioned as a concern in the 2012 rulemaking (77 Fed. Reg. 27,593, 27,598).

Finally, the current language does not provide any guidelines to sponsors on how to enforce this provision vis-a-vis employers, and, as discussed above, sponsors seeking to place their fee-paying SWT workers with employers have little incentive to police this aspect of the rules.<sup>3</sup>

## **8. Section 62.32(f)(10)**

Section 62.32(f)(10) places a new requirement on sponsors to reimburse SWT workers for payment of union dues. This provision is problematic, especially when read together with the preamble's statement that "because the Summer Work Travel Program is cultural and educational, and not a work program, and because exchange visitors are not in the United States for sufficient time to make use of union services" sponsors should reimburse them for union dues. 82 Fed. Reg. at 4129. For many SWT workers, unions are an important resource for understanding their rights, navigating difficult workplace dynamics, and resisting workplace abuse. The Department should not presume that SWT workers do not need or want to belong to a union at their jobsite. Moreover, requiring sponsors to reimburse union dues can provide an incentive to sponsors to discourage a SWT worker's participation in a union, which could amount to a violation of that worker's rights under the National Labor Relations Act. The Department should focus on regulating sponsor and recruiter fees, not union dues. This provision should be eliminated.

## **E. Door-to-door Sales Placements – 22 C.F.R. § 62.32(g)**

Section 62.32(g) adds new requirements on sponsors who place SWT workers in door-to-door sales positions. The Department expresses legitimate concern with SWT workers employed in door-to-door sales positions, noting that the job includes "unsuitable risks." 82 Fed. Reg. at 4129. Given the well-documented risk of human trafficking in these positions and the Department's own findings, this occupation should be banned from the program altogether.<sup>4</sup>

## **F. Exchange Visitor Host Re-Placement – 22 C.F.R. § 62.32(h)**

Section 62.32(h)(1) prohibits sponsors from charging a SWT worker a fee for a re-placement with a new employer. Advocates have received reports of workers paying re-placement fees on top of the already excessive program fees that sponsors charge. This explicit prohibition is thus a necessary addition to the regulations and should be retained.

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<sup>3</sup> The requirement in Section § 62.32(i)(vi) that sponsors "obtain verification" from the employer that it will not displace U.S. workers is similarly vague. Employers should be required to recruit U.S. workers and to attest that no qualified U.S. applicants were rejected as a condition of receiving SWT workers.

<sup>4</sup> Polaris, *Knocking at Your Door: Labor Trafficking on Sales Crews*, <https://polarisproject.org/resources/knocking-your-door-labor-trafficking-sales-crews> (last visited Feb. 9, 2017).



## **G. Sponsor Vetting of Host Entities – 22 C.F.R. § 62.32(i)**

In Section 62.32(i), the Proposed Rule requires sponsors to more thoroughly vet employers and third parties and to discontinue cooperation with employers who fail to disclose certain information. This is a positive change to the existing regulations and should be maintained. However, this provision needs a mechanism to ensure enforcement. The Department should make a list of employers (and third parties) who did not meet the Section's criteria and/or who were otherwise prohibited from participating in the J-1 program; this could help prevent employers from going to other sponsors, which could lead to a race to the bottom among sponsors that are short of job openings to offer their SWT workers. This list should be available on the Department's website and/or as a link to the sponsor's website and publicly available to other sponsors, SWT workers, and stakeholders.

## **H. Host Entity Cooperation – 22 C.F.R. § 62.32(j)**

Section 62.32(j)(5) and (6) prevent sponsors and employers from limiting an SWT worker's communication with others and require sponsors to terminate the participation of employers that withhold the SWT worker's wages or savings, documents, and/or other property. These provisions accord with relevant employment laws, including those preventing human trafficking and retaliation. They should be maintained. The Section should also include a requirement that sponsors report the employer's unlawful activities to the relevant agencies/authorities. Employers who violate this provision should also be included in the publicly available list mentioned in Part G above. We also commend the Department for requiring sponsors to regularly monitor employers' compliance with the regulations to the extent this imposes an on-going monitoring requirement on sponsors. 22 C.F.R. § 62.32(j)(1).

## **I. Program Exclusions – 22 C.F.R. § 62.32(k)**

Section 62.32(k) expands the list of banned occupations for the SWT program. This expansion is a positive change, but it does not go far enough. The Proposed Rule extends the ban to isolated jobs, repetitive-motion jobs, and janitorial, waste management, and custodial work – all of which must be excluded as those jobs provide no opportunity for cultural exchange. The provision inexplicably falls short of expressly excluding housekeeping despite numerous and well-documented complaints from SWT housekeepers.<sup>5</sup> Housekeeping is an arduous job usually done behind closed doors that provides no opportunity for cultural exchange. The Proposed Rule also removes critical language from the 2012 IFR that required sponsors "to use extra caution when placing students at employers in lines of business that are frequently associated with human trafficking persons (e.g., modeling agencies, housekeeping, and janitorial

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<sup>5</sup> See, e.g., Michelle Theriault Boots, *In Alaska, young foreign workers on "cultural exchange" visas wash the dishes and make hotel beds*, <https://www.adn.com/features/business-economy/2016/08/13/in-alaska-young-foreign-workers-on-cultural-exchange-visas-wash-the-dishes-and-make-the-beds-of-tourists/>; Tony Bartelme, *Foreign students mistreated in Myrtle Beach, group says*, [http://www.postandcourier.com/archives/foreign-students-mistreated-in-myrtle-beach-group-says/article\\_e497108d-8eb9-54f3-82e1-60805fc96eb5.html](http://www.postandcourier.com/archives/foreign-students-mistreated-in-myrtle-beach-group-says/article_e497108d-8eb9-54f3-82e1-60805fc96eb5.html); Miles Bryan, *Cultural Visitor Or Laborer? J-1 Student Visa Program Fails To Deliver American Experience*, <http://wyomingpublicmedia.org/post/cultural-visitor-or-laborer-j-1-student-visa-program-fails-deliver-american-experience>; Southern Poverty Law Center, *Culture Shock: The Exploitation of J-1 Cultural Exchange Workers* (2014), [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/publication/j-1\\_report\\_v2\\_web.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/j-1_report_v2_web.pdf).

services).” 22 C.F.R. 62.32(g)(8) (2012). The Department provides no explanation for why it removed that important admonition, and it does not explain why it is not banning housekeeping despite numerous reports and previous comments suggesting that a housekeeping ban is necessary. The only aspect of this provision that addresses housekeeping is the prohibition on jobs that pay the workers on a “piece work basis (i.e., based on the number of . . . rooms cleaned).” 22 C.F.R. § 62.32(k)(6). As stated above, this minor modification does not go far enough. Housekeeping should be banned.

The Department removed the ban on positions that are substantially commission-based “and thus do not guarantee that participants will be paid the minimum wage.” 22 C.F.R. 62.32(h)(11) (2012). The Department provides no explanation for why this ban was lifted. As stated above, door-to-doors sales positions are rife with abuse and should be banned.

Finally, this section continues to allow staffing agencies to have a role in the SWT program. 22 C.F.R. 62.32(k)(7). The only additional burden the Proposed Rule imposes on sponsors that place workers at staffing agencies is to vet those agencies prior to placement. Labor staffing agencies have no place in a cultural exchange program. Even with the limitations on staffing agencies in the 2012 IFR, serious issues involving these entities still occurred.<sup>6</sup> Staffing agencies need to be banned from the program altogether.

#### **J. Exchange Visitor Housing and Local Transportation – 22 C.F.R. § 62.32(l)**

The Proposed Rule includes more rigorous housing and transportation requirements that seem designed to reduce the isolation of SWT workers. The Proposed Rule will also reduce the financial burden on SWT workers for housing and transportation and will ensure those facilities are safer. These changes are positive and should be maintained. In instances where the employer provides the transportation, as contemplated in Section 62.32(l)(3), the cost of such transportation should be less than the weekly or monthly rate for comparable public transportation in the area of activity.

#### **K. Form DS-7007 (Host Placement Certification) – 22 C.F.R. § 62.32(m)**

Section 62.32(m) proposes a new form DS 7007, signed by the sponsor, employer, and SWT worker that outlines in detail the terms and conditions of employment. The DS-7007 form will aid in promoting pre-departure disclosures, post-arrival job and housing security, and overall transparency in the program. The DS 7007 should be made a permanent feature in the program.

Section 62.32(m)(3) appears to allow employers to make changes to the DS 7007 post-arrival, and to allow employers to fire (“request . . . that the exchange visitor be placed elsewhere”) the SWT worker if he/she does not consent to such changes. This loophole could defeat the purpose of the DS-7007, which is to “ensure that [the SWT workers] are fully aware” of their terms and conditions of employment prior to arrival to the United States. 82 Fed. Reg. at 4131. Section 62.32(m)(3) should be removed or modified to permit employers to

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<sup>6</sup> See, e.g., Tony Bartelme, *Foreign students mistreated in Myrtle Beach, group says*, [http://www.postandcourier.com/archives/foreign-students-mistreated-in-myrtle-beach-group-says/article\\_e497108d-8eb9-54f3-82e1-60805fc96eb5.html](http://www.postandcourier.com/archives/foreign-students-mistreated-in-myrtle-beach-group-says/article_e497108d-8eb9-54f3-82e1-60805fc96eb5.html).

change the DS 7007 in only limited and enumerated circumstances. And in those circumstances SWT workers should be reimbursed for any program fees paid and travel arrangements made in reliance on receiving the terms outlined in the DS 7007. Finally, all info collected on the DS 7007 should be made publicly available on the Department's website in a disaggregated and searchable format.

#### **L. Exchange Visitor Pre-Departure Orientation and Documentation – 22 C.F.R. § 62.32(n)**

The Proposed Rule requires sponsors to provide SWT workers a pre-departure orientation with more specificity about what that orientation should entail. The orientation must include information on how to report and identify workplace abuse and housing violations. 22 C.F.R. § 62.32(n)(1)(iv). Though we commend the Department for attempting to address the need for a pre-departure orientation, the sponsors are not sufficiently equipped or motivated to provide an orientation on identifying abuses by their employer and third-party partners. The Department should provide this orientation itself, in conjunction with the relevant labor and housing agencies. At the very least, the Department should work with workers' and immigrants' rights groups on creating "Know Your Rights" materials that sponsors are required to provide during the orientation, similar to the collaborative process used for creating the "Know Your Rights" pamphlets now provided to all non-immigrant visa holders at U.S. embassies abroad.

#### **M. Cross Cultural Activities – 22 C.F.R. § 62.32(o)**

We commend the Proposed Rule for including greater specificity about the cross-cultural activities that sponsors and host employers must provide. We note that a SWT worker's participation in these activities should not be mandatory, and failure to attend should not be cause for program termination, as proposed in Section 62.32(n)(v). SWT workers will find their own cultural exchange activities if their work schedule is appropriately limited. They should not be punished for refusing to engage in off-the-clock activities with their employer.

#### **N. Exchange Visitor Monitoring and Assistance – 22 C.F.R. § 62.32(p)**

The increased monitoring of and assistance to SWT workers the proposed rule requires of sponsors is good. However, too often "email" is taken to mean an automated message with a link to an online survey. At the very least, when problems are noted through online survey, it should trigger the sponsor to initiate actual one-on-one person contact to address problems the SWT worker raises through the survey.

#### **O. Sponsor Use and Vetting of Foreign Third Parties – 22 C.F.R. § 62.32(q) and (r)**

Sections 62.32(q) and (r) expand the requirements on sponsors' use and vetting of foreign third parties. These requirements will better ensure that third parties understand and follow the regulatory requirements and comport with the purpose of the program. We specifically support the provision that allows the Department to prohibit a sponsor from using a foreign third party whom the Department has determined does not meet the relevant criteria. 22 C.F.R. 62.32(q)(9). To completely curb the risk of recruitment abuse, however, the Department should hold employers jointly liable for the abuse and violation of the overseas recruiters. Moreover, all

actors in the chain of recruitment should be identified by the sponsor and published on the Department's website, with a link to the relevant job terms, so that SWT workers can confirm the veracity and terms of offered opportunities, including all associated fees.

#### **P. Sponsor Use and Vetting of Domestic Third Parties – 22 C.F.R. § 62.32(s) and (t)**

Sections 62.32(s) and (t) expand the requirements on sponsors' use and vetting of domestic third parties. These requirements will better ensure that third parties understand and follow the regulatory requirements and comport with the purpose of the program. We specifically support the provision that allows the Department to prohibit a sponsor from using a domestic third party whom the Department has determined does not meet the relevant criteria. 22 C.F.R. 62.32(s)(7). This provision should extend to employers who also do not meet the criteria for a "host entity." To completely curb the risk of abuse, however, the Department should hold employers jointly liable for the abuse and violation of the domestic third parties. Finally, the provision requiring sponsors to place information about each domestic third party on its website is good and should be retained. 22 C.F.R. § 62.32(s)(4).

#### **Q. Proposal to Re-Evaluate the Cap and Moratorium on Designating New Sponsors**

We oppose lifting the cap on the number of SWT participants (which is currently at 109,000) and lifting the moratorium on new SWT sponsor designations. As the Department learned in 2011, when the program is allowed to grow unchecked and the regulations are in flux, problems only mount. 76 Fed. Reg. 68,808 (Nov. 7, 2011). The Department already lacks the capacity to manage a legitimate cultural exchange program and enforce protections for the nearly 100,000 workers who participate in the program. Additionally, the regulations still lack crucial protections for U.S. workers who will be directly affected by an increase in the cap.

According to the Bureau of Labor Statistics, the youth unemployment rate for 2016 (for workers ages 16-24) was 11.5 percent, well over double 4.9 percent national unemployment rate for all workers in 2016.<sup>7</sup> This statistic suggests that many U.S. workers are available and seeking the same unskilled and seasonal jobs that employers are filling with SWT workers. As a result, until the program is reformed in accordance with the principles we outline above, we encourage the Department to maintain the cap or adjust it downward. Another option would be for the Department to set a cap that would vary according to the national youth unemployment rate. We recommend that at the beginning of each fiscal year, if the national youth unemployment rate averaged above five percent during the preceding year, the SWT program would be capped at 30,000 (approximately the 1998 level). But if the national youth unemployment rate has averaged under five percent during the preceding fiscal year, the upper limit of the SWT program could be set as high as 50,000.<sup>8</sup> Or in the alternative, at the very least, the Department should leave it up to Congress to decide whether the cap should be increased.

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<sup>7</sup> Bureau of Labor Statistics, June 2016, News Release: Employment and Unemployment Among Youth — Summer 2016, <https://www.bls.gov/news.release/pdf/youth.pdf>.

<sup>8</sup> See Daniel Costa & Ross Eisenbrey, "EPI public comments on State Department's changes to J-1 visa Summer Work Travel program," Economic Policy Institute (July 10, 2012), at 7 (proposing a lower numerical limit for SWT and inversely tying the annual cap to the youth unemployment rate), <http://www.epi.org/publication/public-comments-state-department-j-1-swt-program-july-2012/>.

If the cap is not increased there will be no need to lift the moratorium on new sponsor designations. In any event, we oppose lifting the moratorium on the designation of new SWT sponsors, as more sponsors could encourage a “race to the bottom” whereby sponsors forgo strong monitoring and oversight practices to secure more partnerships with employers seeking as little regulation as possible. Should the Department decide to lift the moratorium, then the Department’s practices for sanctioning sponsors need to be improved.

### **Conclusion**

The 2017 Proposed Rule and the public comment process present an important opportunity for the Department to make constructive reforms to the SWT program. We sincerely hope the Department will consider our abovementioned suggestions on how to reform the program.

Sincerely,

A handwritten signature in black ink that reads "Jean Bruggeman". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Jean Bruggeman  
Executive Director