

to one of those classifications (for example, an alien admitted as an F-2 dependent or a B-2 visitor for pleasure who seeks to pursue full-time study as an F-1 college student) also will pay the fee prior to applying for the change of status. However, an alien who has already paid the \$100 or \$35 fee, prior to obtaining F, J, or M nonimmigrant status, is not required to pay the fee again at the time of applying for an extension of status in the same classification as an F, J or M nonimmigrant. DHS has sought to build in as much flexibility as possible for the payment of the fee, recognizing that aliens abroad will be required to pay the fee prior to seeking an F, J or M visa at a U.S. embassy or consulate. Accordingly, DHS proposes two options for aliens to pay the fee:

(1) The alien may pay the fee by mail, by submitting Form I-901, Fee Remittance for Certain F, M, and J Nonimmigrants, together with a check or money order drawn on a U.S. bank and payable in U.S. dollars to "I-901 Student/Exchange Visitor Processing Fee;" or

(2) The alien may submit the fee electronically, by completing Form I-901 through the Internet and using a credit card.

These options are similar to the usual means that any student or exchange visitor abroad would use to pay fees and expenses to the school or exchange program. The requirement that a check or money order be drawn on a U.S. bank does not necessarily mean that the student living abroad must approach an U.S. bank to make a payment. As provided in 8 CFR 103.7(a)(1), an application fee submitted from outside the U.S. "may be made by bank international money order or foreign draft drawn on a financial institution in the United States" and payable in U.S. currency. Many foreign banks are able to issue checks or money orders drawn on a U.S. bank. Accordingly, students may obtain checks from banks chartered or operated in the U.S., from foreign subsidiaries of U.S. banks, or from foreign banks that have an arrangement with a U.S. bank to issue a check, money order, or foreign draft that is drawn on a U.S. bank.

DHS will issue a paper receipt to the alien in each case acknowledging the payment. As discussed further below in response to the public comments on the December 21, 1999 proposed rule, an alien who submits the fee electronically will be able to print out an immediate electronic receipt. Finally, DHS intends to incorporate the fee payment information electronically into SEVIS, which will then be passed in a data

share arrangement to the Department of State so that a consular officer abroad will be able to confirm that the fee has been paid at the time the alien applies for an F, J, or M visa.

To accommodate multiple options for payment, DHS intends to continue to consider alternate means for payment where available. Such options may include other companies that have products and services that facilitate fee payment and fee receipt abroad or collection of the fee payment by another federal agency.

How Has Congress Amended the Law as It Relates to the Collection of the Fee?

The provisions in this proposed rule have taken into account amendments to section 641 of IIRIRA contained in section 404 of the Visa Waiver Permanent Program Act of 2002, Pub. L. 106-396 dated October 20, 2000, and section 416 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107-56, dated October 26, 2001.

As initially enacted by Congress, section 641(e) of IIRIRA required the schools and exchange programs to collect the fee. Because of the many concerns presented by that approach, DHS, working in cooperation with other governmental agencies and members of the regulated community, submitted to Congress amendatory language to section 641(e) of IIRIRA, removing the schools and exchange visitor programs from the role of fee collectors. Congress adopted this language with modifications in section 404 of the Pub. L. 106-396. The fee will now be collected from the alien directly by DHS.

The USA PATRIOT Act expanded the class of nonimmigrants subject to the fee. Section 416 of the USA PATRIOT Act provided that the SEVIS program and the applicable fee cover all F and M students attending an approved educational institution, not merely those attending an institution of higher education. It also specifically required that flight schools be included in both the fee requirement and the underlying tracking system.

Was a Previous Proposed Rule Published Prior to the Issuance of This Proposed Rule?

On December 21, 1999, a proposed rule was published in the **Federal Register** at 64 FR 71323, proposing to implement the fee collection process pursuant to section 641(e) of the IIRIRA. Specifically, the proposed rule sought to establish a \$95 fee that schools and

exchange visitor programs would collect and remit on behalf of qualifying F-1, J-1, and M-1 nonimmigrants upon the occurrence of certain events during the course of the student's or exchange visitor's stay in the United States. The proposed rule also calculated the basis for the user fee population base and outlined the associated program costs from which the fee amount was derived. Written comments were due by February 22, 2000.

A total of 4,617 comments were received on the proposed rule.

Since the receipt of comments on the initial proposed rule, the HSA abolished the Service. Likewise, there have been several statutory changes relating to the collection of fees. SEVIS, a concept at the time of the proposed rule, has been implemented and I-20's and DS-2019's not issued through the SEVIS system are no longer valid. In light of these factors, DHS is issuing this proposed rule, in lieu of implementing a final rule.

The following is a discussion of differences between this proposed rule and the rule proposed in 1999, as well as comments received regarding the 1999 proposed rule and DHS's response. Many commenters to the 1999 proposed rule addressed identical issues in their comments, and as a result, the number of comments exceeds the number of issues discussed here. This proposed rule also responds to legislative enactments affecting the collection and the fee amount that occurred after publication of the 1999 proposed rule. Taking into consideration both the comments received and the passage of the new legislation, DHS proposes the resulting regulatory provisions set forth herein.

Significant Differences Between This Proposed Rule and the Rule Proposed in 1999

On December 21, 1999, a fee of \$95 was proposed in the **Federal Register** to support SEVIS (64 FR 71323). After careful evaluation of the costs to design, develop, and maintain the statutorily mandated information collection system, DHS now proposes the fee as \$100 for nonimmigrant students and exchange visitors, and \$35 for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program, initially arriving or continuing a program in the United States. In addition, DHS proposes to collect the fee from the student or exchange visitor directly, rather than placing the burden on the school or exchange program to collect or remit the fee.

Additionally, DHS now has specifically authorized an exemption