

from fee payment for aliens who initially paid a SEVIS fee and applied for an F-1, F-3, J-1, M-1, or M-3 visa, but whose initial application was denied by the consular officer abroad. DHS has provided that such an alien will not have to pay a new SEVIS fee if the new application for a visa is made within nine months of the notice of denial. This length of time was selected as consistent with exceptions for payment of duplicative fees. DHS acknowledges that this policy may differentiate in treatment between aliens present in the United States and aliens who are outside the United States. However, DHS believes it is imperative for aliens to be extended the benefit of only paying one fee for a limited time period, to take into account changes in program upkeep and maintenance as well as individual circumstances.

DHS seeks comments from the public regarding the length of time provided in the exception for aliens re-applying after a denial of a visa by a consular officer.

#### **Discussion of Comments Received Regarding the 1999 Proposed Rule**

There was a total 4,617 comments regarding the collection of the required fee as set forth in the 1999 proposed rule. The following paragraphs will address each issue raised in comments received. This discussion will not describe in detail the provisions outlined in the 1999 regulation, but rather will address only those provisions relevant to the comments received. In general, commenters opposed imposition of this fee. Many commenters felt the fee itself was excessive. Many commenters also discussed various aspects of the fee collection process. The vast majority of commenters suggested that the fee should not be collected by educational institutions or exchange visitor programs, but should instead be collected by the Federal Government. As previously stated in the summary to this proposed rule, all reference to the Service has been changed to DHS even though the events may have preceded March 1, 2003.

##### ***I. Fee Amount***

A primary issue of concern cited by the majority of commenters was that the proposed \$95 fee was excessive and that the imposition of this fee disproportionately would affect students who stay in the United States for shorter periods than a full 4-year course of study. Commenters further stated that the proposed regulation outlining the collection and remittance of the fee was based on inaccurate and outdated data.

As discussed in the 1999 proposed rule, at 64 FR 71323, an extensive fee study was conducted to arrive at the fee amount authorized by the proposed rule, utilizing the enrollment figures for foreign students and exchange visitors on the best available data. The proposed \$95 fee as indicated in the 1999 proposed rule was necessary to cover the design and development costs of carrying out section 641 of IIRIRA.

To address the concerns raised by the education community and to reassess the amount of the fee based on changes in the student program and project funding since publication of the proposed rule, DHS decided to undertake a new fee review. KPMG Consulting was hired to conduct an objective fee review and ensure that applicable federal law and fee guidance were adhered to. The fee review included the recovery of historical costs and costs over the FY 2003/2004 time period, as well as the appropriated monies received. The fee review also included costs for increased staffing and training for DHS personnel involved in the student program at DHS headquarters, district offices, service centers and regional offices as well as the DOS.

The fee study methodologies for the initial fee study and the second fee study were essentially the same. The basic change between the two studies is the assumptions that went into the calculation of the fee. The second fee study took into account changes resulting from the \$36.8 million in counter-terrorism funding to expedite development of SEVIS and the legislation that identified the \$35 fee for certain J nonimmigrants. DHS has determined that the student fee should also provide for the resources necessary to ensure compliance with regulations. The need to pay for these additional resources was not included in the KPMG study, but is now factored into the determination of the calculation of the fee amount in these regulations.

SEVIS Liaison Officers will be a local resource for schools and students, providing timely and accurate information or assistance in meeting the requirements of the program. SEVIS Liaison Officers may visit schools, interview school officials, review records, compare system information to school information, and assist schools with system security issues. They will also coordinate with local school representatives and work on local training programs. Finally, SEVIS Liaison Officers will be available to assist immigration and other law enforcement officials who may have a need for information derived from

SEVIS. Other ICE officers will conduct investigations to ensure compliance with these regulations. In addition, these officers will work in conjunction with SEVIS Liaison Officers for school reviews and re-certifications.

This initial fee as authorized by IIRIRA is not to exceed \$100. Further, the fee for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program is not to exceed \$35. However, IIRIRA also provides that the Secretary of Homeland Security may, on a periodic basis, revise the amount of the fee imposed and collected to take into account changes in the cost of carrying out this program. Pursuant to the Chief Financial Officers Act of 1990, DHS will review this fee every two years. Upon review, if it is found that the fee is either too high or too low, a new fee may be requested.

This fee proposed in this rule will support personnel costs, ongoing system operation and maintenance costs, training costs, and other costs related to the program. Based on prior data, approximately 362,400 F-1 students are expected to enter the United State in Fiscal Year 2004. Another 312,000 J-11 exchange visitors are also expected to enter the United States. In order to ensure that the personnel, system operations and maintenance, and training costs are supported, as well as providing compliance resources for the program on a sustained basis, and to remain within the initial \$100 limitation on the fee amount, DHS recalculated the fee to cover the costs of 61 SEVIS Liaison Officers and 182 other ICE officers in the field. Based upon estimates of the total foreign student population and estimates of the total man-hours that will be needed to ensure compliance with the SEVIS requirements, DHS has estimated that this number of officers will constitute approximately 60% of the personnel resources needed for compliance efforts. DHS intends to staff 100% of the necessary SEVIS Liaison Officers and ICE Officers necessary to ensure compliance efforts, even if the costs of staffing exceed the funds generated by this proposed fee. Because of the initial \$100 fee limitation, however, the fee proposed in this rule is now determined to be \$100, and \$35 for certain J nonimmigrants.

The application of user fees as a funding source for compliance activities has been widely used and permitted since the introduction of user fees in the early 1980's. A federal agency is allowed to recoup the "full cost" of providing special benefits, including the costs of enforcement, collection,