

research, establishment of standards, and regulation, when calculating its fees. Indeed, DHS currently recoups the cost of detecting and deterring fraud and protecting the integrity of benefits and documents through its immigration benefit application fees.

Commenters objected both to the concept of a fee, as well as the fee level proposed. Many commenters to the 1999 proposed rule stated that the imposition of a fee would adversely affect the position of the United States in the international student market, and that the regulations authorizing collection of such a fee will interfere with important cultural exchanges. Additionally, many commenters noted that the imposition of the fee would affect the availability of seasonal and short-term foreign employees. DHS understands these concerns; however, collection of a fee of up to \$100 associated with the student and exchange visitor data collection system was mandated by Congress. Thus, DHS is required, by statute, to impose a fee on the system's participants and, as noted above, DHS has taken into account the program costs in setting the fee. Finally, no supporting documentation was provided by the commenters to demonstrate that the imposition of a fee will have the adverse effects suggested in the comments.

II. The Collection and Remittance Process

Most commenters to the 1999 proposed rule expressed strong opposition over the proposed rule's designation of educational institutions and exchange visitor programs as fee collectors. Comments stemming from this primary topic included: the lack of resources and infrastructure at educational institutions and exchange visitor programs to collect and remit the fee; the inappropriateness of requiring such groups to serve as enforcers of federal law in instances where the student or exchange visitor failed to pay the fee; and the absence of any financial assistance from the government to help defray the cost of setting up a fee collection system. Rather, commenters suggested that the Federal Government should directly collect the proposed fee without involving these institutions and programs in the collection and remittance process.

As previously discussed, subsequent to the publication of the 1999 proposed rule, Congress revised the law to provide that DHS itself will collect the fee directly from the alien prior to the alien's classification as an F-1, F-3, J-1, M-1, or M-3 nonimmigrant, and this revised proposed rule incorporates this

statutory change. The schools and exchange visitor programs in which such aliens wish to participate will not need to have any role whatsoever in the collection of the required fees. Additionally, consistent with comments made to the 1999 proposed rule and with section 641 of IIRIRA, which directs that the design and development of the student/exchange visitor information collection system be electronic. DHS now proposes a fee payment process that utilizes both electronic and paper-based methods. Aliens with access to the Internet will be able to complete the Form I-901 and remit payment through a website sponsored by the Federal Government. Given that some students and exchange visitors may not have access to the Internet, the Form I-901 will also be available on paper, and those aliens may remit payment to DHS by mail to the address listed on Form I-901. DHS also solicits suggestions as to whether there might be alternative payment methods offered to facilitate fee payment and receipt.

Aliens who apply for their nonimmigrant visas while abroad will be required to pay the fee prior to submitting their visa application to the U.S. embassy or consulate with jurisdiction over their place of residence. Aliens who are already located in the United States will be required to pay the fee prior to submitting their request to DHS for change of classification as an F or M student or a J-1 exchange visitor. Aliens who are exempt from the visa requirement described in section 212(d)(4) of the Act will be required to pay the fee prior to the granting of admission to the United States. Upon payment in each of these situations, DHS will provide the alien with a paper receipt to be used by the alien to demonstrate that he or she has complied with the fee requirement.

DHS and the DOS are also working on integrating a data share arrangement in order to provide consular officers electronic access to an F, J, or M nonimmigrant's fee payment information. For those nonimmigrants who are unable to receive the paper receipt, in the future, the consular officer will be able to verify fee payment information when verifying the electronic Form I-20 or DS-2019 information. Such an arrangement will ensure that in instances where paper receipts sent by mail are either not received in a timely manner or not at all, the issuance of the nonimmigrant visa will not be delayed unnecessarily.

III. Aliens Exempt From the Fee

The law provides that an alien seeking J-1 status to participate in an exchange program that is sponsored by the U.S. government is exempt from paying a fee.

IV. The Frequency of the Fee

Many commenters to the 1999 proposed rule suggested that the fee should not be required each time a student or exchange visitor changes institutions or programs. DHS agrees with this suggestion and therefore proposes in this rule that students and exchange visitors will not have to pay a new fee upon each transfer to a new school or exchange program or upon commencement of a new program immediately following completion of the initial program. Rather, students and exchange visitors will only be required to pay the fee prior to being classified into the F, J, or M visa category. Thus, aliens seeking either initial enrollment at a school or initial participation in an exchange visitor program will be required to pay the fee prior to applying for their visas. As a result, many aliens will be paying the fee while abroad. As stated in section 641(e) of IIRIRA, as amended, such aliens will be required to present proof of fee payment, as part of their visa application, to the U.S. embassy or consulate prior to the granting of the visa. In the future, as part of a data share arrangement between SEVIS and DOS, consular officers will have electronic access to an alien's fee payment information. At that time, DOS may use the electronic information to verify whether the fee has been paid by the alien and may not require the alien to present the actual paper receipt as proof of payment. However, until such a data share arrangement is in place, if the alien does not submit the paper receipt as proof of payment, the consular officer will be required to deny the visa application. Similarly, aliens already located in the United States will be required to pay the fee prior to applying to DHS for change of classification to an F, J, or M visa category. It is important to note that under this proposed rule, the alien will be required to pay the fee only one time prior to being classified as an F, J, or M nonimmigrant. Students or exchange visitors whose initial visa applications are denied by a United States consular officer will not be required to pay the fee again when reapplying for the same status for which the alien originally applied within nine months of the notice of denial.

Students and exchange visitors who have already paid the SEVIS fee would