

641(e) of IIRIRA. The commenters stated that revenue generated from collection of the fee should be deposited in an account separate from the general Examinations Fee Account. In response to these comments, and in recognition that section 641(e) of IIRIRA specifies that the fee be imposed for the specific purpose of designing, developing, and maintaining the F, J, and M nonimmigrant monitoring system, DHS will establish a sub-account under the general Examinations Fee Account, into which revenue generated by the fee will be placed. Only costs associated with the F, J, and M nonimmigrant monitoring system and program mandated by section 641(e) of IIRIRA will be supported by the funds in this account.

Several commenters noted that the 1999 proposed rule imposed yet another fee on international students, and that foreign countries will respond to the fee by imposing fees on U.S. students studying abroad. DHS is statutorily mandated by section 641(e) of IIRIRA to impose and collect a fee from each student and exchange visitor identified under section 641(e)(3) of IIRIRA. Additionally, under 31 U.S.C. 9701, DHS must assess a fee for the participation in any program that affords a particular benefit to an identifiable recipient.

In converting the older paper-based process to one that is automated, DHS intends the reengineered student and exchange visitor information collection program to benefit all F, J, and M nonimmigrants by creating a more effective and timely process for verifying their compliance with the conditions of their status.

Several commenters to the 1999 proposed rule suggested that those F, J, and M nonimmigrants subject to the fee should be refunded or credited for fees that are paid in error. DHS agrees with this suggestion. As with all fees imposed by DHS, students and exchange visitors will be refunded any amount of the fee that is erroneously remitted on the part of the alien to DHS.

VII. Description of Fee Payment Process

Several commenters stated that the 1999 proposed rule did not address the process by which the fee will be collected from students/exchange visitors who obtain their visas through a change of status. As previously discussed, nonimmigrants who are seeking a change of status to F-1, F-3, J-1, M-1, or M-3 status will be required to pay the fee prior to the granting of their new status. Under this proposed rule, payment of the fee may be remitted either electronically or by paper prior to

the nonimmigrant's application for a change of classification. The nonimmigrant will be required to provide evidence of payment as part of his or her application for change of status. Absence of proof of fee payment will result in a denial of the application request. In the future, the officers will also have access to the electronic fee payment information in SEVIS to verify payment in instances where the paper receipt is lost or never received by the nonimmigrant.

DHS is cognizant of the fact that many prospective students and exchange visitors are from developing countries that may have delays in mail delivery and may lack easy access to the Internet. For this reason, DHS has designed the fee payment process to provide several methods for payment and for timely receipt of payment confirmation. The fee payment process will begin after the student receives his or her Form I-20 from a DHS-approved school or after the exchange visitor receives the Form DS-2019 from an exchange visitor program authorized by the DOS. The fee may be paid either by: (1) submitting payment using Form I-901, Fee Remittance for Certain F, J, and M Nonimmigrants, by mail or (2) completing Form I-901 and making payment electronically over the Internet.

The fee payment may be completed by schools, programs, family members, or friends on behalf of the applicant. If the Internet is used to complete the Form I-901 and payment, the applicant will be required to use a credit card. The form will be accessible at www.FMJfee.com or through DHS SEVIS Web page. In the future, applicants may have the added capability of payment by electronic funds transfers through an ACH (Alternate Clearinghouse) debit transaction. The Form I-901 will also be available by calling the Forms Center at 1-800-870-3676.

If the Form I-901 and payment are completed by mail, the applicant will be required to pay by using either a check, money order, or foreign draft drawn on a U.S. bank, in U.S. dollars, and to submit the form and payment to the P.O. box address listed on the Form I-901. The check or money order must be made payable to "The Department of Homeland Security, Immigration and Customs Enforcement." DHS does not allow applicants to pay any of DHS fees with foreign currency due to fluctuations in currency rates. Furthermore, DHS does not allow applicants to pay fees with checks drawn on foreign banks as the collection process is slow and expensive and there

is no guarantee on these funds as there is with funds drawn on U.S. banks.

After the completed Form I-901 and accompanying fee payment have been received by DHS, a receipt will be issued on the Form I-797, Notice of Action, to the prospective student or exchange visitor, by mail. All fee receipts will be printed and mailed to the applicant within 3 days of the fee payment being processed. Applicants will also have the option to have the receipt sent to them in an expedited manner. If this option is chosen, the receipt will be delivered by a courier for an additional fee. If the applicant pays the fee over the Internet, the applicant will be able to print and retain an electronic receipt at that time, in addition to the receipt that will be received by mail.

Once the student or exchange visitor has received the Form I-797 as proof of payment of the fee, either electronically or via mail, he or she will submit the Form I-797 in conjunction with either the application for a visa abroad, admission to the United States, if exempt from visa requirements, or a change of status if in the United States. As previously stated, in the future, in instances where the receipt is not received or is lost by the applicant, the consular officer or DHS officer will have access to the fee payment information in SEVIS to verify that a fee has been paid for a particular individual.

Regulatory Flexibility Act

The Secretary of Homeland Security, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, preliminarily certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule levies a fee on nonimmigrant students and exchange visitors initially arriving or continuing a program in the United States, and this fee will have an impact on these nonimmigrants, DHS is required by statute to collect a fee to support an electronic information collection system on foreign students and exchange visitors. The fees were arrived at after careful evaluation of the costs to design, develop, and maintain the statutorily-mandated information collection system.

Since Congress has changed the law to provide that DHS will collect the fee directly from the student or exchange visitor, rather than having the school or exchange program collect and remit the fee, the schools and exchange programs will no longer need to be involved in any way with respect to the collection of the fee, although they are free to offer