



**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Immigration and Customs Enforcement**

*8 CFR Parts 103 and 214*

*[DHS No. ICEB-2017-0003]*

*RIN 1653-AA74*

**Adjusting Program Fees for the Student and Exchange Visitor Program**

**AGENCY:** U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security (DHS) proposes to adjust fees charged by the Student and Exchange Visitor Program (SEVP) to individuals and organizations. DHS proposes to raise the fee for Student and Exchange Visitor Information System (SEVIS) Form I-901, Fee Remittance for Certain F, J, and M Nonimmigrants, for nonimmigrants seeking to become academic (F visa) or vocational (M visa) students from \$200 to \$350. For most categories of individuals seeking to become exchange (J visa) visitors, DHS proposes to increase the fee from \$180 to \$220. For those seeking admission as J exchange visitors in the au pair, camp counselor, and summer work or travel program participant categories, DHS proposes to maintain the fee at \$35. In addition to raising the student and exchange visitor fees, DHS proposes to increase the fee for submitting a school certification petition from \$1,700 to \$3,000.

DHS proposes to maintain the fee for an initial school site visit at the current level of \$655, but clarify that, with the effective date of the rule, DHS would exercise its current regulatory authority to charge the site visit fee not only when a certified school changes its physical location, but also when it adds a new physical location or campus. DHS proposes to establish and clarify two new fees: a \$1,250 fee to submit a school recertification petition and a \$675 fee to submit an appeal or motion following a denial or withdrawal of a school petition. Adjusting fees would ensure fee levels are sufficient to recover the full cost of activities of the program and would establish a fairer balance of the recovery of SEVP operational costs between beneficiary classes.

**DATES:** Send comments by [Insert date 60 days from date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may send comments, identified by Docket No. ICEB-2017-0003, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.
- Mail: Address all comments to Sharon Snyder, Unit Chief, Student and Exchange Visitor Program, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536. DHS docket staff, who maintain and process ICE's official regulatory dockets, will scan the submission and post it to FDMS.

*Collection of information.* You must submit comments on the collection of information discussed in this notice of proposed rulemaking to both DHS's docket and the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). OIRA submissions can be sent using any of the following methods.

- E-mail (preferred): OIRA\_submission@omb.eop.gov (include the docket number and "Attention: Desk Officer for U.S. Immigration and Customs Enforcement, DHS" in the subject line of the e-mail).
- Fax: 202-395-6566.
- Mail: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; Attention: Desk Officer, U.S. Immigration and Customs Enforcement, DHS.

For additional instructions on sending comments, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Sharon Snyder, Unit Chief, Student and Exchange Visitor Program; U.S. Immigration and Customs Enforcement, Department of Homeland Security; 500 12th Street SW, Washington, DC 20536; 703-603-3400, [sevp@ice.dhs.gov](mailto:sevp@ice.dhs.gov). This is not a toll-free number. Program information can be found at <http://www.ice.gov/sevis/>.

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## **I. Executive Summary**

### **A. Purpose of Regulatory Action**

DHS proposes to adjust its fee schedule for students and exchange visitors as well as for petitioning and certified schools. These fees are associated with SEVP and SEVIS. They were last adjusted in 2008. *See* 73 FR 55683 (Sept. 26, 2008).

SEVP, an ICE component, is funded entirely by fees charged to individual applicants and organizational petitioners. Fees collected from individuals and organizations are deposited into the Immigration Examinations Fee Account (IEFA) and used to fund the operational costs associated with SEVP and its management of SEVIS. *See* Immigration and Nationality Act (INA) section 286(m), as amended, 8 U.S.C. 1356(m), and Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, (IIRIRA) section 641(e), (g), 8 U.S.C. § 1372(e), (g).

In accordance with the requirements and principles of the Chief Financial Officers Act of 1990, 31 U.S.C. 901-03 (CFO Act), and OMB Circular A-25, SEVP reviews its associated fees that are deposited into the IEFA biennially and, if necessary, proposes adjustments to ensure recovery of costs necessary to meet national security, customer service, and adjudicative processing goals. SEVP completed a biennial fee review for fiscal year (FY) 2016 and FY 2017 in 2017. The projected results indicate that current

fee levels are insufficient to recover the full cost of current and planned program activities. Section 286(m) of the INA, 8 U.S.C. 1356(m), provides that DHS may set fees for adjudication and naturalization services at a level that would ensure recovery of the full costs of providing such services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. Additionally, section 641 of IIRIRA, 8 U.S.C. 1372, authorizes DHS to periodically revise fees that cover the cost of carrying out SEVP and maintenance of SEVIS. Pursuant to these laws, DHS proposes the adjustments contained in this rule.

SEVP calculates the totality of its fees to recover the full cost of its overall operations. Following its biennial fee review, SEVP anticipates that if it continues to operate at current fee levels, it will experience a shortfall of approximately \$68.9 million beginning in 2019. At current fee levels, SEVP's current expenditures exceed current revenues, without any service upgrades. The deficit is covered by surplus revenue that was previously accumulated from 2009 to 2015. This surplus will be exhausted in FY 2019 even without any service upgrades. This projected shortfall poses a risk of degrading operations and services funded by fee revenue. The proposed fee increases would allow SEVP to cover the current deficit between revenue and expenditures plus make the necessary service upgrades. The proposed fee levels thus eliminate the risk of degrading operations, while also ensuring full cost recovery by providing fees for each specific benefit that will more adequately recover the cost associated with administering the benefit.

## **B. Summary of Major Provisions**

The proposed rule would adjust, institute, and clarify the application of fees pertaining to services SEVP provides to reflect existing and projected operating costs, program requirements, and continued planned program improvements, in the following manner:

- Increase the two types of individual student and exchange visitor application fees, specifically the F and M I-901 SEVIS fee from \$200 to \$350 and the full J-1 I-901 SEVIS fee from \$180 to \$220;
- Increase the SEVP school certification petition fee for initial certification from \$1,700 to \$3,000;
- Institute a stand-alone fee of \$1,250 when a school files a petition for recertification of its existing SEVP certification;
- Revise regulations to ensure collection of a \$675 fee to accompany the filing of a Form I-290B, Notice of Appeal or Motion, when a school appeals or files a motion to reconsider or reopen a denial or withdrawal of its SEVP certification; and
- Maintain the \$655 fee for a site visit at its current level, but clarify that, with the effective date of the rule, SEVP would exercise its current regulatory authority to charge the site visit fee when a certified school changes its physical location or adds a new physical location or campus on its Form I-17, “Petition for Approval of School for Attendance by Nonimmigrant Student.”

In making these changes, the proposed rule would allow SEVP to fully fund activities and institute critical near-term program and system enhancements in a more equitable manner through a fairer balance of the recovery of SEVP operational costs between beneficiary classes. A summary of the current and future fee structures is provided in Table 1 below.

**C. Costs and Benefits**

SEVP proposes to adjust fees to the amounts listed in Table 1.

**Table 1: Current and Proposed Fee Amounts**

<b>Fee Type</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Incremental Fee Adjustment</b>
<b>I-901 F/M</b>	\$200	\$350	\$150
<b>I-901 J-Full</b>	\$180	\$220	\$40
<b>I-901 J-Partial</b>	\$35	\$35	\$0
<b>I-17 Initial Certification</b>	\$1,700	\$3,000	\$1,300
<b>I-17 Recertification</b>	\$0	\$1,250	\$1,250
<b>Site Visit – initial</b>	\$655	\$655	\$0
<b>Site Visit – new location</b>	\$0	\$655	\$655
<b>Appeal Fee</b>	\$0	\$675	\$675

SEVP expects to have a total annual increase in fees of \$75.2 million in FY 2019 transferred from individuals and entities for the services they receive. Table 2 shows the summary of the total annual number of payments, incremental fee amounts, and total fees transferred in FY 2019. This increase in fees would allow SEVP to not only maintain its current level of service but also enhance SEVP’s capability to support national security and counter immigration fraud through the continued development and implementation of

critical system and programmatic enhancements. Enhancements to SEVIS, including the establishment of a student portal, will assist designated school officials (DSOs) in their regulatory obligation to provide accurate and timely information and will also rebalance this reporting requirement by providing students an automated means to update their information. Increased numbers of adjudication personnel will assist in reducing the processing times for initial petitions, updates, and recertifications, while enhanced vetting protocols will ensure that only those nonimmigrant students who are eligible to enter and remain in the country do so.

**Table 2: Annual Proposed Incremental Fee Amounts, FY 2019**

	<b>Projected Number of Payments</b>	<b>Proposed Incremental Fee Amounts</b>	<b>Annual Fees Transfer to Government</b>
<b>I-901 F and M</b>	418,393	\$150	\$62,758,950
<b>I-901 J-Full</b>	157,550	\$40	\$6,302,000
<b>I-17 Initial Certification</b>	426	\$1,300	\$553,800
<b>I-17 Recertification</b>	4,373	\$1,250	\$3,279,750
<b>Site Visits – initial</b>	426	\$0	\$0
<b>Site Visits – new location</b>	174	\$655	\$113,970
<b>Appeals</b>	54	\$675	\$36,450
<b>Total</b>			\$75,231,420

## **II. Abbreviations and Acronyms**

ABC	Activity-Based Costing
ARO	alternate responsible officer
CBP	U.S. Customs and Border Protection
CEU	Compliance Enforcement Unit

CTCEU	Counterterrorism and Criminal Exploitation Unit
CFO	Chief Financial Officer
DHS	Department of Homeland Security
DoS	Department of State
DSO	designated school official
EBSVERA	Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107-173; May 14, 2002
FASAB	Federal Accounting Standards Advisory Board
FY	Fiscal Year
HSPD-2	Homeland Security Presidential Directive – 2
ICE	U.S. Immigration and Customs Enforcement
IEFA	Immigration Examinations Fee Account
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended
INA	Immigration and Nationality Act of 1952, as amended
INS	Immigration and Naturalization Service
IT	information technology
NAICS	North American Industry Classification System
OMB	Office of Management and Budget
PDSO	principal designated school official
RO	responsible officer
RFA	Regulatory Flexibility Act
RFE	request for evidence
SBA	Small Business Administration
SEVIS	Student and Exchange Visitor Information System
SEVP	Student and Exchange Visitor Program
SFFAS	FASAB Statement of Federal Financial Accounting Standard
SSA	Social Security Administration
TSA	Transportation Security Administration
UMRA	Unfunded Mandates Reform Act of 1995
USCIS	U.S. Citizenship and Immigration Services

### **III. Public Participation**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide unless you request that your personally identifiable information be redacted. We also invite

comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See the ADDRESSES section for information on how to submit comments.

#### **A. Submitting Comments**

If you submit comments, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide reasons supporting each suggestion or recommendation. You may submit your comments and materials online or by mail, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. ICE will file all comments sent to our docket address, as well as items sent to the address or e-mail address listed in the FOR FURTHER INFORMATION CONTACT section, in the public docket, except for comments containing marked confidential information. If you submit a comment, it will be considered received by ICE when it is received at the Docket Management Facility.

To submit your comments online, go to <http://www.regulations.gov> and insert the complete docket number starting with “ICEB” in the “Search” box. Click on the “Comment Now!” box and enter your comment in the text box provided. Click the “Continue” box, and if you are satisfied with your comment, follow the prompts to submit it. If you submit your comments by mail, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic scanning and filing. Mailed submissions may be on paper or CD-ROM. If you would like ICE to

acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard or envelope on which the docket number appears. We will stamp the date of receipt on the postcard and mail it to you.

We will consider all comments and materials received during the comment period and may change this proposed rule based on your comments. The docket is available for public inspection before and after the comment closing date.

### **B. Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert the complete docket number starting with "ICEB" in the "Search" box. Click on the "Open Docket Folder" and then click on "View Comment" or "View All" under the "Comments" section of the page. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting ICE through the FOR FURTHER INFORMATION CONTACT section previously listed. Note: Because the software used in computing these fees proposed in this rule is a commercial product licensed to ICE, it may be accessed on-site by appointment by calling the SEVP Response Center at (800) 892-4829.

### **C. Privacy Act**

Anyone can search the electronic form of comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may wish to consider limiting the amount of personal information that you provide in any voluntary

public comment submission you make to DHS. DHS may withhold information from public viewing that it determines may affect the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice posted on <http://www.regulations.gov>.

#### **IV. Program Background**

##### **A. SEVP Legal Authorities**

IIRIRA (Pub. L. 104-208, div. C, 110 Stat. 3009-546 (1996)) established the requirement for the monitoring and reporting of the activities of foreign students and exchange visitors while they reside in the United States (U.S.). Section 641 of IIRIRA, 8 U.S.C. 1372, mandated that the Attorney General develop and conduct a program for the electronic collection of data by U.S.-approved (i.e., certified) institutions of higher education, other approved educational institutions, and designated exchange visitor programs, to monitor nonimmigrants possessing or applying for F, M, and J class visas with a Certificate of Eligibility.<sup>1</sup>

In addition, President George W. Bush issued Homeland Security Presidential Directive 2 (HSPD-2) in October 2001, which requires DHS to conduct periodic, ongoing

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<sup>1</sup> Under INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i), a foreign student may be admitted into the United States in nonimmigrant status to attend an academic or accredited language training school (F nonimmigrant students). Under INA section 101(a)(15)(M)(i), 8 U.S.C. 1101(a)(15)(M)(i), a foreign student may be admitted into the United States in nonimmigrant status to attend a vocational education school (M nonimmigrant students). An F or M nonimmigrant student may enroll in a particular school only if the Secretary of Homeland Security has certified the school for the attendance of such students. Under INA section 101(a)(15)(j), 8 U.S.C. 1101(a)(15)(j), a foreign citizen may be admitted into the United States in nonimmigrant status as an exchange visitor (J visa) in an exchange program sponsored by the Department of State (DoS).

recertification of all schools certified to accept F or M students. Combating Terrorism Through Immigration Policies, Oct. 29, 2001, as amended by HSPD—5 (Management of Domestic Incidents, Feb. 28, 2003, Compilation of HSPDs (updated through Dec. 31, 2007), available at <http://www.gpo.gov/fdsys/pkg/CPRT-110HPRT39618/pdf/CPRT-110HPRT39618.pdf>.

The Homeland Security Act of 2002 created DHS, transferred a broad range of immigration authorities from the Attorney General and the Commissioner of Immigration and Naturalization to the Secretary of Homeland Security, and vested ICE with responsibility for administration of the electronic data collection system, also known as SEVIS. *See* Pub. L. 107-296, sec. 442(a)(4), 116 Stat. 2136, 2193-94 (codified at 6 U.S.C. 252(a)(4) (vesting SEVIS-related authority in “Bureau of Border Security”); Reorganization Plan Modification for the Department of Homeland Security, H.R. Doc. No. 108-32, at 3-4 (2003) (set forth as a note to 6 U.S.C.A. 542 (West 2018)) (renaming “Bureau of Border Security” as “Bureau of Immigration and Customs Enforcement”); DHS Delegation 7030.2(2)(Z) (2004) (affirming delegation of such authority from Secretary of Homeland Security to ICE). ICE assumed responsibility for SEVIS and established SEVP. DHS has issued regulations that address data collection requirements for SEVP certification, oversight, and recertification of schools authorized to enroll F or M students. 8 CFR 214.3, 214.4.

## **B. SEVP and Development of SEVIS**

SEVP is responsible for developing, maintaining, and improving SEVIS, which is an internet-based application that facilitates timely electronic reporting and monitoring of nonimmigrant students, exchange visitors, and their dependents in the United States. SEVIS enables schools and program sponsors to transmit electronic information to DHS and the Department of State (DoS) throughout a student's or exchange visitor's program in the United States. SEVIS is intended to improve customer service by streamlining the application and adjudication processes. Through continuing modernization efforts, it addresses issues in student and school system processes by providing information technology (IT) solutions and modifying business processes.

Schools and exchange visitor programs have been required to enter F, M, and J nonimmigrant data into SEVIS since August 1, 2003. As of April 1, 2017, SEVIS contained 1.4 million active F, M, and J student and exchange visitor records. Approximately 8,700 schools are SEVP-certified and approximately 1,500 exchange visitor programs are DoS-designated.

SEVIS enables DHS and DoS to efficiently administer their approval (i.e., certification and designation, respectively) and oversight processes of schools and programs that wish to benefit from enrolling nonimmigrants. SEVIS assists law enforcement agencies in tracking and monitoring F, M, and J nonimmigrant status and apprehending violators before they can potentially endanger the national security of the United States. SEVIS also assists other federal agencies such as DoS, and other DHS

components such as U.S. Citizenship and Immigration Services (USCIS) and U.S. Customs and Border Protection (CBP) in better serving F, M, and J nonimmigrant applicants. Finally, SEVIS enables schools and exchange visitor programs to instantaneously transmit electronic information and changes in required information on F, M, and J nonimmigrants to ICE and DoS throughout their stays in the United States.<sup>2</sup> These include required notifications, reports, and updates to personal data. SEVIS allows schools to submit school certification applications, update certification information, submit updates to DHS that require adjudication, and also create and update F visa (academic) and M visa (vocational) student and dependent records. SEVP managers and adjudicators have the capability to adjudicate updates made to school records using SEVIS, and principal designated school officials (PDSOs) and designated school officials (DSOs) are notified through SEVIS of the adjudication results. SEVIS also allows program sponsors to submit designation forms for the J-1 visa program, create program designations, and update program designation information. DoS personnel have the capability to adjudicate information submitted by responsible officers (ROs) and alternate

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<sup>2</sup> An individual seeking F or M nonimmigrant student status must apply to an SEVP-certified school and be accepted for enrollment. From the enrollment information provided by the nonimmigrant, the school enters student information into SEVIS and issues a Form I-20, "Certificate of Eligibility for Nonimmigrant Student Status." The individual must submit a valid Form I-20 when applying for an F or M visa. Similarly, an individual seeking J-1 nonimmigrant status must apply to a DoS-designated exchange visitor program and be accepted for enrollment as a basis to apply for a J exchange visitor visa. From the information provided by the accepted individual, the exchange visitor program enters exchange visitor information into SEVIS and issues a Form DS-2019, "Certificate of Eligibility for Exchange Visitor (J-1) Status." The applicant must submit a valid Form DS-2019 when applying for a J visa.

responsible officers (AROs). ROs and AROs are notified through SEVIS of any adjudication results.

SEVIS shares information with other agencies' and components' systems—DoS, USCIS, CBP, Transportation Security Administration (TSA), and others—to better monitor the status of student or exchange visitors throughout their stays in the United States. This allows DHS to meet the aims of the USA PATRIOT Act. *See* Pub. L. 107-56, sec. 416, 115 Stat. 272, 354-55 (2001). In addition, that Act mandates that the Secretary of Homeland Security<sup>3</sup>, in consultation with the Secretary of State, collect information on the date of entry and port of entry for each nonimmigrant for whom information is collected under IIRIRA section 641. *Id.* at sec. 416(b).

### **C. Authority to Collect Fees**

The Secretary is specifically authorized to collect fees for SEVP from prospective F and M students and J exchange visitors, subject to certain limits for certain J-1 nonimmigrants. 8 U.S.C. 1372(e)(1). The Secretary is authorized to periodically revise those fees, with certain exceptions, to take into account changes in the overall cost of carrying out the program. IIRIRA section 641(e)(4)(A), (g)(2), 8 U.S.C. 1372(e)(4)(A), (g)(2). Similarly, section 286(m) of the INA authorizes the Secretary to collect fees for

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<sup>3</sup> The USA PATRIOT Act refers to the Attorney General, but the Homeland Security Act of 2002, as amended, transferred the functions of the Immigration and Naturalization Service (INS) to DHS. Pub. L. 107-296, tit. IV, subtit. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended.

adjudication and naturalization services at a level that would ensure recovery of the full costs of providing such services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. Additionally, pursuant to INA section 286(m), the level that is set may include recovery of any additional costs associated with the administration of the fees themselves. Under this authority, user fees are employed not only for the benefit of the payer of the fee and any collateral benefit resulting to the public, but also to provide a benefit to certain others.<sup>4</sup>

All fees collected under these authorities are deposited as offsetting receipts into the IEFA and are available to the Secretary until expended for authorized purposes. *See* IIRIRA section 641(e)(4)(B), 8 U.S.C. 1372(e)(4)(B); INA section 286(m), 8 U.S.C. 1356(m). DHS proposes the revised fee schedule contained in this rule in accordance with the above-referenced authorities.

As a general matter, in developing fees and fee rules, DHS looks to a range of governmental accounting provisions. OMB Circular A-25, *User Charges (Revised)*, para. 6, 58 FR 38142 (July 15, 1993), defines “full cost” to include all direct and indirect costs to any part of the Federal government for providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of the following: direct and indirect personnel cost, physical overhead, consulting and other indirect cost,

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<sup>4</sup> The longstanding interpretation of DHS is that the “including” clause in section 286(m) does not constrain DHS’s fee authority under the statute. The “including” clause offers only a non-exhaustive list of some of the costs that DHS may consider part of the full costs of providing adjudication and naturalization services. *See* 8 U.S.C. 1356(m); 81 FR 26903, 26906 n.10 (May 4, 2016).

management and supervisory cost, enforcement, information collection and research, and establishment of standards and regulation, including any required environmental review.

Section 31.5 of OMB Circular A-11, Preparation, Submission and Execution of the Budget, July 1, 2016, directs agencies to develop user charge estimates based on the full cost recovery policy set forth in OMB Circular A-25, *User Charges* (budget formulation and execution policy regarding user fees).

The Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government, July 31, 1995, updated June 2017, provides the standards for managerial cost accounting and full cost. SFFAS No. 4 defines “full cost” to include “direct and indirect costs that contribute to the output, regardless of funding sources.”<sup>5</sup> FASAB identifies various classifications of costs to be included and recommends various methods of cost assignment to identify full cost. Activity-based costing (ABC) is highlighted as a costing methodology useful to determine full cost within an agency.

The Chief Financial Officers Act of 1990, 31 U.S.C. 901–903, requires each agency’s Chief Financial Officer (CFO) to “review, on a biennial basis, the fees, royalties, rents and other charges imposed by the agency for services and things of value

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<sup>5</sup> See FASAB, Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts 26 (June 2017), available at [http://files.fasab.gov/pdf/files/handbook\\_sffas\\_4.pdf](http://files.fasab.gov/pdf/files/handbook_sffas_4.pdf) (last visited Feb. 20, 2018).

it provides, and make recommendations on revising those charges to reflect cost incurred by it in providing those services and things of value.” 31 U.S.C. 902(a)(8).

This proposed rule would eliminate the risk of a projected shortfall for SEVP operations and services funded by fee revenue. It proposes increased funding that supports continuing and new initiatives critical to improving the program and reflects the implementation of specific cost-allocation methods to segment program costs to the appropriate fee—F and M students, J exchange visitors, or schools.

#### **D. Full Cost Recovery**

Consistent with these authorities and sources, this proposed rule would ensure that SEVP recovers the full costs for the services it provides and maintains a projected level of service necessary to fulfill its mission. The proposed rule would do this in two ways. First, where possible, the proposed rule sets fees at levels sufficient to cover the full cost of the corresponding services and assigns these fees to those who are the primary beneficiaries. DHS works with OMB and generally follows OMB Circular A-25, which “establishes federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources.” *See* OMB Circular A-25, *User Charges* (Revised), para. 6, 58 FR 38142 (July 15, 1993). A primary objective of OMB Circular A-25 is to ensure that federal agencies recover the full cost of providing specific services to users and associated costs.

This proposed rule would set fees at a level sufficient to fund the full cost of conducting the program and general operations for FY 2019. *See* INA sec. 286(m), 8

U.S.C. 1356(m). DHS has interpreted this statutory fee-setting authority, including the authorization for DHS to collect “full costs” for providing, in pertinent part, “adjudication . . . services,” as granting DHS broad discretion to charge fees at a level that will ensure recovery of all direct and indirect costs associated with providing pertinent immigration adjudication services. This approach is also consistent with the SEVP-specific fee authority referenced above, which authorizes DHS to set fees at a level that funds the full cost of conducting the program. *See* IIRIRA section 641(e), 8 U.S.C. 1372(e).

In following OMB Circular A-25 to the extent appropriate, including its direction that fees should be set to recover the costs of an agency's services in their entirety and that full costs are determined based on the best available records of the agency, DHS accounts for the reality that costs of all SEVP operations cannot always be directly correlated to certain specific fees. DHS therefore applies the discretion provided in the above authorities, in taking the following actions: (1) employing ABC to establish a model for assigning costs to specific benefit requests in a manner reasonably consistent with OMB Circular A-25; (2) distributing costs that are not attributed to or driven by specific adjudication services; and (3) making additional adjustments to effectuate specific policy objectives.

## **V. Proposed Adjustment of SEVP Fees**

This proposed rule would amend the current fee structure governing the collection of fees from individuals by increasing the individual student and exchange visitor application fee (I-901 SEVIS fee). In addition, the rule proposes to amend the fee

structure paid by schools by increasing the SEVP school certification petition costs for initial certification, instituting a fee to address school recertification costs for the ongoing recertification process, and requiring a fee to accompany the filing of an appeal, a motion to reconsider, or a motion to reopen filed by a school organization. SEVP proposes no change to the current fee for site visits. The proposed fees for recertification petitions and appeals and motions would better recover a reasonable portion of related existing and projected operating costs, program requirements, and planned program improvements.

Fees were last adjusted in 2008. 73 FR 55683. Refined and expanded SEVP operations, SEVIS modifications, as well as inflation, have increased SEVP operating costs and are the basis for the proposed increases to the I-901 SEVIS fee and the school certification petition fee.

#### **A. Activities Funded Under the 2008 Fee Rule**

In the 2008 rulemaking that resulted in the most recent agency adjustment, “Adjusting Program Fees and Establishing Procedures for Out-of- Cycle Review and Recertification of Schools Certified by the Student and Exchange Visitor Program To Enroll F and/or M Nonimmigrant Students” (2008 Fee Rule), DHS outlined its rationale for a fee increase by identifying a set of organizational initiatives essential to its mission: improving SEVIS functionality, improving oversight and enforcement, implementing recertification procedures, and developing school liaison activity. 73 FR 55683. SEVP, in accordance with its commitment to the goals prescribed in that rule, has implemented the following actions since then:

## **1. Improved SEVIS Functionality**

SEVP's original plan to roll out a comprehensive overhaul of SEVIS (known as SEVIS II) was replaced by an approach that focused on a series of smaller and more targeted SEVIS enhancements—now termed SEVIS Modernization. New technologies have become available since the comprehensive SEVIS overhaul was first envisioned. The use of these technologies enables SEVP to apply many of the functionalities that were planned for SEVIS II to the current system. At the same time, this approach eliminates potential risks and complications that result from migrating mass quantities of critical data from one system to the next, which would have been necessary if the SEVIS II approach had been fully implemented. Building on the experience, knowledge, and stakeholder feedback acquired during the planning process, SEVP has launched hundreds of smaller-scale SEVIS enhancements. These efforts have addressed the majority of national security vulnerabilities previously identified, by improving critical system functionalities that support data integrity in SEVIS, including establishing system functions that support standardization of student and exchange visitor name and address data entry. The enhancements have also improved system performance for end users. With the introduction of more detailed SEVIS event history and new abilities for DSOs to create student data reports, these enhancements enable action on multiple student records simultaneously.

As an example, SEVP, in collaboration with CBP, developed and implemented an admissibility indicator tool that links to real-time SEVIS data to assist CBP officers at ports of entry in determining whether F, M, and J nonimmigrants may enter the United

States based on their SEVIS record status. Prior to the availability of the admissibility indicator, first-line CBP officers relied on paper documentation that the nonimmigrant student or exchange visitor presented. Today, the admissibility indicator gives CBP officers a quick assessment of the most pertinent and current SEVIS data that are necessary in determining whether nonimmigrant students, exchange visitors, and their dependents are eligible to enter the United States or require further investigation. As a result, CBP officers are able to use the admissibility indicator at points of inspection to quickly verify the information contained on the paper documentation that is also required for entry. This assists in reducing long wait times, aids with detecting and preventing visa fraud, and otherwise enhances compliance efforts and national security.

## **2. Oversight and Enforcement**

A dedicated compliance enforcement program that includes criminal investigative efforts is an integral part of ensuring the operational effectiveness of SEVP. By analyzing SEVIS data, SEVP identifies indicators of potential misuse or abuse of nonimmigrant status and provides leads to Counterterrorism and Criminal Exploitation Unit (CTCEU) law enforcement personnel for further investigation. At the time the 2008 Fee Rule was published, the Compliance Enforcement Unit (CEU), the predecessor of CTCEU, was not sufficiently staffed to address all leads generated from SEVIS. As a result, only the highest priority leads were investigated, which left open unaddressed vulnerabilities. With the increased I-901 SEVIS fee revenue, DHS has hired additional personnel and currently funds 234 Homeland Security Investigations (HSI) positions with primary responsibility for nonimmigrant violator investigations. The increased number

of HSI personnel assigned to support CTCEU investigations has enabled more robust coordination between SEVP and CTCEU and has successfully reduced the exploitation of the laws and programs relating to nonimmigrant students and exchange visitors. An example of the result of such close and extensive cross-coordination was the conviction of the founder and president of Tri-Valley University (TVU) on 31 counts in March 2014, ranging from conspiracy to commit visa fraud and alien harboring to money laundering.<sup>6</sup> SEVP will continue to support cooperation and coordination with CTCEU to maintain the viability of F, M, and J student and exchange visitor programs within the United States.

### **3. Recertification**

SEVP implemented the recertification procedure prescribed in the 2008 Fee Rule beginning with its first recertification cycle in 2010. Institutions that participated in the first cycle have been reviewed several times and will continue to undergo the recertification process every two years. Because there are thousands of schools, recertification is a rolling process allowing adjudicators to address issues with one school before moving on to the next.

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<sup>6</sup> See Sentencing Memorandum, Docket Item No. 195 (Oct. 24, 2014), *United States v. Su*, Case No.11-cr-00288 (N.D. Cal.), 2, 8, available at <https://www.courtlistener.com/docket/4178123/195/united-states-v-su/>; see also Jury Verdict, Docket Item No. 119 (Mar. 24, 2014), *United States v. Su, supra*, available at <https://www.courtlistener.com/docket/4178123/119/united-states-v-su/>.

Each school is notified 2 years to the month following the date of its last recertification or certification about its need to file for recertification in order to maintain its certification. From that date, the school has 180 days to file for recertification. 8 CFR 214.3(h)(2)(i). This cycle helps ensure that only schools that operate in accordance with the law remain certified by SEVP.

#### **4. School Liaisons**

SEVP deployed the first group of field representatives in April 2014, followed by three additional groups later in 2014 and 2015, bringing the national total to 60 field representatives distributed among three geographically determined units. The field representatives serve as liaisons between SEVP and SEVP-certified schools that enroll F and M nonimmigrant students and have conducted more than 32,500 school visits since the unit launch. Field representatives serve as a key resource for schools by providing individualized instruction on the SEVP certification and recertification processes. They also educate DSOs on Federal statutes, regulations, and guidance pertinent to F and M students studying in the United States. Because DSOs are responsible for entering F and M nonimmigrant data into SEVIS, the data integrity of the system depends heavily on the DSOs' understanding the importance of accurate and timely reporting of the required information. By providing individualized assistance to DSOs, the field representatives enhance national security by maintaining and improving the data integrity of SEVIS.

## **B. Continuing SEVP Activities Funded with Proposed Fees**

In developing this proposed rule, SEVP reviewed its current and projected costs, identified goals for services, analyzed projected future workload, and allocated costs to specific services. In addition to the full SEVP operating costs described in the following sections, the proposed fees would fund the continuing efforts identified in the 2008 rule, now updated to reflect technological refinements and operational enhancements. These updated activities include SEVIS modernization and increases in adjudication support and investigatory and compliance personnel.

### **1. SEVIS Modernization**

SEVIS is a web-based system that schools and program sponsors use to transmit information about their programs and participating F, M, and J nonimmigrants. It became fully operational in February of 2003, replacing a paper-based F, M, and J nonimmigrant process.

Since its inception, SEVIS has evolved well beyond its original purpose as a data collection tool. Today, approximately 35,000 officials from approved schools and program sponsors use SEVIS data to manage 1.4 million F, M, and J nonimmigrants and their dependents during their stays in the United States. SEVIS provides real-time administrative and enforcement information to DHS components, including CBP and USCIS, as well as DoS. SEVIS also receives information about F, M, and J nonimmigrant visa applications, entry and exit records, and benefit applications from these entities through various interfaces. This makes SEVIS a critical national security

component and a primary resource for law enforcement and intelligence communities to extract the data necessary to conduct counterterrorism and counterintelligence threat analysis.

The threat of new forms of terrorism and other criminal activity exploiting the Nation's immigration laws continues to be a public safety and national security concern in the United States. As a result, there is an increasing need for sophisticated SEVIS data analysis to detect individuals who engage in immigration fraud or otherwise pose a risk to national security through willful misrepresentation. In addition, end users from schools and program sponsors have expressed concerns and provided feedback reflecting the necessity to create SEVIS functionalities that enable the accurate reporting of new and innovative educational program models. While SEVIS has been modified to meet the most critical needs through hundreds of upgrades and patches, including adding abilities for the system to preemptively address data input errors, system functionality concerns (due to time lags, system constraints, and other system design limitations) continue to affect all SEVIS users and necessitate continuous development of SEVIS design. In response, SEVP has begun an effort—known as SEVIS Modernization—that involves redesigning the entire system over time in prioritized increments. Continued Modernization will increase security by providing real-time, person-centric data. This data will reduce fraud and increase awareness by providing government officials with actionable intelligence with which to make decisions and initiate immigration actions. Informed decisions and efficient investigations allow for better management of F, M, and

J nonimmigrant data and preventing high-risk individuals from entering the United States.

To address critical system limitations and improve the SEVIS user experience, SEVP has identified the following list of key SEVIS modernization priorities for continued funding through the increased I-901 SEVIS Fee revenue:

- *Student Portal.* F-1 students engaged in authorized optional practical training are required to report their contact and employer information to DHS. *See* 8 CFR 214.2(f)(12), (f)(17). At present, students report the required information to their DSOs, who then report the information in SEVIS. By regulation, students must report any new required information to their DSOs within 10 days of the change, and the DSOs must report such information in SEVIS within 21 days. 8 CFR 214.2(f)(17).

This external SEVIS student portal will enable students to directly add or edit the required contact and employer information so that their SEVIS record would be updated in real time. This will reduce processing redundancies and lessen the potential for data entry errors by eliminating the need for the student to first report such information to the DSO who will then enter the reported data into SEVIS. The portal will also consequently reduce the workload of DSOs and make the reported data available to DHS sooner. With future expansion, the portal will address SEVIS vulnerabilities related to accurate monitoring of F, M, and J nonimmigrant status and location of nonimmigrant students and exchange visitors by closing national security vulnerabilities related to person-centric,

paperless, people-matching capabilities. In establishing a portal for student use in this manner, DHS will encourage students to assume responsibility for maintaining their immigration status, reduce the system's reliance on paper-driven processes, and reinforce the operational premise and security advantages of "one person, one record." Through use of a record-matching protocol, all SEVIS records will be collated and presented as a unified, person-centric statement of information and activity. These summaries will be available to all operational entities, including school officials, who will have access in the SEVIS record to the same up-to-date information, including all student history.

- *Support of the Adjudication Process.* As part of maintaining their SEVP certification, schools are required to update certain information in SEVIS about their operations and programs any time such information changes. See 8 CFR 214.3(g)(2). SEVP is required to adjudicate such changes. SEVP currently receives, on average, 350 weekly updates from schools; each update may contain several subparts, including school contact information changes and additions of new programs. At present, system constraints require SEVP adjudicators to adjudicate all parts of the update simultaneously and to deny the entire update if even one part of the update cannot be approved. This causes additional workload and delays for schools and adjudicators due to resubmissions of updates. The new SEVIS functionality that supports adjudication will provide SEVP and DoS with enhanced flexibility to adjudicate school certification and exchange visitor

sponsor designation updates and applications and consequently enable SEVP and DoS to adjudicate updates and applications more efficiently.

- *Automated Data Tracking.* Currently, SEVP and DoS manually monitor SEVIS data for potential noncompliance indicators with regard to schools, students, and exchange visitor program participants and sponsors. In FY 2016, manual monitoring yielded 75 compliance investigations, which resulted in withdrawal of certification for 21 noncompliant schools. Automated SEVIS data tracking functionality would provide SEVP and DoS with enhanced abilities to track and monitor compliance. This additional capability would allow SEVP and DoS to more quickly detect data trends that are potential indicators of fraudulent activities. With the use of automation, SEVP anticipates a 100 percent increase in fraudulent activity flags (from 75 to 150 per year), which is estimated to significantly increase the detection rate of noncompliant schools and subsequent withdrawals of SEVP certification due to noncompliance. Such functionality would play an important role in ensuring the integrity of the Nation's immigration system.

*SEVIS Access Approval Tracking System (SAATS).* School officials (PDSOs and DSOs) and program officials (AROs and ROs) constitute the largest and most critical component of SEVIS users as they are responsible for entering the initial student and exchange visitor data into SEVIS. Their need to access the system is confirmed by petition through their sponsoring school or program.

Once granted access, designated school and program officials confirm their ongoing need for access in a yearly validation exercise in which a delayed response or no response results in automatic system access denial.

Unlike government employees who need access to SEVIS to perform official functions, school and program officials have not had to meet uniform security requirements. Recently, SEVP began conducting national criminal background checks on designated school officials (DSOs). SEVP has vetted all DSOs at K-12 schools and, since May 2017, has vetted all newly designated DSOs, helping to ensure the safety of nonimmigrant students and exchange visitors and preserve the integrity of SEVIS data. SEVP is considering eventually extending this screening and security review to DSOs and ROs who were appointed prior to May 2017 and other school and program officials through regulatory action. SEVP will bear the upfront cost of this security review. When fully implemented, all individuals who require access to SEVIS will be vetted prior to being granted such access. DHS will complete the vetting adjudication for the RO or ARO and provide a copy of its decision to the DoS Bureau of Educational and Cultural Affairs.

This initiative will strengthen the mechanism for approving user access to SEVIS. DHS and DoS rely on PDSOs, DSOs, ROs, and AROs as key links in the process to mitigate potential threats to national security and ensure compliance with immigration law. DHS would require that anyone nominated to serve as a PDSO, DSO, RO, or ARO receive a favorable SEVIS Access

Approval Process (SAAP) assessment prior to their appointment and subsequent approval for access to SEVIS.

- *Information Sharing.* SEVIS currently shares information and exchanges data with 11 intra-governmental interface partners. The modernized Information Sharing module will be capable of sharing data contained in modernized SEVIS data stores with existing interface partners. Other interfaces to support modernized capabilities in other modules, including paperless capabilities, are being considered to address SEVIS vulnerabilities. The centralization of all information-sharing capabilities in a single module will allow for efficiencies in development efforts, system performance, and sustainability.
- *Use of Cloud Technologies.* The cloud infrastructure effort supports the program by providing flexible, efficient, and cost-effective cloud services and infrastructure to facilitate and enable agile development and testing processes. While SEVIS actively mitigates known security threats, it lacks functionalities to proactively analyze end user data to detect potential misuse. The use of cloud technologies will permit increased analysis of SEVIS end user data and increase the efficiency and security of controlling and managing access to SEVIS by users not affiliated with DHS, both governmental and nongovernmental. In addition, it will enable more efficient management of user names and passwords and allow credentials to be safely passed among system components. Such analysis is necessary to create defined alerts about user activity that is indicative of risk

factors to prompt timely criminal and compliance investigations. The cloud infrastructure module supports the program by providing flexible, efficient, and cost-effective cloud services and infrastructure to facilitate and enable agile development and testing processes.

This planned modernization effort, with implementation during FY 2018–2021, is expected to greatly enhance the capability of DHS to identify and reduce national security threats; reduce the possibility for reporting errors by prospective and approved F, M, and J nonimmigrants, as well as their schools and programs; and better provide updated, correct, real-time information to academic, law enforcement, and other government users. SEVP projects that the cost for developing and deploying these SEVIS modifications is \$53.19 million. SEVP would incur \$13.15 million of that cost in FY 2018, \$13.75 million in FY 2019, \$13.14 million in FY 2020, and \$13.15 million in FY 2021.

## **2. Increased SEVP Adjudication Personnel**

In 2008, DHS proposed to recertify all schools approved for attendance by F and M students every 2 years, pursuant to title V, section 502 of EBSVERA and HSPD-2, and established procedures for the review of each SEVP-certified school every 2 years, as well as out-of-cycle reviews whenever it determines that clarification or investigation of school performance or eligibility is necessary. Recertification is a determination of performance and compliance with required standards in the period since the previous certification. In this comprehensive review of an SEVP-certified school by an SEVP

adjudicator, SEVP affirms that the school remains eligible and is complying with regulatory recordkeeping, retention, reporting, and other requirements.

Performance is monitored through SEVIS, DHS records, submissions from the school, and possible onsite reviews. If noncompliance is discovered, SEVP requires schools, as appropriate, to make corrections immediately. SEVP reviews the school's compliance with Federal law and regulations.

In recent years, the scope of work of SEVP adjudication has expanded to include administrative compliance enforcement, support of criminal investigations, and adjudication of school petitions, including certification petitions, recertification petitions, and updates to school information. As a result, SEVP adjudicators have experienced significant workload increases, which in turn have resulted in longer SEVP adjudication processing times of school petitions and student compliance issues.

Since initiating recertification, SEVP has determined that the current number of SEVP adjudication personnel is inadequate to meet the congressional requirement for recertifying or withdrawing all currently certified schools every 2 years. At present staffing levels, SEVP is able to process 1,939, or 44 percent, of the required annual projected 4,400 recertification cases.

### **3. Additional Investigatory Support**

Investigations of violations of immigration status, as well as criminal investigations of F and M students and J exchange visitors, are primarily coordinated by CTCEU. Information is received, collated, and analyzed from a number of DHS and other information sources, including SEVIS, to generate national security leads for field

personnel and prevent terrorists and other criminals from exploiting the Nation's immigration system through fraud. In its continuing support of compliance efforts, SEVP seeks to fund activities in two key areas: support for and integration of technological advances and surge support for critical incidents.

New technologies have enabled sophisticated methods of extracting and analyzing data. To make best use of these technology force multipliers, personnel would use the available technologies to develop investigative packages based on SEVIS research and use of other designated government computer systems, open source websites, and other pertinent information sources related to individual students, exchange visitors, and SEVP-certified schools. To the extent that adequate resources are allocated and employed for this purpose, increased support levels would reduce the vulnerability of the United States to terrorist attacks and reduce the potential for exploitation of certified schools and designated exchange visitor programs.

Through the fee adjustments proposed in this rule, SEVP would continue ensuring funding to enable a surge for investigatory efforts, including increased contract overtime or surge staffing, in advance of planned critical overstay enforcement operations. SEVP would also fund the surge of continuous and extended analytic support to HSI field operations in the event of a terrorist attack or during imminent threat situations. This direct operational support to field elements during heightened threat situations or in the aftermath of an attack would enable CTCEU to quickly assess subjects of investigative interest and to share information to further investigations with its law enforcement partners, ICE legal counsel, and the U.S. Attorney's Office. Such surge support has been

used successfully and has proven critical in furthering investigative efforts and providing investigative focus in recent threat situations and terrorist attacks, including attacks in San Bernardino, California; Orlando, Florida; Columbus, Ohio; Baltimore, Maryland; New York; New Jersey; and Fort Lauderdale, Florida.

**C. Basis for Fee Schedule**

As previously noted, the proposed amended fees comply with statutory and regulatory requirements that SEVP review its fee structure every 2 years to ensure that the cost of the services provided are fully captured by fees assessed on those receiving the services. The new fees are an estimate of the current and projected costs of funding needed to continue enhancing SEVP’s capability to achieve programmatic goals associated with its statutory mandate—supporting national security and countering immigration fraud through the continued development and implementation of critical system and programmatic enhancements. This proposed rule would establish the following fee structure detailed in Table 3.

**Table 3: Proposed Fee Structure**

<b>Fee Type</b>	<b>Responsible Party</b>
I-901 SEVIS Fee	Student or exchange visitor issued an initial Form I-20 or DS-2019 seeking an F, M, or J visa
I-17 Certification Fee	Institutions petitioning for SEVP certification to enroll international students
Site Visit Fee	Institutions applying for initial certification or certified schools changing locations or adding a campus/location
Recertification Fee	Certified institutions seeking recertification every 2 years

<b>Fee Type</b>	<b>Responsible Party</b>
Appeal or Motion Fee	Institutions that have had certification or recertification denied by SEVP, including denied I-17 updates, or that have had certification withdrawn, and which are filing an appeal or motion regarding the SEVP decision

The current fee structure includes the I-901 SEVIS fee, I-17 certification fee, and the site visit fee. The proposed rule would allow SEVP to fully fund activities and institute critical near-term program and system enhancements in a more equitable manner. The proposed fee structure would also include the addition of a recertification fee and a fee for filing a motion or appeal.

With this rule SEVP proposes to impose a fee for a Form I-290B, Notice of Appeal or Motion, filed with SEVP at a level that is comparable to the fee for the Form I-290B when filed with USCIS. DHS proposes to eliminate regulations that currently state there is no fee required for an appeal by a school, to maintain consistency with this clarification in the motions context and to more fairly balance allocation of the recovery of SEVP operational costs between beneficiary classes. Under this proposal, SEVP would charge the fee for all appeals and motions.

The proposed rule would ensure the full recovery of SEVP operational costs in a manner that fairly allocates costs between beneficiary classes and would facilitate the development of activities designed to achieve defined program goals. For example, the proposed rule would continue funding for critical SEVIS modernization efforts and would incorporate the added cost of increased analytical support for investigative and

enforcement operations into the I-901 SEVIS fee. The proposed fee schedule would also allow SEVP to fully fund additional SEVP adjudication personnel.

#### **D. SEVP Baseline Costs and Fees**

SEVP fees are paid by individuals and organizations. DHS certifies schools that enroll F and M students; recertifies schools with active certifications; conducts site visits; administers, maintains, and develops SEVIS; collects fees from prospective F and M students and J exchange visitors, as well as from schools; adjudicates motions and appeals in regard to certification petitions; undertakes investigatory initiatives; and provides overall guidance to schools about program enrollment and compliance, as well as the use of SEVIS. These activities are funded solely through the collection of fees.

The I-901 SEVIS fee, collected from students and exchange visitors, currently underwrites the operation of SEVP; the cost of administering, maintaining, and developing SEVIS; the cost of school recertification; and all activities related to individual and organizational compliance issues within the jurisdiction of SEVP. These activities include the cost of investigating the compliance of schools participating in SEVP and exchange visitor programs, as well as investigations in which F, M, or J nonimmigrants are identified as potential threats to national security or where it is suspected that an immigration violation or fraud may be occurring.

The certification fee is paid by schools that petition for the authority to issue Certificates of Eligibility (COE), commonly referred to as Forms I-20, to prospective nonimmigrant students for the purpose of their applying for F or M visas and admission

to the United States in those statuses. These monies fund the base internal cost for SEVP to process and adjudicate the initial school certification petition (Form I-17, “Petition for Approval of School for Attendance by Nonimmigrant Student”). The proposed recertification fee paid by schools to remain certified would fund the cost of adjudicating the recertification petition.

If SEVP finds that a petitioning or certified school does not meet regulatory standards, it will deny the affected school’s Form I-17 or withdraw its SEVP certification. 8 CFR 214.4. When SEVP sends a school a notice of denial or withdrawal, the notice also includes reasons for the unfavorable decision(s), an explanation of the school’s rights, and the applicable appeal and motion filing information and deadlines. In many cases, a school may file an appeal or motion to reopen and/or reconsider unfavorable decisions issued by SEVP by filing the Form I-290B, “Notice of Appeal or Motion,” pursuant to the process set forth in 8 CFR 103.3(a) or 103.5(a).<sup>7</sup> A school may initiate a motion to reopen or reconsider to request that the original deciding body review the unfavorable decision, including an appeals decision, pursuant to requirements in 8 CFR 103.5(a). A school may also initiate an appeal in order to request review of the unfavorable Notice of Denial, Automatic Withdrawal, or Withdrawal on Notice by an authority independent of the original deciding body. Currently, DHS uses I-901 funds to offset the costs of SEVP appeals and motions. This offset is a result of the DHS

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<sup>7</sup> Form I-290B is managed by USCIS and not ICE. USCIS has agreed to the use of the form by ICE for SEVP appeals and the use has been approved by the Office of Management and Budget under control number 1615-0095.

determination in the 2008 final fee rule to state in regulations that no fee would be required for appeals relating to SEVP certification or recertification or a withdrawal of SEVP certification. *See* 8 CFR 214.4(a)(1), (h). DHS proposes to remove the SEVP-related exceptions to the payment of the I-290B fee and add regulatory text at proposed 8 CFR 103.7(b)(1)(ii)(O) providing for the fee of \$675 when the Form I-290B is filed with SEVP. This fee would apply when schools or institutions file an appeal or motion with regard to a denied petition for initial certification or recertification or a withdrawal of certification.

In proposing these regulatory changes for the I-290B filing fee, DHS would more fairly balance allocation of the recovery of SEVP operational costs among beneficiary classes. To date, the cost of adjudicating appeals and motions has never been placed directly upon the beneficiaries of those adjudications--the schools seeking to obtain or maintain SEVP-certification. The fee for filing the Form I-290B with SEVP is being proposed at a level that requires those who file the Form I-290B to pay for at least a portion of the operating expenses for DHS to adjudicate the I-290B, while preventing the fee from becoming cost prohibitive.

The site visit fee is currently paid by schools that petition for certification to issue Forms I-20 or by a certified school when it physically moves to a new location. DHS established this fee in the 2008 Fee Rule and with that rule codified SEVP's authority to charge the fee when a school changes its physical location or adds a new physical location or campus. *See* 8 CFR 103.7(b)(3)(ii)(B), 8 CFR 214.3(h)(3)(i), (h)(3)(ii). Specifically, the 2008 Fee Rule imposed a site visit fee of \$655 for each location listed on

the Form I-17, and required the Form I-17 to include “any physical location in which a nonimmigrant can attend classes through the school (*i.e.*, campus, extension campuses, satellite campuses, etc.).” *See* 73 FR 55683, 55698-55699 (amending 8 CFR 103.7(b)(3)(ii)(B) and 214.3(a)(1), respectively). The 2008 Fee Rule also imposed a continuing duty on schools to update school locations as changes arise, *i.e.*, even after initial certification, a school must update SEVIS within 21 days of a change to a range of information types, including school location and campus location. *See* 73 FR 55683, 55700 (amending 8 CFR 214.3(g)(2), (h)(3)). Consistent with the aforementioned regulatory amendments, the preamble to the 2008 Fee Rule made clear that these provisions require the imposition of a site visit fee for each location listed on the initial SEVP certification, as well as each location added as part of an initial event, such as a SEVIS update requesting approval of a changed or new location or campus. 73 FR 55683, 55691.

But SEVP is not currently collecting the fee when a certified school adds a new physical location or campus. SEVP intends to begin imposing the fee following the effective date of any final rule. The site visit fee would apply when a certified school updates its Form I-17 in SEVIS to indicate, pursuant to 8 CFR 214.3(h)(3)(ii), it is changing its physical location or adding a new physical location or campus. This revenue would assist in recovering the costs DHS incurs for site visits of these locations, including collecting evidence on school eligibility for certification, reviewing the facilities, and interviewing personnel nominated on the petition to become DSOs, including the person nominated to be the PDSO.

## **E. Methodology**

SEVP captured and allocated cost using an ABC approach to define full cost, outline the sources of SEVP cost, and define the fees. The ABC approach also provides detailed information on the cost and activities allocated to each fee.

### **1. ABC Approach**

SEVP used CostPerform ABC modeling software, Version 9.3 (0147), to determine the full cost associated with updating and maintaining SEVIS to collect and maintain information on F, M, and J nonimmigrants; certifying schools; overseeing school compliance; recertifying schools; adjudicating appeals; investigating suspected violations of immigration law and other potential threats to national security by F, M, or J nonimmigrants; providing outreach and education to users; and performing regulatory and policy analysis. SEVP also used the model to identify management and overhead costs associated with the program.

ABC is a business management methodology that links inputs (cost) and outputs (products and services) by quantifying how work is performed in an organization (activities). The ABC methodology allows fee-funded organizations to trace service costs and to calculate an appropriate fee for the service, based on the cost of activities associated with the services for which the fee is levied.

Using the ABC methodology, SEVP identified and defined the activities needed to support SEVP functions to include current and future initiatives. SEVP captured the full cost of operations and apportioned that full cost to the appropriate program activities.

The full cost of each activity is then assigned to the appropriate fee category based on the nature of the activity, as described further below. By tracking costs to the various fee categories, SEVP was able to use forecasted payments to determine the appropriate fee amount for each fee type. SEVP examined historical data and performed statistical payment analysis to forecast payments in future years.

SEVP used an independent contractor and commercially available ABC software to compute the fees. The structure of the software was tailored to SEVP needs for continual and real-time fee review and cost management.

## **2. Full Cost**

In building the ABC model, it was critical for SEVP to identify the sources and cost for all elements of the program. Consistent with instructive legislative and regulatory guidance, SEVP fees recoup the full cost of providing the agency's overall resources and services.<sup>8</sup>

To the extent applicable, SEVP used the cost accounting concepts and standards recommended in the FASAB Handbook, Version 15, "Statement of Financial Accounting Standards Number 4, Managerial Cost Accounting Concepts and Standards for the Federal Government" (2016). FASAB Standard Number 4 sets the following five

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<sup>8</sup> These include but are not limited to: direct and indirect personnel cost, including salaries and fringe benefits, such as medical insurance and retirement; retirement cost, including all (funded or unfunded) accrued cost not covered by employee contributions, as specified in OMB Circular A-11; overhead, consulting, and other indirect cost, including material and supply cost, utilities, insurance, travel, as well as rents or imputed rents on land, buildings, and equipment; management and supervisory cost; and cost of enforcement, collection, research, establishment of standards, and regulation.

standards as fundamental elements of managerial cost accounting: (1) accumulate and report cost of activities on a regular basis for management information purposes; (2) establish responsibility segments and match the cost of each segment with its outputs; (3) determine the full cost of government goods and services<sup>9</sup>; (4) recognize the costs of goods and services provided among federal entities; and (5) use appropriate costing methodologies to accumulate and assign costs to outputs.

SEVP calculates projected fees using the full cost of operations, as defined by a regularly updated spend plan. The projected spend plans for FY 2019 and FY 2020 were used in calculation of SEVP's proposed fee structure. Tables 4 through 7 detail the full cost of SEVP operations, consistent with the spend plan, from various perspectives: by program category, by cost initiative, by fee type, and by activity.

### **3. Cost Basis for SEVP Fees Based on Current Services**

The FY 2019 and FY 2020 budgets provide the cost basis for the fees. These budgets reflect the required revenue to sustain current initiatives. The revenue is also assessed to ensure a sufficient level of continued funding for program enhancements as discussed above, such as enhanced vetting and investigative analysis to support enforcement operations, SEVIS Modernization, and increased numbers of adjudication personnel. Finally, the past budgets provide the cost basis for adjusting annualized cost-of-living increases.

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<sup>9</sup> Full cost includes the costs associated with resources that directly or indirectly contribute to the output and supporting services within the entity and from other entities.

Determining the projected cost for continuation of current efforts involved routine budget projection processes. The budget establishes the current services of the program and projects the mandatory and cost-of-living adjustments necessary to maintain current services. The budget adjusts the services provided by SEVP to include enhancements that reflect program policy decisions. Table 4 reflects the FY 2017 final budget, the FY 2018 approved budget, and the FY 2019 and FY 2020 planned budget requests.

**Table 4: Student and Exchange Visitor Program Summary of Requirements by Organization and Program Category (Dollars in thousands)**

<b>SEVP Expenses</b>	<b>2017 Spend Plan</b>	<b>2018 Spend Plan</b>	<b>2019 Spend Plan</b>	<b>2020 Spend Plan</b>
<b>SEVP Payroll</b>				
Full-Time Equivalent Personnel	134	175	221	221
Executive Office	\$1,735	\$1,744	\$2,048	\$2,084
Fee Management Section	\$1,350	\$1,597	\$1,775	\$1,806
Field Representative Unit	\$6,480	\$6,958	\$7,641	\$7,776
Policy Section	\$1,178	\$969	\$1,283	\$1,325
Systems Management Unit	\$1,258	\$1,299	\$1,391	\$1,416
SEVP Response Center Section	\$652	\$652	\$931	\$941
School Certification Unit	\$2,993	\$2,966	\$3,291	\$3,349
SEVP Analysis and Operations Section	\$1,070	\$1,226	\$1,402	\$1,388
New Required Positions	-	\$296	\$2,357	\$5,610
Office of the Principal Legal Advisor	\$328	\$517	\$642	\$659
SEVP Outside Positions	\$1,444	\$1,776	\$2,545	\$2,629
<b>Total SEVP Payroll</b>	<b>\$18,488</b>	<b>\$20,000</b>	<b>\$25,306</b>	<b>\$28,983</b>
<b>Program Expenses</b>				
Advisory and Assistance Services	\$58,630	\$58,108	\$52,755	\$50,977

<b>SEVP Expenses</b>	<b>2017 Spend Plan</b>	<b>2018 Spend Plan</b>	<b>2019 Spend Plan</b>	<b>2020 Spend Plan</b>
SEVIS (Modernization and O&M)*	\$8,237	\$18,722	\$22,241	\$21,912
Interagency Agreements with other agencies	\$8,046	\$9,815	\$8,360	\$8,583
Travel	\$1,474	\$1,500	\$1,100	\$1,100
Service-wide Costs	\$3,222	\$4,015	\$2,400	\$2,400
<b>Total Program Expenses</b>	<b>\$79,609</b>	<b>\$92,160</b>	<b>\$86,856</b>	<b>\$84,972</b>
CTCEU	\$67,200	\$74,450	\$74,450	\$74,450
<b>Total, SEVP</b>	<b>\$165,297</b>	<b>\$186,610</b>	<b>\$186,612</b>	<b>\$188,405</b>

\*includes costs for the SEVIS Modernization and SEVIS Operations and Maintenance

### F. Summary of the Full Cost Information

The total cost projection for FY 2019 is \$186,612,000 and for FY 2020 is \$188,405,000. Table 4 sets out the projected current services for SEVP and supporting CTCEU personnel in FY 2019 (\$74.45 million) and FY 2020 (\$74.45 million). These costs are direct extensions of the FY 2018 costs that are supported by the current fees. Table 5 summarizes the enhancements and other costs, which include investigative analysis to support enforcement operations, SEVIS Modernization, increased numbers of adjudication personnel, and annualized inflation.

**Table 5: FY 2018, FY 2019 and FY 2020 SEVP Cost by Initiative**

<b>Program Cost by Initiative</b>	<b>FY 2018 Budgeted Cost (thousands)</b>	<b>FY 2019 Budgeted Cost (thousands)</b>	<b>FY 2020 Budgeted Cost (thousands)</b>
<b>Program Base:</b>			
SEVP (Current operational costs)	\$95,097	\$94,497	\$95,106
CTCEU (Current operational costs)	\$70,200	\$70,200	\$70,200
<b>Subtotal</b>	<b>\$165,297</b>	<b>\$164,697</b>	<b>\$165,306</b>

<b>Program Cost by Initiative</b>	<b>FY 2018 Budgeted Cost (thousands)</b>	<b>FY 2019 Budgeted Cost (thousands)</b>	<b>FY 2020 Budgeted Cost (thousands)</b>
<b>Enhancements and Other Costs:</b>			
Investigative Analysis Support	\$4,250	\$4,250	\$4,250
SEVIS Modernization	\$13,150	\$13,750	\$13,141
Increased Personnel	\$1,100	\$1,100	\$3,500
Annualized Inflation	\$2,813	\$2,813	\$2,208
<b>Subtotal</b>	<b>\$21,313</b>	<b>\$21,913</b>	<b>\$23,099</b>
<b>TOTAL:</b>	<b>\$186,610</b>	<b>\$186,610</b>	<b>\$188,405</b>

### 1. Fee Allocation

The purpose of the ABC methodology is to trace costs to organizational elements, as well as identify all cost components associated with the services offered. For fee-based organizations such as SEVP, this allows the assignment of cost to one or more fees. SEVP defined five fee categories: the I-901 SEVIS fee, certification fee, recertification fee, fee for motions and appeals, and site visit fee.

Historically SEVP has only collected fees from students and exchange visitors—the I-901 fee—and from schools applying for certification, to include a separate site visit fee. In this analysis, SEVP considered the creation of additional fee categories for all the distinct services it provides in deciding how to apportion fees. For example, SEVP considered charging a separate I-901 SEVIS fee to F, M, and J dependents. SEVP also examined various tiered fee structures and considered assigning some specific costs to separate fees. The ABC fee model allowed SEVP to evaluate these scenarios. DHS opted for an updated fee structure that segments program cost to the appropriate fee—F and M students, J exchange visitors, or schools.

The proposed I-901 SEVIS fee would recover the systems cost for SEVIS, including the remainder of certification, recertification, site visits, as well as appeals and motions costs that are not covered by the respective proposed fees. The fee would be apportioned between three categories—full fee of \$350 for F and M students, reduced fee of \$220 for most J participants, and the further reduced fee of \$35 for certain J program participants. Federal Government-sponsored J program participants are fee-exempt by law, so their costs will be funded by other fee payers. 8 U.S.C. 1372(e)(3).

The proposed school certification fee would recover a portion of the costs necessary to process initial school certifications. The proposed recertification fee would recover a portion of the cost to process school recertifications and a portion of SEVP administrative costs. The site visit fee would recover the full cost of performing the site visit for initial school certification and when a school changes its physical location or adds a new physical location or campus. The proposed fee for an appeal or motion would recover a portion of the cost to process an appeal or motion.

## 2. SEVP FY 2019 and FY 2020 Cost Model Results

Table 6 shows the summary of SEVP FY 2019 and FY 2020 cost by source of cost.

**Table 6: Total SEVP FY 2019 and FY 2020 Cost by Fee Category**

<b>SEVP ABC Model Output Category</b>	<b>FY 2019 Budgeted Cost (thousands)</b>	<b>FY 2020 Budgeted Cost (thousands)</b>
I-901 SEVIS Fee	\$159,835	\$160,633
I-17 Certification Fee	\$1,909	\$1,992
I-17 Recertification Fee	\$22,522	\$23,189
Site Visit Fee	\$385	\$389
Appeals Fee	\$1,956	\$2,198

<b>Total:</b>	<b>\$186,607</b>	<b>\$188,401</b>
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Table 7 shows a more detailed cost breakdown. The numbers are shown in thousands, rather than millions, of dollars due to the level of detail. There are two levels for the costs: process and activity. Costs are allocated from payroll, contracts, and other expenses to activities through activity surveys and volume based cost allocations. The full cost of operations from the spend plans is distributed to the activities that best describe the work being performed. Table 7 details these costs from an activity perspective. To simplify the presentation, the numbers are rounded to the nearest thousand. These numbers are not rounded in the cost model.

**Table 7: Detailed Cost Breakdown (FY 19 + FY 20, Dollars in Thousands)**

<b>Process</b>	<b>Activity</b>	<b>I-901</b>	<b>I-17 Certification</b>	<b>I-17 Re-certification</b>	<b>I-17 Site Visit</b>	<b>Appeals</b>
Certify Schools	A-01: Certify schools (initial certification)		\$3,115			
	A-02: Recertify schools			\$4,614		
	A-03: Notify students if school is withdrawn			\$129		
	A-04: Withdraw schools from SEVIS			\$1,102		
	A-05: Process appeals/motions					\$3,420
	A-06: Process petition updates			\$3,036		
	A-07: Monitor school compliance			\$3,761		
	A-08: Monitor school risk			\$3,446		
Enforce Compliance with Regulations and Laws	A-28: Conduct Student and Exchange Visitor (I-901) investigations	\$93,921		\$16,574		
	A-29: Conduct school and sponsor investigations	\$34,238		\$6,042		
	A-30: Operate CTCEU programs	\$4,130		\$729		

Process	Activity	I-901	I-17 Certification	I-17 Re-certification	I-17 Site Visit	Appeals
	A-31: Provide CTCEU liaison support	\$417		\$74		
	A-41: Perform I-515 operations duties	\$1,471				
	A-43: PDSO/DSO background checks	\$1,038		\$54		
Formulate Policy	A-16: Analyze and develop policy	\$3,170		\$600		
	A-17: Develop and review rules and regulations	\$2,476		\$469		
	A-18: Implement policy	\$1,501		\$284		
	A-19: Develop future policy strategy	\$816		\$154		
Provide Stakeholder Communications	A-11: Develop and deliver SEVP communications	\$9,040	\$118	\$1,224	\$24	\$130
	A-12: Respond to stakeholders' policy and technical inquiries (including Tier III Help Desk)	\$8,218				
	A-13: Provide Field Representative support	\$13,731		\$2,598		
	A-14: Prepare and attend conferences/ workshops related to the SEVIS community	\$3,404	\$62	\$644	\$13	\$68
	A-15: Develop and conduct strategic communications	\$2,699	\$49	\$511		
Provide Systems Program Management Support	A-20: Modify and enhance functionality of SEVP mission systems (e.g. SEVIS, SEVPAMS <sup>10</sup> )	\$24,816				
	A-21: Operate and maintain SEVP mission systems (e.g. SEVIS, SEVPAMS)	\$28,491				
	A-22: Provide Tier I and Tier II Help Desk support	\$12,814				

<sup>10</sup> SEVP Automated Management System

Process	Activity	I-901	I-17 Certification	I-17 Re-certification	I-17 Site Visit	Appeals
	A-23: Conduct systems program management	\$5,291				
	A-24: Analyze and disseminate program data	\$3,510	\$46	\$475	\$9	\$50
	A-25: Operate and maintain SEVP inter-office systems	\$1,735	\$32	\$328		
Support SEVP Operations	A-26: Maintain SEVP systems security	\$2,867	\$37	\$388		
	A-27: Maintain SEVP physical security	\$223	\$4	\$42	\$1	\$4
	A-32: Provide Executive Leadership for SEVP	\$2,539	\$33	\$344	\$7	\$36
	A-33: Provide SEVP administrative support	\$1,599	\$21	\$217	\$4	\$23
	A-34: Develop strategic plan	\$1,612	\$29	\$305	\$6	\$32
	A-35: Manage financial resources	\$7,300	\$95	\$988	\$20	\$105
	A-36: Manage procurement	\$1,886	\$25	\$256	\$5	\$27
	A-37: Manage personnel resources	\$2,065	\$27	\$280	\$6	\$30
	A-38: Manage SEVP records	\$3,274	\$60	\$619	\$12	\$66
	A-39: Manage facility resources	\$1,782	\$23	\$241	\$5	\$25
	A-40: Manage I-901 payment system	\$7,766				
	A-42: Manage I-901 J program	\$15,966				
	A-44: Site Visits				\$638	
Train SEVP staff, other staff, and DSOs	A-09: Develop and deliver SEVIS training	\$5,936	\$78	\$803	\$16	\$85
	A-10: Develop and deliver internal training	\$2,613	\$48	\$494	\$10	\$52
	<b>Total</b>	<b>\$314,355</b>	<b>\$3,902</b>	<b>\$51,827</b>	<b>\$775</b>	<b>\$4,155</b>

### 3. Fee Calculations

The cost model provides detailed cost information by activity and a summary cost for each, giving the aggregate fee cost by category. Next, SEVP projected the total

number of fee payments of each type for FY 2019 and FY 2020 and determined the fee-recoverable budget. SEVP selected a forecasting approach to determine the total number of expected fee payments for each fee.

**a. I-901 SEVIS Fee**

To calculate a fee amount for the I-901 SEVIS fee, SEVP estimated the number of fee payments expected in FY 2019 and FY 2020 for each of the three fee payment types: reduced fee for J participants (excluding the additional cost for initial certification and recertification of SEVP-certified schools); full fee for J participants (excluding the additional cost for initial certification and recertification of SEVP-certified schools); and full fee for F and M students (including additional costs for certification, recertification, and appeals).

Calculations for each of the three fee payment types vary because each fee type is treated differently in federal statutes and regulations. Section 641 of IIRIRA exempts Federal Government-sponsored J-1 exchange visitors from the fee payment. All F and M nonimmigrant students are currently required to pay \$200, and nonexempt J nonimmigrant exchange visitors currently must pay \$180. 8 CFR 103.7(b)(1)(ii)(H); 214.13(a). Congress modified the statute in December of 2000 to establish a reduced fee of \$35 for au pairs, camp counselors, or participants in a summer work travel program, demonstrating strong congressional intent that the fee remain at that level. Act of Dec. 21, 2000, Pub. L. 106-553, app. B, sec. 110, 114 Stat. 2762, 2762A-51, 2762A-68. IIRIRA also provided for revising the fee once the program to collect information was expanded to include information collection on all F, M, and J nonimmigrants. As a

result, the I-901 fee was revised in 2008 under the provisions of IIRIRA to take into account the actual cost of carrying out the program. *See* 73 FR 55683. The I-901 fee is now being revised a second time, through this rule, due to an increase in the actual cost of carrying out the program.

SEVP determined the number of expected I-901 SEVIS fee payments in FY 2019 and FY 2020. SEVP calculated the I-901 SEVIS fee over a 2-year period to account for potential fluctuation in the forecast. SEVP used the change in the numbers of payments received to provide the trend data used to forecast I-901 SEVIS fee payments for each I-901 payment type separately. Table 8 reflects aggregate historical payment data for all three I-901 payment types.

**Table 8: F, M, and J Visa Issuance 2007–2017**

<b>Fiscal Year</b>	<b>Total</b>	<b>Growth Rate*</b>
2007	697,054	-
2008	753,065	8.0
2009	644,912	-14.4
2010	699,983	8.5
2011	749,082	7.0
2012	744,027	-0.7
2013	767,805	3.2
2014	829,636	8.1
2015	885,728	6.8
2016	866,623	-2.2
2017	796,820	-8.1
* Growth rate rounded to nearest tenth of a percent		

As indicated in Table 8, the level of payments received varied greatly over the past 10 years. This high degree of variation in the historical data, combined with the variables affecting demand for visas, called for a forecasting methodology that would capture and account for deviations.

SEVP selected a statistical forecasting method that uses trends in historical data to forecast future payments. SEVP selected ARIMA, an autoregressive integrated moving average model to forecast payments. An ARIMA model is a statistical model that uses historical time series data to predict future trends and movements. A non-seasonal model incorporates two major components: trend and moving average. The autoregressive portion of the model, or trend, states that past values have an effect on current or future values and that values are estimated based on the weighted sum of past values. The second component is moving average which helps to smooth out the time series to filter out extreme fluctuations or outliers. In some cases a third component is needed: seasonality. Visa data from 2004 to the present shows extreme seasonality in the number of F, M, and J visas issued. Seasonality is factored into the model to account for the U.S. academic calendar.

SEVP evaluated alternative forecasting methods; however, SEVP rejected these methods due to inaccuracy and poor fit. SEVP’s chosen model provided a conservative forecast that will allow SEVP to operate with stability. The fee payment forecast, reflected in Table 9, places a balanced mix of emphasis on recent and historical data and still contains sufficient data points to smooth out some variability in the underlying data.

**Table 9: I-901 SEVIS Fee Payment Forecast FY 2019–FY 2020**

<b>I-901 Payment Type</b>	<b>FY 2019</b>	<b>FY 2020</b>
Full Payments, F/M	418,393	407,933
Full payment, J-Full	157,550	153,611
Subsidized, J-Partial	158,945	158,945
<b>TOTAL:</b>	<b>734,888</b>	<b>720,490</b>

**b. Certification Cost**

SEVP uses historical data from FY 2012 to FY 2016 to find a 3-year moving average to forecast annual new initial certifications. SEVP predicts demand of approximately 426 initial certifications each year. SEVP assumes that the proposed higher fee will not deter schools from applying for certification.

**Table 10: Three-Year Moving Average of the Number of School Certification Payments Received**

<b>Fiscal Year</b>	<b>Payments Received</b>	<b>3-Year Moving Average</b>
2012	457	
2013	382	
2014	446	428
2015	469	432
2016	363	426

The total fee category budget is taken directly from the FY 2019 and FY 2020 SEVP ABC model, reflected in Table 11.

**Table 11: FY 2019–FY 2020 Certification Fee-Recoverable Budget**

<b>Fiscal Year</b>	<b>Certification Payments Expected</b>	<b>Fee-Recoverable Budget</b>
2019	426	\$1,909,680
2020	426	\$1,992,878
<b>Total</b>	<b>852</b>	<b>\$3,902,558</b>

School certification fees are calculated by dividing the fee-recoverable budget by the anticipated number of payments. This results in a fee-recoverable amount from schools of \$4,580 each. To arrive at the proposed fee, rounding was applied to the result of the fee algorithm. This results in a certification fee of \$4,600 per school. Setting the

certification fee at the \$4,600 figure, however, leads to an increase of the current school certification fee by \$2,900, resulting in a certification fee over twice the current fee amount. School certification is integral to SEVP – F and M nonimmigrant students can only attend SEVP-certified schools. DHS is concerned that such an increase of the school certification fee would appear dramatic to schools seeking initial certification and could lead to fewer schools seeking initial certification, so DHS proposes to keep the fee increase at a level that will not discourage potential new schools from seeking certification. At the same time, DHS considers that initial certification bestows upon the school a valuable asset, the ability to enroll F and M nonimmigrant students, and an increased fee amount is reasonable as the initial certification process becomes more extensive through the SEVIS modernization and other technological developments. Weighing these concerns, DHS decided to subsidize the I-17 certification fee by increasing the payment by only \$1,300 to \$3,000. The remainder of the costs for I-17 certification is subsidized by the I-901 F and M SEVIS fee, which is addressed below.

**c. Recertification Cost**

To identify a fee level that would recover the full cost of recertification operations, SEVP determined the full cost of recertification (including level of effort and contract cost) and the approximate number of schools willing to recertify. Because schools are required to recertify every 2 years, SEVP anticipates that approximately one-half of its certified schools—roughly 4,373 schools per year, given the current certified school population of 8,746—would recertify.

**Table 12: FY 2019–FY 2020 Recertification Fee-Recoverable Budget**

<b>Fiscal Year</b>	<b>Recertification Payments Expected</b>	<b>Fee-Recoverable Budget</b>
2019	4,373	\$25,368,650
2020	4,373	\$26,457,896
<b>Total</b>	<b>8,746</b>	<b>\$51,826,546</b>

To calculate an anticipated school recertification fee, DHS divides the fee-recoverable budget by the anticipated number of payments. This results in a fee-recoverable amount from schools of \$6,000 each. To arrive at the proposed fee, rounding was applied to the result of the fee algorithm. This would result in a recertification fee of \$6,000 per school. DHS desires to institute a recertification fee to more accurately assign the costs of recertification adjudication to those stakeholders who are directly requesting the adjudication – the SEVP-certified schools – particularly since the costs of recertification continue to increase as the recertification process becomes more robust. DHS considers, however, that a recertification fee instituted in this rule for the first time should not be set at a level that could discourage schools from seeking recertification. DHS also considers that the recertification amount should be less than the initial certification amount so that schools are encouraged to seek recertification instead of allowing their SEVP certification to be withdrawn and applying for initial certification anew at some later date. Withdrawal of SEVP-certification not only leads to the school losing a valuable asset, but also leads to complications for F and M nonimmigrant students enrolled in the withdrawn school, who are then forced to transfer schools, leave the United States, or risk facing immigration law penalties for violating the terms of their nonimmigrant status. Weighing all these factors, DHS proposes that the I-17

recertification fee be \$1,250. DHS proposes to eliminate regulations that state that no fee is required for the school recertification process in order to recover part of this cost, as part of an effort to establish a more equitable distribution of costs and more sustainable level of cost recovery relative to services provided. The costs for I-17 recertification not recovered by the proposed fee would be subsidized by the I-901 F and M SEVIS fee. The explanation for shifting responsibility of the fee adjustment to the I-901 fee is included below.

**d. Site Visit Cost**

Site visits consist of initial certification site visits, change of location visits, and new campus or location site visits. The anticipated workload for these site visits is 600 per year, or 1,200 visits over a 2-year period.

**Table 13: FY 2019–FY 2020 Site Visit Fee-Recoverable Budget**

<b>Fiscal Year</b>	<b>Site Visit Payments Expected</b>	<b>Fee-Recoverable Budget</b>
2019	600	\$385,674
2020	600	\$389,689
<b>Total</b>	<b>1,200</b>	<b>\$775,363</b>

The current fee amount is \$655 as established in the 2008 Fee Rule that codified SEVP’s authority to charge the fee when a school changes its physical location or adds new physical location or campus. Following this rule’s effective date, SEVP will collect the fee when a school adds a new physical location or campus. The site visit fee would apply when a certified school updates its Form I-17 in SEVIS to indicate, pursuant to 8 CFR

214.3(h)(3)(ii), an added physical location or campus. The site visit fee is based on level of effort for both SEVP staff and contracts that cover the cost of operations.

**e. Appeals and Motions Cost**

Determining the full cost of processing an appeal is essential to improving the fee structure. The fee for filing a motion or appeal is calculated by determining the workload of appeals and motions over the FY 2019 and FY 2020 periods. Over the past 2 years, SEVP has processed 54 appeals and motions annually. To maintain conservative estimates, SEVP anticipates that number will remain constant over the FY 2019 and FY 2020 periods.

**Table 14: FY 2019–FY 2020 Appeals Fee-Recoverable Budget**

<b>Fiscal Year</b>	<b>Appeal and Motion Payments Expected</b>	<b>Fee-Recoverable Budget</b>
2019	54	\$1,956,375
2020	54	\$2,198,825
<b>Total</b>	<b>108</b>	<b>\$4,155,200</b>

Fees for motions or appeals are calculated by dividing the fee-recoverable budget by the anticipated number of payments over the FY 2019 and FY 2020 periods. This results in a fee-recoverable amount of \$38,474 for each appeal. To arrive at the proposed final cost, rounding was applied to the result of the fee algorithm. This results in a cost for a motion or appeal of \$38,500. SEVP believes that this fee, while justified, is too high to impose on the affected schools as the first fee to be established and collected for the subject appeals and motions, and that some accommodation should be made to keep the fee at a

more reasonable amount. Instead, DHS proposes adding \$4.76 to the Form I-901 F and M fees to counterbalance the unfunded costs of adjudicating appeals and motions. This will better ensure that cost is not a significant obstacle in pursuing an administrative appeal or motion. The Form I-290B fee when filed with SEVP would be set at \$675, which is currently the same amount charged when the form is filed with USCIS. *See* 8 CFR 103.7(b)(i)(S).<sup>11</sup> The Form I-290B, “Notice of Appeal or Motion,” filed with USCIS is the same form used for appeals or motions related to any denial of school certification or recertification or a withdrawal of such certification. Although the appeal fee would not be set at the amount necessary to recover the full costs of appeals and motions, by setting a fee of \$675, schools that benefit from the appeal process would bear some of its costs, and DHS would more fairly balance allocation of the recovery of SEVP operational costs between beneficiary classes. As proposed, DHS would charge the fee for all such appeals and motions.

#### **4. Proposed Fee Levels**

Viewing the SEVP fee structure and affected parties comprehensively, DHS proposes to adjust each fee in its fee structure based not only on cost of services, but also on the desire to spread the impact of fee increases reasonably among the various beneficiaries of SEVP services. Despite the ABC calculations’ determination of the actual cost of each service, which is represented by each fee, DHS has determined that

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<sup>11</sup> Because the underlying rationale for the amount of the I-290B fee differs between SEVP and USCIS, the cost for appealing a claim or petition using the I-290B Form could eventually be different for SEVP and USCIS 8 CFR 103.7(b)(1)(i)(S).

using the I-901 revenue to subsidize the costs of the SEVP's other fees is an appropriate course of action for two reasons. First, the number of F and M students paying the I-901 fee is substantially larger than the number of entities paying each of the school certification-related fees, allowing for SEVP to lessen the impact of fee increases in the aggregate. Second, the subsidization is reasonable because individuals paying the I-901 fee necessarily benefit from the continued certification of schools for their enrollment and prompt and accurate adjudication of appeals.

DHS proposes to increase the I-901 SEVIS fee for F and M students from \$200 to \$350 and the full I-901 SEVIS fee for most J exchange visitors from \$180 to \$220. While these increases may seem large, these fees have been unchanged since 2008. 73 FR 55683 (Sept. 26, 2008). In 2008, the first time these fees had been updated since SEVP's inception in 2004, the I-901 SEVIS fee for F and M students increased from \$100 to \$200, and the full I-901 SEVIS fee for most J exchange visitors increased from \$100 to \$180. *See id.* The I-901 SEVIS fee for special J-visa categories (au pair, camp counselor, and summer work travel) would remain at the current \$35 level, consistent with the levels set by Congress in 8 U.S.C. 1372(e)(4)(A). IIRIRA also exempts from the I-901 SEVIS fee J-1 exchange visitors who participate in Federal Government-sponsored J-1 exchange programs, consistent with 8 U.S.C. 1372(e)(3).

DHS proposes to increase the initial certification fee from \$1,700 to \$3,000. This fee was originally set at \$230, effective in 2002, prior to the reorganization of the Immigration and Naturalization Service (INS) to become part of DHS. *See* 66 FR 65811

(Dec. 21, 2001). The fee was increased in 2008 to \$1,700. *See* 73 FR 55683. This is the base fee for certification and does not include the site visit fee.

DHS proposes to establish a recertification fee at \$1,250, maintain the site visit fee of \$655, and set the I-290B fee at \$675. The cost for SEVP recertification, site visits, and motions and appeals adjudication is determined by employing ABC principles, previously described in this document, balanced with SEVP's desire to prevent recertifications, site visits, appeals, and motions filings from becoming cost prohibitive. DHS is proposing a recertification fee and a Form I-290B fee for the first time, and SEVP believes that charging recertification and appeals fees sufficient to recover, on their own, the fee-recoverable amount for such services, may result in inordinately high fees from the perspective of entities who have regularly received the benefits of these SEVP services at no additional charge. Accordingly, DHS proposes to set these fees at amounts below the fee-recoverable cost. For the I-290B fee in particular, DHS proposes to set the amount at \$675. DHS believes this amount is appropriate because it is less than both the fee for initial certification and the fee for recertification. Further, the amount \$675 is already associated with the Form I-290B when filing it with USCIS. DHS believes \$675 is a logical starting point, because this is the fee currently being charged by USCIS for motions and appeals. While the difference between the fee-recoverable amount (approximately \$38,500) and the proposed fee of \$675 is substantial, subsidizing this fee by driving the additional costs to the I-901 fee results in an increase of only \$4.76 to F/M students paying that fee. The proposed program fee schedule for SEVP beginning in FY 2019 is shown in Table 15.

**Table 15: Proposed FY 2019 SEVP Fees**

Category	Amount
I-901 SEVIS Fees	
• I-901 Primary F/M visa holders (Full)	\$350
• I-901 Primary J visa holders (Full)	\$220
• I-901 Special J-visa categories (Subsidized payment)	\$35
I-17 School Fee	
• Certification Fee	\$3,000
• Recertification Fee	\$1,250
• Site visit fee for initial certification (base fee to be multiplied by number of locations cited on the Form I-17), and for new physical locations	\$655
Appeal or Motion Fee	
• Appeal or Motion Fee	\$675

These proposed fee amounts, the cost model outputs, and cost reallocation amounts are shown in Table 16. The cost reallocation amounts are negative for the fees that are subsidized. The cost reallocation amounts that are positive are the amounts per fee that subsidize the other fee categories.

**Table 16: Proposed Fee Adjustment Amounts**

Fee	Current Fee (a)	Activity Based Cost Model Output (b)	Cost Reallocation (c)	Final Fee (d = b + c)	Change in Fees (e)	% Change in Fee (f = (d / a) - 1)
Appeal or Motion Fee: I-290B	N/A	\$38,475	(\$37,800)	\$675	\$675	N/A
I-901 F/M	\$200	\$290	\$60	\$350	\$150	75%
I-901 J-Full	\$180	\$123	\$97	\$220	\$30	22%
I-901 J-Partial	\$35	\$123	(\$88)	\$35	\$0	0%
I-17 Initial Certification	\$1,700	\$4,600	(\$1,600)	\$3,000	\$1,300	76%
I-17 Recertification	N/A	\$6,000	(\$4,750)	\$1,250	\$1,250	N/A
Site Visit – initial	\$655	\$650	\$5	\$655	\$0	0%

Fee	Current Fee (a)	Activity Based Cost Model Output (b)	Cost Reallocation (c)	Final Fee (d = b + c)	Change in Fees (e)	% Change in Fee (f = (d / a) - 1)
Site Visit – new location	\$0	\$650	\$5	\$655	\$655	N/A

Table 17 reflects the break-even analysis based on the proposed fee schedule and the proportional fee volumes (rounded) required to generate sufficient revenue to offset projected program costs.

**Table 17: Projected Revenue–FY 2019 and FY 2020**

Fee Category	Proposed Fee Amount	Forecasted Volume	Forecasted Revenue
I-901 F/M Full	\$350	826,326	\$289,214,144
I-901 J-Full	\$210	311,162	\$68,455,584
I-901 J-Partial	\$35	317,890	\$11,126,150
<b>I-901 Subtotal:</b>			
Certification Fee	\$3,000	852	\$2,556,000
Recertification Fee	\$1,250	8,746	\$10,932,500
Site Visit	\$655	1,200	\$786,000
<b>I-17 Subtotal:</b>			
Appeals	\$675	108	\$72,900
<b>Total:</b>		1,466,284	\$383,143,278

## VI. Statutory and Regulatory Requirements

### A. Executive Orders 12866, 13563, and 13771: Regulatory Review

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has designated this rule a “significant regulatory action,” although not economically significant under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by OMB. This proposed rule would impose transfer payments between the public and the government. Thus, this proposed rule is not expected to be subject to the requirements of Executive Order 13771. An initial regulatory analysis follows.

### **1. Background and Purpose of the Proposed Rule**

SEVP is a fee funded program within ICE that provides oversight of schools and nonimmigrant students in the F and M visa category. SEVP uses SEVIS to monitor and track certified schools and F, M, and J nonimmigrant students. DoS also uses SEVIS in the management of the Exchange Visitor Program for nonimmigrant exchange visitors in the J visa category. SEVIS is a web-based system administered by SEVP that retains data on international students and exchange visitors in the country. SEVP uses SEVIS to ensure accurate reporting and recordkeeping by schools and exchange visitor programs.

SEVP also uses SEVIS to identify for enforcement action student and exchange visitors who are out of status.

The purpose of this proposed rule is to generate the necessary revenue to recover the full cost of the FY 2019 and FY 2020 budgets. SEVP is authorized to recover the full cost of all resources and services provided. The costs of SEVP activities have increased, and the fees collected no longer cover the costs. The fee increase is needed to meet long-term cash flow needs and achieve solvency.

SEVP projects an annual budget of \$186.6 million in FY 2019 and \$188.4 million in FY 2020. SEVP forecasts \$121.6 million in revenue for FY 2019 and FY 2020 without a fee change. The implementation of this proposed rule would provide SEVP with additional fee revenue of \$75.2 million in FY 2019 and \$73.5 million in FY 2020. If DHS does not adjust the current fees to recover the costs of processing the enrollment of F and M students, certification and recertification of schools, processing relating to J exchange visitors, appeals, and site visits, it will be forced to make reductions in oversight, security, and service as compared to current projections.

To determine the full cost associated with SEVP and the management of SEVIS, SEVP used ABC methodology. ABC first identifies activities in an organization and then assigns the cost of each activity according to the resources they consume. SEVP identified the following as its primary activities: collecting and retaining information on F, M, and J nonimmigrants; certifying schools; overseeing school compliance; recertifying schools; adjudicating appeals; investigating suspected violations of immigration law and other potential threats to national security by F, M, or J

nonimmigrants; providing outreach and education to users; and performing regulatory and policy analysis. SEVP also recognizes management and overhead costs associated with the program.

SEVP proposes five fees paid by two source categories: individuals will pay the I-901 SEVIS fee, and institutions will pay the I-17 certification fee, I-17 recertification fee, the fee for a motion or appeal, and the site visit fee. By tracing expenditures of the activities previously listed to the various fee categories, SEVP forecasted fee payments to determine the appropriate fee amount for each fee type proposed in this rule.

Table 18 presents an accounting statement summarizing the annualized transfer amounts and qualitative benefits of the proposed rule. This rule proposes that schools will pay a higher fee for initial SEVP certification and will incur a fee for recertification, a site visit when adding a new physical location or campus, and the filing of a motion or appeal. In addition, F and M students and J visitors will pay higher fees.

**Table 18: Accounting Statement for FY 2019**

Category	Primary Estimate	
Qualitative Benefits	SEVP will be able to maintain the current level of service. This proposed rule will enhance SEVP’s capability to support national security and counter immigration fraud through the continued development and implementation of critical system and programmatic enhancements. Enhancements to SEVIS, including the establishment of a student portal, will assist DSOs in their regulatory obligation to provide accurate and timely information and rebalance this reporting requirement by providing students an automated means to do so. Increased adjudication personnel will assist in reducing recertification processing times, while enhanced vetting protocols will ensure that only those eligible to enter and remain in the country do so.	
Transfers	7% Discount Rate \$75,231,420 from schools and students to the government 3% Discount Rate \$75,231,420 from schools and students to the government	
Category	Effects	Source
Effects on State, local, and/or tribal government	The proposed rule would increase and establish additional fees on state, local, and/or tribal government-funded educational institutions for support of SEVP operations. This rule proposes to increase the I-17 certification fee and creates the I-17 recertification fee and a fee for filing an appeal or motion. In addition, this rule announces that following completion of this rulemaking, SEVP will collect a site visit fee when an SEVP-certified school adds a campus/location.	NPRM, Executive Order 12866 analysis
Effects on small businesses	The proposed rule would increase and establish additional fees for educational institutions in support of SEVP operations. This proposed rule would increase the I-17 certification fee and create the I-17 recertification fee and a fee for filing an appeal or motion. In addition, this rule announces that following the completion of this rulemaking, SEVP will collect a site visit fee when a school certified by SEVP adds a campus/location.	Initial Regulatory Flexibility Analysis

## **2. Impacts of Regulatory Change**

This proposed rule would amend the current fees for the individual student and exchange visitor application fee (I-901 SEVIS fee) and school certification petition for initial certification. It would maintain the current fee for site visits and extend it to any change of location or additional physical location or campus reported as an update by a certified school. It would also institute a new fee for school recertification petitions and the filing of appeals and motions by schools. The amended fee structure reflects existing and projected operating costs, program requirements, and planned program improvements.

The current I-901 SEVIS fees are based on a fee analysis performed when SEVP last increased the fees in 2008. *See* 73 FR 55683. Those cost calculations were established on the basis of projected workload. Since 2008, SEVP's program mission tasks have expanded significantly. The expansions of certification, recertification, and appeals costs and the subsidization of excess costs not recovered by fees have led to the need for the proposed fee increase. Additionally, SEVP now provides investigative analysis to support enforcement operations, has increased numbers of adjudication personnel, and is undergoing SEVIS Modernization. Concurrently, costs associated with these program tasks have been affected by increased costs due to inflation. This rule proposes fees that would result in recovery of the full cost of SEVP operations with fee-generated revenue; alignment of the fees with current and projected costs and processes that have been adjusted as the program has gained experience and sophistication; and the

agency’s adoption of more detailed and accurate data sources and improved management tools to align resources and workload.

**a. I-901 F and M SEVIS Fee**

F nonimmigrants, as defined in INA section 101(a)(15)(F), 8 U.S.C. 1101(a)(15)(F), are foreign students who come to the United States to pursue a full course of academic study in SEVP-approved schools and their dependents. M nonimmigrants, as defined in INA section 101(a)(15)(M), 8 U.S.C. 1101(a)(15)(M), are foreign nationals pursuing a full course of study at an SEVP-certified vocational or other recognized nonacademic program (other than language training programs) in the United States and their dependents. International F and M nonimmigrant students seeking temporary admission into the United States to attend a U.S. educational institution must pay the I-901 F and M SEVIS fee. SEVP proposes to increase the I-901 F and M SEVIS fee from \$200 to \$350.

From 2007 through 2017, SEVP received an average of 450,581 I-901 F and M SEVIS payments per year. Table 19 shows the volume of I-901 F and M SEVIS fee payments received and the annual average number of fee payments from 2007 to 2017. As previously discussed, SEVP has forecasted 418,393 I-901 F and M payments in FY 2019 and 407,933 FY 2020, respectively.

**Table 19: I-901 F and M SEVIS Fee Payments FYs 2010–2017**

<b>Fiscal Year</b>	<b>Fee Payments</b>
2007	358,666

<b>Fiscal Year</b>	<b>Fee Payments</b>
2008	400,090
2009	348,815
2010	389,255
2011	431,180
2012	449,029
2013	469,986
2014	519,751
2015	574,158
2016	545,203
2017	470,261
Annual Average (2007–2017)	450,581
Forecasted 2019	418,393
Forecasted 2020	407,933

Table 20 illustrates the incremental increase DHS is proposing with this rule for the I-901 F and M fee. Individuals who submit a Form I-901 will pay an additional \$150 under this proposed rule, which is a 75 percent increase.

**Table 20: I-901 F and M Incremental Fee Increase**

<b>Type</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Difference (Proposed–Current)</b>
I-901 F and M	\$200	\$350	\$150

SEVP estimates that the fee increase would result in an annual increase of transfer payment from students who submit an I-901 form to the government of approximately \$62 million per year (\$150 increase x 418,393 FY 2019 number of applicants = \$62,758,950; \$150 increase x 407,933 FY2020 number of applicants = \$61,189,950).

**b. I-901 J-Full SEVIS fee**

DoS generally oversees the exchange visitor program, which includes nonimmigrants who are charged the full J SEVIS fee. J exchange visitors are nonimmigrant individuals approved to participate in an exchange visitor program in the United States and the spouse and dependents of the exchange visitors. This SEVIS fee is associated with J-1 nonimmigrants participating in a designated exchange visitor program. Certain other J-1 categories are subject to a reduced fee or are exempt from a fee in accordance with 8 U.S.C. 1372(e). SEVP and DoS have a memorandum of reimbursable agreement. DoS sends SEVP its actual expenditures, and SEVP reimburses them quarterly. Each year, SEVP and DoS review and update the memorandum. Table 21 displays the affected Exchange Visitor Program categories subject to the full SEVIS fee and the purpose of the visit.<sup>12</sup>

**Table 21: J-1 Exchange Visitor Program Categories Subject to Full SEVIS Fee**

<b>Exchange Visitor Program Category</b>	<b>Purpose of Visit</b>
Short-term Scholar	Lecture, observe, consult, training, demonstrate special skills.
Professor and Research Scholar	Research Scholar: Research, observe, or consult in connection with a research project. Professor: Teach or lecture at university, observe, or consult.

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<sup>12</sup> See Department of State, Exchange Visitor Program Category Requirements (June 2016), available at <https://j1visa.state.gov/wp-content/uploads/2017/06/Exchange-Visitor-Program-Category-Requirements.pdf> (last visited Feb. 26, 2018).

<b>Exchange Visitor Program Category</b>	<b>Purpose of Visit</b>
Physician	Pursue graduate medical education or training at accredited schools of medicine or scientific institutions.
Intern	Structured internship program that is in the student's field of study.
Trainee	Structured training program that is in the trainee's professional field.
Specialist	Observing, consulting, or demonstrating special skills.
Teacher	Teach full-time in an accredited primary, including pre- kindergarten, or secondary (K-12) public or private school.
Secondary School Student	Study in the U.S. at accredited public or private secondary schools for an academic semester or an academic year, while living with American host families.
College and University Student	Participate in a degree or nondegree program at an accredited postsecondary academic institution, or participate in a student internship program.
Government visitor (non-Federal)	Engage in observation tours, discussions, consultations, professional meetings, conferences, workshops and travel when selected by a state or local government agency

SEVP receives an average of 151,958 I-901 Full J SEVIS payments per year (FYs 2007 – 2017). Table 22 displays the volume of Full I-901 J SEVIS fee payments received and the annual average number of fee payments. SEVP has forecasted 157,550 I-901 J-Full payments in FY 2019 and 153,611 in FY 2020.

**Table 22: I-901 J-Full SEVIS Fee Payments FYs 2010–2017**

<b>Fiscal Year</b>	<b>Fee Payments</b>
2007	132,213
2008	137,173
2009	129,979

<b>Fiscal Year</b>	<b>Fee Payments</b>
2010	139,534
2011	148,253
2012	155,008
2013	160,522
2014	172,530
2015	168,967
2016	164,401
2017	162,959
Average (2007–2017)	151,958
Forecasted 2019	157,550
Forecasted 2020	153,611

The difference between the proposed and current fees for the I-901 J-Full applicants is \$40, an increase of approximately 22 percent, as shown in Table 23.

**Table 23: I-901 J-Full Incremental Fee**

<b>Type</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Difference (Proposed–Current)</b>
I-901 J-Full	\$180	\$220	\$40

The total increase in transfer payments from I-901 J-Full applicants to the government is expected to be \$12,446,440 (\$40 increase in fee x 157,550 FY 2019 and 153,611 FY 2020 forecasted number of applicants). The increase in J fees is meant to recover the full cost of J program operations for SEVP, which includes the reimbursement to DoS, SEVIS costs, and other adjudication services for J exchange visitors. For the purposes of calculating fees, SEVP isolates the costs specifically incurred by operating the J visa program. As it stands, the J visa program operates at a greater cost than the revenue that J visa fees bring to the program; therefore, SEVP proposes an increase to the J-Full visa to cover the \$39.4 million full cost of operating the J visa program on an annual basis.

**c. I-17 Certification and Recertification Fee**

For a U.S. school to enroll F and M nonimmigrant students, it is required to be certified by SEVP. A school petitions for SEVP certification to enroll these students by completing and submitting Form I-17, “Petition for Approval of School for Attendance by Nonimmigrant Student,” online through SEVIS.

All SEVP-certified schools are required to go through the recertification process every 2 years to ensure they remain qualified for certification and adhere to all requirements according to the regulations.

From FY 2012 to 2016, there has been an annual average of 423 schools applying for SEVP certification. As previously discussed, DHS calculated the 3-year moving average to minimize the variation in forecasting the population data. The I-17 Initial certifications from FYs 2012 through 2016 are shown in Table 24.

**Table 24: FYs 2012–2016 I-17 Initial Certifications**

<b>Fiscal Year</b>	<b>I-17 Certification Petitions</b>	<b>3-Year Moving Average</b>
2012	457	-
2013	382	-
2014	446	428
2015	469	432
2016	363	426
<b>Total</b>	<b>2,117</b>	-

SEVP uses the 3-year moving average to predict that there will be 426 initial certifications in both FY 2019 and FY 2020, respectively.

There are currently 8,746 SEVP-certified schools. DHS assumes that approximately half, or approximately 4,373 schools, will recertify each year, including the 1,728 schools with no active F or M students. DHS assumes that a school would prefer to recertify for a \$1,250 fee instead of allowing certification to lapse and thereafter having to again pay the proposed initial certification fee of \$3,000. The proposed initial certification fee is a 76 percent increase from the current fee.

The current fee to apply for initial certification is \$1,700, which has not changed since 2008. SEVP does not currently charge a recertification fee; the proposed fee amount is \$1,250. The I-17 initial certification and I-17 recertification incremental fees are shown in Table 25.

**Table 25: I-17 Incremental Fees**

<b>Type</b>	<b>Proposed Fee</b>	<b>Current Fee</b>	<b>Difference (Proposed–Current)</b>
I-17 Initial Certification Fee	\$3,000	\$1,700	\$1,300
I-17 Recertification Fee	\$1,250	\$0	\$1,250

The annual increase in transfer payments from schools to the government from I-17 initial certifications is expected to be \$553,800 (\$1,300 increase in fee x 426 (FY 19 and FY 20 forecasted number of I-17 initial certifications)). The annual increase in transfer payments from schools to the government for I-17 recertification is expected to be \$5,466,250 (\$1,250 increase in fee x 4,373 (FY 2019 and FY 2020 forecasted number of recertifications)).

**d. Fee for Motion or Appeal**

When a school is denied certification or recertification, the school receives a denial letter through certified mail. The denial letter explains the reason for the denial and the steps to appeal. The school can appeal by completing the Form I-290B, “Notice of Appeal or Motion,” within 30 days of receipt. This rule proposes that SEVP impose a filing fee of \$675, which is also the fee currently charged by USCIS upon submission of the Form I-290B.<sup>13</sup> SEVP does not currently collect a fee from a school that files a motion or appeal. DHS proposes to revise its regulations to institute this fee for a school filing a motion or an appeal in order to establish a more equitable distribution of costs, improve services by decreasing an appeals or motions throughput time and a more sustainable level of cost recovery relative to the services provided.

SEVP processed an average of 54 motions and appeals from schools annually from 2013 to 2016. DHS assumes that there will be the same number of appeals or motions filed in FY 2019 and FY 2020.

The total annual increase in transfer payments from schools to the government for filing a motion or appeal is expected to be \$36,450 (\$675 fee x 54 (FY 2019 and FY 2020 forecasted number of fee payments)).

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<sup>13</sup> USCIS I-290B, “Notice of Appeal or Motion,” Filing Fee of \$675, <https://www.uscis.gov/i-290b>.

**e. Site Visit Fee**

As noted above, current regulations provide authority for SEVP to charge a site visit fee to schools that apply for initial certification or report a change of physical location, or addition of a physical location or campus. The site visit allows SEVP an opportunity to gather evidence on the school's eligibility, review school facilities, and interview personnel listed on the I-17 petition as a PDSO or DSO. SEVP currently collects the \$655 fee when a school files a petition for certification to issue Forms I-20 or by a certified school when it physically moves to a new location. This proposed rule notifies the public that following completion of this rulemaking, SEVP plans to also collect the fee from any certified school that adds a physical location or campus, by updating its Form I-17 in SEVIS, consistent with the above authorities and the agency's longstanding interpretation.

SEVP performs 600 site visits annually. Of these 600 visits, 426 will be at schools that apply for initial certification and currently pay the \$655 site visit fee. The remaining 174 site visits may include visits when a school adds a new physical location or campus. DHS proposes that the site visit fee amount, \$655, remain the same.

The annual increase in transfer payments from schools to the government due to site visits is expected to be \$113,970 (\$655 fee x 174 (FY 2019 and FY 2020 forecasted number of site visits)).

**f. Conclusion**

SEVP expects to have a total increase in fees of \$68.7 million per year, discounted at 7 percent, transferred from individuals and entities for the services they

receive, to the government. Table 26 shows the summary of the total annual number of payments, incremental fee amounts, and total fees transferred.

**Table 26: Annual Proposed Incremental Fee Amounts, FY 2019**

	<b>Annual Number of Payments</b>	<b>Proposed Incremental Fee Amounts</b>	<b>Annual Fee Transfer to Government</b>
<b>I-901 F and M</b>	418,393	\$150	\$62,758,950
<b>I-901 J-Full</b>	157,550	\$40	\$6,302,000
<b>I-17 Initial Certification</b>	426	\$1,300	\$553,800
<b>I-17 Recertification</b>	4,373	\$1,250	\$5,466,250
<b>Site Visits – initial</b>	426	\$0	\$0
<b>Site Visits – new location</b>	174	\$655	\$113,970
<b>Appeals</b>	54	\$675	\$36,450
<b>Total</b>			\$75,231,420

### **3. Alternatives**

SEVP examined several alternatives to the proposed fee structure, including no increase to any fee, only increasing the I-901 SEVIS fee and I-17 fee, and the unsubsidized results of the ABC model.

Without an increase in fees, SEVP will be unable to maintain the level of service for students and schools that it currently provides as well as the compliance and national security activities discussed above. SEVP considered the alternative of maintaining fees at the current level but with reduced services and increased processing times, but has decided that this would not be in the best interest of applicants and schools. SEVP seeks to minimize the impact on all parties, but in particular small entities. If SEVP followed this alternative scenario, there would be a shortfall of revenue of over \$65.4 million in FY 2019 to cover expenses. SEVP rejected this alternative. SEVP must pay for the

expenses of maintaining and improving SEVIS and adjudicating schools applying to be certified by SEVP in a timely manner.

SEVP also considered raising only the I-901 and I-17 certification fees instead of including a new proposed fee for recertification and for filing a motion or appeal. If SEVP followed this scenario, the I-901 F and M fee would increase to \$350 to cover the shortfall in revenue, but the I-17 Initial Certification fee would also increase to \$4,200. This would triple the existing certification fee while allowing schools with zero foreign students to remain active SEVP schools that require SEVP effort for recertification. SEVP rejected this fee structure as it would continue to add workload to SEVP’s recertification branch. Without any disincentive to recertify, the list of schools recertifying would likely continue to grow. The proposed fees, however, would establish a more equitable distribution of costs and a more sustainable level of cost recovery relative to the services provided.

SEVP also considered the unsubsidized results of the ABC model as an alternative, which allocated the I-901 F and M fee, school certification fees, and the fee to file an appeal or motion as shown in Table 27.

**Table 27: Unsubsidized Fee Amounts**

<b>Fee Type</b>	<b>Unsubsidized Fee Amounts</b>
I-901 F and M	\$290
I-901 J-Full	\$130
I-901 J-Partial	\$130
I-17 Initial Certification	\$4,600
I-17 Recertification	\$6,000
Appeal or Motion	\$38,475

Fee Type	Unsubsidized Fee Amounts
Site Visit	\$650

SEVP rejected this alternative for several reasons. Most conspicuously, the fee to file a motion or appeal filed on the USCIS-managed Form I-290B has been set at \$675. Since a fee of \$38,475 would be significantly higher than any other SEVP fee it may improperly discourage schools from filing a motion or appeal. Similarly, SEVP rejected the alternative to set the recertification fee at the ABC model output amount of \$6,000. A recertification fee higher than the initial certification fee would discourage schools from seeking recertification. SEVP instead proposes to set the recertification fee at a level less than the initial certification fee. When schools can maintain their certification, F and M nonimmigrant students enrolled in the withdrawn school avoid complications such as being forced to transfer schools, leave the United States, or risk facing immigration law penalties for violating the terms of their nonimmigrant status.

SEVP also rejected the initial certification fee of \$4,600 because it finds that an increase of almost three times the current fee of \$1,700 is excessive. In the fee development, DHS balanced the challenge of minimizing the costs to schools and students while recovering funding to support SEVP services. The population of I-901 F and M students relative to the population of I-17 schools allows for a minimal fee adjustment to be spread over the student population to reduce the cost burden on individual institutions seeking recertification.

## **B. Regulatory Flexibility Act**

### **Initial Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603 requires DHS to consider the economic impact its proposed rules will have on small entities. In accordance with the RFA, DHS has prepared an Initial Regulatory Flexibility Analysis (IRFA) that examines the impacts of the proposed rule on small entities. The term “small entities” encompasses small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000.

DHS requests information and data from the public that would assist in better understanding the impact of this proposed rule on small entities. DHS also seeks alternatives that will accomplish the same objectives and minimize the proposed rule’s economic impact on small entities.

#### **1. A description of the reasons why the action by the agency is being considered**

DHS proposes this rule to adjust current fees and introduce new fees to ensure that SEVP is able to recover the full costs of the management and support of its program activities. DHS’s objectives and legal authority for this proposed rule are further discussed throughout this notice of proposed rulemaking (NPRM).

**2. A succinct statement of the objectives of, and legal basis for, the proposed rule**

The objective of the proposed rule is to prevent an anticipated funding deficit in operating the SEVP. More specifically, this proposed rule would increase the SEVP funding stream by adjusting the I-901 F and M fee, I-901 J-Full fee, and I-17 Certification fee and instituting the I-17 Recertification fee and a fee for filing a motion or appeal. This proposed rule would also announce the collection of a site visit fee when an SEVP-certified school adds a new physical location or campus, at which it provides educational services to nonimmigrant students. The funding supports continuing operations and new initiatives critical to SEVP oversight of schools and the monitoring of nonimmigrant students in the F, M, and J visa classifications for national security purposes.

The legal basis for this proposed rule increasing the SEVP funding stream is grounded in the Homeland Security Act of 2002, which created DHS and imparted upon DHS the responsibility for SEVIS. DHS uses SEVIS to meet the monitoring and verification requirements under EBSVERA, Pub. L. 107-173, secs. 501-502, 116 Stat. 543, 560-63 (2002) (codified at 8 U.S.C. 1761-1762), and to conduct a recertification of schools every 2 years following the date of EBSVERA's enactment. The Secretary of Homeland Security is authorized to collect fees for SEVP from prospective F and M students and J exchange visitors. IIRIRA section 641(e)(1), as amended, 8 U.S.C. 1372(e)(1). Initially, fees for most groups of F, M, and J classes of prospective nonimmigrants were statutorily limited to not exceed \$100, except in the case of the fee

for special J visa categories—au pairs, camp counselors, and participants in summer work travel programs—which was set at \$35 pursuant to 8 U.S.C. 1372(e)(4)(A). This fee level has been maintained consistent with Congressional intent. The Secretary is authorized to revise nonimmigrant fees on a periodic basis to account for changes in the cost of executing SEVP. IIRIRA section 641(g)(2), 8 U.S.C. 1372(g)(2). In addition, INA section 286(m), 8 U.S.C. 1356(m), provides that DHS may set fees “at a level that will ensure recovery of the full costs of providing [adjudication] services.”

**3. A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply**

This analysis does not apply to increases in the I-901 F and M fees because these fees are paid by individuals who are not, for purposes of the RFA, within the definition of small entities established by 5 U.S.C. 601(6). DHS believes that J fees are also paid by individuals and requests comment on this assumption.

As of May 2017, there were a total of 8,746 SEVP-certified schools that would be subject to the I-17 recertification fee, site visit fee, and fee to file a motion or an appeal. New schools applying for SEVP certification would be subject to the proposed I-17 initial certification fee. Of the 8,746 SEVP-certified schools, 2,013 have identified as public schools on their I-17 form. The remaining 6,733 schools have identified

themselves on the Form I-17 as private for-profit, private nonprofit, or private unspecified entities.<sup>14</sup>

Of the 2,013 SEVP-certified public schools, DHS conducted a random sample of 100<sup>15</sup> schools to approximate the number of public schools in a governmental jurisdiction with a population of less than 50,000. Out of the 100 public schools, 62, or 62 percent, are located in a city with a population fewer than 50,000. DHS infers 1,248 SEVP-certified public schools are considered a small entity as defined by SBA.

DHS conservatively assumes that all 1,507 private nonprofit schools certified by SEVP are small entities because they are not dominant in their fields. DHS also assumes that the 4,755 schools that are private unspecified are small entities. DHS requests comments on these assumptions.

To determine which of the remaining 471 private for-profit schools are considered a small entity, DHS references the Small Business Administration (SBA) size standards represented by business average annual receipts. Receipts are generally defined as a firm's total income or gross income. SBA's Table of Small Business Size Standards is

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<sup>14</sup> Prior to October 1, 2016, schools had two options in SEVIS to select their school type: public or private unspecified. With the recent SEVIS update, schools can only choose one of three options: public, private for-profit, or private nonprofit.

<sup>15</sup> The random sample helps ensure an accurate representation of the population with each school having an equal chance of being included. In determining the sample size DHS utilized a 90 percent confidence level (z-score), 10 percent margin of error (e), and a 50 percent population proportion ( $\pi$ ) used as an unknown input and to maximize the estimate to overestimate sample size. The sample size equation used  $n = \frac{z^2 \pi(1-\pi)}{e^2}$  provided inputs  $\frac{1.65^2(.5)(.5)}{.01} = 69$  and rounded up to 100 to over sample. DHS identified geographic population data matched to the school's city address provided in SEVIS, sourced from U.S. Census Bureau 2010-2016 Cities and Towns (Incorporated Places and Minor Civil Divisions) at <https://www.census.gov/data/tables/2016/demo/pepst/total-cities-and-towns.html>.

matched to the North American Industry Classification System (NAICS) for industries.<sup>16</sup> DHS matches information provided by the schools in SEVIS regarding what programs of study it is engaged in with an appropriate NAICS industry description. NAICS is the standard classification used to categorize business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy.

DHS finds that the revenue of 332 of the 471 private, for-profit schools meet the SBA size standard of a small business according to their industry. DHS estimates each private school's annual receipts by multiplying the approximate annual cost of room, board, and tuition by the average annual number of total students, based on data provided by the schools on their Forms I-17. Every 2 years, as part of the recertification process, a school submits the approximate annual cost of room, board, and tuition per student and the average annual number of total students, both domestic and international. DHS acknowledges that this method to estimate receipts may be an incomplete account of a school's income, which may also include contributions from private individuals or other endowments. Since these data reflect a snapshot of all SEVP-certified schools as of May 24, 2017, DHS acknowledges there may be day-to-day changes in the status of a school's certification and that a school's revenue may differ from actual revenue due to a 2-year lag in school self-reporting before a school is required to recertify.

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<sup>16</sup> U.S. Small Business Administration, Tables of Small Business Size Standards Matched to NAICS Codes (Oct. 1, 2017), available at [https://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table\\_2017.xlsx](https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.xlsx).

Given these assumptions, DHS estimates that 7,842 schools meet the SBA definition of a small entity. This is approximately 90 percent of the 8,746 of SEVP-certified schools included in this analysis.

Table 28 shows a summary by school type of the number of SEVP-certified schools and estimated small entities.

**Table 28: SEVP-Certified Schools by School Type**

<b>Description</b>	<b>Total</b>	<b>Small Entities</b>
Public Schools	2,013	1,248
Private, nonprofit schools	1,507	1,507
Private, unspecified schools	4,755	4,755
Private, for-profit schools	471	332
Total Number of SEVP-Certified Schools	8,746	7,842

Table 29 provides a summary of the SEVP-certified schools by industry. The table also shows the NAICS industry description, the NAICS code, and the number of small and large schools by industry. Note that the number of small schools includes all nonprofits and unspecified private schools. Most industries with SEVP-certified schools consist of a majority of small schools.

**Table 29: Number of SEVP-Certified Schools by Industry**

<b>School Industry</b>	<b>NAICS Industry Description</b>	<b>NAICS Codes</b>	<b>Number of Small Schools</b>	<b>Number of non-small Schools</b>	<b>Total SEVP-Certified Schools</b>	<b>Percent Small Schools</b>
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<b>School Industry</b>	<b>NAICS Industry Description</b>	<b>NAICS Codes</b>	<b>Number of Small Schools</b>	<b>Number of non-small Schools</b>	<b>Total SEVP-Certified Schools</b>	<b>Percent Small Schools</b>
Elementary and Secondary Schools	Industry primarily engaged in providing academic courses and related course work that contain a basic preparatory education. A basic preparatory education generally starts kindergarten through 12th grade.	611110	3,472	18	3,490	99%
Junior Colleges	Industry primarily engaged in providing academic or technical courses and granting associate degrees, certificates, or diplomas below the baccalaureate level.	611210	11	2	13	85%
Colleges, Universities, and Professional Schools	Industry primarily engaged in providing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training.	611310	2,150	57	2,207	97%

<b>School Industry</b>	<b>NAICS Industry Description</b>	<b>NAICS Codes</b>	<b>Number of Small Schools</b>	<b>Number of non-small Schools</b>	<b>Total SEVP-Certified Schools</b>	<b>Percent Small Schools</b>
Computer Training	Industry primarily engaged in providing computer training (except computer repair), such as computer programming, software packages, computerized business systems, computer electronics technology, computer operations, and local area network management.	611420	13	0	13	100%
Professional and Management Development Training	Industry primarily engaged in providing a collection of short interval courses and sessions for management and professional development. Training for career development may be provided directly to individuals or through employers' training programs, and courses may be customized or modified to meet the special needs of customers.	611430	18	0	18	100%
Cosmetology and Barber Schools	Industry primarily engaged in providing training in hair styling, barbering, or cosmetic arts, such as makeup or skin care.	611511	91	3	94	97%
Flight Training	Industry primarily engaged in providing aviation and flight training.	611512	199	1	200	100%

<b>School Industry</b>	<b>NAICS Industry Description</b>	<b>NAICS Codes</b>	<b>Number of Small Schools</b>	<b>Number of non-small Schools</b>	<b>Total SEVP-Certified Schools</b>	<b>Percent Small Schools</b>
Apprenticeship Training	Industry primarily engaged in providing apprenticeship training programs.	611513	39	1	40	98%
Other Technical and Trade Schools	Industry primarily engaged in providing job or career vocational or technical courses (except cosmetology and barber training, aviation and flight training, and apprenticeship training).	611519	183	6	189	97%
Fine Arts Schools	Establishments primarily engaged in offering instruction in the arts, including dance, art, drama, and music.	611610	79	3	82	96%
Sports and Recreation Instruction	Industry primarily contains institutions such as camps and schools, primarily engaged in providing instruction in athletic activities to groups of individuals.	611620	10	0	10	100%
Language Schools	Industry primarily engaged in providing foreign language instruction (including sign language).	611630	286	44	330	87%
Exam Preparation and Tutoring	Industry primarily engaged in providing training for standardized examinations and/or educational tutoring services.	611691	8	4	12	67%

School Industry	NAICS Industry Description	NAICS Codes	Number of Small Schools	Number of non-small Schools	Total SEVP-Certified Schools	Percent Small Schools
All Other Misc. Schools and Instruction	Industry primarily engaged in providing instruction (except academic schools, colleges and universities, business, computer, management, technical, trade, fine arts, athletic, language instruction, tutoring, and automobile driving instruction).	611699	32	0	32	100%
Educational Support Services	Industry primarily engaged in providing non-instructional services that support educational processes or systems.	611710	2	0	2	100%
Public Schools (Elementary, Secondary, and High School)	Industry primarily engaged in providing academic courses and related course work that contain a basic public education.	N/A	1,248	765	2,013	62%
<b>Total</b>			<b>7,842</b>	<b>904</b>	<b>8,746</b>	<b>90%</b>

Table 30 presents the type of schools with active F and M students and the percent of students enrolled in small schools. Most F and M students are enrolled at small schools. Of the 8,746 SEVP-certified schools, DHS identified 1,728 with no active F or M students and determined that 1,296 of these are considered small entities as defined by SBA. Note that although there are two SEVP-certified schools in the education support services industry (shown in Table 29), there are no active F and M students in these schools. DHS applies the results of the sample of SEVP-certified public

schools to the number of students in SEVP-certified public schools (619,295) to estimate that the number of students in small SEVP-certified public schools is 383,963.

**Table 30: Total Number of Active F and M Students by Industry**

<b>School Industry</b>	<b>Total Active F and M Students in Small Schools</b>	<b>Total Active F and M Students</b>	<b>Percent of Students at Small Schools</b>
Elementary and Secondary Schools	60,990	63,491	96%
Junior Colleges	409	418	98%
Colleges, Universities, and Professional Schools	419,593	429,784	98%
Computer Training	404	404	100%
Professional and Management Development Training	217	217	100%
Cosmetology and Barber Schools	91	93	98%
Flight Training	6,598	6,605	100%
Apprenticeship Training	71	75	95%
Other Technical and Trade Schools	1,108	1,111	100%
Fine Arts Schools	1,736	2,030	86%
Sports and Recreation Instruction	13	13	100%
Language Schools	33,500	41,867	80%
Exam Preparation and Tutoring	1,469	1,984	74%
All Other Miscellaneous Schools and Instruction	218	218	100%
Educational Support Services	-	-	0
Public Schools	383,963	619,295	62%

DHS estimated SEVP-certified public schools' revenue to examine the impact of the proposed fee adjustments on small public schools. The tuition provided by public schools in SEVIS may not represent a public school's total revenue because most of the U.S. students would generally not pay the tuition provided to attend public schools. Instead, DHS assumes that a public school's county or city's tax revenue is the best revenue source against which to assess the impact of the proposed fee adjustments. DHS

collected local government revenue, expenditure, debt, and assets from the U.S. Census Bureau 2015 State and Local Government Survey<sup>17</sup> to examine the impact of the increased fees on the public schools included in the sample. A county or city’s revenue may be an overestimation of a public school’s capability to pay the fees related to SEVP-certification, appeals, or site visits for new locations. This revenue approximation may minimize the impact of the fee adjustments for public schools. DHS requests comments on these assumptions.

Table 31 displays the range of annual revenue by each school industry and for public schools, from the small school with the lowest revenue to the median revenue of all the small schools to the small school with the largest revenue. It also shows the average revenue of all the small schools in that industry. The Colleges, Universities, and Professional Schools industry has the widest range from maximum to minimum revenue due to the assumption that all private, unspecified schools are small entities, while the Educational Support Services industry that only has two schools included has the smallest range of maximum to minimum revenue for any one industry.

**Table 31: Range of Annual Revenue by School Industry**

<b>School Industry</b>	<b>Lowest Annual Revenue</b>	<b>Median Annual Revenue</b>	<b>Largest Annual Revenue</b>	<b>Average Annual Revenue</b>
Elementary and Secondary Schools	\$28,800	\$5,116,550	\$1,680,000,000	\$13,194,355

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<sup>17</sup> Available at <https://www.census.gov/govs/local/>.

<b>School Industry</b>	<b>Lowest Annual Revenue</b>	<b>Median Annual Revenue</b>	<b>Largest Annual Revenue</b>	<b>Average Annual Revenue</b>
Junior Colleges	\$44,400	\$2,560,000	\$15,255,000	\$4,271,901
Colleges, Universities, and Professional Schools	\$26,400	\$28,432,500	\$5,002,524,120	\$96,761,518
Computer Training	\$425,000	\$3,000,000	\$14,000,000	\$3,881,631
Professional and Management Development Training	\$129,600	\$717,500	\$2,904,625	\$1,000,423
Cosmetology and Barber Schools	\$70,000	\$2,183,000	\$66,907,200	\$4,092,673
Flight Training	\$36,000	\$3,000,000	\$60,000,000	\$5,959,154
Apprenticeship Training	\$132,000	\$10,265,875	\$106,080,000	\$21,004,563
Other Technical and Trade Schools	\$64,000	\$2,800,000	\$82,800,000	\$7,570,939
Fine Arts Schools	\$66,000	\$2,895,000	\$130,000,000	\$9,425,304
Sports and Recreation Instruction	\$276,800	\$1,165,000	\$9,312,500	\$2,626,805
Language Schools	\$118,500	\$5,725,000	\$108,000,000	\$7,514,433
Exam Preparation and Tutoring	\$3,150,000	\$5,043,189	\$27,000,000	\$6,983,297
All Other Miscellaneous Schools and Instruction	\$83,250	\$845,000	\$469,050,000	\$18,359,767
Educational Support Services	\$340,000	\$521,750	\$703,500	\$521,750
Public Schools	\$4,389,000	\$192,353,500	\$17,833,251,000	\$1,315,830,548

**4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record**

The proposed rule would increase and establish additional fees for educational institutions in support of SEVP operations. DHS estimates the annual impact to small schools based on the school cost of compliance as represented as a percentage of their annual revenue. Table 32 displays the proposed fees, the current fees, and the difference in these amounts. This analysis examines the impact that the proposed incremental fee for the Form I-17 certification and the proposed fees for recertification, site visits to add a new physical location or campus, and the filing of a motion or an appeal would have on small SEVP-certified schools.

**Table 32: Proposed School Fees by Type**

<b>Fee Type</b>	<b>Proposed Fee</b>	<b>Current Fee</b>	<b>Difference (Proposed–Current)</b>	<b>Percent Increase</b>
I-17 Certification Fee	\$3,000	\$1,700	\$1,300	76%
I-17 Recertification Fee	\$1,250	\$0	\$1,250	N/A
Site Visit Fee – initial	\$655	\$655	\$0	0%
Site Visit Fee – new location	\$655	\$0	\$655	N/A
Motion or Appeal Fee	\$675	\$0	\$675	N/A

**I-17 Certification Fee**

A school files a petition and pays a certification fee to become eligible to issue the Form I-20, “Certificate of Eligibility for Nonimmigrant Student Status,” to prospective

international students after admitting them for a course of study. Certification also authorizes the school to enroll international students after they enter the country on an F or M student visa. Schools must initially go through the vetting process for authorization by DHS to enroll F and/or M nonimmigrant students and pay the I-17 certification fee, which is currently \$1,700 and proposed to increase to \$3,000. The incremental fee is the difference between the proposed fee (\$3,000) and current fee (\$1,700), or \$1,300. From 2012 to 2016, DHS processed 2,117 I-17 petitions and payments. Out of the 2,117 schools, 1,151, or 54 percent, were identified as meeting the SBA definition of a small school, or estimated to be a small public school based on the sample conducted, as illustrated in Table 33.

**Table 33: I-17 Initial Certifications FYs 2012–2016**

<b>Fiscal Year</b>	<b>Total I-17 Initial Certifications</b>	<b>Small School I-17 Initial Certifications</b>	<b>Percent of Small School I-17 Initial Certifications</b>
2012	457	236	52%
2013	382	218	57%
2014	446	270	60%
2015	469	260	55%
2016	363	167	46%
<b>Total</b>	<b>2,117</b>	<b>1,151</b>	<b>54%</b>
<b>2014–2016 3-year annual average</b>	<b>426</b>	<b>232</b>	<b>55%</b>

SEVP forecasted the total I-17 initial certifications in FY 2019 and FY 2020 to be 426 using the 3-year annual average of FY 2014 through 2016 initial certifications.

Using that same methodology, 232 small schools applied for initial I-17 certification on average each year. DHS assumes the growth of small schools per industry seeking SEVP

certification will remain constant in the future. DHS multiplied the annual average number of small schools applying for initial certification by the percent of small schools in each industry, as presented in Table 29. This calculation yields the number of small schools expected to petition for initial I-17 certification by industry. The results are presented in Table 34.

**Table 34: Expected Annual Number of Small Schools to Initially Certify by School Industry**

<b>School Industry</b>	<b>Annual Number of Small Schools Applying for Initial Certification</b>
Elementary and Secondary Schools	103
Junior Colleges	0
Colleges, Universities, and Professional Schools	64
Computer Training	0
Professional and Management Development Training	1
Cosmetology and Barber Schools	3
Flight Training	6
Apprenticeship Training	1
Other Technical and Trade Schools	5
Fine Arts Schools	2
Sports and Recreation Instruction	0
Language Schools	8
Exam Preparation and Tutoring	0
All Other Miscellaneous Schools and Instruction	1
Educational Support Services	0
Public Schools	37
<b>Total Small Schools</b>	<b>232</b>

This analysis examines the impact the \$1,300 incremental fee has on small schools that might seek initial certification after the final rule is effective. DHS assumes that the range of revenue of the small schools that will apply for certification is similar to the range of revenue of current SEVP-certified small schools and uses this range to show

the potential impacts. Table 35 shows the impact as a percentage for the schools with the lowest annual revenue, median annual revenue, and largest annual revenue, as well as the average annual revenue for all schools in that industry. From these results, DHS does not expect the I-17 certification incremental fee to have an impact greater than 1 percent on the average small school annual revenue. However, there is an expected impact greater than 1 percent for some small schools with the lowest annual revenue in their industry. On average the estimated 194 small schools that apply for initial I-17 certification annually and pay an incremental fee of \$1,300 will experience an impact of less than 1 percent of their estimated annual revenue.

**Table 35: Initial Certification Fee Impact for Small Schools by Type of School**

<b>Type of School</b>	<b>I-17 Initial Certification Incremental Fee Impact on the School with the Lowest Revenue</b>	<b>I-17 Initial Certification Incremental Fee Impact on the School with the Median Revenue</b>	<b>I-17 Initial Certification Incremental Fee Impact on the School with the Largest Revenue</b>	<b>I-17 Initial Certification Incremental Fee Impact on the Average School Revenue</b>
Elementary and Secondary Schools	4.5%	0.0%	0.0%	0.01%
Junior Colleges	2.9%	0.1%	0.0%	0.03%
Colleges, Universities, and Professional Schools	4.9%	0.0%	0.0%	0.00%
Computer Training	0.3%	0.0%	0.0%	0.03%
Professional and Management Development Training	1.0%	0.2%	0.0%	0.13%
Cosmetology and Barber Schools	1.9%	0.1%	0.0%	0.03%

<b>Type of School</b>	<b>I-17 Initial Certification Incremental Fee Impact on the School with the Lowest Revenue</b>	<b>I-17 Initial Certification Incremental Fee Impact on the School with the Median Revenue</b>	<b>I-17 Initial Certification Incremental Fee Impact on the School with the Largest Revenue</b>	<b>I-17 Initial Certification Incremental Fee Impact on the Average School Revenue</b>
Flight Training	3.6%	0.0%	0.0%	0.02%
Apprenticeship Training	1.0%	0.0%	0.0%	0.01%
Other Technical and Trade Schools	2.0%	0.0%	0.0%	0.02%
Fine Arts Schools	2.0%	0.0%	0.0%	0.01%
Sports and Recreation Instruction	0.5%	0.1%	0.0%	0.05%
Language Schools	1.1%	0.0%	0.0%	0.02%
Exam Preparation and Tutoring	0.0%	0.0%	0.0%	0.02%
All Other Miscellaneous Schools and Instruction	1.6%	0.2%	0.0%	0.01%
Educational Support Services	0.4%	0.2%	0.2%	0.25%
Public Schools	0.0%	0.0%	0.0%	0.0%

#### I-17 Recertification Fee

SEVP-certified schools are required to file for recertification every 2 years to demonstrate that they have complied with all recordkeeping, retention, reporting, and other requirements when registering F and M students. There is currently no fee charged to schools for recertification, but this proposed rule establishes a new fee for that process.

To measure the impact on small schools, DHS first estimated the number of small schools that will recertify. DHS assumes 50 percent (4,373) of the total number of schools in this analysis (8,746) will recertify each year. DHS multiplies the recertification rate of 50 percent by the total number of small schools to generate the estimation that 3,921<sup>18</sup> small schools will recertify annually. DHS examined all 7,842 small SEVP-certified schools to determine the impact of the recertification fee, as it is assumed that a significant number of the schools will pursue recertification within the next 2 years.

DHS assumes that the total number of SEVP-certified schools will remain static as new schools become certified and other schools withdraw certification. DHS therefore assumes that the annual increase of total recertifications will be zero.

As previously discussed, DHS identified 1,296 SBA-defined small schools with no active F or M international students. DHS included these schools in this analysis and assumes they will opt to pay the recertification fee of \$1,250 rather than reapplying for initial certification with a proposed fee of \$3,000 at such time in the future that they enroll F or M students.

Table 36 illustrates the number of small schools that will recertify by industry and the I-17 recertification incremental fee impact as a percent of the small school's annual revenue. From these findings, of the 7,842 small schools expected to apply for

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<sup>18</sup> 7,842 x 50 percent = 3,921 small schools recertifying each year.

recertification and pay the proposed fee of \$1,250, 50 schools, or 0.6 percent, will experience an impact greater than 1 percent but less than 3 percent of the school’s annual revenue. For the remaining schools, DHS does not expect the incremental fee to have an impact of greater than 1 percent.

**Table 36: Recertification Fee Impact for Small Schools by Type of School**

<b>School Industry</b>	<b>0% &lt; Impact ≤ 1%</b>	<b>1% &lt; Impact ≤ 2%</b>	<b>2% &lt; Impact &lt; 3%</b>	<b>Total</b>
Elementary and Secondary Schools	3,458	7	7	<b>3,472</b>
Junior Colleges	10	0	1	<b>11</b>
Colleges, Universities, and Professional Schools	2,135	12	4	<b>2,150</b>
Computer Training	13	0	0	<b>13</b>
Professional and Management Development Training	18	0	0	<b>18</b>
Cosmetology and Barber Schools	89	2	0	<b>91</b>
Flight Training	196	1	2	<b>199</b>
Apprenticeship Training	39	0	0	<b>39</b>
Other Technical and Trade Schools	175	8	0	<b>183</b>
Fine Arts Schools	76	3	0	<b>79</b>
Sports and Recreation Instruction	10	0	0	<b>10</b>
Language Schools	285	1	0	<b>286</b>
Exam Preparation and Tutoring	8	0	0	<b>8</b>
All Other Miscellaneous Schools and Instruction	30	2	0	<b>32</b>
Educational Support Services	2	0	0	<b>2</b>
Public Schools	1,248	0	0	<b>1,248</b>
<b>Total Small Schools</b>	<b>7,792</b>	<b>36</b>	<b>14</b>	<b>7,842</b>

Site Visit Fee

Current regulations provide authority for SEVP to charge a site visit fee to schools that apply for initial certification or add a new physical location or campus. The site visit allows SEVP an opportunity to gather evidence on the school's eligibility, review school facilities, and interview personnel listed on the I-17 petition as a PDSO or DSO. SEVP currently collects the \$655 fee when a school files a petition for certification to issue Forms I-20 or by a certified school when it physically moves to a new location. This proposed rule notifies the public that SEVP plans to collect the fee from any certified school that adds a new campus or physical location by updating its Form I-17 in SEVIS, consistent with 8 CFR 214.3(h)(3) and the agency's description when it established the fee in 2008 that such a fee could apply to such an initial event. 73 FR 55683, 55691.

SEVP performs 600 site visits annually. Of these site visits, 426 would be performed as part of the forecasted initial certifications, leaving the capacity for 174 site visits to be performed when a school adds a campus. In order to estimate the impact on a school's revenue of the proposed charging of the site visit fee for a new instructional campus, DHS assumes that any of the currently SEVP-certified schools could add a campus and require a site visit. Table 37 shows the proposed site visit fee impact on estimated annual revenue for all 7,842 small schools certified by SEVP and the type of school. Of the total 7,842 small schools, 7,827, or 99.8 percent, would have a site visit fee impact of less than or equal to 1 percent of their annual revenue. Twelve small schools, or 0.2 percent of small schools, would have an impact of greater than 1 percent but less than or equal to 2 percent of their annual revenue. Three small schools would

have a site visit fee impact greater than 2 percent but less than 3 percent of their annual revenue.

**Table 37: Site Visit Fee Impact on Estimated Annual Revenue**

<b>Type of School</b>	<b>0% &lt; Impact ≤ 1%</b>	<b>1% &lt; Impact ≤ 2%</b>	<b>2% &lt; Impact &lt; 3%</b>	<b>Total</b>
Elementary and Secondary Schools	3,465	5	2	<b>3,472</b>
Junior Colleges	10	1	0	<b>11</b>
Colleges, Universities, and Professional Schools	2,146	3	1	<b>2,150</b>
Computer Training	13	0	0	<b>13</b>
Professional and Management Development Training	18	0	0	<b>18</b>
Cosmetology and Barber Schools	91	0	0	<b>91</b>
Flight Training	197	2	0	<b>199</b>
Apprenticeship Training	39	0	0	<b>39</b>
Other Technical and Trade Schools	182	1	0	<b>183</b>
Fine Arts Schools	79	0	0	<b>79</b>
Sports and Recreation Instruction	10	0	0	<b>10</b>
Language Schools	286	0	0	<b>286</b>
Exam Preparation and Tutoring	8	0	0	<b>8</b>
All Other Miscellaneous Schools and Instruction	32	0	0	<b>32</b>
Educational Support Services	2	0	0	<b>2</b>
Public Schools	1,248	0	0	1,248
<b>Total Small Schools</b>	<b>7,827</b>	<b>12</b>	<b>3</b>	<b>7,842</b>

#### Fee to File an Appeal or Motion

When a school is denied certification or recertification, the school receives a denial letter through certified mail. The denial letter explains the reason for the denial and the steps to appeal. The school can appeal by completing the Form I-290B, “Notice of Appeal or Motion,” within 30 days of receipt. This rule proposes that SEVP impose a

\$675 filing fee for submission of the Form I-290B.<sup>19</sup> Currently no fee is imposed when a school submits the Form I-290B for a motion or appeal.

DHS processed 215 motions and appeals from schools from 2013 to 2016. Out of the 215 school motions and appeals, DHS determined that 74, or 34.4 percent, were filed by small schools. Among the 74 small schools, 4 had 2 appeals within the same year or over the 4-year period. During the 4-year period, there was an average of 19 appeals and motions filed by small schools annually.

DHS examined all 7,842 small schools to estimate the impact of the proposed appeal and motion fee on estimated annual revenue. The impact is calculated by dividing the fee to file a motion or appeal by the school's estimated annual revenue. Of the 7,842 SEVP-certified small schools, 7,826, or 99.8 percent, would experience an impact less than or equal to 1 percent of their estimated annual revenue were the school to file an appeal or motion. DHS estimates 13 small schools, or 0.2 percent, would realize an impact between 1 percent and 2 percent of their estimated annual revenue. In addition, three small schools, or 0.04 percent, would experience an impact greater than 2 percent but less than 3 percent of estimated annual revenue. Table 38 shows the number of small schools within the range of impact to each school's estimated annual revenue.

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<sup>19</sup> USCIS, I-290B, Notice of Appeal or Motion, Filing Fee, <https://www.uscis.gov/i-290b>.

**Table 38: Appeal and Motion Fee Impact on Estimated Annual Revenue**

Type of School	0% < Impact ≤ 1%	1% < Impact ≤ 2%	2% < Impact < 3%	Total
Elementary and Secondary Schools	3,465	5	2	3,472
Junior Colleges	10	1	0	11
Colleges, Universities, and Professional Schools	2,146	3	1	2,150
Computer Training	13	0	0	13
Professional and Management Development Training	18	0	0	18
Cosmetology and Barber Schools	91	0	0	91
Flight Training	197	2	0	199
Apprenticeship Training	39	0	0	39
Other Technical and Trade Schools	182	1	0	183
Fine Arts Schools	78	1	0	79
Sports and Recreation Instruction	10	0	0	10
Language Schools	286	0	0	286
Exam Preparation and Tutoring	8	0	0	8
All Other Miscellaneous Schools and Instruction	32	0	0	32
Educational Support Services	2	0	0	2
Public Schools	1,248	0	0	1,248
<b>Total Small Schools</b>	<b>7,826</b>	<b>13</b>	<b>3</b>	<b>7,842</b>

The potential total impact on small entities in any year can be determined by examining scenarios in which a school may pay more than one of the proposed adjustments in fees in the same year. DHS examines the following scenarios and determines that the impact on any small school's revenue is less than three percent on any school industry type: 1) a school appeals an initial certification or 2) a school appeals a recertification and adds a new location requiring a site visit.

A school may pay the initial certification fee and then it may appeal the results of the initial certification within the same year. DHS proposes that this would be an

increase of \$1,975 (\$1,300 incremental fee for I-17 initial certification plus \$675 fee for an appeal). More than 98 percent of schools would be impacted less than one percent in this scenario, as shown in Table 39. The impacts of this scenario would be greater than the impacts of scenario where a school appeals a recertification, which would add to \$1,925 in increased fees (\$1,250 I-17 recertification fee plus \$675 for an appeal).

**Table 39: Impact of Initial Certification Fee Increase Plus an Appeal Fee**

Type of School	0% < Impact ≤ 1%	1% < Impact ≤ 2%	2% < Impact < 3%	Total
Elementary and Secondary Schools	3,440	21	11	<b>3,472</b>
Junior Colleges	10	0	1	<b>11</b>
Colleges, Universities, and Professional Schools	2,126	15	10	<b>2,151</b>
Computer Training	13	0	0	<b>13</b>
Professional and Management Development Training	15	3	0	<b>18</b>
Cosmetology and Barber Schools	89	1	1	<b>91</b>
Flight Training	192	4	3	<b>199</b>
Apprenticeship Training	37	2	0	<b>39</b>
Other Technical and Trade Schools	171	9	3	<b>183</b>
Fine Arts Schools	74	2	3	<b>79</b>
Sports and Recreation Instruction	10	0	0	<b>10</b>
Language Schools	282	4	0	<b>286</b>
Exam Preparation and Tutoring	8	0	0	<b>8</b>
All Other Miscellaneous Schools and Instruction	26	4	2	<b>32</b>
Educational Support Services	2	0	0	<b>2</b>
Public Schools	1,248	0	0	<b>1,248</b>
<b>Total Small Schools</b>	<b>7,743</b>	<b>64</b>	<b>35</b>	<b>7,842</b>

A school may seek recertification in the same year it adds a new physical location or campus that requires a site visit and then it may appeal the findings of a recertification. A

recertification fee would not include a site visit to a new location. DHS proposes that this would be an increase of \$2,580 (\$1,250 I-17 recertification fee plus \$655 for a site visit at a new location plus \$675 for an appeal). Under this scenario, the impact on small schools' revenue would be less than one percent for all but 139 small schools. The impact on these 139 schools' revenues would be less than three percent as shown in Table 40.

**Table 40: Impact of Recertification Fee Plus a Site Visit – New Location Fee Plus an Appeal Fee**

Type of School	0% < Impact ≤ 1%	1% < Impact ≤ 2%	2% < Impact < 3%	Total
Elementary and Secondary Schools	3,426	28	18	<b>3,472</b>
Junior Colleges	10	0	1	<b>11</b>
Colleges, Universities, and Professional Schools	2,110	24	17	<b>2,151</b>
Computer Training	13	0	0	<b>13</b>
Professional and Management Development Training	15	3	0	<b>18</b>
Cosmetology and Barber Schools	87	2	2	<b>91</b>
Flight Training	191	5	3	<b>199</b>
Apprenticeship Training	37	2	0	<b>39</b>
Other Technical and Trade Schools	167	8	8	<b>183</b>
Fine Arts Schools	74	2	3	<b>79</b>
Sports and Recreation Instruction	10	0	0	<b>10</b>
Language Schools	279	6	1	<b>286</b>
Exam Preparation and Tutoring	8	0	0	<b>8</b>
All Other Miscellaneous Schools and Instruction	26	4	2	<b>32</b>
Educational Support Services	2	0	0	<b>2</b>
Public Schools	1,248	0	0	<b>1,248</b>
<b>Total Small Schools</b>	<b>7,703</b>	<b>84</b>	<b>55</b>	<b>7,842</b>

**5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule**

DHS is unaware of any relevant Federal fee rule that may duplicate, overlap, or conflict with the proposed rule.

**6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities**

SEVP examined several alternatives to the proposed fee structure, including no increase to any fee, only increasing the I-901 SEVIS fee and I-17 fee, and not subsidizing the school fees with the I-901 F and M fees.

Without an increase in fees, SEVP will be unable to maintain the level of service for students and schools that it currently provides as well as the compliance and national security activities discussed above. SEVP considered the alternative of maintaining fees at the current level but with reduced services and increased processing times, but has decided that this would not be in the best interest of applicants and schools. SEVP seeks to minimize the impact on all parties, but in particular small entities. SEVP must pay for the expenses of maintaining and improving SEVIS and adjudicating schools in a timely manner. If SEVP followed this alternative scenario, there would be a shortfall of revenue to cover the expenses of over \$65.4 million in FY 2019. SEVP rejected this alternative,

as SEVP must pay for the expenses of maintaining and improving SEVIS and certifying and recertifying schools in a timely manner.

SEVP also considered only raising the I-901 and I-17 certification fees instead of including new proposed fees for recertification and for filing a motion or appeal. If SEVP followed this scenario, the I-901 F and M fee would increase to \$350 to cover the shortfall in revenue, but the I-17 Initial Certification fee would also increase to \$4,200. This would triple the existing certification fee while continuing to allow schools with no foreign students to remain active SEVP schools that require SEVP effort for recertification. SEVP rejected this fee structure as it would continue to add workload to SEVP’s recertification branch. Without a disincentive to not recertify, the list of schools recertifying would never stop growing. SEVP rejected this alternative because the proposed fees would establish a more equitable distribution of costs and a more sustainable level of cost recovery relative to the services provided as compared to this alternative.

SEVP also considered the results of the ABC model as an alternative, which allocated the I-901 F and M fee, school certification fees, and the fee to file an appeal or motion as shown in Table 41.

**Table 41: Unsubsidized Fee Amounts**

Fee Type	Unsubsidized Fee Amounts
I-901 F and M	\$290
I-901 J-Full	\$130
I-901 J-Partial	\$130
I-17 Initial Certification	\$4,600

<b>Fee Type</b>	<b>Unsubsidized Fee Amounts</b>
I-17 Recertification	\$6,000
Appeal or Motion	\$38,475
Site Visit	\$650

SEVP rejected this alternative for several reasons. Setting the fee at \$38,475 may discourage schools from filing a motion or appeal.

Similarly, SEVP rejected the alternative of setting the recertification fee at \$6,000. A recertification fee higher than the initial certification fee would discourage schools from seeking recertification.

SEVP instead proposes to set the recertification fee at a level is less than the initial certification fee. When schools can maintain their certification, F and M nonimmigrant students enrolled in the withdrawn school avoid complications such as being forced to transfer schools, leave the United States, or risk facing immigration law penalties for violating the terms of their nonimmigrant status.

SEVP also rejected the initial certification fee of \$4,600 because it finds that an increase of almost three times the current fee of \$1,700 is excessive. In the fee development, DHS balanced the challenge of minimizing the costs to schools and students while recovering funding to support SEVP services. The population of I-901 F and M students relative to the population of I-17 schools allows for a minimal fee adjustment to be spread over the student population to reduce the cost burden on individual institutions seeking recertification. DHS requests comment on the impacts on

small entities of the unsubsidized fee amounts, impacts on small entities of the proposed fee amounts, and other ways in which DHS could modify the proposed rule to reduce burdens for small entities or better ensure that the burdens on small entities, individuals, and others subject to the rule are appropriately distributed.

### **C. Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, 109 Stat. 48 (codified at 2 U.S.C. 1501 *et seq.*), requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, UMRA addresses actions that may result in the expenditure by a State, local, or tribal government in the aggregate or by the private sector of \$100 million (adjusted for inflation) or more in any 1 year. 2 U.S.C. 1532(a). Though this rule would not result in such an expenditure, DHS does discuss the effects of this rule elsewhere in this preamble. In addition, DHS maintains that this rulemaking is not a “Federal mandate,” as defined for UMRA purposes, 2 U.S.C. 658(6), as the payment of an SEVP certification fee by individuals, local governments, or other private sector entities is (to the extent it could be termed an enforceable duty) one that arises from participation in a voluntary Federal program (i.e., applying for status as F-1, F-3, M-1, or M-3 students or as a J-1 exchange visitor in the United States or seeking approval from the United States for attendance by certain aliens seeking status as F-1, F-3, or M-1 students). 2 U.S.C. 658(7)(A)(ii). For these reasons, no additional actions were deemed necessary under the provisions of the UMRA.

#### **D. Congressional Review Act**

This rulemaking is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Pub. L. 104-121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rulemaking would not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets. If implemented as proposed, DHS will submit to Congress and the Comptroller General of the United States a report about the issuance of the final rule prior to its effective date, as required by 5 U.S.C. 801(a)(1).

#### **E. Small Business Regulatory Enforcement Fairness Act of 1996**

Pursuant to Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, 110 Stat. 847, 858-59, DHS wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult ICE using the contact information provided in the FOR FURTHER INFORMATION section.

#### **F. Executive Order 13132: Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS has analyzed this proposed rule under that Order and has determined that it does not have implications for federalism.

#### **G. Executive Order 12988: Civil Justice Reform**

This proposed rule meets the applicable standards set forth in 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **H. Energy Effects**

DHS has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. DHS has determined that it is not a “significant energy action” under that order because it is a “significant regulatory action” under Executive Order 12866 but is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **I. Environment**

The U.S. Department of Homeland Security Management Directive (MD) 023-01 Rev. 01 establishes procedures that DHS and its Components use to comply with the

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 83 Stat. 852 (codified at 42 U.S.C. 4321-4375), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508. CEQ regulations allow federal agencies to establish categories of actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The MD 023-01 Rev. 01 lists the Categorical Exclusions that DHS has found to have no such effect. MD 023-01 Rev. 01, Appendix A, Table 1.

For an action to be categorically excluded, MD 023-01 Rev. 01 requires the action to satisfy each of the following three conditions:

- (1) The entire action clearly fits within one or more of the Categorical Exclusions.
- (2) The action is not a piece of a larger action.
- (3) No extraordinary circumstances exist that create the potential for a significant environmental effect. MD 023-01 Rev. 01 section V.B(1)-(3).

Where it may be unclear whether the action meets these conditions, MD 023-01 Rev. 01 requires the administrative record to reflect consideration of these conditions. MD 023-01 Rev. 01 section V.B.

DHS has analyzed this proposed rule under MD 023-01 Rev. 01. DHS has made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule clearly fits within the Categorical Exclusion found in MD 023-01 Rev. 01, Appendix A, Table 1, number A3(a): “Promulgation of rules . . . of a strictly

administrative or procedural nature”; and A3(d): “Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.” This proposed rule is not part of a larger action. This proposed rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

#### **J. Paperwork Reduction Act**

All Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, Pub. L. 104-13, 109 Stat. 163 (codified at 44 U.S.C. 3501 *et seq.*). Schools use SEVIS to petition for recertification. The recertification process requires schools to input data in SEVIS, print the Form I-17, and sign the form. The electronic data captured for the Form I-17 have been previously approved for use by OMB as one component of the data that are captured in SEVIS. The OMB Control Number for this collection is 1653-0038 (previously 1615-0066 before being transferred from USCIS to ICE). With the regulatory implementation of SEVIS (67 FR 60107, Sept. 25, 2002), most schools enrolled in SEVIS were petitioning for DHS recertification, rather than initial certification (i.e., enrolling F or M nonimmigrant students for the first time). The workload for both certification and recertification was included under OMB 1615-0066.

The changes to the certification and recertification fees, as well as the I-901 fees, would require changes to SEVIS and the I-901 software to reflect the updated fee

amounts, as these systems generate the pertinent petition and application forms. DHS would submit a revision to OMB with respect to any changes to existing information collection approvals.

DHS's institution of the fee for a motion or appeal with regard to a denial of school certification or recertification, or a withdrawal of such certification, would not require a form amendment to reflect the charging of the fee. The instructions associated with the Form I-290B, which schools can currently use for such motions and appeals, contain information regarding the use associated with Form I-17 decisions and the \$675 fee.

### **List of Subjects**

#### **8 CFR Part 103**

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

#### **8 CFR Part 214**

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

### **The Proposed Amendments**

For the reasons set forth in the preamble, the Department of Homeland Security proposes to amend 8 CFR parts 103 and 214 of Chapter I of Title 8 of the Code of Federal Regulations as follows:

**PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS;  
AVAILABILITY OF RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112-54.

2. Amend § 103.7 by revising paragraphs (b)(1)(ii)(B) and (H) and adding paragraph (b)(1)(ii)(O) to read as follows:

**§ 103.7 Fees.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) Petition for Approval of School for Attendance by Nonimmigrant Student (*Form I-17*). For filing a petition for school certification: \$3,000, plus:

(1) A site visit fee of \$655 for each location required to be listed on the form., and

(2) For filing a petition for school recertification: \$1,250.

\* \* \* \* \*

(H) Fee Remittance for Certain F, J, and M Nonimmigrants (*Form I-901*). The fee for Form I-901 is:

(1) For F and M students: \$350.

(2) For J-1 au pairs, camp counselors, and participants in a summer work or travel program: \$35.

(3) For all other J exchange visitors (except those participating in a program sponsored by the Federal Government): \$220.

(4) There is no Form I-901 fee for J exchange visitors in federally funded programs with a program identifier designation prefix that begins with G-1, G-2, G-3, or G-7.

\* \* \* \* \*

(O) *Notice of Appeal or Motion (Form I-290B) filed with ICE SEVP.* For a Form I-290B “Notice of Appeal or Motion,” filed with the Student and Exchange Visitor Program (SEVP): \$675.

\* \* \* \* \*

## **PART 214—NONIMMIGRANT CLASSES**

3. The authority citation for part 214 is revised to read as follows:

**Authority:** 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, and 1372; section 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 48 U.S.C. 1806; 8 CFR part 2.

4. Amend § 214.3 by revising paragraph (h)(2) to read as follows:

**§ 214.3 Approval of schools for enrollment of F and M nonimmigrants.**

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(2) *Recertification.* Schools are required to file a completed petition for SEVP recertification before the school's certification expiration date, which is 2 years from the date of their previous SEVP certification or recertification expiration date. The school must submit the proper nonrefundable recertification petition fee as provided in 8 CFR 103.7(b)(1)(ii)(B). SEVP will review a petitioning school's compliance with the recordkeeping, retention, and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section, as well as continued eligibility for certification, pursuant to paragraph (a)(3) of this section.

5. Amend § 214.4 by revising the heading and paragraphs (a)(1) and (h) to read as follows:

**§ 214.4 Denial of certification, denial of recertification, or withdrawal of SEVP certification.**

(a) *General*—(1) *Denial of certification.* The petitioning school will be notified of the reasons and its appeal rights if a petition for certification is denied, in accordance with the provisions of 8 CFR 103.3(a)(1)(iii). A petitioning school denied certification may file a new petition for certification at any time.

\* \* \* \* \*

(h) *Appeals.* A school may file an appeal of a denial or withdrawal no later than 15 days after the service of the decision by ICE. The appeal must state the reasons and

grounds for contesting the denial or withdrawal of the approval. The appeal must be accompanied by the fee as provided in 8 CFR 103.7(b)(1)(ii)(O).

\* \* \* \* \*

6. Amend § 214.13 by revising paragraph (a) to read as follows:

**§ 214.13 SEVIS fee for certain F, J, and M nonimmigrants.**

(a) *Applicability.* The following aliens are required to submit a payment in the amount indicated for their status to the Student and Exchange Visitor Program (SEVP) in advance of obtaining nonimmigrant status as an F or M student or J exchange visitor, in addition to any other applicable fees, except as otherwise provided for in this section:

(1) An alien who applies for F-1 or F-3 status in order to enroll in a program of study at an SEVP-certified institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended, or in a program of study at any other SEVP-certified academic or language training institution, including private elementary and secondary schools and public secondary schools, the amount of \$350;

(2) An alien who applies for J-1 status in order to commence participation in an exchange visitor program designated by the Department of State (DoS), the amount of \$210, with a reduced fee for certain exchange visitor categories as provided in paragraphs (b)(1) and (c) of this section; and

(3) An alien who applies for M-1 or M-3 status in order to enroll in a program of study at an SEVP-certified vocational educational institution, including a flight school, in the amount of \$350.

\* \* \* \* \*

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**Claire M. Grady,**  
*Deputy Secretary (Acting).*

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