



DEPARTMENT OF HOMELAND SECURITY

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: Final rule.

SUMMARY: This rule adjusts the Student and Exchange Visitor Program (SEVP) school certification petition fees and the application fees for nonimmigrants seeking to become academic (F visa) or vocational (M visa) students, or exchange visitors (J visa). The rule sets the following fees: \$3,000 for a school certification petition; \$655 for each school site visit; \$1,250 to submit a school recertification petition; and \$675 to submit an appeal or motion following a denial or withdrawal of a school petition. The rule also sets new fees for filing the Form I-901 at \$350 for each F or M nonimmigrant student applicant and a \$220 for most J exchange visitor applicants; however, the existing \$35 fee for each J nonimmigrant exchange visitor seeking admission as an au pair, camp counselor, or summer work/travel program participant will remain the same. All fee payments addressed in this final rule must be made in the amounts established by this rule beginning [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

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Table of Abbreviations and Acronyms

| | |
|-------------|---|
| ABC | Activity Based Cost/Costing |
| CFO | Chief Financial Officer |
| CTCEU | Counterterrorism and Criminal Exploitation Unit |
| DHS | Department of Homeland Security |
| DOS | Department of State |
| DSO | Designated School Official |
| EBSVERA | Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173; May 14, 2002 |
| FASAB | Federal Accounting Standards Advisory Board |
| FISMA | Federal Information Security Management Act |
| Form I-17 | Petition for Approval of School for Attendance by Nonimmigrant Student |
| Form I-901 | Fee Remittance for Certain F, J and M Nonimmigrants |
| Form I-290B | Notice of Appeal or Motion |
| 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 |
| MD | Management Directive |
| NEPA | National Environmental Policy Act of 1969 |
| NPRM | Notice of Proposed Rulemaking |
| OMB | Office of Management and Budget |
| PDSO | Principal Designated School Official |
| RFA | Regulatory Flexibility Act |
| SEVIS | Student and Exchange Visitor Information System |
| SEVP | Student and Exchange Visitor Program |
| SFFAS | FASAB Statement of Federal Financial Accounting Standard |
| UMRA | Unfunded Mandates Reform Act of 1995 |
| USCIS | U.S. Citizenship and Immigration Services |

I. Executive Summary

A. Purpose of Regulatory Action

The Department of Homeland Security (DHS) is adjusting its fee schedule for nonimmigrant students and exchange visitors as well as for petitioning and certified schools. These fees are associated with SEVP and the Student and Exchange Visitor Information System (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. 901-903 (CFO Act), and the Office of Management and Budget (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 indicated that fee levels were 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 is implementing the adjustments contained in this rule.

SEVP has calculated the totality of its operating costs to set fees that fully recover such costs. Following its biennial fee review, SEVP anticipated that if it continued to operate at previous fee levels, it would experience a revenue shortfall. At previous fee levels, SEVP's expenditures exceeded revenues, without any service upgrades. The deficit had been covered by surplus revenue that was previously accumulated from 2009 to 2015. As a consequence of multiple factors, including inflation, costs associated with SEVIS enhancement, complying with a two-year recertification cycle of schools, increased demand for program and investigatory services, and increased litigation related to administrative enforcement and regulatory actions, the surplus is expected to be exhausted in FY 2019 even without any further service upgrades. The projected shortfall poses a risk of degrading operations and services funded by fee revenue. The fee increases in this final rule will allow SEVP to cover the current deficit between revenue and expenditures plus make necessary service upgrades. The 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 of the Final Rule

This rule adjusts, institutes, and clarifies 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:

- Increases the two types of individual nonimmigrant student and exchange visitor application fees, specifically the F and M fee for Form I-901, “Fee Remittance for Certain F, J and M Nonimmigrants,” to \$350 and the Form I-901 Full J fee to \$220;
- Increases the SEVP school certification petition fee for initial certification to \$3,000;
- Imposes a fee of \$1,250 when a school files a petition for recertification of its existing SEVP certification;
- Imposes 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
- Maintains the \$655 fee for a site visit at its current level, but clarifies that, with the effective date of the rule, SEVP is exercising 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 rule allows SEVP to fully fund activities included in this cost model 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

With this final rule, SEVP will adjust fees to the amounts listed in Table 1:

Table 1: Current and Final Fee Amounts

| Fee Type | Current Fee | Final Fee | Incremental Fee Adjustment |
|-----------------------------------|--------------------|------------------|-----------------------------------|
| I-901 F/M | \$200 | \$350 | \$150 |
| I-901 J-Full | \$180 | \$220 | \$40 |
| I-901 J-Partial | \$35 | \$35 | \$0 |
| I-17 Initial Certification | \$1,700 | \$3,000 | \$1,300 |
| I-17 Recertification | \$0 | \$1,250 | \$1,250 |
| Site Visit – initial | \$655 | \$655 | \$0 |
| Site Visit – new location | \$0 | \$655 | \$655 |
| Appeal Fee | \$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 projected for FY 2019. This increase in fees will 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 Final Incremental Fee Amounts, FY 2019

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

II. Background

A. The 2018 NPRM and Purpose of the Rule

On July 17, 2018, DHS published a Notice of Proposed Rulemaking (NPRM) to amend the fees charged by SEVP. 83 FR 33762. This final rule implements those proposed changes by amending DHS regulations governing the fees charged by SEVP to F and/or M nonimmigrant students, schools that enroll such students, and fees charged to J nonimmigrant exchange visitors.

SEVP helps ensure the integrity of the U.S. immigration system by collecting, maintaining, and analyzing information so only legitimate nonimmigrant students and exchange visitors gain admission into the United States under these programs, and by ensuring that the institutions accepting them are certified and follow the rules that govern them. The information collected by SEVP and compliance investigations conducted on students and educational institutions support other law enforcement activities within ICE.

The rule adjusts the SEVP school certification fee and implements a recertification fee, increases student and exchange visitor application fees (Form I-901

fees), and imposes a fee for a Form I-290B filed with SEVP, to reflect existing program operating costs, program requirements, and planned program enhancements. DHS maintains the fee for an initial school site visit at the current level, but clarifies that, with the effective date of the rule, DHS will 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. The rule sets the fee for an initial school certification petition at \$3,000 and the fee for each site visit at \$655. It sets a \$1,250 fee for a school recertification petition and a \$675 fee to submit an appeal or motion following a denial or withdrawal of a school certification. Further, it sets the fee for each F or M student at \$350. The rule sets the fee for certain J exchange visitors at \$220 and maintains the fee for exchange visitors seeking admission as au pairs, camp counselors, and summer work/ travel program participants at \$35. All fee payments addressed in this final rule must be made in the amounts established by this rule beginning [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

These fee adjustments are driven by two factors: the need to comply with statutory and regulatory requirements that SEVP review its fee structure biennially to ensure that the cost of the services that are provided by SEVP are captured by fees assessed on those receiving the services, and the need to enhance SEVP's capability to achieve current programmatic goals to support national security and counter immigration fraud through the development and implementation of critical system and programmatic enhancements. Enhancements to SEVIS, including the establishment and further expansion 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. ICE continues to examine programmatic goals and refine its cost projection model. Future fee reviews may capture additional includable costs, such as additional enforcement costs generated by SEVP information or compliance investigations.

The rule ensures the full recovery of SEVP operational costs in a manner that fairly allocates costs between beneficiary classes and facilitates the development of activities designed to achieve defined program goals. These include new initiatives critical to improving homeland security through enhanced vetting of SEVIS users, increased adjudication personnel, and SEVIS modernization.

B. Authority to Collect Fees

The Secretary is specifically authorized to collect fees for SEVP from prospective F and M nonimmigrant students and J nonimmigrant 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 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.¹

All fees collected under these authorities are deposited as offsetting receipts into the IEFA and remain 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 is implementing the 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, including OMB Circular A-25, User Charges (revised). *See* 58 FR 38142 (July 15, 1993). Section 6 of OMB Circular A-25 defines “full cost” to include all direct and indirect cost to any part of the federal government for providing a good, resource, or service. For the purposes of this rulemaking, DHS considers “full cost” to mean the cost of all activities related to individual and organizational compliance issues within the jurisdiction of SEVP that DHS included in the cost model. These activities include the cost of investigating the compliance of

¹ DHS has interpreted section 286(m), including its authorization for DHS to collect “full costs” for providing “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 interpretation 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). 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).

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. DHS also considers OMB Circular A-11, Preparation, Submission and Execution of the Budget, section 51.13 (June 29, 2018), which states that budget requests should reflect the results of the biennial review of existing user charges and of the potential for establishing user charges, under OMB Circular A-25. This final rule adjusts fees in order to recover the cost of services provided by SEVP.

In addition, DHS considers 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 2018, which provides federal government standards regarding managerial cost accounting and full cost recovery. SFFAS No. 4 defines “full cost” to include “direct and indirect costs that contribute to the output, regardless of funding sources.”² 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

² See FASAB, Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts 26 (June 2018), http://files.fasab.gov/pdf/files/handbook_sffas_4.pdf (last visited Oct. 26, 2018).

value 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 final rule reflects consideration of these federal sector financial and accounting standards.

III. Adjustment of SEVP Fees

A. Basis for Fee Schedule

As discussed in the NPRM, the new fees are based on estimates of funding needed to maintain and enhance SEVP’s capability to achieve programmatic goals associated with its statutory mandate, including supporting national security and countering immigration fraud through the continued development and implementation of critical system and programmatic enhancements. This rule establishes the following fee structure detailed in Table 3.

Table 3: Fee Structure

| Fee Type | Responsible Party |
|---------------------------------|---|
| I-901 Fee | Student or exchange visitor issued an initial Form I-20 or DS-2019 seeking an F, M, or J visa |
| I-17 School 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 |
| I-17 School Recertification Fee | Certified institutions seeking recertification every two years |
| 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 Form I-901 fee, I-17 school certification fee, and the site visit fee. By introducing fees for other services, this final rule allows SEVP to fully fund activities included in the cost model and institute critical near-term

program and system enhancements in a more equitable manner. The new fee structure also includes the addition of a recertification fee and a fee for filing an appeal or motion.

With this rule, SEVP imposes a fee for filing an appeal using Form I-290B that is similar to the current fee for appeals filed with U.S. Citizenship and Immigration Services (USCIS) using Form I-290B. *See* 8 CFR 103.7(b)(1)(i)(S) (listing the fee for appealing a decision over which the Board of Immigration Appeals does not have appellate jurisdiction). DHS also eliminates regulations that currently state there is no fee required for an appeal by a school, to maintain consistency and to more fairly balance allocation of the recovery of SEVP operational costs between beneficiary classes. Under this final rule, SEVP charges the fee for all appeals and motions.

This rule ensures the recovery of SEVP operational costs in a manner that fairly allocates costs between beneficiary classes and facilitates the development of activities designed to achieve defined program goals. For example, the rule continues funding for critical SEVIS modernization efforts and incorporates the added cost of increased analytical support for investigative operations into the Form I-901 fee. The fee schedule will provide the necessary revenue for SEVP to fund approximately 20 additional SEVP adjudication personnel, including approximately 15 new frontline adjudicators. The additional adjudicators are intended to cover site visits which are authorized under a 2016 final rule,³ augment out-of-cycle review teams, and reduce times for recertifications, updates, and initial applications.

³ *See* 81 FR 13039 (Mar. 11, 2016).

B. 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 nonimmigrant students and J nonimmigrant 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 Form I-901 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). The

recertification fee paid by schools to remain certified partially funds 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 pursuant to the process set forth in 8 CFR 103.3(a) or 103.5(a).⁴ 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 Form I-901 funds to offset the costs of SEVP appeals and motions. As noted in the proposed rule, DHS believes that the introduction of an appeal fee will result in a more equitable distribution of costs. Although DHS declined to introduce such a fee in 2008, DHS believes that given the costs of the appeal process and the increase in the I-901 fee, it is appropriate to establish an appeal fee at this time. With this rule, DHS removes the SEVP-related exceptions to the payment of the Form I-290B fee and adds regulatory text at 8 CFR 103.7(b)(1)(ii)(O)

⁴ 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 OMB under control number 1615-0095.

providing for the fee of \$675 when the Form I-290B is filed with SEVP. This fee applies 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.

With these regulatory changes for the Form I-290B filing fee, DHS more fairly balances 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 set 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 Form 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), (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.

SEVP will begin collecting the fee when a certified school adds a new physical location or campus following the effective date of this final rule. The site visit fee applies 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 assists 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 Principal Designated School Official (PDSO).

C. Methodology

SEVP captured and allocated cost using an ABC approach to define full cost with regards to current SEVP activities and planned enhancements, 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 for current activities and planned enhancements 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, including 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. Consistent with instructive legislative and regulatory guidance, SEVP fees recoup the full cost of providing SEVP's overall resources and services.⁵ The amended fees are calculated to recoup the cost of current SEVP operations, including planned enhancements detailed in the NPRM.

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 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)

⁵ 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.

determine the full cost of government goods and services,⁶ (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 SEVP current activities and planned enhancements, 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 new 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.

As with the previous fee adjustment in 2008, the goal of ICE compliance efforts is to achieve full compliance with F, M, and J nonimmigrant regulations by institutions participating in these programs and to prevent any abuse of SEVP for criminal purposes. Through consistent and expanded enforcement of SEVP requirements, the integrity of the F, M, and J nonimmigrant student and exchange visitor programs within the United States is better maintained. ICE continues to examine programmatic goals and refine its cost projection models. Future fee reviews may capture additional includable costs, such as additional enforcement costs for activities resulting from SEVP information or related compliance investigations.

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

⁶ 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.

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.

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)

| SEVP Expenses | 2017 Spend Plan | 2018 Spend Plan | 2019 Spend Plan | 2020 Spend Plan |
|--------------------------------------|------------------------|------------------------|------------------------|------------------------|
| SEVP Payroll | | | | |
| 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 |

| SEVP Expenses | 2017 Spend Plan | 2018 Spend Plan | 2019 Spend Plan | 2020 Spend Plan |
|--|------------------------|------------------------|------------------------|------------------------|
| Office of the Principal Legal Advisor | \$328 | \$517 | \$642 | \$659 |
| SEVP Outside Positions | \$1,444 | \$1,776 | \$2,544 | \$2,629 |
| Total SEVP Payroll | \$18,488 | \$20,000 | \$25,305 | \$28,983 |
| Program Expenses | | | | |
| Advisory and Assistance Services | \$58,630 | \$58,108 | \$52,755 | \$50,977 |
| SEVIS (Modernization and O&M)* | \$8,237 | \$18,722 | \$22,240 | \$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 |
| Total Program Expenses | \$79,609 | \$92,160 | \$86,855 | \$84,972 |
| CTCEU / Domestic Operations | | | | |
| Personnel Costs | \$43,299 | \$42,285 | \$43,251 | \$43,251 |
| Contract Costs | \$9,767 | \$19,605 | \$20,166 | \$20,166 |
| GE Costs | \$4,585 | \$2,843 | \$1,316 | \$1,316 |
| Relevant Direct Costs | \$9,549 | \$9,717 | \$9,717 | \$9,717 |
| Total CTCEU/ Domestic Operations Expenses | \$67,200 | \$74,450 | \$74,450 | \$74,450 |
| Total, SEVP | \$165,297 | \$186,610 | \$186,610 | \$188,405 |

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

D. Summary of the Full Cost Information

The total cost projection for FY 2019 is \$186,610,000 and for FY 2020 is \$188,405,000. Table 4 sets out the projected current services for SEVP and supporting Counterterrorism and Criminal Exploitation Unit (CTCEU) and HSI Domestic Operations 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, SEVIS Modernization, increased numbers of adjudication personnel, and annualized inflation.

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

| Program Cost by Initiative | FY 2018 Budgeted Cost (thousands) | FY 2019 Budgeted Cost (thousands) | FY 2020 Budgeted Cost (thousands) |
|--|--|--|--|
| Program Base: | | | |
| SEVP (Current operational costs) | \$95,097 | \$94,497 | \$95,106 |
| CTCEU / Domestic Operations (Current operational costs) | \$70,200 | \$70,200 | \$70,200 |
| Subtotal | \$165,297 | \$164,697 | \$165,306 |
| Enhancements and Other Costs: | | | |
| 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 |
| Subtotal | \$21,313 | \$21,913 | \$23,099 |
| TOTAL: | \$186,610 | \$186,610 | \$188,405 |

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 Form I-901 fee, certification fee, recertification fee, fee for filing an appeal or motion, and site visit fee.

Recently SEVP has only collected fees from students and exchange visitors—the Form 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 Form I-901 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 for services provided directly by SEVP. DHS opted for an updated fee structure that segments program cost to the appropriate fee—F and M nonimmigrant students, J nonimmigrant exchange visitors, or schools.

The adjusted Form I-901 fee recovers 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 new fees. The Form I-901 fee is 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 adjusted school certification fee recovers a portion of the costs necessary to process initial school certifications. The new recertification fee recovers a portion of the cost to process school recertifications and a portion of SEVP administrative costs. The adjusted site visit fee recovers the full cost of performing the site visit upon initial school certification and when a school changes its physical location or adds a new physical location or campus. The new fee for filing an appeal or motion recovers a portion of the cost to process an appeal or motion. The remainder of these costs are covered by the adjusted Form I-901 fee as detailed in the preceding paragraph.

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

| SEVP ABC Model Output Category | FY 2019 Budgeted Cost (thousands) | FY 2020 Budgeted Cost (thousands) |
|---------------------------------------|--|--|
| I-901 Fee | \$156,989 | \$157,365 |
| I-17 Certification Fee | \$1,910 | \$1,993 |
| I-17 Recertification Fee | \$25,369 | \$26,458 |
| Site Visit Fee | \$386 | \$390 |
| Appeal or Motion Fee | \$1,956 | \$2,199 |
| Total: | \$186,610 | \$188,405 |

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)

| Process | Activity | I-901 | I-17 Certification | I-17 Re-certification | I-17 Site Visit | Appeal or Motion |
|-----------------|---|--------------|---------------------------|------------------------------|------------------------|-------------------------|
| 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 | | |

| Process | Activity | I-901 | I-17 Certification | I-17 Re-certification | I-17 Site Visit | Appeal or Motion |
|---|--|--------------|---------------------------|------------------------------|------------------------|-------------------------|
| Secure 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 | | |
| | 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 ⁷) | \$24,816 | | | | |

⁷ SEVP Automated Management System

| Process | Activity | I-901 | I-17 Certification | I-17 Re-certification | I-17 Site Visit | Appeal or Motion |
|---|---|------------------|--------------------|-----------------------|-----------------|------------------|
| | 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 | | | | |
| | 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 |
| | Total | \$314,355 | \$3,902 | \$51,827 | \$775 | \$4,155 |

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. Form I-901 Fee

To calculate fee amounts for the Form I-901 fee, SEVP estimated the number of fee payments expected in FY 2019 and FY 2020 for each of the three fee payment types: the reduced fee for J participants (excluding the additional cost for initial certification and recertification of SEVP-certified schools); the full fee for J participants (excluding the additional cost for initial certification and recertification of SEVP-certified schools); and the full fee for F and M nonimmigrant students (including additional costs for certification, recertification, and appeals). The total fee category budget is taken directly from the FY 2019 and FY 2020 SEVP ABC model, reflected in Table 8 and Table 9.

Table 8: I-901 F/M Fee-Recoverable Budget

| Fiscal Year | I-901 F/M Payments Expected | Fee-Recoverable Budget |
|--------------------|------------------------------------|-------------------------------|
| 2019 | 418,393 | \$117,365,448 |
| 2020 | 407,933 | \$118,132,152 |
| Total | 826,326 | \$235,497,600 |

Table 9: I-901 J Fee-Recoverable Budget

| Fiscal Year | I-901 J Payments Expected | Fee-Recoverable Budget |
|--------------------|----------------------------------|-------------------------------|
|--------------------|----------------------------------|-------------------------------|

| Fiscal Year | I-901 J Payments Expected | Fee-Recoverable Budget |
|--------------------|----------------------------------|-------------------------------|
| 2019 | 316,495 | \$39,624,171 |
| 2020 | 312,556 | \$39,233,218 |
| Total | 629,052 | \$78,857,390 |

Form I-901 fees are calculated by dividing the fee-recoverable budget by the anticipated number of payments. This results in a fee-recoverable amount of \$290 for all F and M payments and \$130 for both the J Full and J Partial fees. Model results indicate a required fee of \$290 before addition of additional costs of other fee types, discussed throughout the remainder of the document. Additional costs of subsidization of other SEVP fees results in a F/M fee of \$350.

For reasons discussed below related to the \$35 J-Partial fee, DHS must increase the J-Full fee by a proportional amount to cover the cost of operating the J program. This results in a J-Full fee of \$220. 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 nonimmigrant exchange visitors from the fee payment. Prior to this final rule, all F and M nonimmigrant students were required to pay \$200, and nonexempt J nonimmigrant exchange visitors were required to 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 Form 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 Form 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 Form I-901 fee payments in FY 2019 and FY 2020. SEVP calculated the Form I-901 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 Form I-901 fee payments for each Form I-901 payment type separately. Table 10 reflects aggregate historical payment data for all three Form I-901 payment types.

Table 10: F, M, and J I-901 Payments 2007–2017

| Fiscal Year | Total | Growth Rate* |
|---|--------------|---------------------|
| 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 10, 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, poor fit, and limited data. SEVP's chosen model provided a conservative forecast that will allow SEVP to operate with stability. The fee payment forecast, reflected in Table 11, 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 11: Form I-901 Fee Payment Forecast FY 2019–FY 2020

| I-901 Payment Type | FY 2019 | FY 2020 |
|---------------------------|----------------|----------------|
| Full Payments, F/M | 418,393 | 407,933 |
| Full payment, J-Full | 157,550 | 153,612 |
| Subsidized, J-Partial | 158,945 | 158,945 |
| TOTAL: | 734,888 | 720,490 |

b. Certification Cost

SEVP uses historical data from FY 2012 to FY 2016 (Table 12) to find a three year moving average to forecast annual new initial certifications. SEVP predicts demand of approximately 426 initial certifications each year, which assumes the higher fee will not deter schools from applying for certification at a lower rate than the historical average. Historically, SEVP has used a forecasted increase in payments of approximately one percent annually due to the financial benefits schools derive from foreign student enrollment, but recent data on payments has led SEVP to apply a conservative zero percent growth.

Table 12: Three-Year Moving Average of the Number of School Certification Payments Received

| Fiscal Year | Payments Received | 3-Year Moving Average |
|--------------------|--------------------------|------------------------------|
| 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 13.

Table 13: FY 2019–FY 2020 Certification Fee-Recoverable Budget

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

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 new 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. While DHS is increasing the fee to ensure a more equitable distribution of costs, such a fee level could 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 Form I-17 school certification fee by increasing the payment by only \$1,300 to \$3,000. The remainder of the costs for Form I-17 school certification is subsidized by the Form I-901 F and M 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 (Table 14). Because schools are required to recertify every two 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 14: FY 2019–FY 2020 Recertification Fee-Recoverable Budget

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

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 \$5,925.74 each. To arrive at the new fee, rounding was applied to the result of the fee algorithm. This resulted 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.

These increased costs are due to increased review of school records and other information submitted by schools as part of recertification to ensure that schools are remaining in compliance with all requirements. Ensuring compliance is a statutory requirement under EBSVERA that has been reaffirmed through the results of GAO audits and other Executive Branch reviews of SEVP operations. For example, as part of recertification, SEVP adjudicators independently verify state licenses, accreditation information, and other related information. SEVP is continuously trying to find ways to

perform these checks more efficiently to reduce the burden. These reviews should become less burdensome as the modernization of SEVIS continues and more information becomes automated.

DHS 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. In such circumstances, the school may bear administrative costs to help students transfer to a certified school. Affected students bear costs as well. Weighing all these factors, DHS sets the Form I-17 recertification fee at \$1,250. With this rule, DHS eliminates 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 Form I-17 school recertification not recovered by the new fee are subsidized by the Form I-901 F and M fee. The explanation for shifting responsibility of the fee adjustment to the Form 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 (Table 15). The anticipated workload for these site visits is 600 per year, or 1,200 visits over a 2-year period.

Table 15: FY 2019–FY 2020 Site Visit Fee-Recoverable Budget

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

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 certified school adds a new physical location or campus. Thus, in addition to the site fee(s) required upon initial certification, the site visit fee will now apply when a certified school updates its Form I-17 in SEVIS to indicate, pursuant to 8 CFR 214.3(h)(1)(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 an appeal or motion is calculated by determining the workload of appeals and motions over the FY 2019 and FY 2020 periods. Over the past two 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 16).

Table 16: FY 2019–FY 2020 Appeals Fee-Recoverable Budget

| Fiscal Year | Appeal and Motion Payments Expected | Fee-Recoverable Budget |
|--------------------|--|-------------------------------|
| 2019 | 54 | \$1,956,375 |
| 2020 | 54 | \$2,198,825 |

| Fiscal Year | Appeal and Motion Payments Expected | Fee-Recoverable Budget |
|--------------------|--|-------------------------------|
| Total | 108 | \$4,155,200 |

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. The relative costs of seasoned federal employees involved in rendering a decision and the few petitioners result in costs that SEVP felt should be subsidized. To arrive at the 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.⁸ Instead, DHS is 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 is set at \$675, which is currently the same amount charged when the form is filed with USCIS. *See* 8 CFR 103.7(b)(1)(i)(S).⁹ The Form I-290B filed with USCIS is the same form used for appeals or motions related to any denial of school certification or recertification or a withdrawal

⁸ If a school is denied certification or withdrawn from certification, it can file an appeal with an independent Administrative Appeals Team (AAT). The AAT has sustained approximately 92 percent of decisions.

⁹ Because the underlying rationale for the amount of the I-290B fee differs between SEVP and USCIS, DHS may change the I-290B fee for USCIS but not for SEVP, meaning the Form I-290B may have two different fees in the future.

of such certification. Although the appeal fee is not 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 bear some of its costs, and DHS more fairly balances allocation of the recovery of SEVP operational costs between beneficiary classes. DHS will charge the fee for all such appeals and motions.

4. Fee Levels

Viewing the SEVP fee structure and affected parties comprehensively, DHS is adjusting 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 using the Form 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 Form 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 Form I-901 fee necessarily benefit from the continued certification of schools for their enrollment and prompt and accurate adjudication of appeals.

DHS is increasing the Form I-901 fee for F and M students from \$200 to \$350 and the full Form I-901 fee which applies to most J exchange visitors from \$180 to \$220. 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 Form I-901 fee for F and M students increased from \$100 to \$200, and the Form I-901 J full fee

increased from \$100 to \$180. *See id.* The Form- I-901 fee for special J-visa categories (au pair, camp counselor, and summer work travel) remains 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 Form I-901 fee J-1 exchange visitors who participate in Federal Government-sponsored J-1 exchange programs. 8 U.S.C. 1372(e)(3).

DHS is increasing 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 is establishing a recertification fee at \$1,250, maintaining the site visit fee of \$655, and sets the Form I-290B fee at \$675. The cost for SEVP recertification, site visits, and motions and appeals adjudication is determined by employing ABC principles, described in the proposed rule, balanced with SEVP's desire to prevent recertifications, site visits, appeals, and motions filings from becoming cost-prohibitive. *See* 83 FR 33762, 33771. DHS is setting a recertification fee and setting 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. As noted below, public comments received in response to the NPRM supported this assessment. Accordingly, DHS is setting these fees at amounts below the fee-recoverable cost. For the Form I-290B fee in particular, DHS is setting the amount at \$675. DHS believes this amount

best addresses concerns raised in public comments about entities paying a Form I-290B fee for the first time 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 fee of \$675 is substantial, subsidizing this fee by driving the additional costs to the Form I-901 fee results in an increase of only \$4.76 to F/M students paying that fee. The program fee schedule for SEVP beginning in FY 2019 is shown in Table 17.

Table 17: FY 2019 SEVP Fees

| Category | Amount |
|--|---------------|
| I-901 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 Fees | |
| • 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 fee amounts, the cost model outputs, and cost reallocation amounts are shown in Table 18. 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 18: 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 | \$130 | \$97 | \$220 | \$30 | 22% |
| I-901 J-Partial | \$35 | \$130 | (\$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% |
| Site Visit – new location | \$0 | \$650 | \$5 | \$655 | \$655 | N/A |

Table 19 reflects the break-even analysis based on the fee schedule and the proportional fee volumes (rounded) required to generate sufficient revenue to offset projected program costs.

Table 19: Projected Revenue–FY 2019 and FY 2020

| Fee Category | Fee Amount | Forecasted Volume | Forecasted Revenue |
|------------------------|------------|-------------------|--------------------|
| I-901 F/M | \$350 | 826,326 | \$289,214,100 |
| I-901 J-Full | \$220 | 311,162 | \$68,455,640 |
| I-901 J-Partial | \$35 | 317,890 | \$11,126,150 |
| I-901 Subtotal: | | | |
| Certification Fee | \$3,000 | 852 | \$2,556,000 |
| Recertification Fee | \$1,250 | 8,746 | \$10,932,500 |
| Site Visit | \$655 | 1,200 | \$786,000 |
| I-17 Subtotal: | | | |
| Appeal or Motion | \$675 | 108 | \$72,900 |
| Total: | | 1,466,284 | \$383,143,290 |

IV. Technical Corrections to the Proposed Rule

DHS identified six sets of required technical corrections to the proposed rule, as follows.

First, DHS identified that in the NPRM's Table 7: *Form I-901 Fee Payment Forecast FY 2019-FY 2020*, contained a minor mathematical error due to rounding. On line three, column three, FY 2020 full payment, J-Full, stated as 153,611 is corrected to 153,612 in what is Table 11 of this final rule.

Second, DHS changed a corresponding number in the NPRM's Table 22: *Form I-901 Full J Fee Payments FYs 2010–2017* (Table 24 in this final rule), line 16, column 2 from 153,611 to the corrected 153,612. DHS also made two additional conforming corrections in the preamble text where the incorrect figure 153,611 was changed to 153,612 and in accordance corrected a sum of total increase in transfer payments from I-901 J-Full applicants from \$12,446,440 to \$12,446,480. These changes are minor and do not change the substance of the rule.

Third, DHS discovered that the NPRM's Table 17: *Projected Revenue – FY 2019 and FY 2020*, contained the following four errors:

- On line two, column four, a mathematical error indicating the forecasted I-901 F/M Full revenue as \$289,214,144. The entry of \$289,214,144 is corrected to \$289,214,100.
- On line three, column four, a correlating mathematical error indicating the forecasted I-901 J-Full fee revenue as \$68,455,584. The entry of \$68,455,584 is corrected to \$68,455,640.

- On line three, column two, a typographical error stating “210” for the Form I-901 fee the “J-Full” category. The correct amount, as included and discussed elsewhere in the proposed rule, is “220.”
- On line eleven, column four, a correlating mathematical error indicating the total forecasted revenue as \$383,143,278. The entry of \$383,143,278 is corrected to \$383,125,290. The proposed rule included and discussed the correct “220” figure at several points in the document, and no commenter expressed confusion over these proposed dollar amounts.

Fourth, DHS identified a section of the NPRM’s proposed regulatory text at 8 CFR 103.7(b)(1)(ii)(B) that could be confusing to some readers. Though no commenters expressed confusion about the provision, DHS determined that the text, as published in the NPRM, made it appear as though a school going through recertification would be required to pay the \$3,000 initial certification fee in addition to the \$1,250 recertification fee, plus \$655 per additional site. As previously noted throughout the preamble to the NPRM, the \$1,250 recertification fee is charged in lieu of the full \$3,000 fee for an initial certification, and an additional fee of \$655 is charged when a certified school reports a new physical location where it provides education to international students and which was not previously reported on its Form I-17. *See, e.g.*, 83 FR 33762, 33771 (discussing the basis and purpose of DHS’s intention to collect a site visit fee when a school changes or adds a new physical location or campus), 33773 (noting different costs for initial certification and recertification processes), 33776 (describing the fee-recoverable amount of recertification separately from initial certification), 33781-82 & 33788-89 (explaining

the impact of the recertification fee). DHS amends the regulatory text at 8 CFR 103.7(b)(1)(ii)(B) to clarify this provision.

Fifth, DHS identified a section of the NPRM's proposed regulatory text at 8 CFR 103.7(b)(1)(ii)(H) that unnecessarily referred to fee remittance for "certain" F, J, and M nonimmigrants when all potential scenarios for fee remittance in these categories are in fact addressed. DHS amends the regulatory text at 8 CFR 103.7(b)(1)(ii)(H) to delete the word "certain."

Sixth, the NPRM's proposed regulatory text at 8 CFR 214.13(a)(2) inadvertently provided that the fee for certain J-1 status applicants is \$210. The correct amount, as referenced elsewhere both in the regulatory text proposed in the NPRM and in its preamble, is \$220. DHS amends the regulatory text at 8 CFR 214.13(a)(2) to correct this error. The revised regulatory text of this fee level does not change the intent of the proposed rule.

Last, the authority sections for the text of the CFR are amended to include additional references to relevant statutory authorities. Specifically, DHS is adding citations to 8 U.S.C. 1356 and 8 U.S.C. 1372, which also serve as sources of authority relevant to 8 CFR parts 103 and 214.

V. Public Comments on the Proposed Rule

DHS provided a 60-day comment period for this rulemaking following publication of the NPRM. The comment period concluded on September 17, 2018. DHS received approximately 300 comments.

DHS has carefully reviewed all comments received during the comment period and summarizes and responds to all significant comments received in the following sections of this final rule preamble, with some additional responses to small entities-related comments in the Final Regulatory Flexibility Analysis section below.¹⁰ This final rule does not make any substantive revisions to the proposed rule based on the comments received.

A. General Comments

DHS received comments from a broad spectrum of individuals and organizations, including representatives of schools and universities, advocacy organizations, public policy groups and other interested persons. Most commenters expressed general opposition to the fee increases; others expressed concerns related to specific fees.

While most commenters opined the proposed fees were generally too high, many also expressed their understanding of the necessity of some fee increases. Some comments favored increasing fees, acknowledging the need to account for the costs of current SEVP services and planned enhancements without financially impacting the U.S. taxpayer. A few commenters expressed their appreciation for the fees having remained the same since 2008. Additionally, one commenter opined that the increase in fees may decrease the likelihood of visa overstays by curtailing visa applications. Another commenter expressed appreciation for the U.S. government policy related to assessing fees for the cost of government programs and opined that all costs associated with

¹⁰ Overall, the final rule does not address comments seeking changes in statutes, regulations, policy or processes unrelated to or not addressed by the proposed rule. It also does not respond to requests for changes in procedures of other DHS components or other agencies, or the resolution of any other issues not within the scope of the rulemaking.

nonimmigrant students' presence in the United States should be paid by students rather than by U.S. taxpayers. Some commenters supported the fee increases but stated that the proposed fees were too low and that DHS should consider raising the fees further.

Some commenters suggested alternative methods to reduce costs and inefficiencies. DHS also received some comments on subjects that are not directly related to the proposed fee amounts and are outside the scope of the NPRM. For example, some commenters suggested that DHS should allocate funds from other areas of the department to address SEVP funding deficits rather than raise the fees.¹¹

Overall, comments submitted to the docket for this rulemaking were dominated by concerns about the potential impact the increased Form I-901 fee would have on nonimmigrant student enrollments and concerns about the potential impact of the new recertification fee on a school's ability to continue being certified by SEVP. Commenters, particularly those representing institutions with few nonimmigrant students, specifically stated that the new recertification fee is excessive and would adversely affect their ability to remain an SEVP-certified school. Finally, several commenters observed that the fee changes will send a signal to nonimmigrant students that the United States intends to restrict access to its educational opportunities.

¹¹ In addition to noting that it would be outside the scope of this rulemaking to artificially reduce the fee amounts in the hopes of receiving another lawful source of funding, DHS notes that such an approach would be irresponsible. As explained earlier in this preamble, by statute, SEVP is completely funded by the fees it collects. Congress specifically authorized SEVP to recover the full cost of agency operations, and has not indicated an intention to increase DHS appropriations to fund costs that SEVP could have recouped through fees. DHS cannot place SEVP operations at risk in the hopes of securing additional funding.

In response to these comments, SEVP notes that it supports international education. Nonimmigrant students typically have positive experiences while in the United States, and the goodwill engendered by all that the United States has to offer encourages mutually beneficial international relations. SEVP, by ensuring that individuals admitted to the United States as F, J, and M nonimmigrants are bona fide students and exchange visitors, reduces fraud, abuse, and potential terrorist threats, contributing to a safe environment for students and exchange visitors when they attend programs in the United States. In order for SEVP to continue to facilitate the benefits of U.S. educational and exchange experiences to F, J, and M nonimmigrants, SEVP must maintain its current systems and operational staff and make refinements now possible through progressive adaptations, both of which require appropriate funding.

B. Comments on Timing of Fee Increase

Several commenters expressed their understanding of the necessity to increase the fees; however, they suggested that instead of a one-time increase, a more consumer-friendly approach would be to raise fees incrementally over time to allow schools and students more time to budget and plan for the increase. DHS recognizes that the fees impose a burden on prospective students and schools. However, in order to ensure that fee levels are sufficient to recover the full cost of activities of the program immediately upon the effective date of the final rule, DHS calculations indicate that the fee amounts must remain, at a minimum, as proposed. 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. Additional factors as to why DHS cannot implement such a tiered payment system at this time include the additional administrative burden and development costs such an incremental payment system would place on the program as well as time delays in development.

C. Comments on Enhancements

1. SEVIS Modernization

One commenter observed that since the NPRM was published, DHS has already implemented the SEVIS Student Portal, which the NPRM described as a part of the SEVIS modernization for which it required additional funding. In addition, a university expressed dissatisfaction with the current portal functionality and requested specific technical improvements. DHS acknowledges that the initial phase of the SEVIS Student Portal has now been launched. However, DHS clarifies that the proposed funding is intended to allow DHS to improve the portal and to expand the use of the portal to areas other than those currently online. DHS plans on building on the successes of and lessons learned from the initial Student Portal launch phase. Such expansion requires the additional revenue enabled by the fee increase.

One commenter also questioned the need for a DSO background check that is connected to SEVIS modernization and opined that such checks are duplicative as human resources offices in educational institutions already conduct their own background checks. DHS supports any school's initiative to conduct employee background checks when those employees will be accessing SEVIS but disagrees that the current DSO verification is a duplication of those efforts. FISMA, the Federal Information Security Management Act of 2002, as amended, requires that SEVP protect government

information by applying appropriate suitability checks to non-government users. *See generally, e.g.*, 44 U.S.C. 3554(a). These checks are potentially substantively different than, and not replaceable by, those background checks used by private entities.

2. Increased SEVP Adjudication Personnel

Many commenters opined that current recertification processing times are too lengthy and observed that while the NPRM indicated that hiring additional SEVP adjudication personnel was a partial reason for the fee increases, there was no description of the impact such hiring would have on reducing adjudication times. Several SEVP-certified schools expressed support for the fee increase specifically on the condition that adjudications would become more expedited after new adjudicators were hired. Other comments noted that the quality and efficiency of SEVP adjudications needed to be assessed and asked that funds be directed to improve and expedite the adjudication process. As an alternative to increasing the number of adjudication personnel, an organizational commenter, supported by other commenters, opined that “SEVP has opted to fully adjudicate nearly every change to Form I-17” and questioned whether all such adjudications are necessary. The commenter further noted that by doing so, SEVP has created unnecessary work that has created a work backlog and delays.

SEVP agrees that its policy is to adjudicate most changes to the fields contained within the Form I-17. However, the lack of sound alternative methods to mitigate risks has necessitated such adjudications. SEVP notes that it continuously investigates and assesses opportunities for more streamlined, risk-based methods available, including opportunities that may arise due to new ways of analyzing school and student data. For purposes of this rulemaking, however, the underlying fee review, as described in the

NPRM preamble, uses historical staffing and workload information for current SEVP functions and planned future initiatives to establish future revenue needs. SEVP lacks a methodology to reliably estimate downward adjustments in revenue needs based on workload adjustments that have yet to be made. To the extent that ICE makes such adjustments in the future, any efficiencies would be reflected in a subsequent fee rulemaking.

This change will allow SEVP to fund additional personnel needed to improve case processing, reduce backlogs, and move toward more expedited processing times. That being said, superseding priorities may arise, which could not have been known at the time fee cycle calculations were made, that may impact SEVP's ability to meet petitioner expectations at all times. It is possible that at times, SEVP will need to shift adjudicator workloads and priorities away from recertification to address emergent issues, which may impact case processing efficiency and backlogs.

D. Comments on Specific Fees

1. Fee for F, M and J nonimmigrants

Almost all of the submitted comments voiced concern that the increase in the Form I-901 fee would adversely affect U.S. competitiveness in the international market for nonimmigrant student enrollment and exchange visitor participation. Some cited decreasing nonimmigrant student enrollments in the United States and corresponding increasing enrollments in other English-speaking countries, notably in Canada and Australia. Many commenters emphasized the importance of nonimmigrant student enrollment and exchange visitor participation to U.S. productivity and innovation and specifically identified the negative impact the decrease in enrollment would have on

school programs, the U.S. economy and local jobs. While DHS acknowledges the potential for increased fees to theoretically lead to decreased enrollment and subsequent negative effects on the U.S. economy, these commenters provided no supporting facts or data to demonstrate that such broad effects are a likely outcome of this particular fee increase. Therefore, DHS determines that such concerns do not outweigh the Department's need to increase the Form I-901 fee.

Some commenters suggested that SEVP could decrease the burden on students by having the student fee increase gradually over a longer period of time, amortized annually based on the length of the student program, to minimize the potential impact on student enrollment.

One commenter criticized the decision to use the Form I-901 fee to effectively reallocate some of the costs of services for which SEVP has assessed a fee, such as recertification. The commenter stated that the cost reallocation undermined the consistency of the ABC approach, and that as a result of the cost reallocation, students would bear the burden of costs that are more fairly attributed to educational institutions.

As noted above, SEVP appreciates the importance of nonimmigrant student and exchange visitor enrollment to the U.S. culture and economy and is firmly committed to lawful admission of nonimmigrants for this purpose. SEVP also observes that while many of the comments provided historical data to show a recent decrease in nonimmigrant student enrollment, they neither cited nor provided a published study or other credible data supporting the suggestion that an increase in government fees charged to nonimmigrant students of the scale proposed in the NPRM would adversely affect their decision to choose the United States for academic or vocational study, or exchange visits.

SEVP, likewise, has been unable to locate such a study. DHS thus has no objective basis for concluding that nonimmigrant students significantly base their decisions for attending educational institutions in the United States on government fees which, generally, are a small portion of the overall costs of attending these programs.

For instance, the increased Form I-901 fee represents approximately one percent of the average cost of yearly expenses for students in a four-year program.¹² DHS believes that amortizing these costs over the course of a student's stay in the United States would be administratively cumbersome and inappropriate, given the need to fund SEVP operations. For example, because many of the operational costs of nonimmigrant student enrollment associated with establishing an F or M student record in SEVIS occur prior to or at the beginning of the program of study (such as maintaining the SEVIS database and educating DSOs), amortization would result in ICE incurring costs years before it recovers such costs through fees.

In addition, there are a variety of types of educational institutions in the United States, such as community colleges and focused vocational educational programs of study that are relatively unique in the world. These United States institutions offer fields of study; academic, social, and geographic environments; and support services that cannot be found anywhere else. Noted American research facilities provide opportunities for advanced research and collaboration among an increasingly international community of scholars. Given the many variables that go into a nonimmigrant student's decision to

¹² See National Center for Education Statistics, Fast Facts: Tuition costs of colleges and universities, <https://nces.ed.gov/fastfacts/display.asp?id=76> (last visited Oct. 26, 2018) (showing the 2015-16 average total tuition, fees, room and board rates charged for full-time undergraduate students in degree-granting institutions).

study abroad, and the lack of validated data on this issue, there is no reliable basis to conclude that U.S. government fees represent a significant factor in persuading a student or exchange visitor to attend a school in the United States, or not. SEVP, consequently, cannot conclude at this time that the increase in the Form I-901 fee as a result of this rule would be directly or even indirectly related to a decrease in U.S. competitiveness for foreign students and exchange visitors.

Further, as discussed in the NPRM, after the fees were last increased in 2008 there was a brief decrease in the combined F, M, and J I-901 payments. However, the I-901 payment rate quickly recovered and ultimately reached record levels while the fees remained at the increased levels. *See* 83 FR 33762, 33775. Accordingly, an increase in fees does not necessarily precipitate a drop in enrollment. DHS acknowledges, however, that its analysis of the dropoff and subsequent increase in participants may not capture some applicants who forewent participation in SEVP due to the increased cost of application.

With respect to the comment about the use of cost reallocation, *i.e.*, the use of Form I-901 fee revenues to subsidize program integrity measures (such as mandatory biennial reviews) that would otherwise be funded through other fees (such as fees paid by schools), DHS notes that the benefits of program integrity measures accrue to F and M students and J exchange visitors, not just to institutions. DHS accordingly believes it reasonable for each F, M, and J nonimmigrant to share the cost by paying a small fee for this benefit rather than requiring SEVP-certified or Department of State (DOS)-designated institutions to bear the entire cost themselves. DHS also believes that such sharing of the costs, by lowering the respective costs of certification or designation, may

be a contributing factor to the diversification of the type of schools that have sought SEVP certification and/or DOS designation thus benefiting F, M, and J nonimmigrants with a greater choice of schools.

In addition, as discussed above, 8 U.S.C. 1372 and 8 U.S.C. 1356(m) authorize a full range of SEVP activities and collection of fees related thereto, and not merely data collection. Also, inclusion of these costs is not inconsistent with the full cost concept as outlined in federal cost accounting guidance, generally applicable federal policy for user charges, and legal precedent.

Finally, DHS notes that even if a rise in the cost to F and M nonimmigrant students and J nonimmigrant exchange visitors were to cause a reduction in the demand by foreign students or exchange visitors for U.S. educational or exchange opportunities, that result would not alter this rulemaking. DHS and DOS must recoup the costs of administering the programs that manage F, M, and J nonimmigrants. The program cannot operate at a projected deficit based on a desire to attract a greater number of foreign students. If the rise in the cost causes a substantial reduction in the demand by foreign students or exchange visitors for U.S. educational or exchange opportunities, the lower revenue may not sustain the programs that manage the F, M, and J nonimmigrants. As stated previously, SEVP reviews its associated fees that are deposited into the IEFA biennially and, if necessary, will propose adjustments to ensure recovery of costs necessary to meet national security, customer service, and adjudicative processing goals at that time.

2. Impacts on Specific Applicant Groups

Several commenters voiced concern about the negative impact of the increased fee on all F, M, and J nonimmigrants, but particularly on students in short-term programs such as intensive English programs that are already reporting declines in enrollment. Several commenters expressed concern that specific groups of nonimmigrant students or specific programs could be disproportionately affected by the fee increases. For example, many commenters expressed concern that short-term programs of study, specifically English language training programs, would be negatively impacted by the increase in Form I-901 fees. These commenters noted that such programs are shorter than full degree programs and often cost less, making the fee increase relatively more burdensome than for students enrolled in multi-year programs of study.

For instance, some of these commenters suggested that the fee should be proportionate to the type of program of study a student is engaged in. Some of these comments suggested that students in short-term programs should be charged a lower fee than students in multi-year degree programs. One commenter suggested that for such short-term programs, the Form I-901 fee could account for 25 to 30 percent of the cost of a short-term program and stated that such a high percentage would be cost-prohibitive to many students to enroll in such programs. However, the commenter did not provide a clear basis for that 25 to 30 percent estimate, propose a specific amount for a short-term program fee, or explain how DHS would distinguish between “short-term” students and longer-term students. Some commenters requested that DHS establish a lower or a graduated fee for the student, exchange visitor and school fees to minimize negative impact specifically of potential declining enrollments.

DHS declines to establish a lower or graduated fee for specific subgroups of nonimmigrants, such as those who require shorter-term nonimmigrant status, for multiple reasons.

First, SEVP has reviewed its program costs for processing students in short-term nonimmigrant status versus those in long-term nonimmigrant status and can find no convincing basis for charging a lower fee for students on short-term status. As discussed above and in the proposed rule, DHS must establish a fee schedule that allows for recovery of the full costs of current SEVP services and planned enhancements. The proposed fee schedule was based on a fee model that captured the full cost of operations for current activities and planned enhancements and apportioned that full cost to the appropriate program activities. The model assigned costs to the appropriate fee category based on the nature of the activity. The model does not contain separate activity types for students in short-term programs as compared to long-term programs.

DHS nonetheless conducted a qualitative review of the activities and their associated costs, and found that students in short-term programs do not necessarily impose lower costs on SEVP than students in long term programs. For instance, as indicated in Table 7, significant portion of the costs assigned to the I-901 fee are for student and exchange visitor investigations and school and sponsor investigations. Such investigations are not significantly less likely for students in short-term programs, and in some cases, poor oversight of students by short-term program DSOs has resulted in a

particular need for investigations of those students and programs. Similarly, SEVP system maintenance costs are not significantly lower for short-term students.¹³

Second, DHS would incur additional administrative costs associated with separate processing of these fees, increasing the costs for all participants.

Finally, as F-1 nonimmigrant students may easily transfer from one type of a program of study to another without paying another I-901 fee, charging a lower fee for certain types of programs creates an opportunity for abuse of the transfer function in order to avoid paying a full fee.

Accordingly, DHS will charge a single set fee regardless of the student's anticipated program length or other considerations.

3. Continued Fee of \$35 for Au Pairs, Camp Counselors and Summer Work Travel

One commenter asked why the \$35 fee for au pairs, camp counselors, and summer work/travel programs was not included in the funding increase and why such a fee could not be increased to subsidize F and M nonimmigrant student fee.

For the J-visa for exchange visitors, Congress provided the Department of Homeland Security with the authority to set fees consistent with the Department's estimation of the cost per individual of providing services. In addition to that general authority, Congress also specifically indicated that the fee for au pairs, camp counselors, and participants in summer work travel programs should be \$35. 8 U.S.C. 1372(e)(4)(A).

¹³ For instance, the creation of a SEVIS record, regardless of program affiliation or program length, has certain fixed costs shared by all nonimmigrant students. In addition, with respect to the increased fees on the schools themselves, SEVP notes that the costs of certification, recertification, maintaining SEVIS, and training DSOs do not necessarily vary based on program type.

Based on the clear Congressional intent that the fee for au pairs, camp counselors and summer work/travel programs remain set at \$35, the Department has decided to keep the fee set at that level.

4. Recertification Fee

Many commenters objected to the introduction of a recertification fee, stating that it will disproportionately burden smaller institutions, because those schools obtain less revenue from F and M nonimmigrant students. Some representatives of small institutions commented that the proposed recertification fee increase would likely be cost-prohibitive to them and they would likely not seek to renew their SEVP certification. Other commenters voiced concerns over the timing of the increase in the middle of an academic budget cycle.

DHS declines to establish a lower fee for smaller institutions, because following a qualitative review of the fee model (which does not distinguish between institutions based on size), DHS could not identify a convincing basis for doing so. Many of the administrative costs associated with recertification are fundamentally similar regardless of school size or type. Universities, secondary schools, public or private schools, and F and M schools receive the same SEVP certification. The workload and cost of certification adjudications does not change for different types of schools. In addition, institutions with large nonimmigrant student populations typically require fewer resources in some respects, since they are more knowledgeable, have a stable professional pool of employees, and have better internal reporting systems to assist in their compliance efforts. By contrast, schools with smaller enrollments may require more frequent training of DSOs, or significant oversight if they are identified as higher risk.

With respect to the timing of the proposed fee increase, DHS appreciates this concern, but notes that DHS announced the likely publication of the proposed rule well in advance of the current academic year.¹⁴ In addition, although the fee schedule will occur in the middle of a budget cycle, not all schools will be impacted during the current budget cycle.

Multiple commenters also opined that the interval of SEVP school recertification is too frequent at two years. One commenter suggested that the frequency of recertification should be decreased from two years to four or five years. DHS notes that EBSVERA, section 502, 8 U.S.C. 1762, and Homeland Security Presidential Directive–2 (HSPD–2) provided for DHS to periodically review all schools approved for attendance by F or M nonimmigrant students. Further, EBSVERA requires that DHS recertify all such schools within two years of enactment and conduct an additional recertification of these schools every two years thereafter. *See* 8 U.S.C. 1762(a). As the two-year recertification cycle is a statutory requirement, the frequency cannot be modified through rulemaking. Therefore, comments suggesting alternative recertification intervals are beyond the scope of this rulemaking.

5. Fee for Filing an Appeal or Motion

A few individuals and organizations commented on SEVP charging a fee to submit an appeal or motion following a denial or withdrawal of a school petition, the majority voicing their opposition to charging such a fee. Some questioned the

¹⁴ *See, e.g.*, Spring 2018 Unified Agenda of Federal Regulatory and Deregulatory Actions, RIN 1653-AA74, *available at* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1653-AA74> (last visited Jan. 7, 2019) (indicating likely publication of a proposed rule in September of 2018).

meaningfulness of the fee when it covers only a fraction of the actual appeal cost and encouraged DHS to explore ways to increase efficiencies to decrease the cost of appeals and motions. DHS recognizes the potentially adverse impact of a high appeal fee, and therefore reallocated some of the costs of handling appeals to other SEVP fees. DHS notes that it is exploring ways to increase efficiencies to reduce the cost of adjudications. At this time, however, DHS feels that the benefits of charging a fee to recover some portion of the costs of reviewing appeals and motions remain compelling. One commenter stated that the fee was excessive as the appeal process is the only recourse or way for the applicant to engage with adjudicators for discussion. DHS notes that this notice comes at a point in the overall process during which the applicant or petitioner has had significant opportunities for dialogue (*see, e.g.*, 8 CFR 214.4(b)(3) (referencing a school's right to request a telephonic interview after receiving a notice of intent to withdrawal SEVP certification)), and so concerns about the impact of the appeal fee amount for this reason are overstated.

6. Site Visit Fee

Some commenters asked SEVP to reconsider charging a site visit fee when an SEVP-certified school adds a new physical location or a campus where it plans to enroll F and M students. In particular, an organizational commenter objected to DHS's statement in the proposed rule that under the 2008 Fee Rule, DHS must impose 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. *See* 83 FR at 33771. The commenter wrote that current regulations require site visits only in the context of initial school certification

under 8 CFR 214.3(h)(1), and not in the context of recertification (8 CFR 214.3(h)(2)) and out-of-cycle reviews (8 CFR 214.3(h)(3)). According to the commenter, those provisions refer to “on-site reviews,” not to site visits. The commenter also suggested that the on-site review, when necessary, is a less costly endeavor than an initial school certification site visit and thus a school should not be charged for an on-site review but only for an initial site visit.

As an initial matter, DHS disagrees with the commenter’s assessment of the scope of the site visit fee under existing regulations. When DHS established the site visit fee, DHS made clear that for initial SEVP certification petitions, a petition fee (\$1,700) is required for each institution and a site visit fee (\$655) is required for each campus. DHS also made clear that SEVP-certified institutions seeking approval for change of location must pay a site visit fee, and that SEVP-certified institutions seeking approval for a new campus must pay a site visit fee. 73 FR 55683, 55695.

These requirements are reflected in existing regulations, which provide as follows:

- The site visit fee applies to each location required to be listed on the form, and is not limited to the initial certification context. 8 CFR 103.7(b)(1)(ii)(B).
- As part of initial certification, SEVP will conduct a site visit for each petitioning school *and its additional schools or campuses*. 8 CFR 214.3(h)(1)(ii). As noted above, a fee is charged for each additional school or campus at the initial certification stage.

- The Form I-17 must include “any physical location in which a nonimmigrant can attend classes through the school (*i.e.*, campus, extension campuses, satellite campuses, etc.)” 8 CFR 214.3(a)(1).
- Schools are subject to a continuing duty to update SEVIS school locations as changes arise, *i.e.*, even after initial certification, within 21 days of a change to a range of information types on the Form I-17, including school location and campus location. *See* 8 CFR 214.3(g)(2), (h)(3).

This makes amply clear that the intent of the 2008 Fee Rule was to apply the site visit fee whenever a school fulfills its duty to add a school or campus location in SEVIS.

DHS reaffirms that interpretation in this final rule. The site visit fee applies at the initial certification stage, and when a certified school updates its Form I-17 in SEVIS to indicate, pursuant to 8 CFR 214.3(g)(2)(i) and (h)(3), that it is changing its physical location or adding a new physical location or campus.

DHS emphasizes that the imposition of this fee is necessary to support the relevant operations. The revenue generated by the imposition of this fee assists in recovering the costs that DHS incurs for these site visits, which are necessary for program integrity purposes. Site visits are no less burdensome in the post-certification context, and warrant an equivalent fee, because SEVP must assess that the schools continue to possess the necessary facilities, personnel, and finances to conduct instruction regardless of the point in time at which the schools choose to use a location for the instruction of nonimmigrant students.

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 has designated this rule a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by OMB. This final rule imposes transfer payments between the public and the government with no new cost burdens. Thus, this rule is not subject to the requirements of Executive Order 13771.

No comments were received concerning the regulatory impact analysis contained in the proposed rule. With the exception of a minor technical amendment to Table 24, as described earlier in this preamble, there are no changes from the proposed to the final regulatory impact analysis. A final regulatory impact analysis follows.

1. Background and Purpose of the Rule

SEVP is a fee-funded program within ICE that provides oversight of certified schools and nonimmigrant students in the F and M visa category. SEVP uses SEVIS to monitor and track certified schools and F and M 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 nonimmigrant 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 enforcement actions for students and exchange visitors who are out of status.

The purpose of this final 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 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.

With this rule, SEVP will collect five fees paid by two source categories: individuals will pay the Form I-901 fee, and institutions will pay the Form I-17 certification fee, Form 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 in this rule.

Table 20 presents an accounting statement summarizing the annualized transfer amounts and qualitative benefits of the final rule. With this rule, 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 nonimmigrant students and J nonimmigrant exchange visitors will pay higher fees.

Table 20: Accounting Statement for FY 2019

| Category | Primary Estimate | |
|---|--|--|
| Qualitative Benefits | SEVP will be able to maintain the current level of service. This 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 final rule increases and establishes additional fees on state, local, and/or tribal government-funded educational institutions for support of SEVP operations. This rule increases the I-17 certification fee and creates the I-17 recertification fee and a fee for filing an appeal or motion. In addition, SEVP will collect a site visit fee when an SEVP-certified school adds a campus/location. | Final Rule, Executive Order 12866 analysis |
| Effects on small businesses | The final rule increases and establishes additional fees for educational institutions in support of SEVP operations. This final rule increases the I-17 certification fee and create the I-17 recertification fee and a fee for filing an appeal or motion. In addition, SEVP will collect a site visit fee when a school certified by SEVP adds a campus/location. | Final Regulatory Flexibility Analysis |

2. Impacts of Regulatory Change

This rule amends the current fee levels for the individual student and exchange visitor application fee (Form I-901 fee) and school certification petition for initial

certification. It maintains the current fee for site visits and makes clear that SEVP will impose it for any change of location or additional physical location or campus reported as an update by a certified school. It also institutes a 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 Form I-901 fee levels 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 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's fees will result in recovery of the full cost of SEVP analysis and support 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. Form I-901 F and M 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 Form I-901 F and M fee. In this final rule, SEVP increases the Form I-901 F and M fee from \$200 to \$350.

From 2007 through 2017, SEVP received an average of 450,581 Form I-901 F and M fee payments per year. Table 21 shows the volume of Form I-901 F and M fee payments received and the annual average number of fee payments from 2007 to 2017. As previously discussed, SEVP has forecasted 418,393 Form I-901 F and M fee payments in FY 2019 and 407,933 FY 2020, respectively.

Table 21: Form I-901 F and M Fee Payments FYs 2010–2017

| Fiscal Year | Fee Payments |
|----------------------------|---------------------|
| 2007 | 358,666 |
| 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 22 illustrates the incremental increase DHS is finalizing with this rule for the Form I-901 F and M fee. Individuals who submit a Form I-901 will pay an additional \$150 under this final rule, which is a 75 percent increase.

Table 22: Form I-901 F and M Incremental Fee Increase

| Type | Current Fee | New Fee | Difference (New-Current) |
|---------------|-------------|---------|-----------------------------|
| I-901 F and M | \$200 | \$350 | \$150 |

SEVP estimates that the fee increase will result in an annual increase of transfer payment from students who submit a Form I-901 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 FY 2020 number of applicants = \$61,189,950).

b. Form I-901 J-Full fee

DOS generally oversees the exchange visitor program, which includes nonimmigrants who are charged the full Form I-901 J 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 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 23 displays the affected Exchange Visitor Program categories subject to the full Form I-901 J fee and the purpose of the visit.¹⁵

Table 23: J-1 Nonimmigrant Exchange Visitor Program Categories Subject to Form I-901 Full J Fee

| Exchange Visitor Program Category | Purpose of Visit |
|--|---|
| 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. |
| 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. |

¹⁵ See Department of State, Exchange Visitor Program Category Requirements (June 2016), <https://j1visa.state.gov/wp-content/uploads/2017/06/Exchange-Visitor-Program-Category-Requirements.pdf> (last visited Feb. 26, 2018).

| Exchange Visitor Program Category | Purpose of Visit |
|--|---|
| 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 Form I-901 Full J payments per year (FYs 2007 – 2017). Table 24 displays the volume of Form I-901 Full J fee payments received and the annual average number of fee payments. SEVP has forecasted 157,550 Form I-901 Full J payments in FY 2019 and 153,612 in FY 2020.

Table 24: Form I-901 Full J Fee Payments FYs 2010–2017

| Fiscal Year | Fee Payments |
|---------------------|---------------------|
| 2007 | 132,213 |
| 2008 | 137,173 |
| 2009 | 129,979 |
| 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 | 153,612 |

The difference between the final and current fees for the Form I-901 Full J applicants is \$40, an increase of approximately 22 percent, as shown in Table 25.

Table 25: Form I-901 Full J Incremental Fee

| Type | Current Fee | New Fee | Difference (New–Current) |
|--------------|--------------------|----------------|---------------------------------|
| I-901 J-Full | \$180 | \$220 | \$40 |

The annual increase in transfer payments from Form I-901 Full J applicants to the government is expected to be \$6,302,000 in FY 2019 and \$6,144,480 in FY 2020 (\$40 increase in fee x 157,550 FY 2019 and 153,612 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 Form I-901 J fees bring to the program; therefore, SEVP increases the Form I-901 Full J fee to cover the \$39.4 million full cost of operating the J visa program on an annual basis.

c. Form I-17 School 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 two 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 three year moving average to minimize the variation in forecasting the population data. The Form I-17 initial certifications from FYs 2012 through 2016 are shown in Table 26.

Table 26: FYs 2012–2016 I-17 Initial Certifications

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

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

As of May 2017, there were 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 nonimmigrant 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 initial certification fee of \$3,000. The 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 new fee amount is \$1,250. The Form I-17 initial certification and Form I-17 recertification incremental fees are shown in Table 27.

Table 27: I-17 Incremental Fees

| Type | New Fee | Current Fee | Difference (New–Current) |
|--------------------------------|----------------|--------------------|-------------------------------------|
| 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 Form 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 Form I-17 initial certifications)). The annual increase in transfer payments from schools to the government for Form 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 filing the Form I-290B. This rule finalizes that SEVP impose a filing fee of \$675, which is also the fee currently charged by USCIS upon submission of the Form I-290B.¹⁶ SEVP does not currently collect a fee from a school that files a motion or appeal. DHS finalizes its regulations to institute this fee for a school filing an appeal or motion 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 an appeal or motion is expected to be \$36,450 (\$675 fee x 54 (FY 2019 and FY 2020 forecasted number of fee payments)).

¹⁶ USCIS Form 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 Form I-17 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 final 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. The site visit fee amount, \$655, remains 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 seven percent, transferred from individuals and entities for the services they

receive, to the government. Table 28 shows the summary of the total annual number of payments, incremental fee amounts, and total fees transferred.

Table 28: Final Annual Incremental Fee Amounts, FY 2019

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

3. Alternatives to Regulatory Change

SEVP examined several alternatives to the final fee structure, including no increase to any fee, only increasing the Form I-901 fee and Form I-17 SEVP school certification 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 Form I-901 and Form I-17 certification fees instead of including a new fee for recertification and for filing an appeal or motion. If SEVP followed this scenario, the Form I-901 F and M fee would have increased to \$350 to cover the shortfall in revenue, but the Form I-17 initial certification fee would have also increased to \$4,200. This would have tripled 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 have continued to add workload to SEVP’s recertification branch. Without any disincentive to recertify, the list of schools recertifying would likely continue to grow. The new fees, however, 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 Form I-901 F and M fee, school certification fees, and the fee to file an appeal or motion as shown in Table 29.

Table 29: 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 |
| I-17 Recertification | \$6,000 |
| Appeal or Motion | \$38,475 |
| Site Visit | \$650 |

SEVP rejected this alternative for several reasons. As a starting point, the current fee to file Form I-290B with USCIS is \$675. The same form is required to file an appeal or motion with SEVP and using the existing USCIS fee is a consistent and reasonable means

of implementing this new fee without discouraging schools from seeking an appeal. Setting the appeal fee at the amount that SEVP's standard methodology would dictate (\$38,475) would result in a fee that is prohibitively expensive for many SEVP-certified schools, a significant portion of which have fewer than ten nonimmigrant students. 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 also discourage schools from seeking recertification. SEVP instead sets the recertification fee at a level that 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, an increase of almost three times the current fee of \$1,700. 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 Form I-901 F and M nonimmigrant students relative to the population of Form 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

1. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 604 generally requires Federal agencies to consider the economic impact of their rules on small entities. In accordance with the RFA, DHS has prepared a Final Regulatory Flexibility Analysis (FRFA) that examines the impacts of the 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.

2. A statement of the need for, and objective of, the rule.

This rule will adjust current fees and collect new fees to ensure that SEVP is able to recover the costs of the management and support of its program activities. DHS’s objectives and legal authority for this final rule are further discussed throughout this final rule preamble. The objective of the final rule is to prevent an anticipated funding deficit in operating the SEVP. More specifically, this rule increases the SEVP funding stream by adjusting the Form I-901 F and M fee, Form I-901 J-Full fee, and Form I-17 certification fee, and by instituting the Form I-17 recertification fee and a fee for filing an appeal or motion. This final rule also announces 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 existing SEVP activities and planned enhancements critical to current SEVP oversight of schools and the monitoring of nonimmigrant students in the F, M, and J visa classifications for national security purposes. ICE continues to examine programmatic goals, which may include

enforcement costs generated by SEVP information or compliance investigations. As such projections have not yet been completed, any related costs are beyond the scope of this rulemaking effort.

The legal basis for this final 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 sections 501-02, 8 U.S.C. 1761-62), and to conduct a recertification of schools every two 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 nonimmigrant students and J nonimmigrant exchange visitors. IIRIRA section 641(e)(1), as amended, 8 U.S.C. 1372(e)(1). 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 statement of significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

DHS published the Adjusting Program Fees for the Student Exchange Visitor Program NPRM which included the initial regulatory flexibility analysis on July 17, 2018 (83 FR 33762) with the comment period ending September 17, 2018. During the 60-day comment period, DHS received multiple comments that referred to the proposed rule's

potential impact on small entities. These comments, however, did not result in any revisions to the established fee amounts for small entities in this final rule. DHS summarizes and responds to the significant issues raised by the public comments below.

Comments on Form I-17 Recertification Fee

Several commenters objected to the proposed Form I-17 recertification fee. Commenters specifically mentioned that the Form I-17 recertification will disproportionately burden smaller entities. Several commenters discussed concerns with the new Form I-17 recertification fee, because it is required every two years. One commenter said small rural public-school districts cannot afford the new expense of \$1,250 to petition for recertification. A commenter who identified himself as affiliated with a rural high-need public school district, said the recertification fee will greatly inhibit the district's ability to continue a valuable program for its students.

One commenter wrote the proposed recertification fee would be cost-prohibitive to their international program and they would therefore be forced to pass on the additional expense incurred to the program onto international students. This commenter suggested applying a prorated fee schedule based upon the average number of Forms I-20 issued or the average number of attending students during the prior certification period.

A commenter stated that he or she was uncertain as to what information, statistics, guidance and studies were used to derive the proposed fees, but that it was not fair for a small institution to have to pay the same amount as an institution with high enrollment.

One commenter wrote that the recertification fee burden on small institutions may be the reason some institutions close their F-1 programs, which would negatively impact potential students who can no longer attend and domestic students who miss out on the

opportunity for cultural and academic exchange. Overall, many commenters stated that it is not fair for a small institution to pay the same amount as an institution with larger enrollment numbers.

DHS Response to Comments on the Form I-17 Recertification Fee

Many commenters objected to DHS requiring small schools to petition for recertification and pay the fee every two years. DHS is mandated by EBSVERA section 502, 8 U.S.C. 1762(a), and HSPD-2 to periodically review all schools approved for admission of F or M students; EBSVERA specifically mandates a two-year review cycle. The recertification fee is used to support DHS's compliance with EBSVERA and HSPD-2 and to improve the recertification process.

Regarding the commenters' suggestion that DHS apply a gradual fee scale over time or base the fee on the number of international students attending the school, DHS considered this alternative but has ultimately decided not to institute a separate fee amount for small institutions. As DHS notes earlier under the section entitled, Recertification Fee, DHS declines establishing a lower fee for smaller institutions. Following a qualitative review of the fee model (which does not distinguish between institutions based on size), DHS could not identify a convincing basis for establishing a lower fee for small institutions. However, DHS identified two main reasons for keeping the recertification fee the same for all size schools. First, many of the administrative costs related to the recertification process are essentially similar irrespective of school type. The workload and cost of recertification adjudications does not change for different types of schools. Second, institutions with large nonimmigrant student populations typically require fewer resources in some respects, since they are more knowledgeable in the

process, have a stable professional pool of employees, and have better internal reporting systems to assist in their compliance efforts. By contrast, schools with smaller nonimmigrant enrollment may require more frequent training of DSOs, or significant oversight if they are identified as higher risk.

Further, DHS conducted an analysis that compared the amount of the recertification fee to the overall revenue of affected small entities. DHS found that of the 7,037 small schools expected to apply for recertification and pay the final fee of \$1,250, 50 schools, or less than one percent of all the small schools, will experience an impact greater than one percent, but less than three percent, of the school's annual revenue. See a detailed recertification fee regulatory flexibility analysis below.

With respect to the commenter who expressed uncertainty with respect to how the recertification and other fees are determined, DHS refers the commenter to the NPRM preamble, which described SEVP's current and future spend plans by organization and program category (Table 4), described future budget plans by initiative (Table 5), and allocated costs by activity type (Table 7). The NPRM also contained a comprehensive discussion of the basis for the individual fee calculations (see, e.g., 83 FR 33775 et seq.), as well as information about how to access the software used to calculate the fees (see 83 FR 33764).

Comments on Proposed Form I-901 Fees

Commenters objected that the proposed increase in the I-901 fees may lead to decreased enrollment at their small institutions from international students. Commenters raised objections that the increase in the I-901 fees made their small institutions less competitive with schools in other countries.

DHS Response to Proposed Form I-901 Fees

In response to these comments, SEVP reiterates from above that it supports international education. As stated above, nonimmigrant students typically have positive experiences while in the United States, and the goodwill engendered by all that the United States has to offer encourages mutually beneficial international relations. However, DHS must establish a fee schedule that allows for recovery of the full costs of current SEVP services and planned enhancements. Increasing the Form I-901 fees allows DHS to recover the costs of SEVP services and planned enhancements.

Comments on All Fee Adjustments and Potential Alternatives

Some commenters expressed concern that all the fee adjustments proposed would be burdensome to their small institutions and that DHS should charge its fees based on a scale of how many international students are enrolled.

DHS Response to Comments on All Fee Adjustments and Proposed Alternatives

DHS conducted an initial regulatory flexibility act analysis to consider how all the fee adjustments may cumulatively affect a small entity that is responsible for paying them. Commenters did not provide significant new data for DHS to consider in terms of impacts to small institutions. DHS rejects the alternative suggested by commenters to have a fee structure based on a scale of how many international students are enrolled at an institution. As stated above, since many of the costs associated with establishing an F or M student record in SEVIS occur prior to or at the beginning of the program of study (such as fixed costs of maintaining the system and educating DSOs), an equitable reduction in fees based on the number of students would be insignificant. SEVP reviews

its fee structure biennially and will continue to explore additional means of configuring or tailoring the fees to better meet the needs of the stakeholders, including consideration of a tiered program if justified. In light of the significant adjustments in its fee structure, in its next biennial review SEVP will take into specific consideration any reductions in participation by small entities when determining a potential need for a tiered program.

4. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

DHS did not receive comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

5. A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

This analysis does not apply to increases in the Form 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 assumes that the Form I-901 J fees are also paid by individuals and did not receive comments on this assumption.

As of May 2017, there were a total of 8,746 SEVP-certified schools that would be subject to the Form I-17 recertification fee, site visit fee, and fee to file a motion or an appeal. New schools applying for SEVP certification will be subject to the Form I-17

initial certification fee. Of the 8,746 SEVP-certified schools, 2,013 have identified as public schools on their Form 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.¹⁷

Of the 2,013 SEVP-certified public schools, DHS conducted a random sample of 100¹⁸ schools to approximate the number of public schools in governmental jurisdictions with a population of less than 50,000. Out of the 100 public schools, 22 are located in a city or school district with a population fewer than 50,000. Using this finding of 22 percent, DHS infers 443 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 conservatively assumes that the 4,755 schools that are private unspecified are small entities. DHS did not receive comments on this assumption.

¹⁷ 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 choose one of three options: public, private for-profit, or private nonprofit.

¹⁸ 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 (π) used as an unknown input and to maximize the estimate to overestimate sample size. The sample size equation used $n = (z^2 \pi(1 - \pi))/e^2$ provided inputs $([1.65]^2 (.5)(.5))/0.1 = 69$ and rounded up to 100 to over sample. DHS has revised the number of small public schools estimated in the Initial Regulatory Flexibility Analysis. DHS estimated the number of small public schools by first identifying that 61 of the 100 entities are state-administered entities are therefore not considered small entities under the RFA. For the remaining schools, DHS then identified geographic population data matched to the school district as provided in SEVIS, sourced from the U.S. Census Bureau, Small Area Income and Poverty Program, <https://www.census.gov/data/datasets/2016/demo/saie/2016-school-districts.html> (last visited April 19, 2019) or 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), <https://www.census.gov/data/tables/2016/demo/popest/total-cities-and-towns.html> (last visited July 11, 2018).

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 matched to the North American Industry Classification System (NAICS) for industries.¹⁹ 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 two 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

¹⁹ U.S. Small Business Administration, Tables of Small Business Size Standards Matched to NAICS Codes (Oct. 1, 2017), https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.xlsx.

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.

Given these assumptions, DHS estimates that 7,037 schools meet the SBA definition of a small entity. This is approximately 80 percent of the 8,746 of SEVP-certified schools included in this analysis.

Table 30 shows a summary by school type of the number of SEVP-certified schools and estimated small entities.

Table 30: SEVP-Certified Schools by School Type

| Description | Total | Small Entities |
|--|--------------|-----------------------|
| Public Schools | 2,013 | 443 |
| 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 | 7,037 |

Table 31 provides a summary of the SEVP-certified schools by industry. Table 31 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 31: Number of SEVP-Certified Schools by Industry

| School Industry | NAICS Industry Description | NAICS Codes | Number of Small Schools | Number of non-small Schools | Total SEVP-Certified Schools | Percent Small Schools |
|------------------------|-----------------------------------|--------------------|--------------------------------|------------------------------------|-------------------------------------|------------------------------|
|------------------------|-----------------------------------|--------------------|--------------------------------|------------------------------------|-------------------------------------|------------------------------|

| School Industry | NAICS Industry Description | NAICS Codes | Number of Small Schools | Number of non-small Schools | Total SEVP-Certified Schools | Percent Small Schools |
|--|--|--------------------|--------------------------------|------------------------------------|-------------------------------------|------------------------------|
| Elementary and Secondary Schools (private) | 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% |
| 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% |

| School Industry | NAICS Industry Description | NAICS Codes | Number of Small Schools | Number of non-small Schools | Total SEVP-Certified Schools | Percent Small Schools |
|--|---|-------------|-------------------------|-----------------------------|------------------------------|-----------------------|
| 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% |
| 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% |

| School Industry | NAICS Industry Description | NAICS Codes | Number of Small Schools | Number of non-small Schools | Total SEVP-Certified Schools | Percent Small Schools |
|---|--|--------------------|--------------------------------|------------------------------------|-------------------------------------|------------------------------|
| 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% |
| 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% |

| School Industry | NAICS Industry Description | NAICS Codes | Number of Small Schools | Number of non-small Schools | Total SEVP-Certified Schools | Percent Small Schools |
|--|---|-------------|-------------------------|-----------------------------|------------------------------|-----------------------|
| Public Schools (Elementary, Secondary, and High School and post-secondary) | Industry primarily engaged in providing academic courses and related course work that contain a basic public education. | N/A | 443 | 1,570 | 2,013 | 22% |
| Total | | | 7,037 | 1,709 | 8,746 | 80% |

Table 32 presents the type of schools with active F and M nonimmigrant students and the percent of students enrolled in small schools. Most F and M nonimmigrant students are enrolled at small schools. Of the 8,746 SEVP-certified schools, DHS identified 1,728 with no active F or M nonimmigrant 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 31), there are no active F and M nonimmigrant 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 136,245.

Table 32: Total Number of Active F and M Students by Industry

| School Industry | Total Active F and M Students in Small Schools | Total Active F and M Students | Percent of Students at Small Schools |
|--|--|-------------------------------|--------------------------------------|
| Elementary and Secondary Schools (private) | 60,990 | 63,491 | 96% |
| Junior Colleges | 409 | 418 | 98% |

| School Industry | Total Active F and M Students in Small Schools | Total Active F and M Students | Percent of Students at Small Schools |
|--|---|--------------------------------------|---|
| 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 (K-12 and post secondary) | 136,245 | 619,295 | 22% |

DHS estimated SEVP-certified public schools' revenue to examine the impact of the 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 school district, county, or city's tax revenue is the best revenue source against which to assess the impact of the fee adjustments. DHS collected local government revenue, expenditure, debt, and assets from the U.S. Census

Bureau 2015 State and Local Government Survey²⁰ to examine the impact of the increased fees on the public schools included in the sample. A school district, 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. In other words, the use of revenue as a proxy for ability to pay may result in understating the impact of the fee increase on public schools.

Table 33 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 33: Range of Annual Revenue by School Industry

| School Industry | Lowest Annual Revenue | Median Annual Revenue | Largest Annual Revenue | Average Annual Revenue |
|--|------------------------------|------------------------------|-------------------------------|-------------------------------|
| Elementary and Secondary Schools (private) | \$28,800 | \$5,116,550 | \$1,680,000,000 | \$13,194,355 |
| 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 |

²⁰ United States Census, 2015 State & Local Government Finance Historical Tables, <https://www.census.gov/data/tables/2015/econ/gov-finances/summary-tables.html> (last visited Nov. 1, 2018).

| School Industry | Lowest Annual Revenue | Median Annual Revenue | Largest Annual Revenue | Average Annual Revenue |
|--|------------------------------|------------------------------|-------------------------------|-------------------------------|
| 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 (K-12 and post secondary) | \$2,948,000 | \$65,920,500 | \$8,352,908,000 | \$803,913,182 |

6. A description of the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The final rule will 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 34 displays the final fees, the current fees, and the difference in

these amounts. This analysis examines the impact that the final incremental fee for the Form I-17 certification and the final 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 34: Finalized School Fees by Type

| Fee Type | Finalized Fee | Current Fee | Difference (Final – Current) | Percent Increase |
|-------------------------------|----------------------|--------------------|-------------------------------------|-------------------------|
| 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. SEVP certification authorizes the school to enroll international students after they enter the country as F or M nonimmigrant students. Schools must initially go through the vetting process for authorization by DHS to enroll F and/or M nonimmigrant students and pay the Form I-17 school certification fee, which is currently \$1,700 and determined to increase to \$3,000. The incremental fee is the difference between the finalized fee (\$3,000) and current fee (\$1,700), or \$1,300. From 2012 to 2016, DHS processed 2,117 Forms I-17 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 35.

Table 35: I-17 Initial Certifications FYs 2012–2016

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

SEVP forecasted the total Form I-17 initial certifications in FY 2019 and FY 2020 to be 426 using the three-year annual average of FY 2014 through 2016 initial certifications. Using that same methodology, 232 small schools applied for initial Form 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 31. This calculation yields the number of small schools expected to petition for initial Form I-17 certification by industry. The results are presented in Table 36.

Table 36: Expected Annual Number of Small Schools to Initially Certify by School Industry

| School Industry | Annual Number of Small Schools Applying for Initial Certification |
|--|--|
| Elementary and Secondary Schools (private) | 103 |
| Junior Colleges | 0 |
| Colleges, Universities, and Professional Schools | 64 |
| Computer Training | 0 |
| Professional and Management Development Training | 1 |
| Cosmetology and Barber Schools | 3 |

| School Industry | Annual Number of Small Schools Applying for Initial Certification |
|---|--|
| 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 (K-12 and post secondary) | 12 |
| Total Small Schools | 194 |

This analysis examines the impact the \$1,300 incremental fee has on small schools that might seek initial certification after this 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 37 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 Form I-17 certification incremental fee to have an impact greater than one percent on the average small school annual revenue. However, there is an expected impact greater than one percent for some small schools with the lowest annual revenue in their industry. On average the estimated 194 small schools that apply for initial Form I-17 certification annually and pay an incremental fee of \$1,300 will experience an impact of less than one percent of their estimated annual revenue.

Table 37: Initial Certification Fee Impact for Small Schools by Type of School

| Type of School | I-17 Initial Certification Incremental Fee Impact on the School with the Lowest Revenue | I-17 Initial Certification Incremental Fee Impact on the School with the Median Revenue | I-17 Initial Certification Incremental Fee Impact on the School with the Largest Revenue | I-17 Initial Certification Incremental Fee Impact on the Average School Revenue |
|--|--|--|---|--|
| Elementary and Secondary Schools (private) | 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% |
| 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% |

| Type of School | I-17 Initial Certification Incremental Fee Impact on the School with the Lowest Revenue | I-17 Initial Certification Incremental Fee Impact on the School with the Median Revenue | I-17 Initial Certification Incremental Fee Impact on the School with the Largest Revenue | I-17 Initial Certification Incremental Fee Impact on the Average School Revenue |
|--|---|---|--|---|
| Public Schools (K-12 and post secondary) | 0.0% | 0.0% | 0.0% | 0.0% |

I-17 Recertification Fee

SEVP-certified schools are required to file for recertification every two 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 final 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 3,519²¹ small schools will recertify annually. DHS examined all 7,037 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 two years.

DHS assumes that the total number of SEVP-certified schools will remain static as new schools become certified and other schools' certifications are relinquished,

²¹ 7,037 x 50 percent = 3,518.5 small schools recertifying each year.

withdrawn, or denied. 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 nonimmigrant 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 finalized fee of \$3,000 at such time in the future that they enroll F or M nonimmigrant students.

Table 38 illustrates the number of small schools that will recertify by industry and the Form I-17 recertification incremental fee impact as a percent of the small school's annual revenue. From these findings, of the 7,037 small schools expected to apply for recertification and pay the finalized fee of \$1,250, 50 schools, or 0.7 percent, will experience an impact greater than one percent but less than three 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 one percent.

Table 38: Recertification Fee Impact for Small Schools by Type of School

| School Industry | 0% < Impact ≤ 1% | 1% < Impact ≤ 2% | 2% < Impact < 3% | Total |
|--|--------------------------------|------------------------------------|---------------------------------------|--------------|
| Elementary and Secondary Schools (private) | 3,458 | 7 | 7 | 3,472 |
| Junior Colleges | 10 | 0 | 1 | 11 |
| Colleges, Universities, and Professional Schools | 2,135 | 12 | 4 | 2,150 |
| Computer Training | 13 | 0 | 0 | 13 |
| Professional and Management Development Training | 18 | 0 | 0 | 18 |
| Cosmetology and Barber Schools | 89 | 2 | 0 | 91 |
| Flight Training | 196 | 1 | 2 | 199 |

| School Industry | 0% < Impact ≤ 1% | 1% < Impact ≤ 2% | 2% < Impact < 3% | Total |
|---|--------------------------------|------------------------------------|---------------------------------------|--------------|
| Apprenticeship Training | 39 | 0 | 0 | 39 |
| Other Technical and Trade Schools | 175 | 8 | 0 | 183 |
| Fine Arts Schools | 76 | 3 | 0 | 79 |
| Sports and Recreation Instruction | 10 | 0 | 0 | 10 |
| Language Schools | 285 | 1 | 0 | 286 |
| Exam Preparation and Tutoring | 8 | 0 | 0 | 8 |
| All Other Miscellaneous Schools and Instruction | 30 | 2 | 0 | 32 |
| Educational Support Services | 2 | 0 | 0 | 2 |
| Public Schools (K-12 and post secondary) | 443 | 0 | 0 | 443 |
| Total Small Schools | 6,987 | 36 | 14 | 7,037 |

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 Form 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 final rule notifies the public that SEVP will 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 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 39 shows the finalized site visit fee impact on estimated annual revenue for all 7,037 small schools certified by SEVP and the type of school. Of the total 7,037 small schools, 7,022, or 99.8 percent, would have a site visit fee impact of less than or equal to one percent of their annual revenue. Twelve small schools, or 0.2 percent of small schools, would have an impact of greater than one percent but less than or equal to two percent of their annual revenue. Three small schools would have a site visit fee impact greater than two percent but less than three percent of their annual revenue.

Table 39: Site Visit Fee Impact on Estimated Annual Revenue

| Type of School | 0% < Impact ≤ 1% | 1% < Impact ≤ 2% | 2% < Impact < 3% | Total |
|--|----------------------------|----------------------------|-------------------------------|--------------|
| Elementary and Secondary Schools (private) | 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 | 79 | 0 | 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 |

| Type of School | 0% < Impact ≤ 1% | 1% < Impact ≤ 2% | 2% < Impact < 3% | Total |
|--|------------------|------------------|------------------|--------------|
| Public Schools (K-12 and post secondary) | 443 | 0 | 0 | 443 |
| Total Small Schools | 7,022 | 12 | 3 | 7,037 |

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 filing the Form I-290B. This final rule imposes a \$675 filing fee for submission of the Form I-290B.²² 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, four schools had two appeals within the same year or over the four-year period. During the four-year period, there was an average of 19 appeals and motions filed by small schools annually.

DHS examined all 7,037 small schools to estimate the impact of the final 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 7,037 SEVP-certified small schools, 7,021, or 99.8 percent, would experience an impact less than or equal to one 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 one percent and two percent of their estimated annual revenue. In addition,

²² USCIS, Form I-290B, Notice of Appeal or Motion, Filing Fee, <https://www.uscis.gov/i-290b>.

three small schools, or 0.04 percent, would experience an impact greater than two percent but less than three percent of estimated annual revenue. Table 40 shows the number of small schools within the range of impact to each school's estimated annual revenue.

Table 40: 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 (private) | 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 (K-12 and post secondary) | 443 | 0 | 0 | 443 |
| Total Small Schools | 7,021 | 13 | 3 | 7,037 |

The possible 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 finalized 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 estimates that this would be an increase of \$1,975 (\$1,300 incremental fee for Form 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 41. The impacts of this scenario would be greater than the impacts of a 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 41: 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 (private) | 3,440 | 21 | 11 | 3,472 |
| Junior Colleges | 10 | 0 | 1 | 11 |
| Colleges, Universities, and Professional Schools | 2,126 | 15 | 10 | 2,151 |
| Computer Training | 13 | 0 | 0 | 13 |
| Professional and Management Development Training | 15 | 3 | 0 | 18 |
| Cosmetology and Barber Schools | 89 | 1 | 1 | 91 |
| Flight Training | 192 | 4 | 3 | 199 |
| Apprenticeship Training | 37 | 2 | 0 | 39 |
| Other Technical and Trade Schools | 171 | 9 | 3 | 183 |
| Fine Arts Schools | 74 | 2 | 3 | 79 |
| Sports and Recreation Instruction | 10 | 0 | 0 | 10 |
| Language Schools | 282 | 4 | 0 | 286 |
| Exam Preparation and Tutoring | 8 | 0 | 0 | 8 |
| All Other Miscellaneous Schools and Instruction | 26 | 4 | 2 | 32 |
| Educational Support Services | 2 | 0 | 0 | 2 |

| Type of School | 0% < Impact ≤ 1% | 1% < Impact ≤ 2% | 2% < Impact < 3% | Total |
|--|------------------|------------------|------------------|--------------|
| Public Schools (K-12 and post secondary) | 443 | 0 | 0 | 443 |
| Total Small Schools | 6,938 | 64 | 35 | 7,037 |

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 estimates that this would be an increase of \$2,580 (\$1,250 Form 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 42.

Table 42: 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 (private) | 3,426 | 28 | 18 | 3,472 |
| Junior Colleges | 10 | 0 | 1 | 11 |
| Colleges, Universities, and Professional Schools | 2,110 | 24 | 17 | 2,151 |
| Computer Training | 13 | 0 | 0 | 13 |
| Professional and Management Development Training | 15 | 3 | 0 | 18 |
| Cosmetology and Barber Schools | 87 | 2 | 2 | 91 |
| Flight Training | 191 | 5 | 3 | 199 |
| Apprenticeship Training | 37 | 2 | 0 | 39 |
| Other Technical and Trade Schools | 167 | 8 | 8 | 183 |
| Fine Arts Schools | 74 | 2 | 3 | 79 |
| Sports and Recreation Instruction | 10 | 0 | 0 | 10 |
| Language Schools | 279 | 6 | 1 | 286 |

| Type of School | 0% < Impact ≤ 1% | 1% < Impact ≤ 2% | 2% < Impact < 3% | Total |
|---|------------------|------------------|------------------|--------------|
| Exam Preparation and Tutoring | 8 | 0 | 0 | 8 |
| All Other Miscellaneous Schools and Instruction | 26 | 4 | 2 | 32 |
| Educational Support Services | 2 | 0 | 0 | 2 |
| Public Schools (K-12 and post secondary) | 443 | 0 | 0 | 443 |
| Total Small Schools | 6,898 | 84 | 55 | 7,037 |

7. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

SEVP examined several alternatives to the final fee structure, including no increase to any fee, only increasing the Form I-901 fee and Form I-17 initial school certification fee, not subsidizing the school fees with the Form I-901 F and M fees, and, as noted above, a graduated or sliding-scale fee structure based either on student population numbers or program length.

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 Form I-901 fees and the Form I-17 initial certification fee instead of including new finalized fees for recertification and for filing an appeal or motion. If SEVP followed this scenario, while the Form I-901 F and M fee would increase to \$350 to cover the shortfall in revenue, the Form 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 program. Without a disincentive to not recertify, the list of schools recertifying would never stop growing. SEVP rejected this alternative because the finalized 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 Form I-901 F and M fee, school certification fees, and the fee to file an appeal or motion as shown in Table 43.

Table 43: 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 |
| 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 an appeal or motion.

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 as opposed to relinquishing certification or allowing certification to expire and subsequently applying again for initial certification.

SEVP instead sets the recertification fee at a level that 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 Form I-

901 F and M nonimmigrant students relative to the population of Form 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.

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 one year. 2 U.S.C. 1532(a). Though this rule will 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. 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. 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 final rule under that Order and has determined that it does not have implications for federalism.

F. Executive Order 12988: Civil Justice Reform

This 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.

G. Energy Effects

DHS has analyzed this final 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.

H. Environment

DHS 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 regulations for implementing NEPA, 40 CFR parts 1500 through 1508. The Council on Environmental Quality 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 final rule under MD 023-01 Rev. 01. DHS has made a 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 final 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 rule is not part of a larger action. This rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded from further NEPA review.

I. 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 will be using 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 (originally 1615-0066 before the collection was transferred from United States Citizenship and Immigration Services 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 Form I-901 fees, would require changes to SEVIS and the Form I-901 software to reflect the updated fee amounts, as these systems generate the pertinent petition and application forms. DHS will 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, will not require a form amendment to reflect the charging of the fee. The instructions associated with the Form I-290B, which is currently used for such motions and appeals, contain information regarding 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.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

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

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

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1356b, 1372; 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, 125 Stat 550.

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 a site visit fee of \$655 for each location required to be listed on the form. For filing a petition for school recertification: \$1,250, plus a site visit fee of \$655 for each new location required to be listed on the form.

* * * * *

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

(I) 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 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, 1356, 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) introductory text to read as follows:

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

* * * * *

(h) * * *

(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 section 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 aliens in paragraphs (a)(1) through (3) of this section 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, the amount of \$220, 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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Kevin K. McAleenan,
Acting Secretary of Homeland Security.

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