



**U.S. Department of State  
Bureau of Educational and Cultural Affairs  
Private Sector Exchange**



**November 18, 2020**

**Exchange Visitor Program – Confucius Institutes 2020-01**

This Guidance Directive is intended to assist sponsors in their compliance with the Exchange Visitor Program (EVP) regulations by providing further insight into how the operational practices, personnel policies, and funding of Confucius Institutes (CIs) and Confucius Classrooms (CCs) are generally directed by the Government of the People’s Republic of China (PRC) in some concerning ways. This Guidance Directive supersedes guidance offered in Department of State Guidance Directive 2012-06: *Exchange Visitor Program – Confucius Institutes* issued on May 25, 2012.

Confucius Institutes and Confucius Classrooms are organizations primarily affiliated with U.S. colleges, universities, and K-12 schools that provide Chinese language and cultural training for U.S. students. The PRC government partially funds these programs, and the United States Government has reason to believe some CIs and CCs operate under guidance from the Chinese Communist Party’s (CCP) United Front Work Department. The Department has examined how exchange visitors support CIs and CCs through the EVP and identified the following areas of concern. Sponsors of the EVP are encouraged to read the following areas of concern regarding CI and CC operations and determine whether they are applicable to their respective programs.

- **Teaching in K-12 Classrooms:** ECA has learned that some CIs have sent exchange visitors in a range of categories to teach in K-12 schools. Exchange visitors, other than those in the Teacher category, are not authorized to instruct or otherwise be responsible for students in K-12 classrooms. Exchange visitors outside of the Teacher category teaching in K-12 schools without proper supervision is an improper use of the exchange visitor visa category. Even in the case where an exchange visitor has an American co-teacher, Department reviews have determined that the efficacy of the co-teacher’s supervision is often severely limited. In cases where the exchange visitors were teaching courses in Chinese, many co-teachers did not understand the language and so even when a co-teacher is in the classroom to supervise the exchange visitor, s/he cannot evaluate the substance or quality of information and language skills the exchange visitor is teaching the students. Consequently, the co-teacher cannot control the class instruction and must place the students’ learning experience in the foreign national’s hands for the duration of the class. EVP sponsors, especially those in the Intern, Professor, Research Scholar, Specialist, Short-term Scholar, and College and

University Student categories should ensure their program activities are not performing the roles of the Teacher category as the qualifications, regulations, and program requirements greatly differ. Additionally, sponsors should ensure their exchange visitors' program activities are consistent with the category and activity listed on their Forms DS-2019 (and Forms DS-7002 for the Intern category and Student Intern sub-category [22 CFR 62.23(i)]).

- Exchange Visitor Staffing at Confucius Institutes: The Department has identified several CIs staffed by exchange visitors serving as a Co-Director, Director, or Administrative Assistant. In some cases, these exchange visitors supervise other staff of the CI, including other exchange visitors. Department reviews identified that these roles are primarily administrative in nature, which is inconsistent with the definition and purpose of the Professor (22 CFR 62.4(e) and 62.20(b)), Research Scholar (22 CFR 62.4(f) and 62.20(b)), Specialist (22 CFR 62.4(g) and 62.26(b)), Short-term Scholar (22 CFR 62.4(b) and 62.21(b)), and College and University Student (22 CFR 62.4(a) and 62.23(a)) categories.
- Primary Site of Activity: Sponsors are obligated to maintain accurate records in the Student and Exchange Visitor Information System (SEVIS) with regards to their exchange visitors and accompanying spouses/dependents in order to comply with Public Law 104-208. However, Department reviews of CI and CC sites of activity in SEVIS often found that the university or sponsors' headquarters were listed when the activities of the exchange visitors are actually at one or more area K-12 schools. Such listings are not in accordance with the procedures in Department of State Guidance Directive *2011-06: Maintaining SEVIS Records* and are possible violations of 22 CFR 62.10(d)(4) and 62.13(b)(2).
- Monitoring: Monitoring exchange visitors is a critical element of program administration. This includes monitoring the physical location (activity site), progress, and welfare of each exchange visitor to the extent appropriate, and ensuring that the exchange visitor obtains sufficient advice and assistance to facilitate the successful completion of his or her exchange visitor program. Department reviews of several CIs indicate that many sponsors are unaware that their exchange visitors are actually teaching in K-12 schools or otherwise conducting activities at locations different than those listed on their Forms DS-2019 and DS-7002, a possible violation of 22 CFR 62.10(d) and 62.11(b).
- Actions of Third Parties Imputed to Sponsors: The Department considers school districts, overseas partners, and any other organizations involved with implementing any part of an exchange visitor's program to be third parties pursuant to EVP regulations. The Department is aware that some sponsors' affiliated CIs have conducted their own recruitment of host K-12 schools and vetting of exchange visitors, among other sponsor duties. In these situations, the CI is acting as a third party of the sponsor. 22 CFR 62.2 *Third Party* states that a

sponsor's use of a third party does not relieve the sponsor of its obligations to comply, and to ensure third party compliance, with the provisions of 22 CFR Part 62. As stated in § 62.2 and referenced in Guidance Directive 2019-01: *Teacher Regulation Clarification*, regulatory non-compliance by a third party acting on a sponsor's behalf will be imputed to the sponsor. Accordingly, sponsors must ensure that any contracts or agreements between third parties and exchange visitors adhere to all EVP regulations. Sponsors are further required to ensure that third parties know and comply with all applicable provisions of these regulations.

- Teacher Category – Commensurate Compensation: As detailed in 22 CFR 62.24(f)(5) and Department Guidance Directive 2019-01: *Teacher Regulation Clarification*, sponsors are required to ensure that exchange teachers' compensation is commensurate with that of similarly situated U.S. teachers in the school district or host school where that exchange teacher is assigned to teach. This applies whether the school is public or private and whether an exchange teacher is paid by a U.S. public school district or by some other source. As described in more detail in the Guidance Directive referenced above, exchange teacher compensation must be commensurate with those of U.S. teachers with similar responsibilities and similar educational background.
  - The terms of their employment, including duties, responsibilities, hours, and compensation, must be commensurate with those of similarly situated U.S. teachers in their schools (22 CFR 62.24(f)). In most circumstances, these terms of employment are governed by a collective bargaining agreement. Thus, it is important that the terms and conditions that sponsors may seek to impose on exchange teachers are consistent with the applicable collective bargaining agreement. Sponsors should be prepared to provide evidence of exchange teachers' full-time positions and commensurate compensation upon the Department's request (22 CFR 62.10(e)).
  - The Department is aware that some Chinese exchange visitors in the Teacher category who are associated with CIs arrive with contracts stating that they will receive a stipend of between \$12,000 and \$18,000 per year as their only source of program funding. The lack of commensurate compensation between the exchange teachers and their American counterparts appears to be a violation of 22 CFR 62.24(f)(5). Prior to the placement of exchange teachers in a host school, sponsors must first confirm what is commensurate pay for the host school. If the prospective exchange teacher's compensation package is below that amount, then the sponsor needs to ensure additional funding will be provided to ensure the compensation is commensurate.
- Teacher Category – Employment: The Department is aware that some exchange teachers are considered the employees of a Confucius Institute rather than their host school or host school district. Each exchange teacher must be employed by and under the direct supervision and

guidance of his or her host school, and where applicable, host school district. Exchange teachers' documentation must indicate that they are considered employees of the host school for any purpose and that host schools will supervise or direct the exchange teachers in their performance. Any exchange teacher files that lack this documentation may present a possible violation of 22 CFR 62.24(f)(5).

- Permission to Issue: Some sponsors have issued Forms DS-2019 in the Professor, Research Scholar, Specialist, and Short-term Scholar categories to place CI-affiliated exchange visitors at post-secondary academic institutions that are not Department-designated sponsors of the EVP. As referenced in the Department of State Guidance Directive *2019-02: Permission to Issue in the Exchange Visitor Program*, the Responsible Officer (RO) has the discretion to request Permission to Issue a Form DS-2019 on behalf of an institution without an EVP, and in doing so, sponsors are required to submit a request and a nonrefundable fee payable to the U.S. Department of State for each individual exchange visitor. The Department is aware of some sponsors neither requesting nor having been approved for Permission to Issue a Form DS-2019 on behalf of any other academic institutions. As detailed in 22 CFR 62.17, sponsors must pay the non-refundable fee for Permission to Issue and receive Department authorization prior to placing exchange visitors in the Professor, Research Scholar, Specialist, and Short-term Scholar categories at unaffiliated academic institutions for the entirety of their program.
- Trainee, Intern, and Student Intern Sub-category - Form DS-7002 Signatures: As detailed in Department of State Guidance Directive *2015-03 Training/ Internship Placement Plan - Form DS-7002 (T/IPP)*, the Form DS-7002 must be signed by the Responsible Officer (RO) or an Alternate Responsible Officer (ARO), the exchange visitor, and the exchange visitor's direct supervisor (i.e., supervisor at the host organization). Department reviews found many CI-affiliated student interns' Forms DS-7002 are signed by their CI Director rather than their direct supervisor at their site of activity, a possible violation of 22 CFR 62.23(i)(7)(i).
- Student Intern Sub-category - Not Pursuing a Degree Outside the United States: Sponsors must ensure that their student interns are foreign nationals enrolled in and pursuing a degree at an accredited post-secondary academic institution outside the United States and are participating in a student internship program in the United States that will fulfill the educational objectives for their current degree program at their home institution. Department reviews have identified a trend of CI-affiliated student interns who have already graduated and were not currently enrolled at a university in their home country, which may be a violation of 22 CFR 62.23(i). Exchange visitors in the Trainee and Intern categories have similar educational requirements that must be met as detailed in 22 CFR 62.22.

- Trainee, Intern, and Student Intern Sub-category – Workman's Compensation Insurance Policy: Sponsors must adequately screen all potential host organizations at which a student intern will be placed, including verification of a host organization's workman's compensation insurance policy. Department reviews indicate a trend of sponsors not verifying whether their CI-affiliated exchange visitors are covered by their host organization's workman's compensation insurance policy, a possible violation of 22 CFR 62.23(i)(3)(iii)(D). Verification of Workers' Compensation Insurance Policy or equivalent in each state or, if applicable, evidence of state exemption from requirement of coverage is also required for exchange visitors in the Trainee and Intern categories, per 22 CFR 62.22(g)(3)(iii).

The objective of this Guidance Directive is to provide sponsors more clarity regarding the possible regulatory violations presented in some CI operations so they can make informed choices about sponsoring exchange visitors coming on program through CIs. The Department strongly encourages all sponsors with exchange visitors affiliated with CIs to thoroughly review the CI practices to ensure that sponsors remain in compliance with EVP regulations, including those listed above. If inconsistencies with the EVP regulations are found, sponsors are encouraged to contact the Office of Private Sector Program Administration at [OPA@state.gov](mailto:OPA@state.gov) for assistance.



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