



United States Department of State

Washington, D.C. 20520

21-118

April 30, 2021

CONGRESSIONAL NOTIFICATION TRANSMITTAL LETTER

Consistent with section 7034(e)(6) and the “Educational and Cultural Exchange Programs” heading of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021, (Div. K, P.L. 116-260), the Department of State is notifying you of the Department’s intent to publish a Notice of Proposed Rulemaking (NPRM) in the Federal Register pertaining to the Au pair category of the Exchange Visitor Program administered by the Bureau of Educational and Cultural Affairs. Additional information about the planned NPRM is enclosed.

Recipients:

House Foreign Affairs Committee

Senate Foreign Relations Committee

House Appropriations Committee

House Appropriations Subcommittee on State, Foreign Operations, and Related Programs

Senate Appropriations Committee

Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs

We hope the enclosed information is useful. Please let us know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Naz Durakoğlu".

Naz Durakoğlu

Acting Assistant Secretary

Bureau of Legislative Affairs

Enclosure:

As stated.

UNITED STATES DEPARTMENT OF STATE CONGRESSIONAL NOTIFICATION

Consistent with section 7034(e)(6) and the “Educational and Cultural Exchange Programs” heading of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021, (Div. K, P.L. 116-260), the Department of State is notifying you of the Department’s intent to publish a Notice of Proposed Rulemaking (NPRM) to modify the Exchange Visitor Program (EVP). The planned NPRM would strengthen the au pair category of the EVP, through which the Bureau of Educational and Cultural Affairs (ECA) designates sponsors to administer exchange programs throughout the United States. This rule would be subject to notice and public comment.

The EVP is a vital public diplomacy tool to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange, to demonstrate developments and achievements of the people of the United States and other nations, to promote American interests, and to enhance contributions made toward a peaceful and more fruitful life for people throughout the world. The EVP is implemented through 22 CFR Part 62.

Through the Au pair category of the EVP, participants and host families take part in a mutually rewarding, intercultural opportunity. Au pairs can continue their education while experiencing everyday life with an American family, and hosts receive reliable and responsible childcare from individuals who become part of the family.

The Department has reviewed the differences in the cost of living across localities in the United States and acknowledges that they have been increasing, and that this may now result in inadequate compensation for some au pairs who are hosted in particularly expensive areas. The Department proposes a targeted solution – redefining the structure of the au pair program options and their associated hours and compensation calculations, including incorporating differences in state and local minimum wage rates, in order to address cost-of-living disparities. At the same time, other fundamental elements of the au pair category that underpin the success of this cultural exchange program as an immersion into American family life (e.g., paid leave, prohibition on overtime, deduction from wages for room and board), consistent with the Fair Labor Standards Act (FLSA), must be preserved.

To date, the Department has ensured a nationwide approach to au pair compensation by articulating the existing federal government position that this nationally uniform stipend formula was intended to preempt and thus render inapplicable conflicting or otherwise inconsistent state and local labor laws, including state and local minimum wage requirements. However, after a review of the entire program, the Department has now determined that in some circumstances, the hourly minimum wage in the city or state of the host family residence may be significantly higher than the federal FLSA minimum wage, and using the federal minimum wage in the stipend calculation may result in inadequate compensation for au pairs in such locations. Therefore, the Department is proposing that the hourly rate of compensation be based on the highest of federal, state, or local minimum wage in the city/state of host family residence. This new au pair rule will have an important impact on the structure of the au pair program to better

achieve the Department's foreign affairs objectives, and therefore the Department encourages public comment. The new rule will not add any costs to regulated entities because designated exchange sponsors do not pay au pairs' stipends. As such, this rule preserves the status quo among regulated entities. The foreign policy benefits from preserving a nationwide au pair program outweigh any costs to others.

In addition to standardizing options for the au pair program and incorporating state and local wage rates in the compensation calculation, the proposed rulemaking would also expressly preempt state and local laws that, in the Department's view, are inconsistent with or pose an obstacle to the achievement of the objectives of the program. Au pairs, as a category of the EVP, operate in the field of foreign affairs, an area that has long been reserved to the federal government. Congress authorized the Director of the U.S. Information Agency by statute to provide for educational exchanges. In 1994, Congress directed the U.S. Information Agency to continue the au pair category of the EVP and to prescribe regulations governing it (*see* Pub. L. No. 103-415, 108 Stat. 4299 (1994)). Congress has since further extended the program and made it permanent in 1997 (*see* Pub. L. No. 105-48, 111 Stat. 1165 (1997)). In so doing, Congress ensured this distinctly federal program would further the federal objectives of foreign relations and international diplomacy. In providing for express preemption of state and local law as described above, the proposed rule is consistent with the Department's longstanding position that the existing au pair regulations impliedly preempt such state and local laws.