SUNY System Administration and several SUNY campuses participate in the Exchange Visitor Program (EVP) of the U.S. Department of State. Designation as a participating institution allows campuses to bring international faculty, students or scholars to campuses as J-1 exchange visitors. Several campuses maintain their own designation, while more than 30 campuses are participants in the SUNY EVP Consortium, managed by the Office of Global Affairs.

Earlier this year, the Department of State issued changes to the Code of Federal Regulations, specifically Subpart A of 22 CFR 62, governing the EVP. The majority of these changes became effective on January 5, 2015, with new insurance requirements effective on May 15, 2015. The following guidance pertains primarily to campuses with their own EVP designation, as the Office of Global Affairs will address the new requirements on behalf of the SUNY J-1 EVP Consortium.

Among the updated regulations is a requirement that all proposed and current Responsible Officers and Alternate Responsible Officers undergo a criminal background check. The regulations state that the sponsor must submit a certification, signed by the CEO, President, or other legal authority, that “the sponsor has completed timely criminal background checks since the date of the last designation or redesignation letter on the Responsible Officer and all Alternate Responsible Officers and had determined their suitability for these positions.” [22 CFR 62.5(c)(8)(iii); 22 CFR 62.7(c)(5); and 22 CFR 62.9(g)(1)]

In response to this particular rule, we felt it was critical to provide general guidance to assist campuses with EVP designation. The Office of Global Affairs consulted with University Police and the Office of General Counsel in determining these recommendations. This guidance will also be available on the SUNY Compliance website: http://system.suny.edu/compliance/.

Recommendations for Compliance with New Requirements for Criminal Background Checks

Campuses with EVP designation who have established protocol requiring criminal background checks for employees do not need to depart from their current procedures as long as the existing protocol also meets the new requirements of Subpart A that are also outlined below. For campuses that do not have a current protocol in place to require criminal background checks, we recommend implementation of procedures that encompass the newly mandated regulations pertaining to Responsible and Alternate Responsible Officers.

- **Timing:** Background checks of all current employees designated as Responsible (RO) or Alternate Responsible Officers (ARO) should be conducted at the following times: 1) when the campus is adding new RO or AROs or 2) prior to the submission of an application for designation or re-designation to the Department of State.

- **Background check provider:** Each campus should identify a “bona fide background screener” for performing the required background checks. The Department of State does not endorse any particular screener or screening organization; however, it does provide the following resource for sponsors’ convenience: National
Association of Professional Background Screeners (NAPBS) [https://www.napbs.com/]. SUNY does not currently have a system-wide contract with any vendor to provide these services; however, at the end of this guidance is a list of vendors that some SUNY campuses have utilized. Please note that these are not specific recommendations and provided only for your reference.

- **Retention:** At this time, the Department of State does not require the results of the background check, so there is no need to send the report on; however, the reports must retained by the sponsor. Therefore, SUNY campuses should identify the employee who will serve as the official custodian for records, and then ensure they are being maintained appropriately. Each background check report should be housed in a locked cabinet, ideally within the campus Office of Human Resources.

- **Review:** The campus should designate the appropriate personnel to review the background check reports. Given that the Responsible Officer is also subject to a background check, the review of the RO and AROs should be done by a non-interested employee on campus. Ideally, this should be either the Director of Human Resources and/or Chief of Police or Director of Public Safety, given their experience with confidential information and understanding of the type of information that would be cause for concern in a criminal background check.

- **Renewal:** The new regulations require that background checks be completed every 4 years for each RO and ARO. It should be the responsibility of the RO to maintain a calendar of background checks and initiate renewals in conjunction with the other parties who will facilitate the searches, whether that be Human Resources, University Police or Public Safety.

**Related references:**

*The Code of Federal Regulations pertaining to Exchange Visitor Programs: [http://www.ecfr.gov/cgi-bin/text-idx?SID=21227a5717e0c8fa15a2f125513cee4dd&node=pt22.1.62&rgn=div5#se22.1.62_16]*


*NAFSA J Subpart A Rule Resource Page: [http://www.nafsa.org/Content.aspx?id=11139&loggedIn=True]*

**Background Check Vendors:**

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<th>Certiphi</th>
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<td>T: 888-260-1370</td>
<td>T: 888-557-5984</td>
<td>T: 888-878-1595</td>
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<td>Hireright</td>
<td>Sterling Backcheck</td>
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Please direct questions or requests for more information to the International Student and Scholar Services Manager at isss@suny.edu.

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