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Bureau of Educational and Cultural Affairs
U.S. Department of State
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RE: U.S. Department of State, 22 CFR 62, Public Notice 11121, RIN 1400-AF12, Exchange Visitor Program — Au Pairs

Dear Ms. Ward,

I write on behalf of the Niskanen Center to provide the following comment in response to the United States Department of State notice of proposed rulemaking, Exchange Visitor Program — Au Pairs, 88 Fed. Reg. 208 (Oct. 30, 2023) (“Proposed Rule”).

The Niskanen Center is a nonprofit public policy organization dedicated to strengthening liberal democratic governance and promoting widespread prosperity and opportunity. Our vision of market liberalism is rooted in an effective public sector and a competitive private sector.¹ It is committed to upholding the principles of a pluralistic and open society that encourages engagement, cooperation, discussion, and learning.²

We are committed to the premise that immigration is an irreplaceable pillar of American economic, civic, and cultural strength. Our ability to attract the brightest minds and hardest workers worldwide was foundational to America’s early growth and is essential for ensuring the U.S. remains a hub of innovation and dynamism. Our economic health depends on newcomers who fill critical gaps in our workforce, pay billions of dollars in taxes every year, and employ millions of Americans in their businesses. Finally, our international prestige and sense of self are

¹ Our Mission - Niskanen Center. <https://www.niskanencenter.org/mission/>.

² *Id.*

deeply tied to being the premier destination for everyone, from students to refugees to entrepreneurs. A well-functioning and humane immigration system is a core function of effective government. Despite these responsibilities, negligence and inertia have become the hallmarks of contemporary immigration policy. By developing and promoting constructive solutions that draw from the whole of the ideological spectrum, Niskanen works to break through years of partisan and congressional gridlock and offer solutions to our divisive impasses.

Overview

The J-1 visa was established by passing the Mutual Educational and Cultural Exchange Act of 1961, or the Fulbright-Hays Act.³ Congress passed this law to “increase mutual understanding between the people of the United States and the people of other countries using educational and cultural exchange to strengthen the ties... [and] to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.”⁴

The au pair program was officially established in the Fulbright-Hays Act to foster cultural exchange and understanding by allowing individuals from foreign countries to live with American families while providing childcare services.⁵ In October 1988, Public Law 100-461 required the United States Information Agency (USIA) to oversee the au pair programs for fiscal years 1989 and 1990,⁶ but prohibited USIA from altering its guidelines or promulgating new ones.⁷ It also directed the General Accounting Office (GAO) to examine the use of the J-visa.⁸

In February 1990, the GAO⁹ found that “the currently structured au pair programs” were “not compatible with the original intent of the 1961 Fulbright-Hays Act and that the au pair programs

³ 22 U.S.C. 33, (Pub. L. 87-256, §101, Sept. 21, 1961, 75 Stat. 527).

⁴ 22 U.S. Code § 2451 - Congressional statement of purpose.

⁵ 22 U.S.C. 33, (Pub. L. 87-256, §101, Sept. 21, 1961, 75 Stat. 527).

⁶ Congressional Research Service, The Au Pair Program January 30, 1998, <https://crsreports.congress.gov/product/pdf/RS/95-256/2>.

⁷ *Id.*

⁸ *Id.*

⁹ Inappropriate Uses of Educational and Cultural Visa. GAO Report to Congressional Committees, U.S. Information Agency. February 1990. GAO/NSIAD-90-61.

[were] essentially child care work programs that [did not] correlate with the qualifying categories mentioned in the J-visa statute.”¹⁰

GAO noted that distinguishing J visas (visas used by recipients of the Fulbright-Hays Act) from traditional work visas required adequate information on “participant activities, enforcing requirements that program sponsors provide periodic information on participant activities, a systematic process to monitor sponsors’ and participants’ activities, and adequate internal coordination of the program internally and with other agencies having visa responsibilities.”¹¹

Significant contemporary regulatory changes were made to the program in 1995, 1997, and 2019 to clarify the distinction between the au pair program and traditional work visas and ensure adequate program oversight. These included changes to minimum wage requirements, limits on weekly work hours, and tuition assistance from host families.¹² The September 1997 amended regulations re-emphasized the program’s original objective — to be a cultural exchange program to facilitate the spread of information about culture and life in the United States.¹³ Education requirements were changed “to include attendance (not just enrollment) in 6 hours of classes at a post-secondary accredited institution. Not only would the stipend be adjusted according to minimum wage laws (to be \$139.05 as of October 1, 1997), but au pair hours were limited to no more than 45 hours per week and no more than 10 hours per day.”¹⁴

In recognition of these significant improvements to the au pair program, Congress passed S.1211 in 1997 to provide permanent authority for the administration of au pair programs by repealing the September 30, 1997 sunset for the administration of au pair programs (thus providing permanent authority for such programs).¹⁵ Since then, there have been various legal expansions of the au pair program in the United States.

¹⁰ Congressional Research Service, The Au Pair Program January 30, 1998, <https://crsreports.congress.gov/product/pdf/RS/95-256/2>.

¹¹ Inappropriate Uses of Educational and Cultural Visa. GAO Report to Congressional Committees, U.S. Information Agency. February 1990. GAO/NSIAD-90-61.

¹² Congressional Research Service, The Au Pair Program January 30, 1998, <https://crsreports.congress.gov/product/pdf/RS/95-256/2>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Statute at Large 109 Stat. 776 - Public Law No. 105-48 (10/01/1997).

Some key changes and expansions include:

- **Increased engagement from host families:** Host families are now required to participate in a cultural exchange component of the program and provide training.¹⁶
- **Extension of program duration:** Originally, the au pair program was limited to a maximum duration of one year. However, in 2008, the program was expanded to allow au pairs to extend their stay for six, nine, or twelve months, subject to certain conditions.¹⁷
- **Increase in safety provisions:** In response to concerns about the safety of children in the program, the U.S. Department of State has implemented stricter background checks for au pairs, including fingerprinting and criminal background checks.¹⁸
- **Increase in the number of participating countries:** Over time, the number of countries whose nationals are eligible to participate in the au pair program has expanded. As of 2021, over 50 countries can participate in the program.¹⁹
- **Expansion of program eligibility:** In recent years, the eligibility criteria for the au pair program have been expanded to include individuals with certain special needs, such as children with disabilities or families with infants.²⁰

At its most basic level, the term “au pair” signifies a relationship intended to be one of equals — the au pair is meant to be treated as a family member, albeit temporarily, rather than a traditional domestic worker. Au pairs help educate and care for family members, learn, earn money while traveling, meet international friends, enhance language skills, and live in a uniquely immersive cultural environment unlike that provided by nearly any other program.

The Niskanen Center commends the successful and ongoing changes to the program that provide the oversight, safeguards, and processes that have allowed thousands of participants to teach, learn, and observe life in the United States while living and working with a host family. In light

¹⁶ Congressional Research Service, The Au Pair Program January 30, 1998, <https://crsreports.congress.gov/product/pdf/RS/95-256/2>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 9 FAM 402.5 (U) STUDENTS AND EXCHANGE VISITORS – F, M, AND J VISAS. https://fam.state.gov/FAM/09FAM/09FAM040205.html?utm_source=MASTER&utm_campaign=c5e6ad0f00-EMAIL_CAMPAIGN_2017_09_25_COPY_01&utm_medium=email&utm_term=0_a84ee0deca-c5e6ad0f00-

²⁰ Congressional Research Service, The Au Pair Program January 30, 1998, <https://crsreports.congress.gov/product/pdf/RS/95-256/2>.

of these successes, **we urge the Dept. of State and the Bureau of Educational and Cultural Affairs to explore expanding eligibility for the au pair program to include care for elderly individuals living in a family home with other members.** Our recommendations below will ensure the program's continued success and set the stage for its potential expansion.

I. Expand the age requirement from 26 to 35 and emphasize recruiting men to become au pairs.

Au pair applicants must be between 18 and 26 years of age, though they may turn 27 while in the U.S. and extend their stay. We recommend expanding the eligible age range to better reflect the age of care workers in the U.S. to expand the pool of eligible candidates, and to ensure that qualified individuals can participate in the exchange of culture and ideas while attending school.

According to data verified against the U.S. Bureau of Labor Statistics (BLS), Census, and current job openings data for accuracy, the average age of the childcare worker in the U.S. is 37 years of age.²¹ In the U.S., 41% of childcare workers were over 40, 21% were between 30 and 40 years of age, and 33% were between the ages of 20 and 30.²²

Expanding the eligibility of au pair applicants an additional nine years from 26 to 35 would allow more applicants with significant care experience to participate in the au pair program and reflect better the changing demographics of those pursuing careers adjacent to secondary education programs.

In the U.S., the average age of a college student is now 26.4 years of age,²³ and the majority of students in the U.S. (324,000) are between the ages of 24 and 39.²⁴ Finally, nearly half (49.5%)

²¹ *Child daycare worker demographics and statistics [2023]: Number of child daycare workers in the US* Child Daycare Worker Demographics and Statistics [2023]: Number Of Child Daycare Workers In The US. (2023, July 21). <https://www.zipppia.com/child-daycare-worker-jobs/demographics/>.

²² *Id.*

²³ U.S. Department of Education, National Center for Education Statistics, 2011-12 National Postsecondary Student Aid Study (NPSAS:12), available at: <https://www.newamerica.org/in-depth/varying-degrees/perception-vs-reality-typical-college-student/>.

²⁴ *Id.*

of college students in the U.S. are working and going to school rather than attending college full-time.²⁵

These statistics indicate that the demographics of the population of individuals seeking diverse learning experiences and additional education is shifting, and our cultural and educational programs should shift eligibility to reflect those changes and capitalize on the benefits of a slightly older, more experienced pool of applicants.

It would include individuals interested in pursuing an educational and cultural experience at a point slightly later in their lives due to familial or financial delays. Host families would benefit from a more diverse applicant pool, and those receiving care would benefit from an individual with more lived experience.

In addition to changing the age range for eligibility, focusing on recruiting more men to participate in the au pair is essential. In recent years, the number of men providing childcare has grown to nearly 12%.²⁶ Expanding efforts to include more au pair men will give young men additional critical opportunities to participate in educational and cultural activities.

II. Expand educational components to include time spent with the elderly and retired persons with significant expertise and experience with U.S. history, values, the rule of law, civil rights, and democratic values and to allow for volunteer work with government organizations and agencies in addition to 501(c)(3) organizations.

This rule proposes in Section 62.31(o) that the Educare program be eliminated in favor of new options to fulfill the program's educational component, including online classes, continuing education classes, and community service. We propose that time be spent actively engaging with elderly and retired persons with significant expertise and experience with U.S. history, values,

²⁵ *Id.*

²⁶ *Child daycare worker demographics and statistics [2023]: Number of child daycare workers in the US.* Child Daycare Worker Demographics and Statistics [2023]: Number Of Child Daycare Workers In The US (2023, July 21). <https://www.zippia.com/child-daycare-worker-jobs/demographics/>.

rule of law, civil rights, and democratic values should be considered as meeting the educational component of the au pair program.

The Department of State is especially interested in ensuring that au pairs have sufficient exposure to U.S. values, culture, and history during their time in the U.S. The Department of State further recognizes that inculcation in these topics may not be accessible via “... traditional academic and educational institutions.”²⁷

Including active engagement with elderly and retired persons would benefit both the au pair and the older Americans they spend time with. The Surgeon General’s office recently released an Advisory detailing the severe impact growing rates of loneliness and isolation have on the American social fabric. An increasing lack of personal connections also carries concrete health risks: According to the advisory, poor or insufficient interpersonal connection is correlated with a “29% increased risk of heart disease, a 32% increased risk of stroke, and a 50% increased risk of developing dementia for older adults.”²⁸

Incentivizing au pairs to spend time with older adults is one step in ensuring that our oldest Americans remain as psychologically and physically healthy as possible. Since international travel is difficult for this population, interacting with au pairs under this scheme may be the only chance some elderly citizens get to meet and interact with people from different national and cultural backgrounds, which helps keep their minds active and expands their understanding of the world.

This time spent would yield significant benefits for the au pair as well. By nature of their work, au pairs primarily interact with a younger population sector. Engaging with older Americans provides a window into American history and perspectives that they would otherwise be unable

²⁷ NPRM, Federal Register Volume 88, Issue 208 (October 30, 2023).

²⁸ Centers for Disease Control and Prevention. (2023, June 29). *Social Determinants of health and alzheimer’s disease and related dementias*. Centers for Disease Control and Prevention.

<https://www.cdc.gov/aging/disparities/social-determinants-alzheimers.html#:~:text=Social%20isolation%20was%20associated%20with,percent%20increased%20risk%20of%20dementia.&text=Poor%20social%20relationships%20were%20associated,32%25%20increased%20risk%20of%20stroke.&text=Loneliness%20was%20associated%20with%20higher,depression%2C%20anxiety%2C%20and%20suicide.>

to obtain and are rapidly fading. For example, only an estimated 119,000 WWII veterans are still alive today. Elderly Americans who have lived through singular moments in American history inherently have valuable lessons and stories to share on how American democracy, society, and culture have evolved.

Spending active time with older people would also help develop the au pair's social, emotional, and professional skills. Older people can communicate their needs and provide constructive feedback more than young children. The elderly can also better offer career advice from a lifetime of experience than young parents. This inclusion could be verified via the au pair's sponsor and through partnerships with retirement homes. However, seniors living independently should not be excluded from this program by requiring this provision to occur via an intermediary third party.

Finally, volunteer work with government organizations and agencies in addition to 501(c)(3) organizations should be included in the list of valid volunteer work.

III. Expand required training to include any relevant training agreed upon by participants and host families needed for the safety and care of all family members, including aging ones.

As proposed, training an au pair before the beginning of the exchange program must be provided by the sponsor (62.319g)). In addition to requiring sponsors to provide au pairs with child safety and development instruction, driving courses, and information about driving in the applicable state, we urge the inclusion of *any* training agreed upon by the sponsor and the au pair participant to be required, including training specific to the care of elderly family members and language instruction before arrival.

The proposed regulation offers several exciting modernizations to the au pair program. In addition to those modifications, we hope you will consider setting the stage to expand the au pair program to allow for programs to care for the elderly. We hope you will consider making the above-recommended modifications to ensure that the program remains consistent with its purpose and can continue to develop as many ambassadors who return to their home countries more aware of American values and cultures as possible.

Thank you for your consideration and the opportunity to provide feedback on the proposed rule. If you have any questions or need additional information, please do not hesitate to contact me at kdepena@niskanencenter.org.

Sincerely,

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