Regulate the recruitment of J-1 workers to protect against fraud, excessive fees, and human trafficking. Prohibit designated J-1 sponsors from charging fees to workers, and also ban fees charged to workers by third party recruiters with whom sponsors engage, both in the U.S. and abroad. Create a recruiter registry identifying all actors in the chain of recruitment, between the sponsor and the SWT worker.

Ensure the program is fulfilling its original mission of cultural exchange while guaranteeing that J-1 workers and U.S. workers have robust labor and employment protections. Ban placement in all low-wage jobs with no meaningful cultural exchange component. Require employers to recruit U.S. workers before hiring J-1 workers and to pay J-1 workers a DOL-issued prevailing wage comparable with the average wage for the occupation filled according to local wage standards.

Provide a path to justice for J-1 workers by protecting them from retaliation, facilitating their ability to hold employers liable, and providing them with legal recourse when sponsors, employers, and recruiters violate their rights.

Make information about the J-1 program publicly available and easily accessible to ensure that the program and its impact on the U.S. labor market can be monitored and that the regulating agencies can be held accountable by stakeholders and the public.

As a civil rights organization that defends the rights of immigrants and other vulnerable people, SPLC has represented dozens of J-1 student guest workers, primarily in the hospitality industry, in agency complaints and other advocacy regarding violations of federal law and regulations. Most recently, in 2016, we represented 13 J-1 workers in a complaint against a temporary labor broker in Myrtle Beach, SC, who placed them in substandard housing, did not give them the jobs they were promised, failed to ensure they had steady employment, and threatened to retaliate against them when they complained. In 2015, the SPLC represented a young woman who paid $3,000 to work in a culinary position in Virginia through the J-1 program, but who was told upon arrival that the only job available to her was a housekeeping job on a remote island in Michigan. SPLC has also authored a report on the J-1 workers titled *Culture Shock: The Exploitation of J-1 Cultural Exchange Workers*.[1]

Although the Proposed Rule does not accomplish the much needed overhaul discussed above, it takes steps to remedying the rampant abuse of the SWT program. We commend the Department for addressing these problems. As an immigrant rights organization, we value legitimate cultural exchange with other nations, and will not stand for the current administration's scapegoating of immigrants as the source of American workers' struggles. We will continue to fight for standards that elevate <u>all</u> workers. These comments, which discuss several provisions of the Proposed Rule that must be strengthened, reflect this goal.

[1] Southern Poverty Law Center, *Culture Shock: The Exploitation of J-1 Cultural Exchange Workers* (2014), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/j-1_report_v2_web.pdf.

Sponsors should not be allowed to delegate the responsibilities listed in Section 62.32(d)(3) and (4) to foreign and domestic third parties. In particular, recruitment, housing, and transportation assistance should not be outsourced. Those activities tend to provide opportunities for exploitation by the third parties who charge the SWT workers exorbitant and/or unauthorized fees for their service

sponsor's website at the time of recruitment and throughout the SWT worker's stay, and not merely accessible via a limited portal after the SWT worker has paid relevant fees. The Department should also require and publish a public record of fees charged by sponsors, and any other associated fees or costs that will be assessed as part of the program, on the Department's website. Finally, this section's prohibition on a sponsor or third party requiring a SWT worker to remit a portion of his or her earnings in the U.S. to an overseas recruiter should be expanded beyond –earnings.‖ An overseas private entity (or recruiter) should be prohibited from imposing any charges on SWT workers on the back-end of their exchange. This provision should include a ban on any collateral or other financial guarantee that the SWT worker is required to put forth as a condition of contracting with the overseas entity. For example, advocates have uncovered that some recruiters in the Dominican Republic and the Philippines are requiring workers to post collateral as part of the recruitment contract that is then seized by the recruiter if the worker does not return to his or her country before their visa expiration date.

C.

Section 62.32(f)(1)(xii) also requires sponsors to place workers at employers where the workers can be reached by the sponsor's employees within eight hours. This provision will ensure better sponsor monitoring and should be maintained.

2. Section 62.32(f)(2)

Section 62.32(f)(2) proposes to require sponsors to disclose –whether a partial or full ownership relationship exists between the sponsor and the host entity.‖ The Department should prohibit, not condone, joint ownership between a sponsor and an employer. The Department relies on sponsors to act as independent monitors of employers; thus, this provision begs the question of how a sponsor that is also the employer will effectively perform such monitoring. This provision codifies the inherent problem with the Department's sponsor-based enforcement model. J-1 sponsors must be expressly prohibited from also serving as SWT workers' employers. BT/F5 12 Tf1

can force workers to work excessive hours in order to make ends meet. We encourage the State Department to evaluate the maximum hours limit with these considerations in mind, and to specifically evaluate its impact on SWT workers given the program's treatment of fees and program costs.

Section 62.32(f)(4)(iv) requires SWT workers to give sponsors two weeks' notice if they plan to leave the employer early or reduce their hours. If the SWT worker does not provide this notice, then the sponsor can terminate the program. 22 C.F.R. § 62.32(n)(2)(v). This provision grants the sponsor too much control over the SWT worker's program in instances when abusive working conditions might be at play. The provision's exception for instances when the worker can –credibly allege‖ workplace abuse appears to leave any determination of –credibility‖ to the sponsor, which permits sponsor bias for the employer to enter into the calculation. Awaiting a determination of –credible‖ allegations also could implicate a lengthy delay. This requirement could inadvertently harm the workers the regulation seems designed to protect. Section 62.32(f)(4)(iv) should be removed.

5. Section 62.32(f)(6)

The Proposed Rule includes new language regarding SWT workers' compensation. 22 C.F.R. § 62.32(f)(6). This provision retains much of the language from the 2012 IFR, with some minor modifications. Crucially, the provision still does not require SWT workers to be paid a DOL-issued prevailing wage, as is the case in similar, low-wage guest worker programs. This requirement exists in those programs to protect U.S. workers and make sure that local wage rates 2

6. Section 62.32(f)(8) and (11)

Sections 62.32(f)(8) and (11) prohibit employers and sponsors from charging workers for promotional materials, on-the-job training and travel thereto, uniforms, tools, and other equipment needed for the job. Section 62.32(f)(7) also requires the sponsor to inform the employer of its recordkeeping requirements under the Fair Labor Standards Act. These provisions are consistent with existing law and are needed to protect SWT workers from excessive and unlawful deductions. They should be maintained.

7. Section 62.32(f)(9)

Section 62.32(f)(9) requires sponsors to ensure that employers have not rejected qualified U.S. worker applicants for the same position within 90 days of the date the sponsor confirmed the employer's formal acceptance of the SWT worker. This provision seems designed to protect U.S. workers from displacement, but it falls short of accomplishing that goal. Employers must be required to

abuse. The Department should not presume that SWT workers do not need or want to belong to a union at their jobsite. Moreover, requiring sponsors to reimburse union dues can provide an incentive to sponsors to discourage a SWT worker's participation in a union, which could amount to a violation of that worker's rights under the National Labor Relations Act. The Department should focus on regulating sponsor and recruiter fees, not union dues. This provision should be eliminated.

E. Door-to-door Sales Placements 22 C.F.R. § 62.32(g)

Section 62.32(g) adds new requirements on sponsors who place SWT workers in door-to-door sales positions. The Department expresses legitimate concern with SWT workers employed in door-to-door sales positions, noting that the job includes –unsuitable risks.‖ 82 Fed. Reg. at 4129. Given the well-documented risk of human trafficking in these positions and the Department's own findings, this occupation should be banned from the program altogether.[6]

F. Exchange Visitor Host Re-Placement 22 C.F.R. § 62.32(h)

Section 62.32(h)(1) prohibits sponsors from charging a SWT worker a fee for a re-placement with a new employer. Advocates have received reports of workers paying re-placement fees on top of the already excessive program fees that sponsors charge. This explicit prohibition is thus a necessary addition to the regulations and should be retained.

G. Sponsor Vetting of Host Entities 22 C.F.R. § 62.32(i)

In Section 62.32(i), the Pro.91 6(ttd R0 0 e501.91 Tm[(P84FBBBBBBBBBBBBBBB 377.95 Tm[(, t)] TJE

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requirement that sponsors report the employer's unlawful activities to the relevant agencies/authorities. Employers who violate this provision should also be included in the publicly available list mentioned in Part G above. We also commend the Department for requiring sponsors to regularly monitor employers' compliance with the regulations to the extent this imposes an on-going monitoring requirement on sponsors. 22 C.F.R. § 62.32(j)(1).

I. Program Exclusions 22 C.F.R. § 62.32(k)

Section 62.32(k) expands the list of banned occupations for the SWT program. This expansion is a positive change, but it does not go far enough. The Proposed Rule extends the ban to isolated jobs, repetitive-motion jobs, and janitorial, waste management, and custodial work – all of which must be excluded as those jobs

Finally, this section continues to allow staffing agencies to have a role in the SWT program. 22 C.F.R. 62.32(k)(7). The only additional burden the Proposed Rule imposes on sponsors that place workers at staffing agencies is to vet those agencies prior to placement. Labor staffing agencies have no place in a cultural exchange program. Even with the limitations on staffing agencies in the 2012 IFR, serious issues involving these entities still occurred.[8] In summer 2016, SPLC notified the State Department that the staffing agency Grandeur Management had violated numerous program rules in its treatment of J-1 employees in Myrtle Beach, South Carolina. Grandeur Management placed the J-1 workers in jobs that were different from the jobs their sponsors promised them and which did not allow for interaction with Americans; failed to ensure the J-1 workers had steady employment; failed to provide on-site supervision; placed J-1 workers in overcrowded apartments infested with bed bugs; and threatened to retaliate against them for complaining. These problems demonstrate that regulation of staffing agencies is not enough; these agencies must be banned from the J-1 program entirely.

J. Exchange Visitor Housing and Local Transportation 22

L. Exchange Visitor Pre-Departure Orientation and Documentation 22 C.F.R. § 62.32(n)

The Proposed Rule requires sponsors to provide SWT workers a pre-departure orientation with more specificity about what that orientation should entail. The orientation must include information on how to report and identify workplace abuse and housing violations. 22 C.F.R. § 62.32(n)(1)(iv). Though we commend the Department for attempting to address the need for a pre-departure orientation, the sponsors are not sufficiently equipped or motivated to provide an orientation on identifying abuses by their employer and third-party partners. The Department should provide this orientation itself, in conjunction with the relevant labor and housing agencies. At the very least, the Department should work with workers' and immigrants' rights groups on creating –Know Your Rights‖ materials that sponsors are required to provide during the orientation, similar to the collaborative process used for creating the –Know Your Rights‖ pamphlets now provided to all non-immigrant visa holders at U.S. embassies abroad.

M. Cross Cultural Activities 22 C.F.R. § 62.32(o)

We commend the Proposed Rule for including greater specificity about the cross-cultural activities that sponsors and host employers must provide. We note that a SWT worker's participation in these activities should not be mandatory, and failure to attend should not be cause for program termination, as proposed in Section 62.32(n)(v). SWT workers will find their own cultural exchange activities if their work schedule is appropriately limited. They should not be punished for refusing to engage in off-the-clock activities with their employer.

N. Exchange Visitor Monitoring and Assistance 22 C.F.R. § 62.32(p)

The increased monitoring of and assistance to SWT workers the proposed rule requires of sponsors is good. However, too often –email‖ is taken to mean an automated message with a link to an online survey. At the very least, when problems are noted through online survey, it should trigger the sponsor to initiate actual one-on-one person contact to address problems the SWT worker raises through the survey.

O. Sponsor Use and Vetting of Foreign Third Parties 22 C.F.R. § 62.32(q) and (r)

Sections 62.32(q) and (r) expand the requirements on sponsors' use and vetting of foreign third parties. These requirements will better ensure that third parties understand and follow the regulatory requirements and comport with the purpose of the program. We specifically support the provision that allows the Department to prohibit a sponsor from using a foreign third party whom the Department has determined does not meet the relevant criteria. 22 C.F.R. 62.32(q)(9). To completely curb the risk of recruitment abuse, however, the Department should hold employers jointly liable for the abuse and violation of the overseas recruiters. Moreover, all