



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



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Guidance Directive 2023-02

Clarifying the Department of State's Interpretation of Commensurate "Compensation" and "Pay and Benefits"

This Guidance Directive provides the Department of State's interpretation of regulations that require exchange visitors' "pay and benefits" or "compensation" to be commensurate with their U.S. counterparts. The Department of State clarifies that "pay and benefits" and "compensation" have substantially the same meaning: compensation includes pay and benefits (including accident and health insurance). The Exchange Visitor Program regulations in the Camp Counselor, Summer Work Travel, and Teacher categories provide:

- 22 CFR 62.30(f): "Sponsors shall ensure that international participants [i.e., camp counselors] receive **pay and benefits commensurate** with those offered to their American counterparts."¹ (Emphasis added).
- 22 CFR 62.32(i)(1): "Sponsors must inform [summer work travel] program participants of Federal, State, and Local Minimum Wage requirements, and ensure that at a minimum, participants are compensated at the higher of: (i) The applicable Federal, State, or Local Minimum Wage (including overtime); or (ii) **Pay and benefits commensurate** with those offered to their similarly situated U.S. counterparts."² (Emphasis added).
- 22 CFR 62.24(f)(5): "Sponsors must ensure that . . . [t]eaching positions, including duties, responsibilities, hours of employment, and **compensation, are commensurate** with those of similarly situated U.S. teachers in the school district or host school where that exchange teacher is assigned to teach" ³ (Emphasis added).

¹ 58 FR 15196, Mar. 19, 1993, as amended at 59 FR 16984, Apr. 11, 1994. Redesignated at 64 FR 54539, Oct. 7, 1999.

² 77 FR 27609, May 11, 2012.

³ 81 FR 4955, Jan. 29, 2016.

The ordinary meaning of “compensation,” as evidenced by the Cambridge Dictionary, is that it is “the combination of money and other benefits that an employee receives for doing their job.”⁴ The Merriam-Webster Dictionary defines compensation as, among other things, “payment” or “remuneration.”⁵ Thus, the ordinary English usage of “compensation” supports the Department of State’s interpretation that “compensation” unambiguously includes pay and benefits, such as health insurance.

The Department of State also reviewed other agency regulations and policies and found support for its interpretation. The Internal Revenue Service defines compensation to generally include “the employee’s wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment,” including certain “fringe benefits.”⁶ The U.S. Department of Labor (DOL) Office of Federal Contractor Compliance Programs defines compensation “as any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including, but not limited to, salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits”⁷ The DOL, Bureau of Labor Statistics, defines compensation as “encompassing the entire range of wages and benefits, both current and deferred, that employees receive in return for their work.”⁸ The plain meaning of “compensation,” as evidenced by dictionaries and other agency regulations, support the Department of State’s view that “pay and benefits” and “compensation” have substantially the same meaning.

Regulatory history and context do not demonstrate an alternative intent. The 2012 rule promulgating the Summer Work Travel category regulation noted the Department of State’s expectation that host organizations “fairly *compensate* participants for their work” (emphasis added), although the regulatory text refers to “pay and benefits” and “compensation.”⁹ Similarly, the heading of paragraph § 62.30(f) in the Camp Counselor category regulation is “Participant compensation,” while the text of the paragraph discusses “pay and benefits.” The interchangeable use of the terms “pay and benefits” and “compensation” in the regulations suggests that the Department of State uses “compensation” and “pay and benefits” synonymously.

For the reasons discussed above, the Department of State interprets “compensation” and “pay and benefits” for purposes of Subpart B to have substantially the same meaning, and include not only salary but also other types of payments made to or on behalf of employees. The Department of State clarifies that employer-paid or employer-subsidized health insurance is one example of a benefit and is a form of compensation. Accordingly, the phrase “pay and benefits”

⁴ Cambridge Advanced Learner’s Dictionary & Thesaurus, Cambridge University Press.

⁵ Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/compensation>.

⁶ See 26 CFR § 1.415(c)-2(b).

⁷ 41 CFR 60-1.3.

⁸ U.S. Bureau of Labor Statistics *Handbook of Methods*, <https://www.bls.gov/opub/hom/glossary.htm>.

⁹ 22 CFR 62.32(i); 77 FR 27593, 27602.

as used in the Camp Counselor and Summer Work Travel category regulations includes, among other things, wages and employer-paid insurance premiums. Through this Guidance Directive, the Department of State announces that it interprets the term “compensation” (as used in the Teacher regulations at 22 CFR 62.24) to include, at a minimum, “pay and benefits.” The Department of State notes that the term “benefits” should be interpreted broadly (i.e., to include other non-wage benefits in addition to employer-paid insurance premiums).

The Department of State also clarifies that in determining what constitutes commensurate compensation or commensurate pay and benefits, as required in the Camp Counselor, Summer Work Travel, and Teacher regulations, sponsors must compare exchange visitors’ responsibilities and qualifications not to other exchange visitors, but to similarly situated U.S. counterparts working in the same host organizations and/or host schools/districts. When determining which U.S. counterparts are similarly situated, sponsors should consider relevant factors such as position-specific responsibilities, job title, experience, qualifications, and any other relevant circumstances. Furthermore, sponsors should ensure that host organizations and/or host schools/districts consider all the relevant qualifications, education, and experience of exchange visitors, even if they were obtained outside the United States.

In the Teacher category, prior to the placement of an exchange teacher in a host school, sponsors must first confirm what is commensurate pay for the host school/district. If the school district or host school utilizes salary schedules that specify compensation based on qualifications and years of experience for their U.S. employees, sponsors should consider those in their assessment of whether the exchange visitor compensation is commensurate. Sponsors should be prepared to provide evidence of exchange visitors’ commensurate compensation upon the Department’s request (22 CFR 62.10(e)).

Please submit any questions on this matter to JVisas@state.gov. We thank you for your continued commitment to international exchanges and to the Department of State’s public diplomacy mission. Your contribution is vital, and we value your partnership.

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