

CRS Report for Congress

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The Au Pair Program

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Summary

In 1997, the au pair program received considerable media attention as a result of the Louise Woodward court case regarding possible involvement of an au pair in the death of a child in Massachusetts. That same year, Senator Helms introduced S. 1211 (P.L. 105-48, signed October 1, 1997) providing permanent authority for the U.S. Government to administer the au pair program. (Previously, the program had to be reauthorized by Congress about every year or two.) In addition, the U.S. Information Agency (USIA), the administering agency for the au pair program, amended existing federal regulations for the au pair program in September, 1997 to underscore the cultural exchange aspect of the program and strengthen au pair recruiting and training.

Since 1986, the USIA has administered an au pair program that has brought thousands of young people from around the world to the United States. The program has maintained a dual purpose of promoting cultural exchange and offering reliable child care for U.S. families. Legislation passed late in the 103rd Congress granted USIA authority to design and implement more rigorous rules regulating the program. Those program guidelines were intended to improve the quality of child care and enhance the cultural exchange aspects of the experience. This year, Congress may consider legislation to increase oversight of the sponsoring au pair agencies, reform the program,

or eliminate U.S. government involvement in it.¹

Introduction

In recent years, child care has been a growing issue of public policy debate. The United States has moved largely from a society where only one of two parents worked to dual-income families, and increasingly, to single-parent heads of household. Families now often must search for viable, cost-effective, and safe alternatives for child care. The

¹ "Au Pair Program Targeted for Elimination by Rep. Barr" by Melissa B. Robinson, Associated Press, January 14, 1998. Congressman Barr announced that he would seek to eliminate the program, asserting that it is "nothing more than indentured servitude."

au pair program, although not created just for child care, offers families the chance to have reliable child care at a reasonable cost in their own homes. Among the program's cultural benefits, the au pairs receive direct exposure to American culture, which then is disseminated back to their home country through correspondence and their return. Americans increase their understanding of other cultures as well.

Despite its stated good intent, the au pair program has been plagued by nagging questions since its inception. Is it a cultural exchange program or a child care service? If it is primarily a child care program, should au pairs enter on H-visas for temporary workers rather than J-visas for cultural exchange? Does the au pair program deliver the cultural benefits promised by its advocates? Are au pairs providing safe care for America's children? Should the U.S. government be involved with this operation? If so, to what degree?

The U.S. au pair program came under scrutiny in 1994, 1995, and again in 1997 for two reasons. First, charges that some au pairs physically abused or contributed to the deaths of children have alarmed parents, policymakers, and government officials. Second, accusations have surfaced by some au pairs that they were not receiving the promised cultural benefits but were actually indentured servants caring for children in excess of 60 to 70 hours a week.

In 1995, for the first time, the U.S. government proposed standards for the virtually unregulated au pair program that has brought tens of thousands of young people to the United States since 1986. Proposed regulations were issued in mid-December 1994² and were published in final form February 15, 1995.³ Regulations were further refined in June, 1997 and made final in September, 1997 when the 1995 regulations were amended.⁴

History of the Au Pair Program⁵

In 1985, the Institute for Foreign Study approached USIA with a cultural exchange proposal that would involve young people from Western Europe. The general idea was that the young people, referred to as au pairs, would come to the United States to live and be immersed in the home life of a typical American family. Au pair, a French term meaning "on par with" is used in European au pair programs with the intention that the student is on par with the family and is a mother's helper, not a servant, or employer. In the U.S. program, the au pair is treated more like an employee, getting a stipend that is linked to the minimum wage, and doing child care to offset the cost of living with the family.

USIA's role was to be minimal but crucial, for without it the program would not have been possible. Using its power to authorize cultural exchange visas and working

² Federal Register, Vol. 59, No. 239, December 14, 1994, pps. 64296-64301.

³ Federal Register, Vol. 60, No. 31, February 15, 1995, pps. 8547-8553.

⁴ Federal Register, Vol. 62, No. 124, July 27, 1997, pps. 34632-34634; Federal Register, Vol. 62, No. 172, September 5, 1997, p. 46876.

⁵ "Au pair" exchanges had been conducted under private sponsorship for decades prior to the first government sponsored program.

with two private sponsoring agencies in New England (Experiment in International Living, and the Institute for Foreign Study), USIA authorized two pilot au pair programs. The programs were to run on a trial basis for two years only. Guidelines for the two pilot programs were as follows: 1) the 18-25 year old would live in the United States for a period of thirteen months; and 2) in exchange for room, board, and a small stipend (usually \$100 a week and \$300 to be used for six credits of school), the au pair would work a maximum of 45 hours a week performing child care.

The validity of the program was questioned from the beginning by some government officials outside USIA. In early 1986, a U.S. immigration commissioner reportedly sent a letter stating that the au pair program resembled an employment program, not a cultural exchange activity.⁶ A December 1987 review of the program by an interagency panel concluded that it did not fall within the framework of a cultural exchange activity and should not be continued under the J-visa.⁷

Subsequently, USIA informed the sponsoring agencies, Experiment in International Living and the Institute for Foreign Study, that 1) the au pair program did not meet the J-visa guidelines, and as such the programs must end; and 2) the au pair programs were outside the Agency's statutory authority. USIA proposed a new program in which au pairs would receive greater cultural experience and work less (only 30 hours a week) but would still receive the same \$100 stipend. The two sponsoring agencies claimed that this proposed arrangement could undermine the program. The work portion of the program was the engine, they said, that carried the program along and made it both affordable to the host families and to the au pairs. The concerned parties viewed the 45-hour work week as critical to the program's continuation, because in the United States most participating host parents worked full-time.

When told they could not continue their programs, the sponsoring agencies went directly to Congress; subsequently, P.L. 100-461 required USIA to continue to oversee the au pair programs for fiscal years 1989 and 1990. The legislation prohibited USIA from altering its guidelines or promulgating new ones.⁸ It also resulted in USIA adding six more organizations to carry out au pair programs. The measure also directed the General Accounting Office (GAO) to examine the use of the J-visa. A 1990 GAO report found that the "currently structured au pair programs are not compatible with the original intent of the 1961 Mutual Educational and Cultural Exchange Act" and that "the au pair programs are essentially child care work programs that do not correlate with the qualifying categories mentioned in the J-visa statute."⁹

⁶ U.S. News and World Report, March 21, 1988. P. 23.

⁷ Letter from the United States Information Agency, February 1988. This letter was sent by USIA to people and legislators who enquired about the au pair program.

⁸ Foreign Operations, Export Financing, and Related Programs Appropriations Act for Fiscal Year 1989. Public Law 100-461. 102 STAT. 2268. October 1, 1988.

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

In response to this report, USIA sought legislation to shift the program to what the agency believed to be a more appropriate government agency. But instead of shifting responsibility for the au pair program to another agency, Congress passed P.L. 101-454, giving USIA oversight of the eight sponsoring agencies, stating that, “the au pair program would continue as currently constructed, that there will not be an expansion of new sponsors, and that the number of J-visas being processed will not increase above the current level.”¹⁰

Little more was heard about this issue until October 1994, when Congress passed the Technical Amendments to the State Basic Authority Act (P.L. 103-415), which gave USIA the authority, for the first time, to regulate (not just oversee) the au pair program. The Act provided authority for the USIA to administer the au pair program until September 30, 1995.

In 1995, provisions to extend the authority were included in several bills. Action on all of these bills, however, stalled in Congress, leaving the expired au pair program in disarray. Eventually, Congress separated the au pair provision from the other legislation and passed it. The President signed the bill into law (P.L. 104-72) on December 23, 1995. The measure provided USIA continued authority to administer the au pair program through FY1997, called for operating it on a worldwide basis (rather than just in Europe), and required USIA to report to Congress on the au pair program by October 1, 1996. In January 1997, Senator Helms introduced S. 1211 to provide permanent authority for the au pair programs. The President signed the measure into law (P.L. 105-48) on October 1, 1997.

Current Regulations

Using authority provided by P.L. 103-415, in 1994 the USIA drafted new regulations that sought to integrate the views of all parties involved—host families, au pairs, USIA, and the eight sponsoring organizations. The first set of USIA-proposed regulations drew an outcry from many Americans during the comment period, which ended January 13, 1995. According to many participating American families, the proposed changes (eliminating infant care from the program or requiring au pairs to be over 21 to care for children under the age of two, raising the weekly stipend from \$100/week to \$155/week, increasing families’ tuition costs from \$300 to \$500, and reducing the weekly total hours of work from 45 to 30, for example) were too severe. As a result of the sharp public response, the proposed regulations were modified to stipulate that au pairs: must be paid \$115 per week; must clear a thorough background review, including criminal reference check; may not work more than 45 hours per week; must receive a day and a half off each week, as well as two weeks of paid vacation; and must receive up to \$500 worth of tuition paid by the family. The new regulations took effect February 15, 1995.

On October 3, 1996 Dr. Joseph Duffey, Director of USIA, reported to the House International Relations Committee (as required by P.L. 104-72) on the oversight of the au

¹⁰ Eisenhower Exchange Fellowship Act of 1990. Public Law 101-454. 104 STAT. 1063. October 24, 1990.

pair program.¹¹ In the letter, Dr. Duffey comments that the au pair program had been strengthened by the February 1995 regulations, but that USIA continued to have concerns about some aspects of the program. The letter identified some issues to be addressed: 1) less-than-desirable compliance rate of au pairs meeting the educational aspect of the program by not attending classes in the United States; 2) the need to adjust the stipend to reflect the increasing minimum wage; 3) indications that some sponsoring agencies were not satisfying the criminal background check fully because of a lack of information in some countries; and 4) the sponsoring agencies' requirement for au pairs to pay a \$400 - \$500 refundable deposit upon entering the program.

These matters were addressed in the regulation changes that were finalized in September 1997. 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 would be limited to no more than 45 hours per week and no more than 10 hours per day. And, definitions for au pair background and personality checks would be tightened, so that all sponsoring agencies would maintain an established standard. The refundable au pair deposit was not addressed in the amending regulations.

How Recent Changes Have Affected the Program

The 1997 amended regulations have re-emphasized the program's original objective, which is first and foremost to be a cultural exchange program, to facilitate the spread of information about culture and life in the United States. According to the sponsoring agencies, many participating families are objecting to recent changes, stating they seem to increase costs and obligations for American host families, while enhancing benefits for the au pair. In particular, families are most concerned about the nearly 40% increase in stipend in 3 years and simultaneous reduction in child care hours of the au pair (especially the 10 hour per day limitation). The agencies explain that some host families consist of two parents who are professionals (particularly in the medical profession), or may have to put in long hours at work on a short term basis. They may want the au pair to provide child care only 3 days a week occasionally, but may need up to 12 hours of coverage on each of those days. The au pair also may like this arrangement, as it would offer more days off; however, the recent changes would not allow this flexibility.

In reaction to the Louise Woodward case, the au pair organizations are seeing up to a 50% reduction of au pair applications from Great Britain. In contrast, some agencies claim that there has been a significant increase in American families interested in the program.

Possible Considerations

After the Louise Woodward case raised concerns about the au pair program, some Members of Congress have expressed interest in reforming the program, while others

¹¹ Letter to House International Relations Committee Chairman, Benjamin A. Gilman, from Dr. Joseph Duffey, October 3, 1996.

have suggested eliminating U.S. government involvement in it altogether. Following are proposals that some involved in the program have suggested:

1--Create a private umbrella organization or an office in USIA to oversee the 8 agencies and collect data. Currently no organization keeps track of all the countries from which au pairs come, exactly how many are here at any given time, or how many au pairs remain in the United States illegally after their participation as an au pair. Each of the 8 sponsoring agencies keeps their own records of these issues, but a total picture is not maintained anywhere. Some have suggested that a private umbrella agency or an office within USIA could be devoted to monitoring all the sponsoring agencies and keeping data on au pairs, their countries of origin, successes, and problems. Currently, the USIA allocates less than \$100,000 to administering the au pair program; officials there state that additional appropriations would be needed to increase its monitoring of au pair activities.

2--Establish comparable expectations for au pairs and host families. Host families participating in the program must be informed of their educational and cultural responsibilities to the au pair. They should be forewarned that the au pair program is not for parents who cannot take on the added responsibility of being an ambassador for America in addition to working and raising a family. At the same time, au pairs must understand the seriousness of their child care responsibilities; they are not in the program to have a subsidized vacation in America. Brochures given both to au pairs and host families should be identical, rather than highlighting child care to American families, while highlighting America's national parks to the au pairs.

3--Strengthen recruiting standards. Each of the 8 agencies handle recruiting somewhat differently. Some have their own staff interviewing; some hire contractors and train them; some hire contractors and have minimal involvement. Some recruiters overseas conduct thorough interviews on a one-to-one basis, while other recruiters perform group interviews which result in little or no personal knowledge of the prospective au pair. Background checks, in some cases, are done simply to comply with regulations, not really to find potential problems with au pairs. Recruiting standards and background checks could require each sponsoring agency to recruit in an identical manner. Background checks (including criminal) were strengthened in the 1997 amending regulations, but monitoring how well the sponsoring agencies conduct these checks is crucial. USIA officials state that they are not required, nor do they have the resources to monitor the 8 agency background checks.

4--Improve child development and child safety training. Some organizations train au pairs by sending them (before arriving in the United States) a Red Cross book. The au pair is required to read it and pass a follow up test. Other agencies train au pairs the day they arrive in the United States. The au pairs may be exhausted from an 8 or 10 hour flight; they are probably coping with jet lag; they are likely experiencing some degree of nervousness and disorientation; and they may be focusing more on making friends and exchanging names and addresses with other au pairs, than on child development/safety training. Furthermore, the training they receive is not hands on, but is usually a lecture. Training could be changed to begin a day or two after they arrive in the United States; a more hands on approach could be incorporated; and follow up training could take place in monthly cluster meetings after beginning their year with the host family.

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