When first enacted, INA § 214(m) was numbered 214(l). Pub.L. 104-208 (October 2000) renumbered it to (m).

3.6.1.1 Definition of “elementary, secondary, and publicly funded adult education”

The Department of State interprets the term “Elementary School” in INA § 214(m) to include grades K through 8; “Secondary School” is interpreted to include grades 9 through 12; and “Publicly funded adult education program” is interpreted to include “any adult education or training program operated by, through or for a public school district, agency or authority.” INA § 214(m) restrictions apply regardless of whether the public school program actually charges tuition or fees. According to DOS, INA § 214(m) does not apply to post-secondary schools such as community colleges that receive public funds, but charge full non-resident tuition to foreign students.

† 9 FAM 41.61 Notes N2.1-2.2; DOS cable 2000-State-051174 (March 17, 2000). AMDOC# 200207036.

3.6.1.2 Reimbursement requirements

The student must reimburse the school system before an F-1 visa can be issued. School districts may not waive or otherwise ignore this requirement. The public school system issuing the Form I-20 must document that it has received reimbursement, in one of two ways:

† 9 FAM 41.61 Notes N2.3-2 Reimbursement

1. Indicate on the Form I-20 that the reimbursement payment has been made and the amount of such payment; or
2. If the Form I-20 does not include the reimbursement information, the DSO who signed the Form I-20 must provide the student with a notarized statement that the payment was made, and the amount of the payment.

Reimbursement is required even if the F-1 student is admitted to the school as a resident of the school district. Likewise, the fact that the student’s U.S. sponsor or guardian has paid local property/school taxes does not waive the INA 214(m) reimbursement requirement.

† 9 FAM 41.61 Notes N2.3-3

3.6.1.3 Penalties for violating INA § 214(m)

An F-1 student who violates a term or condition of status under INA § 214(m) in considered out of status, and is subject to a 5-year bar to reentry to the U.S. in any category. The bar applies until the person has been outside the United States for a continuous period of 5 years after the date of the violation.

† INA § 212(a)(6)(G)

3.6.2 Written application to the school

8 C.F.R. § 214.3(k)(1) requires the student make a “written application to the school.”

Legacy INS guidance stated that the “written application” rule requires a student to “personally make a written application to a school,” with the following two exceptions:
1. Application may be made in behalf of a scholarship student by an official agency of the student's government such as the ministry of education; and

2. The application may be made in behalf of a student by the student's parent or legal guardian.

† INS Operations Instruction 214.3(n)(5)(i)-(ii)

### 3.6.2.1 Electronic applications for admission

Many schools use Web-based technology that allows students to apply via the Internet. The school receives and stores the students’ applications electronically. In most cases, the student still sends a “signature document” to the school, certifying that all information submitted electronically is his or her own. The student also submits other documents, such as teacher recommendations, transcripts, and financial information, by mail. Schools with on-line application procedures must interpret and apply the 8 C.F.R. § 214.3(k)(1) “written application” requirement in the context of the electronic age. For example, the dictionary entry of “to write” includes the following definitions: “to introduce (information) into the storage device or medium of a computer,” and “to transfer (information) from the main memory of a computer to a storage or output device.” [Merriam-Webster’s Collegiate Dictionary, 10th edition (1999)].

The U.S. Code’s definition of “writing” [1 U.S.C. § 1] is: “writing includes printing and typewriting and reproductions of visual symbols by photographing, multigraphing, mimeographing, manifolding, or otherwise.” Although it is probably more important that the application be made “personally” by the student rather than the form in which it is “written,” DSOs may want to discuss with their institution’s general counsel to ensure that their school’s electronic application system meets the “written application” requirement of the regulations.

### 3.6.3 Review of eligibility for admission, to be done at the school, in the U.S.

The student’s application, transcripts, and all other supporting documents normally necessary to determine scholastic and linguistic eligibility for admission, as well as the student’s financial documentation, must be received, reviewed, and evaluated at the school’s location in the United States. The requirement that the review of application materials be done in the United States prohibits admissions decisions from being made “on the spot” overseas.

† 8 C.F.R. § 214.3(k)(2)

The appropriate school authority must then determine that the prospective student’s qualifications meet all standards for admission.

† 8 C.F.R. § 214.3(k)(3)

### 3.6.4 Review of English language proficiency

Although not specified in regulations at 8 C.F.R. § 214.3(k), a DSO must remark on a student’s English proficiency in order to issue Form I-20.

† SEVIS RTI field 24, printed on SEVIS I-20 at item 6
The DSO must indicate on Form I-20:

- Whether the school requires English language proficiency to pursue the educational program;
- And if so,
  - Whether the student has the required English language proficiency, or,
  - If not proficient, provide an explanation as to why the student is being admitted without such proficiency (for example, because the school will provide the required English language training).

**Resource 3-d SEVIS RTI field 24: English language proficiency**

DOS regulations also require the applicant to be sufficiently proficient in English to pursue the full course of study to which he or she has applied, in order to receive an F-1 visa. If such proficiency is lacking, the school must make arrangements to provide the student with supplemental instruction in English. The academic program's English language requirements and determination of the student's language proficiency are recorded in the relevant section of Form I-20.

22 C.F.R. § 41.61(b)(1)(iii); see also 9 FAM 41.61 Notes N.6

Assessment of language proficiency. A language proficiency assessment should be part of the admissions process. Because they must remark on this topic in SEVIS to issue Form I-20, DSOs should request from the admissions office the specific basis on which a determination of English language proficiency has been made.

Also See AM § 3.6.6.3 "Special admissions issues relating to English language proficiency"

### 3.6.4.1 Standardized English proficiency tests

Academic institutions may require the foreign applicant to take a standardized English proficiency test such as the TOEFL, and have the results sent to the institution for evaluation as a condition of admission. Such tests are administered at various centers in the United States and abroad.

The official TOEFL Web site is [http://www.toefl.org](http://www.toefl.org)

### 3.6.4.2 Instruction provided in student's language

Proficiency in English need not be required if the institution in which the student will enroll conducts its courses in a language in which the student is proficient.

9 FAM 41.61 Notes N.6.3

### 3.6.4.3 English training provided by the school
Proficiency in English need not be required if the institution will enroll the student in a full course of English or a combination of English training and academic courses that will constitute a full course of study.

22 C.F.R. § 41.61(b)(1)(iii)

In such cases, the level of proficiency required would depend on the extent to which the institution can substitute for or supplement the academic program with special classes in English for non-native speakers. Supplemental English language instruction may affect the anticipated completion date on the Form I-20 (See AM § 3.22.5 "Concurrent enrollment in two different SEVIS-approved F-1 schools").

3.6.5 REVIEW OF FINANCIAL SUPPORT

The school must obtain reliable documentation that the student has financial resources adequate to meet expenses while studying at the school.

8 C.F.R. § 214.3(k)(2); § 214.4(a)(1)(ix); 9 FAM 41.61 Notes N7

Resource 3-k shows the SEVIS RTI screen into which expense and funding information is put.

3.6.5.1 Estimate of expenses

The first step in reviewing whether a student has sufficient funding to meet expenses is to determine what the expenses are. The expense figures determined by the school and DSO are the basis for what is entered into SEVIS and eventually printed out on the relevant sections of Form I-20.

SEVIS RTI field 26, printed on SEVIS I-20 at item 7

The school should make a reasonable estimate of all expenses—including tuition, fees, books, supplies, maintenance (lodging and food), health insurance, taxes, and miscellaneous expenditures (clothing, local travel, recreation, toiletries, telephone, etc.)—and review the estimate each year. Calculation of fixed costs for tuition, fees, and health insurance will be relatively straightforward. Calculation of variable costs, such as living expenses, may be more complex, and is generally an institutional decision. To arrive at a standard budget for variable expenses, DSOS should work with their own institutional financial aid offices. Institutions that need a point of reference might look to sources such as the monthly maintenance rate (MMR) set for U.S. government scholarship programs. These are available from sponsoring and programming organizations such as the Institute of International Education.

3.6.5.2 Documentation of financial support sufficient to meet expenses

The DSO must also record in SEVIS what amount and sources of financial support the student will use to meet his or her educational and living expenses. These amounts and sources are entered into SEVIS, and will also appear on the student’s Form I-20. The financial information should be provided based on the academic term specified in SEVIS RTI field # 25.

SEVIS RTI field 27, printed on SEVIS I-20 at item 8
Although the financial fields in SEVIS are completed with reference to a single academic term, the school should require actual documentation that funds exist at least for the student’s first year of study and that, barring unforeseen circumstances, adequate funding will be available from the same or equally dependable sources for subsequent years. This is the same standard that consular and DHS officers will use to determine a student’s financial ability.

† INS Operations Instruction 240.7(c)(2); 9 FAM 41.61 Notes, N7.1

... Also See AM § 3.9.4.4 "Review of financial documentation"

3.6.5.2.1 Types of acceptable support and documentation

Funds may come from any dependable source, including scholarships, fellowships, sponsoring agencies, personal funds, or funds from the student’s family. Documentation of scholarships and fellowships may be in the form of an official award letter from the school or sponsoring agency; documentation of personal or family funds should be on bank letterhead stationery, or in the form of a legally binding affidavit. Form I-134, “Affidavit of Support,” can be used to document support being provided by a U.S. citizen or U.S. legal permanent resident.

If the student will depend on funds from a source outside the United States, the school may want to determine if restrictions exist on the transfer of dollars from the country holding the funds, if the situation of the country warrants such inquiry. If there are restrictions, the student should present evidence that they will not prevent the funds from being transferred. Alternatively, the school may wish to require an advance deposit of tuition and perhaps living expenses as well before issuing the Form I-20. An advance deposit for tuition or living expenses is not considered a fee for issuing Form I-20.

Schools should advise newly admitted applicants that it is likely they will have to present financial support documents when they apply for a visa and again when they arrive in the United States.

☐ Prospective F-1 employment as the source of financial support. Agency guidance requires documentation of funds for the first year of study, and credible evidence of the source of funds for the remainder of the program. F-1 employment through a guaranteed arrangement like assistantships or fellowships, often serves as a major source of financial support for many students, and can definitely be considered, especially when those arrangements can be renewed.

3.6.6 ADMISSION TO THE SCHOOL

The school must actually admit the prospective F-1 student for a full course of study, before it can issue an I-20.

3.6.6.1 To be done by authorized school admissions official

The official or officials normally responsible for admissions at the school must make the admissions decision.

† 8 C.F.R. § 214.3(k)(4)
The admission official’s admission decision must be based on a determination that “the prospective student’s qualifications meet all standards for admission.”

Immigration regulations do not give DSOs authority to admit students. Only the school can give authority to an employee to admit students. If a school official responsible for admissions at the school has also been designated as a DSO, however, then that same individual can of course issue an I-20, so long as the DSO is “a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students.”

### 3.6.6.2 Conditional or provisional admission: discussion

Generally, a DSO cannot issue Form I-20 until all conditions for admission have been met.

By signing Form I-20 at item 10, a DSO affirms “under penalty of perjury” that a school official has examined the student's academic records and financial documentation and has determined that the student meets “all standards for admission” to the school.

If a school has a conditional or provisional admission policy, the nature of the admission would have to be carefully examined when determining if an I-20 could be issued on the basis of such an admission.

For example, a school may accept a student on the basis of having previewed a faxed copy of the student's transcripts, but on the condition that the school receive original transcripts before the admission is finalized. In such a case, the student is expected to meet the condition prior to enrollment at the school. Form I-20 cannot be issued until that condition has been met and the student is actually admitted. Once the condition is met, the DSO can issue Form I-20.

The general rule is that an I-20 should only be issued for a program to which the student has been fully admitted, and which he or she can begin at the time of entry.

If a student is fully admitted to a program, but that admission is subject to requirements that certain conditions be maintained or met after study begins in order to remain in the program (for example, a student is admitted to a program, but must maintain a grade point average of B- or better in order to continue in the program), the DSO may issue Form I-20 for such a program, since the student has been admitted and is eligible to begin the program upon entry in F-1 status.

### 3.6.6.3 Special admissions issues relating to English language proficiency

Institutions vary in how they handle admissions of students who will require English language instruction after arrival. Practices generally fall into three broad categories: provisional admission with English level prerequisite; full admission to a degree program with allowance for language training, if needed; and, full admission to a degree program.

Provisional admission, also termed conditional or contingent admission, requires a student to obtain a certain English proficiency level before beginning degree studies. The university has expressed its intent to admit the student subject to the student's obtaining the appropriate level of English proficiency prior to
beginning his or her degree program. Because the student is not qualified to begin studies toward the degree upon entry in this case, the university would not issue a Form I-20 for the degree program. The Form I-20 would be issued for English language training, by the DHS-approved school that will provide that training. After the student has attained the appropriate proficiency level at the language school, the student would be either transferred to the university, if the language school is not part of the university, or, if the language school is on the university’s I-17, would be issued a Form I-20 for “change in educational level.” In circumstances where a student has been provisionally admitted to a university upon completion of language training, a comment to this effect on the language school I-20 and/or a letter from the university to accompany the language school I-20 is recommended.

A university may also fully admit a student making allowance on the I-20 for the possibility that the student requires English language instruction upon arrival. Because the student's academic program in this case includes language study, and the student can begin this program immediately, the university may issue the Form I-20 for the main course of study. This holds true whether the English portion of the program is provided by a language school that is part of the university or is not part of the university, the only requirement being that the school be DHS-approved. If additional language instruction is needed, the student may attend classes in English as a second language concurrently with university classes, so long as a full course of study is maintained between the two institutions. The student's status is maintained through the concurrent enrollment provision in the regulations (see further explanation at AM § 3.22.5 “Concurrent enrollment in two different SEVIS-approved F-1 schools”).

The alternatives are more limited for a student who is fully admitted to a degree program without provision for language training on the I-20. The I-20 in this case would have been prepared only for study in the degree within the normal timeframe for completing that degree. If this student encounters problems in his or her academic program as a result of English proficiency, concurrent enrollment in a language program would not be appropriate because language study is not part of the student's degree program. However, the student can be placed on a reduced course load (RCL) for a university term for academic difficulties. This enables the student to pursue language studies on top of some coursework toward the degree program, but only for one school term or semester. If the student should require additional English instruction beyond this point, it would have to be taken on top of a full course of study or during a summer break. Transfer to a language program would be an option, but perhaps should be reserved as a last resort if the student does not make sufficient progress while on RCL.

3.6.7  FULL COURSE OF STUDY REQUIREMENT

The F-1 category is available only to students who will be pursuing a “full course of study.” Determining whether an academic program qualifies as a “full course of study” under the regulations is one of the most essential steps in determining eligibility for I-20 issuance. A school may offer a variety of innovative programs, but a program can serve as the basis for I-20 issuance only if it qualifies as a “full course of study.”

See AM § 3.20 “F-1 full course of study requirements” for a thorough discussion of that topic.