

13-161

The Secretary presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to inform all missions of the policies and procedures associated with a foreign mission's use of private entities for application services with respect to visas, passports, and similar documents in the United States.

The increased global demand for visa services is an issue many governments are currently facing. As a result, many countries, including the United States, have started using or are considering the use of private entities to assist with the provision of application services for the aforementioned documents.

Given the growing importance of such endeavors with respect to the efficient provision of application services globally, the Department has determined that it is important to establish terms and conditions associated with the provision of such services to foreign missions in the United States.

Thus, the Department has designated the provision of application services with respect to visas, passports, and similar documents by private entities on behalf of foreign missions in the United States a benefit under the Foreign Missions Act (22 U.S.C. 4301-4316, as amended).

The Department has further determined that the provision of application services by private entities for foreign missions in the United States is subject to such terms and conditions as may be established by the Department's Office of Foreign Missions (OFM). A copy of this designation and determination under the Foreign Missions Act is enclosed.

The purpose of this note is to inform the Chiefs of Mission of the terms and conditions associated with a foreign mission's use of private entities for application services. Application services include, but are not limited to: appointment management, fee collection, document delivery, and collection of biometric data.

Subject to reciprocity, or as otherwise determined to protect the interests of the United States, the Department reserves the right to impose conditions or restrictions on the manner in which specific foreign missions will be authorized to use private entities for application services in the United States.

The Department wishes to remind the Chiefs of Mission that, pursuant to §211(a) of the Foreign Missions Act, it is unlawful for any person or entity to make available any benefits to a foreign mission that are contrary to requirements and determinations made under the Act. As a result, the United States has standing to bring or intervene in an action to obtain compliance with such requirements, including any action for injunctive or other equitable relief.

## *Obtaining Approval for the Use of Private Entities for Application Services*

Effective immediately, all foreign missions are required to request the Department's approval before using private entities for application services in the United States.

Requests shall be transmitted to OFM by diplomatic note. OFM is located in Room 2236 of the Harry S Truman Building. Diplomatic notes may also be sent to OFM at [OFMProperty@state.gov](mailto:OFMProperty@state.gov).

All such notes must include the information requested below:

1. A description of the application services the foreign mission wishes to secure;
2. Will the country represented by the foreign mission allow the U.S. Embassy to utilize the services of private entities to conduct application services on its behalf from facilities located in cities that host the U.S. Embassy or a U.S. consular post?
3. Will the country represented by the foreign mission allow the U.S. Embassy to utilize the services of private entities to conduct application services on its behalf from facilities located in cities that do not host the U.S. Embassy or a U.S. consular post?
4. Will the country represented by the foreign mission allow the U.S. Embassy to select freely and contract directly with a private entity for the types of services described above?

5. Will the country represented by the foreign mission allow the private entity with which the U.S. Embassy contracts for the provision of this service to select freely and hire employees of its own choosing? If not, please describe any applicable limitations.
6. Will the country represented by the foreign mission impose any other restrictions on the manner in which the Department of State selects or utilizes the services of a private entity to assist with the provision and conduct of application services by the U.S. Embassy and, if applicable, its consular posts? If yes, please describe these restrictions.
7. Will the country represented by the foreign mission consider any physical or electronic documents or data collected by a private entity on behalf of a diplomatic or consular mission to facilitate the adjudication, processing, or handling of requests for application services by the mission to be exempt from inspection or compelled disclosure by host government authorities? Additionally, if known at the time that the request is transmitted, the

following information is to be included:

- the name of the private entity that the foreign mission plans to use for application services;
- the federal tax identification number of the private entity that the foreign mission plans to use for application services;

- the physical address of the property (or properties) at which the private entity will provide application services;
- the primary mailing address of the private entity that the foreign mission plans to use for application services; and
- the name, title, and contact information of the representative of the private entity who is responsible for overseeing the provision of application services.

Within sixty (60) calendar days of OFM receiving a request and any additional supporting statements or documents that are separately determined to be necessary, the Department will provide the foreign mission with a written response.

### ***Ongoing Operational Requirements***

Once a foreign mission receives authorization from the Department to use a private entity for application services, the mission is required to transmit a diplomatic note to the Department which includes the information requested above, if not previously provided, within ten days business days of selecting a service provider. Foreign missions are further required to notify the Department in writing within ten days of a change associated with any of the following:

- the service provider;
- the service provider's name;

- the service provider's federal tax identification number;
- the physical address of the property at which application services are provided;
- the service provider's primary mailing address; and
- the types of application services being provided.

Within sixty (60) calendar days of OFM receiving a notification of a change of, the physical address of the property at which application services are being provided or of the types of application services being provided, or of any additional information that is determined by OFM to be necessary, the Department will provide the foreign mission with a written response.

### ***Obtaining Approval for the Use of Private Entities for Application Services***

#### ***Begun Prior to April 10, 2013***

The Department is aware that there are a number of foreign missions that currently use private entities for application services in the United States. In order to ensure that such arrangements are in compliance with the Department's newly established requirements concerning these operations, within forty-five (45) calendar days of the date of this note, affected missions are required to transmit to OFM, by diplomatic note, the following information:

- a description of the application services it currently receives from private entities in the United States;

- the name of the private entity that the foreign mission uses for application services;
- the federal tax identification number of the private entity that the foreign mission uses for application services;
- the physical address of the property (or properties) at which the private entity provides application services;
- the primary mailing address of the private entity that the foreign mission uses for the application services; and
- the name, title, and contact information of the representative of the private entity who is responsible for overseeing the provision of application services.

Additionally, the note must include answers to each of the questions on pages three and four of this note.

Within sixty (60) calendar days of OFM receiving the note described above and any additional supporting statements or documents that are separately determined to be necessary, the Department will provide the foreign mission with a written response.

*Inquiries*

Any questions or concerns with respect to this matter may be directed to OFM's Office of Diplomatic Property, Taxes, Services and Benefits at (202) 895-3500 extension 5 or at [OFMProperty@state.gov](mailto:OFMProperty@state.gov).

Enclosures: As stated.

Department of State,

Washington, April 10, 2013

A handwritten signature in blue ink, consisting of stylized initials or a name, located to the right of the typed text.

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Notices

DEPARTMENT OF STATE (DOS)

[Public Notice 8266]

**Designation & Determination Pursuant to the Foreign Missions Act; Concerning the Provision of Application Services for Visas, Passports and Similar Documents by Private Entities to Foreign Missions in the United States**

78 FR 19797

**DATE:** Tuesday, April 2, 2013

Sections 202(a), 203, 204, and 207 of the Foreign Missions Act (codified at 22 U.S.C. 4301 *et seq.*) (hereinafter "the Act") authorize the Secretary of State to designate benefits and provide or assist in the grant of benefits for or on behalf of a foreign mission. Therefore, pursuant to such authority, vested in me by Delegation of Authority No. 198, dated September 16, 1992, in order to protect the interests of the United States and to adjust for costs and procedures of obtaining benefits for missions of the United States abroad, I hereby designate the provision of application services with respect to visas, passports and similar documents by private entities on behalf of foreign missions in the United States as a benefit under the Act. For [\*19798] this purpose, such application services include, but are not limited to, appointment management, fee collection, document delivery, and the collection of biometric data from applicants.

Additionally, I hereby determine the provision of such application services by private entities for foreign missions in the United States to be subject to such terms and conditions as may be established by the Department's Office of Foreign Missions and that any state or local laws to the contrary are hereby preempted.

In accordance with § 211(a) of the Act, it shall be unlawful for any person to make available any benefits to a foreign mission that are contrary to the Act. The United States, acting on its own behalf or on behalf of a foreign mission, has standing to bring or intervene in an action to obtain compliance with this chapter, including any action for injunctive or other equitable relief.

Dated: March 18th, 2013.

**Patrick F. Kennedy,**

*Under Secretary for Management.*

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