Order Code RL31146

Report for Congress
Received through the CRS Web

# Foreign Students in the United States: Policies and Legislation

**Updated September 23, 2002**

Ruth Ellen Wasem
Specialist in Social Legislation
Domestic Social Policy Division

# Foreign Students in the United States: Policies and Legislation


## Summary

The September 11 terrorist attacks by foreign nationals — including several terrorists on student visas — have prompted a series of questions about foreign students in the United States and the extent to which the U.S. government monitors their admission and presence in this country. The arrival of letters on March 11, 2002, in which the Immigration and Naturalization Service (INS) notified a flight school that two September 11 terrorists had been approved for foreign student visas further heightened concerns about lax enforcement of immigration laws.

Potential foreign students, as well as all aliens, must satisfy Department of State (DOS) consular officers abroad and INS inspectors upon entry to the United States that they are not ineligible for visas under the so-called "grounds for inadmissibility" of the Immigration and Nationality Act, which include security and terrorist concerns. The consular officers who process visa applicants are required to check DOS's automated lookout systems before issuing any visa. In FY2000, DOS identified 181 potential nonimmigrants (i.e., foreign nationals coming temporarily) as inadmissible because of security or terrorist concerns.

The three visa categories used by foreign students are: F visas for academic study; M visas for vocational study; and J visas for cultural exchange. The numbers admitted have more than doubled over the past 2 decades. In FY1979, the total number of foreign student and cultural exchange visas issued by DOS consular officers was 224,030 and comprised 4% of all nonimmigrant visas issued. In FY2000, DOS issued 589,368 visas to F, J, and M nonimmigrants, making up 8% of all nonimmigrant visas issued.

In 1996, Congress enacted a provision that established a foreign student monitoring system and required educational institutions to participate as a condition of continued approval to enroll foreign students. The USA Patriot Act (P.L. 107-56) includes provisions to expand the foreign student tracking system and authorizes appropriations for the foreign student monitoring system, which previously had been funded through $95 fees paid by the foreign students. In May, the President signed the Enhanced Border Security and Visa Entry Reform Act (P.L. 107-173, H.R. 3525), which increased the monitoring of foreign students and closed perceived loopholes.

Some are advocating closer scrutiny of foreign students entering and studying in the United States. Supporters of this view assert that foreign students are the category of aliens most likely to include spies and terrorists, and they argue that increased monitoring of aliens on F, J, and M visas is essential to national security. Some are suggesting that there should be a moratorium on issuance of new foreign student visas until these questions are addressed. Others warn that this emphasis on foreign students as a main security and terrorist risk is misplaced and that such scrutiny may lead to excessive government monitoring without reducing the risk of terrorism. Many also question the feasibility of systems for nonimmigrant tracking, citing the work that remains on the reporting system for foreign students.

## Contents



## List of Figures

# Foreign Students in the United States: Policies and Legislation

## Background

Since the Immigration Act of 1924, the United States has expressly permitted foreign students to study in U.S. institutions. Most foreign students are at least 18 years old and are enrolled in higher education programs. If they attend public high schools in the United States, the law requires that foreign students pay tuition, with some exceptions. It also bars the admission of foreign students for the purpose of attending public elementary schools. While foreign students are also barred from receiving federal financial assistance, many are successful at gaining financial assistance from the colleges and universities they attend.

Foreign students enrich the cultural diversity of the educational experience for U.S. residents as well as enhancing the reputation of U.S. universities as world-class institutions. While their presence is generally viewed as a positive one, concerns have arisen in recent years that have caused Congress to take a new look at the Immigration and Nationality Act (INA) provisions that govern their admission. The recent terrorist attacks conducted by foreign nationals — including several terrorists on foreign student visas — are raising a series of questions about foreign students in the United States, their rights and privileges, and the extent to which the U.S. government monitors their presence in this country.

## Foreign Student Visas

There are three main avenues for students from other countries to temporarily come to the United States to study, and each involves admission as a nonimmigrant. A nonimmigrant is an alien legally in the United States for a *specific purpose* and a *temporary period* of time. There are more than 20 major nonimmigrant visa categories, and they are commonly referred to by the letter that denotes their subsection in the law.[1] The three visa categories used by foreign students are: F visas for academic study; M visas for vocational study; and J visas for cultural exchange.

**F Visa.** The most common visa for foreign students is the F-1 visa. It is tailored for international students pursuing a full-time academic education. The F-1 student is generally admitted as a nonimmigrant for the period of the program of

[1] §101(a)(15) of INA.

study, referred to as the duration of status.[2] The law requires that the student have a foreign residence that they have no intention of abandoning. Their spouses and children may accompany them as F-2 nonimmigrants.

To obtain an F-1 visa, prospective students also must demonstrate that they have met several criteria:

- They must be accepted by a school that has been approved by the Attorney General.[3]
- They must document that they have sufficient funds or have made other arrangements to cover all of their expenses for 12 months.[4]
- They must demonstrate that they have the scholastic preparation to pursue a full course of study for the academic level to which they wish to be admitted and must have a sufficient knowledge of English (or have made arrangements with the school for special tutoring, or study in a language the student knows).

Once in the United States on an F visa, nonimmigrants are generally barred from off-campus employment. Exceptions are for extreme financial hardship that arises after arriving in the United States and for employment with an international organization.[5] F students are permitted to engage in on-campus employment if the employment does not displace a U.S. resident. In addition, F students are permitted to work in practical training that relates to their degree program, such as paid research and teaching assistantships. An alien on an F visa who otherwise accepts employment violates the terms of the visa and is subject to removal and other penalties discussed later in this report.

**J Visa.** Foreign students are just one of many types of aliens who may enter the United States on a J-1 visa, sometimes referred to as the Fulbright program. Others admitted under this cultural exchange visa include scholars, professors, teachers, trainees, specialists, foreign medical graduates, international visitors, au pairs, and participants in student travel/work programs. Those seeking admission as a J-1 nonimmigrant must be participating in a cultural exchange program that the U.S. Department of State's Bureau of Educational and Cultural Affairs (BECA)[6] has

---

[2] Those entering as secondary school students are only admitted for 1 year.

[3] Schools that wish to receive foreign students must file a petition with the INS district director. The particular supporting documents for the petition depend on the nature of the petitioning school. Once a school is approved it can continue to receive foreign students without any time limits; however, the approval may be withdrawn if the INS discovers that the school has failed to comply with the law or regulations.

[4] F, J, and M students are barred from federal financial aid. See §484(a)(5) of the Higher Education Act of 1965, as amended.

[5] The Immigration Act of 1990 created an F-1 pilot employment program, but authority for this pilot off-campus work program expired September 30, 1996.

[6] This bureau was formerly the United States Information Agency (USIA).

designated. They are admitted for the period of the program.[7] Their spouses and children may accompany them as J-2 nonimmigrants.

Responsible officers of the sponsoring organizations must be U.S. citizens. The programs that wish to sponsor J visas also must satisfy the following criteria:

- be a bona fide educational and cultural exchange program, with clearly defined purposes and objectives;
- have at least five exchange visitors annually;
- provide cross-cultural activities;
- be reciprocal whenever possible;
- if not sponsored by the government, have a minimum stay for participants of at least 3 weeks (except for those designated as "short term" scholars);
- provide information verifying the sponsoring program's legal status, citizenship, accreditation, and licensing;
- show that they are financially stable, able to meet the financial commitments of the program, and have funds for the J nonimmigrant's return airfare;
- ensure that the program is not to fill staff vacancies or adversely affect U.S. workers;
- assure that participants have accident insurance, including insurance for medical evacuations; and,
- provide full details of the selection process, placement, evaluation, and supervision of participants.[8]

As with F visas, those seeking J visas must have a foreign residence they have no intention of abandoning. However, many of those with J visas have an additional foreign residency requirement in that they must return abroad for 2 years if they wish to adjust to any other nonimmigrant status or to become a legal permanent resident in the United States. This foreign residency requirement applies to J nonimmigrants who meet any of the three following conditions:

- An agency of the U.S. government or their home government financed in whole or in part — directly or indirectly — their participation in the program.
- The BECA designates their home country as clearly requiring the services or skills in the field they are pursuing.
- They are coming to the United States to receive graduate medical training.

There are very few exceptions to the foreign residency requirement for J visa holders who meet any of these criteria — even J visa holders who marry U.S. citizens are required to return home for 2 years.[9] Although many aliens with J-1 visas are

---

[7] As with secondary students entering with F-1 visas, J-1 students in secondary school programs are only admitted for up to 1 year.

[8] 22 CFR §514.

[9] INA §212(e) provides only a few exceptions, including cases of exceptional hardship to the spouse or child of a J-1 if that spouse or child is a U.S. citizen or permanent resident alien and in cases of persecution on the basis of race, religion, or political opinion if the alien returned home, and if it is in the national interest not to require the return.

permitted to work in the programs in which they are participating, the work restrictions for foreign students with a J-1 visa are similar to those for the F visa.

**M Visa.** Foreign students who wish to pursue a non-academic, e.g., vocational, course of study apply for an M visa. This visa is the least used of the foreign student visas. Much as the F students, those seeking an M visa must show that they have been accepted by an approved school, have the financial means to pay for tuition and expenses and otherwise support themselves for 1 year, and have the scholastic preparation and language skills appropriate for the course of study. Their spouses and children may accompany them as M-2 nonimmigrants. As with all of the student visa categories, they must have a foreign residence they have no intention of abandoning. Those with M visas are also barred from working in the United States, including in on-campus employment.

**Screening Procedures.** Potential foreign students, as well as all aliens, must satisfy Department of State's (DOS) consular officers abroad and INS inspectors upon entry to the United States that they are not ineligible for visas under the so-called "grounds for inadmissibility" of the INA. These criteria include security and terrorist concerns as well as health-related grounds and criminal history.[10] Some provisions may be waived/overcome in the cases of nonimmigrants, refugees, and certain other aliens. To become a nonimmigrant, aliens also must demonstrate that they are not "intending immigrants," i.e., wanting to reside permanently in the United States.[11]

In terms of criminal and security and terrorist concerns, the consular officers who process visa applicants are required to check DOS's automated lookout systems before issuing any visa; thus, the names of foreign students are run through various databases, as are those of all other nonimmigrants seeking a visa to enter the United States. In FY2000 (the most recent year for which complete data are available), DOS identified 181 potential nonimmigrants (i.e., foreign nationals coming temporarily) as inadmissible because of security or terrorist concerns.[12] In comparison, DOS identified just over 3,200 potential nonimmigrants as inadmissible on criminal grounds in FY2000.

The Immigration and Nationality Act of 1952 originally included a requirement that all visa applicants be fingerprinted, with waivers for A visa (diplomats) and G

---

[10] §212(a) of INA lists the grounds for inadmissibility categories as: health-related grounds; criminal history; security and terrorist concerns; public charge (e.g., indigence); seeking to work without proper labor certification; illegal entrants and immigration law violations; lacking proper documents; ineligible for citizenship; and, aliens previously removed. For more information, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

[11] For background and analysis of visa issuance policy and activities, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

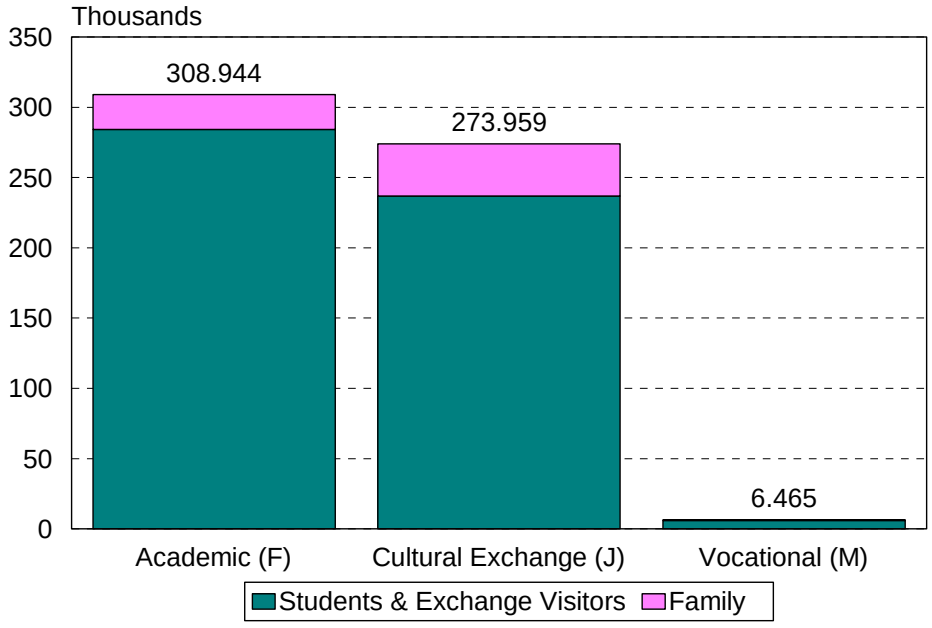
[12] The inadmissibility of members and supporters of foreign terrorist organizations can be waived under §212(d), which provides the Attorney General with that authority, if he deems that it is in the national interest to do so. Such waivers are usually granted at the request of the Secretary of State, with the concurrence of the Attorney General.

visa (representatives of international organizations) nonimmigrants.[13] The statutory requirement for fingerprinting nonimmigrants was repealed in 1986, but the Attorney General still has the discretionary authority to require fingerprints of aliens applying for nonimmigrant visas "for the purposes of identification and investigation."[14]

## Trends and Characteristics

Foreign students have been coming to study in the United States for almost a century, and the numbers admitted have more than doubled over the past 2 decades. In FY1979, the total number of F and J visas issued by DOS consular officers was 224,030 and comprised 4% of all nonimmigrant visas issued.[15] In FY1989, the number of F, M, and J visas had grown to 373,932, constituting 5% of all nonimmigrant visas DOS issued. By FY2000, the most recent year data are available, DOS had issued 589,368 visas to F, J, and M nonimmigrants, and these categories made up 8% of all nonimmigrant visas issued. As **Figure 1** illustrates, F academic students lead with 308,944 visas issued in FY2000. The J cultural exchange visitors followed with 273,959, and the M students trailed with only 6,465 visas issued in FY2000.

**Figure 1. Visas for F, J, and M Nonimmigrants Issued in FY2000**




**Source**: CRS presentation of U.S. Department of State Bureau of Consular Affairs data.

---

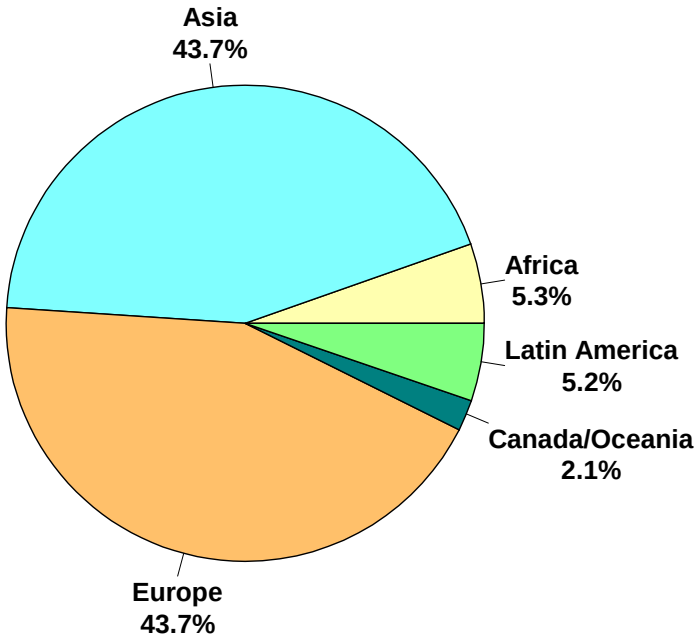
[13] Immigration and Nationality Act of 1952, P.L. 82-414.

[14] Immigration and Nationality Amendments of 1986, P.L. 99-653. See CRS Report RL31570, *Immigration: Alien Registration*, by Andorra Bruno.

[15] The M vias was not established until 1981 by P.L. 97-116.

The largest sending regions of the world are Asia and Europe, as **Figure 2** depicts. Although Asia had led with well over half of all student visas for many years, the latest available data shows both Europe and Asia having 43.7% of the 589,368 visas issued to F, J and M nonimmigrants issued in 2000. African and Latin American countries had comparable portions, 5.3% and 5.2% respectively. Canada and Oceania combined are 2.1%.[16]

**Figure 2. Region of Origin for F, J and M Nonimmigrants, FY2000**



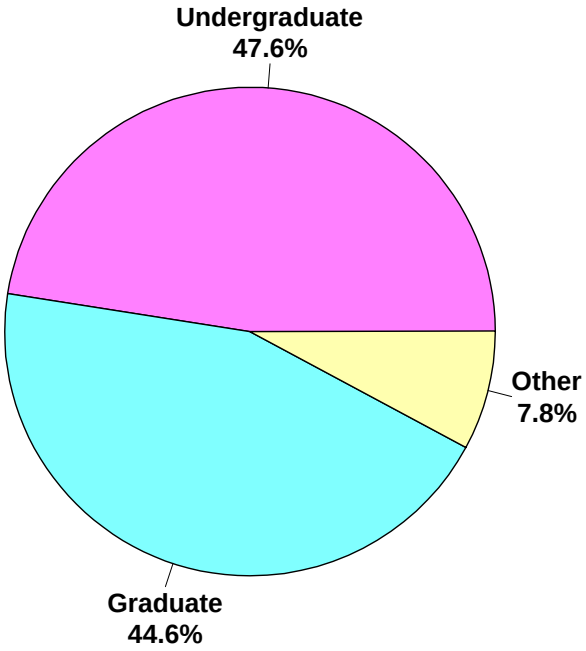

**Source**: CRS presentation of U.S. Department of State Bureau of Consular Affairs data on 589,368 nonimmigrants issued visas.

According to International Educational Exchange's *Open Doors* survey of U.S. colleges and universities, the largest group (47.6%) of foreign students enrolled in 1999-2000 were in undergraduate degree programs. As **Figure 3** presents, almost an equal portion (44.6%) were enrolled in graduate degree programs. Foreign students enrolled in other programs (including practical training programs) comprised 7.8%.[17]

[16] For analysis of foreign students data in the mid-1990s, see CRS Report 97-576, *Immigration: Foreign Students in the United States*, by Ruth Ellen Wasem.

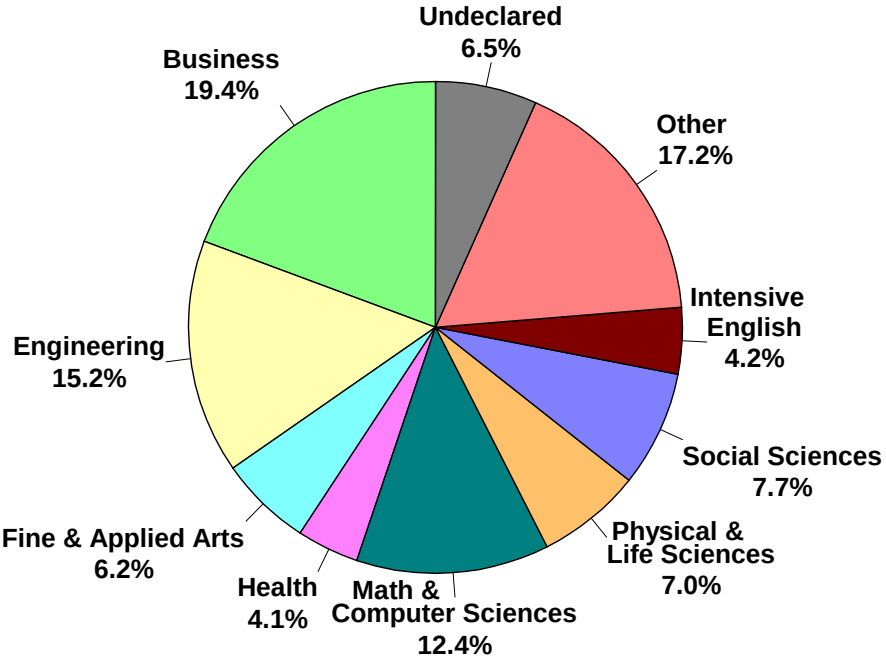
[17] Trade schools, such as flight schools, generally do not participate in this privately-conducted annual survey.

**Figure 3. Academic Level of Foreign Students, 2000-2001**




**Source**: CRS presentation of International Educational Exchange *Open Doors* data on 547,867 students.

**Figure 4. Major Fields of Study of Foreign Students, 2000-2001**




**Source**: CRS presentation of International Educational Exchange *Open Doors* data on 547,867 students.

The fields of study undertaken by foreign students appear to be quite diverse, as **Figure 4** shows. The largest category is business, which is the field of study of

only 19.4% of foreign students. Engineering along with mathematics and computer sciences follow with 15.2% and 12.4%, respectively.

## Monitoring Foreign Students

**Duration of Status Visa.** While most nonimmigrants are admitted with visas that have a precise expiration date, foreign postsecondary students are admitted for "duration of status," which lasts as long as they are full-time students or participating according to the terms of their exchange programs. It is difficult for INS to know when foreign students have overstayed because the duration of status lacks a fixed termination date and schools, although required to report students who stop attending, have not been required until recently to systematically report data on the progress of the foreign student (see below).

For many years previously, a foreign student was admitted for only 1 year and had to renew the visa with INS each subsequent year for as long as the student was enrolled. The INS then issued regulations in 1978 and 1981 allowing for visa validity periods longer than 1 year. In regulations in 1983 and 1987 that were aimed at "eliminating burdensome paperwork," INS reduced the reporting requirements and established the "duration of status" policy that remains in practice currently.[18]

**Security Concerns.** In 1995, INS began a review of the admission and monitoring of foreign students. Impetus for the review came in part from former Federal Bureau of Investigation Director Louis Freeh who expressed concern that possible terrorists could use foreign student status as a way of entering the United States.[19] Those concerned with the security risks of the foreign student visa often pointed out that one of the men convicted in the 1993 World Trade Center terrorist bombing had entered the United States on a student visa, dropped out of school, and yet stayed in the country.

Former INS Commissioner Doris Meisner emphasized plans to automate a foreign student reporting and monitoring system when she testified before the Senate Committee on the Judiciary's Subcommittee on Immigration in 1995.[20] INS had not been maintaining the addresses of foreign students, and reviews of the reporting system questioned the accuracy of the data.[21] The National Commission on

---

[18] *Federal Register*, v. 44, November 22, 1978. p. 54620; *Federal Register*, v. 46, January 23, 1981. p. 7267; *Federal Register*, v. 48, April 5, 1983. p. 14575; and, *Federal Register*, v. 52, April 22, 1987. p. 13223.

[19] For a discussion of Mr. Freeh's memorandum, see: *Interpreter Releases*, v. 71, December 19, 1994.

[20] U.S. Congress. Senate Committee on the Judiciary. *Examining Nonimmigrant Immigration Issues*. Senate Hearing 104-814, Serial No. J-104-48. Washington, September 28, 1995.

[21] There have long been record keeping requirements for schools with foreign students, covering such information as name, address, country of citizenship, enrollment status, and field of study. The regulations were revised in 1983 so that schools no longer had to report

(continued...)

Terrorism, a bi-partisan commission established by Congress, cited the vulnerability of the foreign student visa in its June 2000 report, which recommended, among other things, that the INS automated system to monitor foreign students be enhanced and expanded.[22] Reports of evidence that several of the terrorists involved in the September 11 attacks entered the United States on foreign student visas has led many others to echo the earlier calls for a better monitoring system.

**Reporting Requirements.** When Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, it added statutory language mandating that the Attorney General, in consultation with the Secretaries of State and Education, develop by January 1, 1998, a program to collect data on F, J, and M nonimmigrants from at least five countries. By 2003, the data collection must include all countries. This provision, §641 of IIRIRA, requires that INS collect the following data elements:

- identity and address of the alien;
- nonimmigrant classification of the alien, date of visa issuance, and any change or extension;
- academic status of the alien (e.g., full-time enrollment); and
- any disciplinary action taken by the school, college, or university as a result of a crime committed by the alien.

INS is to collect the information electronically "where practical." According to §641 of IIRIRA, educational institutions are required to report this information to INS as a condition of continued approval to enroll foreign students.[23]

From June 1997 to October 1999, INS conducted the first pilot program known as the Coordinated Interagency Partnership Regulating International Students (CIPRIS) at 21 educational institutions in Georgia, Alabama, North Carolina, and South Carolina, at Atlanta's Hartsfield Airport, and at the INS Texas Service Center. In July 2001, INS announced that the second phase of its foreign student monitoring system, referred to as the Student and Exchange Visitor Information System (SEVIS), would begin at 12 Boston area institutions in November 2001. At a recent hearing,

---

[21] (...continued)
changes in status directly to INS. Since 1983, schools have had 3 business days to respond to requests for information about a foreign student. INS could bar schools that did not meet record keeping requirements from enrolling foreign students. (8 CFR §214.3(g)(1))

[22] National Commission on Terrorism. *Countering the Changing Threat of International Terrorism*, June 5, 2000. For a discussion of this report, see CRS Report RS20598, *National Commission on Terrorism Report: Background and Issues for Congress*, by Raphael F. Perl.

[23] The law also required, as of April 1, 1997, that the educational institutions collect a fee (not to exceed $100) from each of the foreign students to remit to the Attorney General to carry out the program. The 106th Congress amended this provision so that INS rather then the institutions would collect the fee (P.L. 106-396).

INS stated that about 900 institutions are issuing and updating student records in SEVIS.[24]

Prior to September 11, some university officials argued they would be turned into an enforcement agent of INS and expressed concern that the confidentiality of their student records would be compromised.[25] Although educational institutions stopped their calls to repeal §641 of IIRIRA after September 11 and now support a tracking system, many educational institutions across the country are expressing reservations about these new reporting requirements. They stated that the SEVIS is burdensome and that INS is not providing training to staff who must use SEVIS. They also note with concern that they do not know what procedures they will have to follow by January 1, 2003, because INS has not yet promulgated final regulations for SEVIS.[26] These concerns that INS will not have SEVIS fully operational by January 2003 are consistent with the findings of the DOJ Inspector General's evaluation of the foreign student tracking program.[27]

## Current Issues

Some are advocating a closer monitoring of aliens in the United States, particularly those present on foreign student visas. Supporters of this view assert that foreign students are the most likely class of nonimmigrants to include spies and terrorists, and they argue that increased monitoring of aliens on F, J, and M visas is essential to national security. Some are suggesting that there should be a moratorium on issuance of new foreign student visas until these questions are addressed. Others warn that this emphasis on foreign students as a major security and terrorist risk is misplaced and that such scrutiny may lead to excessive government monitoring without reducing the risk of terrorism. Many also question the feasibility of systems for nonimmigrant tracking, citing the work that remains on the reporting system for foreign students. A variety of options are being raised, and several of the major issues sparked by these options are discussed below.

**Strengthening Background Checks.** Some are suggesting that the policy of fingerprinting foreign students as a condition of their admission be reinstated.

---

[24] U.S. House of Representatives. Committee on the Judiciary. Subcommittee on Immigration, Border Security, and Claims. *Hearing on the INS's Implementation of the Foreign Student Tracking Program*, statement of Janis Sposato, INS Immigration Services Division, September 18, 2002. For hearing testimony, see: [http://www.house.gov/judiciary/immigration.htm].

[25] *Interpreter Releases*, v. 74, March 17, 1997.

[26] U.S. House of Representatives. Committee on the Judiciary. Subcommittee on Immigration, Border Security, and Claims. *Hearing on the INS's Implementation of the Foreign Student Tracking Program*, statement of Terry W. Hartle, American Council on Education, September 18, 2002. For hearing testimony, see: [http://www.house.gov/judiciary/immigration.htm].

[27] U.S. House of Representatives. Committee on the Judiciary. Subcommittee on Immigration, Border Security, and Claims. *Hearing on the INS's Implementation of the Foreign Student Tracking Program*, statement of Glenn A. Fine, DOJ Inspector General, September 18, 2002. For testimony, see [http://www.house.gov/judiciary/immigration.htm].

Others are exploring whether more advanced biometric identifiers should be used to screen foreign students to ascertain that they are indeed who they say they are and that they are not inadmissible to the United States. Proponents of enhanced screening assert that once these fingerprints or biometric identifiers are stored in an automated database, it can be continuously updated as new intelligence and law enforcement data become available to identify potentially deportable aliens already in the United States as well as exclude inadmissible aliens from entering. Those who oppose strengthening background checks for foreign students focus less on the principle and more on the feasibility. Opponents refer to the assessments made 20 years ago that the fingerprinting requirements were burdensome and time consuming. They speculate that the costs of putting in place a modern system with biometric identifiers would be significant. They also cite the diplomatic complications that could arise under reciprocity when U.S. citizens seek to travel to other nations.

**Accelerating SEVIS.** Some maintain that waiting until 2003 to have SEVIS fully operational nationwide is not acceptable given the current security threats, and that admission of foreign students should be curtailed until SEVIS is fully operational. They argue that INS must accelerate the implementation of the foreign student monitoring system, and some are advocating additional funding for INS to do so. For FY2002, Congress appropriated $36.8 million to get SEVIS up and running by January 1, 2003. While opposition to SEVIS has all but disappeared, some caution that its usefulness in detecting terrorist or security risks is quite limited and that too much emphasis on its implementation may pull needed INS resources from other important priorities.

**Expanding Reporting Requirements.** Some advocate more frequent reporting requirements so that foreign students who drop out or do not show up would be tagged in the monitoring system more quickly. Currently, §641 does not specify how often educational institutions must report the status of foreign students, and some fear that, as a result, the timeliness of the data is problematic. Adding additional data elements to help identify student who may fit a risk profile, some maintain, should also be considered. Others express concern that expanding the reporting requirements would slow the implementation and may also result in a system so complex that it is less feasible. Still others assert that the reporting responsibility should shift from the educational institution back to the foreign student, making them once again report to INS annually Opponents of this option argue that adding almost one-half million foreign student visa renewals to the workload of INS, an agency that already has millions of petitions pending, would be impractical and may make it even more cumbersome to identify security risks. Some suggest that home countries should play a more responsible role in monitoring the students sent to the United States, perhaps adding trigger mechanisms that would restrict admissions from countries whose students are more likely to violate the terms of their visas.

**Increasing Enforcement of Schools.** It appears that some schools, notably flight schools as reported by the media, have been admitting foreign nationals who lack proper visas to study in the United States, i.e., an F, J, or M visa. Those who argue further legislation is not necessary point out that such practices violate immigration law, placing the foreign national at risk of deportation as well as placing the educational institution at risk of losing federal approval to enroll foreign students.

Supporters of increased enforcement assert that closer monitoring and stricter penalties for schools that violate the law are needed to ensure that lax practices are stopped. Most proponents of increased enforcement would target vocational schools, especially flight schools, and intensive English language schools because of migration patterns reportedly followed by the foreign nationals involved in the September 11 attack.

**Ensuring That INS Implements Laws and Policies.** The arrival of letters on March 11, 2002, in which the INS notified a flight school that two of the September 11 terrorists — Mohammad Atta and Marwan Al-Shehhi — had been approved for foreign student visas called into question INS's ability to carry out its laws and policies. As it turns out, INS had actually approved the student visas for Atta and Al-Shehhi on July 17, 2001 and August 9, 2001, respectively. While neither INS nor DOS reportedly had any information at that time that would have indicated that the two men might be terrorists, it does appear that Atta might have been inadmissible on grounds of violating other provisions in INA when he re-entered the United States in January 2001.[28] Many argue that INS does not have sufficient personnel dedicated to implementing the foreign student tracking program, to reviewing the educational institutions for compliance, and to analyzing the SEVIS to detect fraud.[29]

## Legislation

**Enhanced Border Security and Visa Entry Reform Act.** On December 19, 2001, the House passed the Enhanced Border Security and Visa Entry Reform Act of 2001 (H.R. 3525), sponsored by Representative F. James Sensenbrenner, Chairman of the House Judiciary Committee. This bill was nearly identical to a bipartisan Senate bill (S. 1749, also titled the Enhanced Border Security and Visa Entry Reform Act of 2001) that incorporated key provisions from two other border security and visa entry reform bills — S. 1627 (Feinstein-Kyl) and S. 1618 (Kennedy-Brownback). The Senate passed H.R. 3525 on April 18, 2002. The President signed P.L. 107-173 on May 14, 2002.

Among the many provisions of P.L. 107-173 aimed at visa issuance reform are provisions that close perceived loopholes in the admission of foreign students. Specifically, Title V of P.L. 107-173 establishes electronic means to monitor and verify:

- documentation of acceptance of student by approved school or designated exchange program;

---

[28] U.S. Congress. House of Representatives. Committee on the Judiciary. *The INS's March 2002 Notification of the Approval of Pilot Training Status for Terrorist Hijackers Mohammed Atta and Marwan Al-Shehhi*. Washington, March 19, 2002. For hearing testimony, see [http://www.house.gov/judiciary/immigration.htm].

[29] U.S. House of Representatives. Committee on the Judiciary. Subcommittee on Immigration, Border Security, and Claims. *Hearing on the INS's Implementation of the Foreign Student Tracking Program*, statement of Glenn A. Fine, DOJ Inspector General, September 18, 2002. For testimony, see [http://www.house.gov/judiciary/immigration.htm].

- transmittal of documentation to DOS;
- issuance of nonimmigrant visa to student or exchange visitor;
- admission of student or exchange visitor to the U.S.;
- notice to school or exchange program that nonimmigrant has been admitted to the U.S.;
- registration and enrollment of nonimmigrant in school or exchange program; and
- any other relevant act by the nonimmigrant, including changing schools or programs.

The act also requires creation (within 120 days of enactment) of a transitional program until the monitoring system is fully implemented. The transitional program restricts issuance of a F, J, or M visa unless DOS has received electronic evidence from an approved institution that alien is accepted and the consular officer has adequately reviewed the applicant's record. It additionally requires DOS to transmit to INS that the alien has been issued a visa and, in turn, INS to notify the approved institution that the alien has been admitted to the U.S. and, within 30 days of registration deadline, the institution to notify INS if the alien fails to enroll.

**USA Patriot Act (P.L. 107-56).** The USA Patriot Act, which passed the House on October 24 and the Senate on October 25 and was signed by the President on October 26, 2001, includes provisions to expand the foreign student tracking system and authorizes $36 million in appropriations for the foreign student monitoring system, which had been funded through $95 fees paid by the foreign students. It also requires INS to have the foreign student tracking system established by §641 of IIRIRA fully operational by January 1, 2003.

**Other Legislation.** Many of the bills aimed at thwarting terrorism contain provisions regarding foreign students. They range in scope from tightening up the monitoring of foreign students under current law to establishing a temporary moratorium on the admission of foreign students until national security concerns are addressed. The following bills are not an exhaustive list, but cover those that have foreign students as the primary focus:

- H.R. 3002, introduced by Representative John Sweeney, would require the establishment of the foreign student monitoring system within 180 days of enactment. H.R. 3002 stipulates that if INS and DOS cannot meet this deadline, priority should be given to tracking students from countries listed as aiding terrorism or those countries the Attorney General deems as a national security risk.
- Representative Betty McCullom has introduced H.R. 3033, which would authorize appropriations (such sums as may be necessary) for the foreign student monitoring system.
- S. 1518/H.R. 3077 would expand the foreign student tracking system to include information on immediate family members who are accompanying the student. These companion bills introduced by Senator Kit Bond and Representative Mike Castle would require the school to inform the Attorney General within 30 days if a student fails to attend the institution and would instruct the Attorney General to add an alien's failure to attend school to the National Crime Information Center's Interstate Identification Index.

- Representative Peter Deutsch has introduced legislation (H.R. 2988) that would regulate flight schools. H.R. 2988 would, among other things, require flight schools to obtain a set of fingerprints and proof of identity for all students and to verify that all noncitizens who are enrolled are lawfully admitted as nonimmigrants. The bill would establish civil penalties for violations, with the amounts escalating from $3,000 to $7,000 per violation.
- Senator Olympia Snowe has introduced S. 1455, which would amend federal aviation law to prohibit a person from providing training in the operation of any jet-propelled aircraft to any alien within the United States unless the Attorney General certifies to such person that a background investigation of such alien has been completed.
- Representative Michael Bilirakis has introduced H.R. 3181, which would establish a temporary moratorium on the issuance of visas for nonimmigrant foreign students and other exchange program participants and would reform procedures for issuance of nonimmigrant student visas and for admission at ports of entry to the United States.
- Representative Marge Roukema has introduced H.R. 322, which would establish a temporary moratorium on the issuance of visas for nonimmigrant foreign students and other exchange program participants and would expand reporting requirements for universities under the foreign student monitoring program.
- H.R. 3515, introduced by Representative George Miller, would add provisions aimed at ensuring that aliens studying in the United States comply with the terms and conditions applicable to such study.