

CRS Report for Congress

Foreign Students in the United States: Policies and Legislation

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Summary

More than six years after the September 11, 2001, terrorist attacks by foreign nationals — including several terrorists on student visas — the security concerns over foreign student visas are being weighed against competitiveness concerns. Potential foreign students, as well as all aliens, must satisfy Department of State (DOS) consular officers abroad and immigration 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 the consolidated Terrorist Screening Database (TSDB) before issuing any visa. In part because of these security measures, student visa debates have expanded to include both security and market-based discussions.

Higher education institutions in the United States are concerned over their ability to attract the numbers and quality of foreign students, and whether the post-September 11 security measures impede the entry of potential students into the U.S. education system. The fields of science, technology, engineering and mathematics (STEM) increasingly rely on foreign students, and these fields hold a top priority with most research institutions. Furthermore, the U.S. economy has a high demand for the skill-sets produced in these fields of study, and the STEM students often provide a major link between the academic community and the labor market. Consequently, many groups in higher education and the private sector are seeking to expand pathways for foreign students to emigrate to the United States.

All nonimmigrant students are issued visas from one of three categories, and are monitored and tracked by the Department of Homeland Security (DHS). 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 two 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 FY2006, DOS issued 642,097 visas to F, J, and M nonimmigrants, making up 11% of all nonimmigrant visas issued. The Student and Exchange Visitor Information System (SEVIS) aims to manage the tracking and monitoring of foreign students. Participation in the SEVIS program is now mandatory for all higher education institutions enrolling foreign students.

A diverse set of issues related to foreign students, including foreign student funding and English-language competency, has raised concerns with some universities, advocacy groups, and other observers. Additionally, some recent legislation has focused on attracting foreign students in STEM fields. Legislation introduced in the House (H.R. 1645) and in the Senate (S. 1639) would create pathways to legal permanent residence for foreign students in the STEM fields of study. Although there are provisions in this legislation for undergraduate students, the emphasis has been on students obtaining advanced degrees. This report will be updated as warranted.

Contents

Background	1
Foreign Student Visas	1
F Visa	2
J Visa	3
M Visa	4
Duration of Status Visa	4
Processing, Screening, and Reporting	5
Agency Involvement	5
Screening Procedures	5
Security Concerns	6
Student and Exchange Visitor Information System (SEVIS)	7
Trends and Characteristics	10
Foreign Students on Non-Student Visas	14
Current Issues	19
Foreign Students and Funding	19
Foreign Students and Language Competence	20
New Pathways to Permanent Residence	21
SEVIS Fee Increase	23
Legislation in the 110 th Congress	25

List of Figures

Figure 1. F, J, and M Nonimmigrant Visas Issued in FY2007	11
Figure 2. Region of Origin for F and M Nonimmigrants, FY2007	12
Figure 3. Academic Levels of Foreign Students, 2006-2007	13
Figure 4. Major Fields of Study for Foreign Students, 2006-2007	14

Foreign Students in the United States: Policies and Legislation

Background¹

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. Although foreign students are also barred from receiving federal financial assistance, many are successful at gaining financial assistance from the colleges and universities they attend.²

Foreign students are generally considered to enrich cultural diversity of the educational experience for U.S. residents as well as enhance the reputation of U.S. universities as world-class institutions. 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 September 11, 2001 terrorist attacks conducted by foreign nationals — including several terrorists on foreign student visas — raised a series of questions about foreign students in the United States, their rights and privileges, the extent to which the U.S. government monitors their presence in this country, and whether U.S. policy hampers the ability of domestic higher education institutions to attract foreign students.

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

¹ This report was originally authored by Ruth Ellen Wasem.

² T.B. Hoffer, V. Welch, Jr., K. Williams, M. Hess, K. Webber, B. Lisek, D. Loew, and I. Guzman-Barron, *Doctorate Recipients from United States Universities: Summary Report 2004* (Chicago: National Opinion Research Center, 2005). (The report gives the results of data collected in the Survey of Earned Doctorates, conducted for six federal agencies, NSF, NIH, USED, NEH, USDA, and NASA by NORC), p. 60.

subsection in the law.³ The three visa categories generally 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 study, referred to as the duration of status.⁴ 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.⁵
- They must document that they have sufficient funds or have made other arrangements to cover all of their expenses for 12 months.⁶
- 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.⁷ 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.

³ §101(a)(15) of INA.

⁴ Those entering as secondary school students are only admitted for one year.

⁵ Schools that wish to receive foreign students must file a petition with DHS 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 DHS discovers that the school has failed to comply with the law or regulations.

⁶ F, J, and M students are barred from federal financial aid. See §484(a)(5) of the Higher Education Act of 1965, as amended.

⁷ 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.

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)⁸ has designated. They are admitted for the period of the program.⁹ 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 three 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.¹⁰

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 two 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:

⁸ This bureau was formerly the United States Information Agency (USIA).

⁹ As with secondary students entering with F-1 visas, J-1 students in secondary school programs are only admitted for up to one year.

¹⁰ 22 CFR §514.

- 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 two years.¹¹ Although many aliens with J-1 visas are 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 one 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.

Duration of Status Visa

Although 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 DHS 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, a foreign student was admitted for only one year and had to renew his or her visa each subsequent year for as long as he or she was enrolled. The former-INS then issued regulations in 1978 and 1981 allowing for visa validity periods longer than one year. In regulations in 1983 and 1987 that were aimed at “eliminating burdensome paperwork,” the same agency reduced the reporting

¹¹ 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.

requirements and established the “duration of status” policy that remains in practice currently.¹²

Processing, Screening, and Reporting

Agency Involvement

Nonimmigrant foreign students are processed by four different federal agencies during their tenure as applicants to and foreign students at United States higher education institutions. The first U.S. institution involved is the Department of State (DOS), which conducts the applicant interviews and either grants or rejects the visa applications. Once a nonimmigrant arrives at a United States port of entry, the individual receives an inspection by the Customs and Border Protection (CBP). The student’s arrival is reported to the Immigration and Custom Enforcement (ICE) for entry in to the Student and Exchange Visitor Information System (SEVIS). After entry, the alien’s academic institution is responsible for reporting information to the SEVIS database. The SEVIS information is then shared with DOS, CBP, and the U.S. Citizenship and Immigration Services (USCIS). The latter agency is responsible for adjudicating any adjustments in visa status the foreign students wishes to make.

Screening Procedures

Potential foreign students, as well as all aliens, must satisfy DOS’s consular officers abroad and DHS 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.¹³ 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).¹⁴

In terms of criminal, security and terrorist concerns, the consular officers who process visa applicants are required to check the consolidated Terrorist Screening Database (TSDB)¹⁵ before issuing any visa; thus, the names of foreign students are

¹² *Federal Register*, vol. 44, November 22, 1978, p. 54620; *Federal Register*, vol. 46, January 23, 1981, p. 7267; *Federal Register*, vol. 48, April 5, 1983, p. 14575; and *Federal Register*, vol. 52, April 22, 1987, p. 13223.

¹³ §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.

¹⁴ For background and analysis of visa issuance policy and activities, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

¹⁵ The TSDB is maintained by the Terrorist Screening Center (TSC), which is a multiagency collaborative effort administered by the Federal Bureau of Investigation (FBI). For more information, see CRS Report RL33645, *Terrorist Watchlist Checks and Air Passenger* (continued...)

run through various databases, as are those of all other nonimmigrants seeking a visa to enter the United States. In FY2006, DOS identified 15 potential nonimmigrants (i.e., foreign nationals coming temporarily) as inadmissible because of student visa abuse. Comparatively, DOS identified 4,924 potential nonimmigrants as inadmissible on criminal, security or terrorist concerns in FY2006.¹⁶ It is not known how many, if any, of these latter potential nonimmigrants were seeking to enter the United States on student visas.

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 visa (representatives of international organizations) nonimmigrants.¹⁷ 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.”¹⁸

Security Concerns

In 1995, the former-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 The former-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

¹⁵ (...continued)

Prescreening, by William J. Krouse and Bart Elias.

¹⁶ 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.

¹⁷ Immigration and Nationality Act of 1952, P.L. 82-414.

¹⁸ Immigration and Nationality Amendments of 1986, P.L. 99-653. See CRS Report RL31570, *Immigration: Alien Registration*, by Andorra Bruno.

¹⁹ For a discussion of Mr. Freeh’s memorandum, see *Interpreter Releases*, vol. 71, December 19, 1994.

²⁰ U.S. Congress, Senate Committee on the Judiciary, *Examining Nonimmigrant Immigration Issues*, hearing, 104th Cong., 1st sess., September 28, 1995, S.Hrg. 104-814, Serial No. J-104-48 (Washington: GPO, 1995).

²¹ There have long been record keeping requirements for schools with foreign students (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 former-INS automated system to monitor foreign students be enhanced and expanded.²² Reports that several of the terrorists involved in the September 11 attacks entered the United States on foreign student visas led many others to echo earlier calls for a better monitoring system.

Student and Exchange Visitor Information System (SEVIS)

When Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, it added statutory language mandating that the Attorney General (now Secretary of Homeland Security), 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 requirement included all countries. This provision, §641 of IIRIRA, requires that DHS 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.

²¹ (...continued)

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 changes in status directly to the former-INS. Since 1983, schools have had 3 business days to respond to requests for information about a foreign student. DHS can 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.

DHS is to collect the information electronically “where practical.”²³ According to §641 of IIRIRA, educational institutions are required to report this information to DHS as a condition of continued approval to enroll foreign students.²⁴

From June 1997 to October 1999, the former-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 former-INS Texas Service Center. In July 2001, the former-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. According to published statistics, there are currently 9,012 SEVIS-approved schools and 996,263 current active international non-immigrant students, exchange visitors, and their dependants in SEVIS.²⁵

Prior to September 11, 2001, some university officials argued they would be turned into an enforcement agent of the former-INS and expressed concern that the confidentiality of their student records would be compromised.²⁶ Although educational institutions stopped their calls to repeal §641 of IIRIRA after the terrorist attacks and now support a tracking system, many educational institutions across the

²³ Foreign students who wish to study in the United States must first apply to a SEVIS certified school. Once the student is admitted, the school enters the student’s name and identifying information into the SEVIS system. This process produces an I-20 form (Certificate of Eligibility for Nonimmigrant Student Status) for F and M nonimmigrants and a Form DS-2019 for J nonimmigrants, with both forms being generated by the SEVIS computer program. The foreign student may then apply for a student visa with the United States Embassy or Consulate in his or her home country. The consular officer then enters the visa information into SEVIS, confirming that the student is in the SEVIS database. A visa may only be issued within 90 days of the course of study registration date. Applications received more than 90 days in advance are held until a visa can be issued.

Prior to arrival in the United States, all educational nonimmigrant visa holders are required to have paid a SEVIS fee (i.e., those applying for student visas, or to change their nonimmigrant status to students). The regulation specifies that the fee is to be \$100, and can be paid electronically with a credit card, or by mail with a check or money order drawn on a U.S. bank and payable in U.S. dollars. Applicants for J-1 visas who work as au pairs, camp counselors, or participants in summer work travel programs are subject to a reduced fee of \$35, whereas J-1 visa holders who are visitors in an exchange program sponsored by the federal government are exempt from paying the fee. IIRIRA §431(e) as amended by §110 of P.L. 106-553 (signed into law on December 21, 2000). The operating budget for SEVIS comes from the fee collection.

²⁴ 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 than the institutions would collect the fee (P.L. 106-396).

²⁵ U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Student and Exchange Visitor Information System: General Summary Quarterly Report*, June 7, 2007, p. 3, at [http://www.ice.gov/doclib/sevis/pdf/quarterly_report_june07.pdf], visited September 20, 2007.

²⁶ *Interpreter Releases*, vol. 74, March 17, 1997.

country expressed frustration about these new reporting requirements. They argued that the SEVIS is burdensome and that DHS is not providing training to staff who must use SEVIS.²⁷ All continuing foreign students were required to be entered into SEVIS as of August 2003.²⁸

Following the full implementation of SEVIS in 2003, when its administration was taken over by the Student and Exchange Visitor Program (SEVP) at ICE, there has not been much legislative activity on foreign student monitoring. Some believe that SEVIS has been left relatively unaltered during this time because of high-profile incidents that have positively contributed to the SEVIS image with the general public. Notably, the data from SEVIS resulted in the detection of several instances of unaccounted alien students, including some as recent as the summer of 2006. In this high profile incident, 11 Egyptian student visa holders were admitted at U.S. ports of entry, but never reported to classes or to the appropriate SEVIS officials at Montana State University. University officials reported the absence to DHS, which was able to locate and apprehend all of the 11 students.²⁹ Incidents such as this one are generally accepted as indicators that SEVIS is working as intended.

Although SEVIS has been one of the less criticized DHS monitoring systems in recent years, ICE believes it is inadequate in its current form for security purposes.³⁰ Thus, the agency has proposed raising its fees to fund a second-generation system known as SEVIS II to address security vulnerabilities (discussed in the “Current Issues” section).³¹ Yet, concerns continue with respect to whether increased security is detracting from the United States’ ability to attract the number and quality of foreign students that higher education proponents advocate. The fields of science, technology, engineering and mathematics (STEM) have become particularly dependent upon foreign students, and these fields hold a top priority with most research institutions. Furthermore, the U.S. economy has a high demand for the skill-sets produced in these fields of study, and the STEM students can provide a major link between the academic community and the labor market.³² Consequently,

²⁷ Statement of Terry W. Hartle, American Council on Education, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims, hearing, *INS’s Implementation of the Foreign Student Tracking Program*, September 18, 2002.

²⁸ *Federal Register*, vol. 67, no. 238 (December 11, 2002), pp. 76256-76280.

²⁹ U.S. Department of Homeland Security, Immigration and Customs Enforcement, *SEVIS Newsletter*, vol. 3 no. 3 (October 2006), p. 1.

³⁰ U.S. Immigration and Customs Enforcement, “Adjusting Program Fees and Establishing Procedures for Out-of-Cycle Review and Recertification of Schools Certified by the Student and Exchange Visitor Program To Enroll F or M Nonimmigrant Students,” *Federal Register*, vol. 73, no. 77 (April 21, 2008), pp. 21260-21286.

³¹ *Ibid.*

³² Although conventional wisdom holds that there is a shortage of both STEM teachers and students, critics have questioned whether data actually support such assertions (Testimony of Michael S. Teitelbaum Vice President of the Alfred P. Sloan Foundation, in U.S. Congress, House Committee on Science and Technology, Subcommittee on Technology and Innovation, *The Globalization of R&D and Innovation, Pt. IV: Implications for the Science* (continued...))

with security measures now implemented, many groups in higher education and the private sector are seeking to develop pathways to immigration for foreign students.³³ The Bush Administration has responded to these concerns with recent regulatory changes aimed at facilitating such pathways (also discussed in the “Current Issues” section).³⁴

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 two 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.³⁵ In FY1989, the number of F, M, and J visas had grown to 373,932, constituting 5% of all nonimmigrant visas DOS issued. By FY2006, the most recent year data are available, DOS issued 706,167 visas to F, J, and M nonimmigrants, and these categories made up 11% of all nonimmigrant visas issued.³⁶ As **Figure 1** illustrates, J cultural exchange visitors lead all educational visa categories with 376,182 visas issued in FY2007.³⁷ The F academic students category followed with 320,545, and the M students category trailed with 9,440 visas issued in FY2007.

³² (...continued)

and *Engineering Workforce*, hearings, 110th Cong., 1st sess., November 6, 2007 (Washington: GPO, 2007).

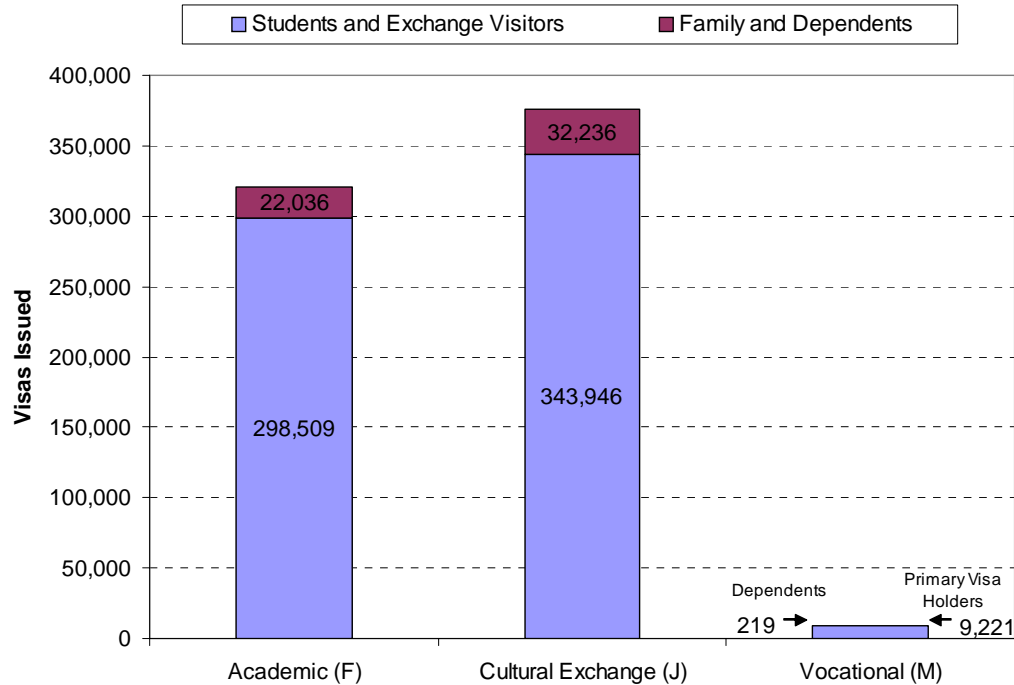
³³ For example, see NAFSA: Association of International Educators (National Association of Foreign Student Advisers), “NAFSA Supports International Student and Employment Provisions,” public policy statement, at [http://www.nafsa.org/public_policy.sec/international_student_1/immigration_reform_is_sues/proposed_changes_to_immigration].

³⁴ U.S. Citizenship and Immigration Services, “Extending Period of Optional Practical training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B Petitions,” *Federal Register*, vol. 73, no. 68 (April 8, 2008), pp. 18944-18956.

³⁵ The M visa was not established until 1981 by P.L. 97-116.

³⁶ U.S. Department of State, Bureau of Consular Affairs, *Report of the Visa Office: 2007*.

³⁷ Although a large number of J visa holders are exchange students, a number are participants in work exchange programs and other non-academic programs.

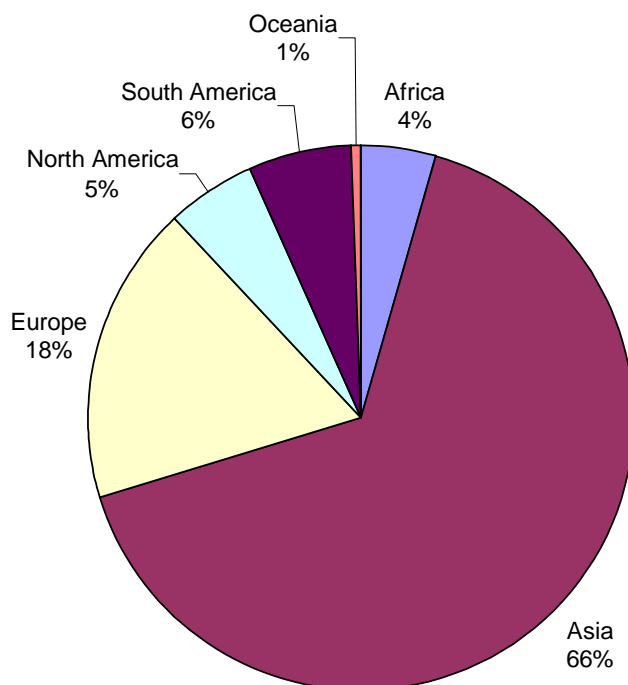
Figure 1. F, J, and M Nonimmigrant Visas Issued in FY2007

Source: CRS presentation of U.S. Department of State, Bureau of Consular Affairs, *Report of the Visa Office: 2007* data.

Note: While Department of State data from the *Report of the Visa Office: 2007* on the program type of the J visa recipient are not available, the *Open Doors2006* survey by the Institute of International Education reports that roughly 5% of foreign students are on J visas, but over half of international scholars are on J visas.

The largest sending region of the world for F and M student visas is Asia, as **Figure 2** depicts. DOS data show Asia having 217,407 visas issued to F and M nonimmigrants in FY2007, representing 66% of the 329,931 cumulative F and M visas issued. Europe had the second largest portion of visas issued with roughly 18%, or 58,652. North and South American countries had smaller portions, with 17,590 and 19,465, respectively, or approximately 5% and 6% of the total. Africa's share of F and M nonimmigrant visas issued was 14,668 or roughly 4% of the total, while Oceania's 2,149 visas issued constituted approximately 1% of the total for F and M visas.³⁸

³⁸ NAFSA: Association of International Educators (National Association of Foreign Student Advisers) estimates that foreign students and their dependents contributed more than \$13.29 billion to the U.S. economy during the 2004-2005 academic year. This figure does not include any potential "multiplier effects." (NAFSA: Association of International Educators, *The Economic Benefits of International Education to the United States for the 2004 — 2005 Academic Year: A Statistical Analysis*, 2006, at [http://www.nafsa.org/public_policy.sec/international_education_1/economic_impact_statements_2005], visited September 19, 2007).

Figure 2. Region of Origin for F and M Nonimmigrants, FY2007

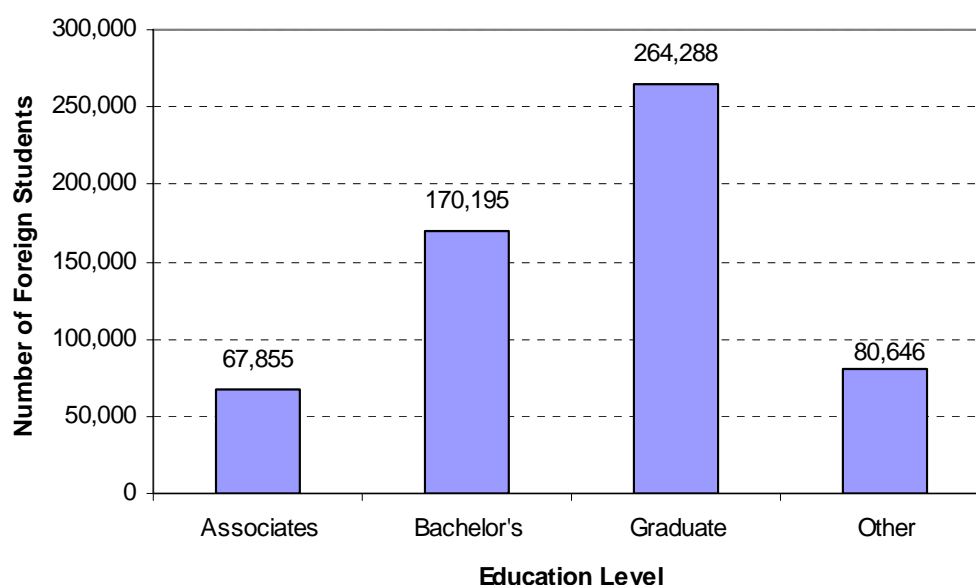
Source: CRS presentation of U.S. Department of State, Bureau of Consular Affairs, *Report of the Visa Office: 2007 data*.

Note: N = 329,931.

According to International Educational Exchange's *Open Doors* survey of U.S. colleges and universities, the largest group (45%) of foreign students enrolled in 2005-2006 were in graduate degree programs.³⁹ As **Figure 3** presents, the second largest portion (29%) were enrolled in undergraduate degree programs. An additional 11% were enrolled in associate degree programs. Foreign students enrolled in other programs (including practical training programs) comprised 14% of the foreign student total.⁴⁰

³⁹ Koh Chin, Hey-Kyong, and Rajika Bhandari, *Open Doors 2006: Report on International Educational Exchange*, New York: Institute of International Education, 2006.

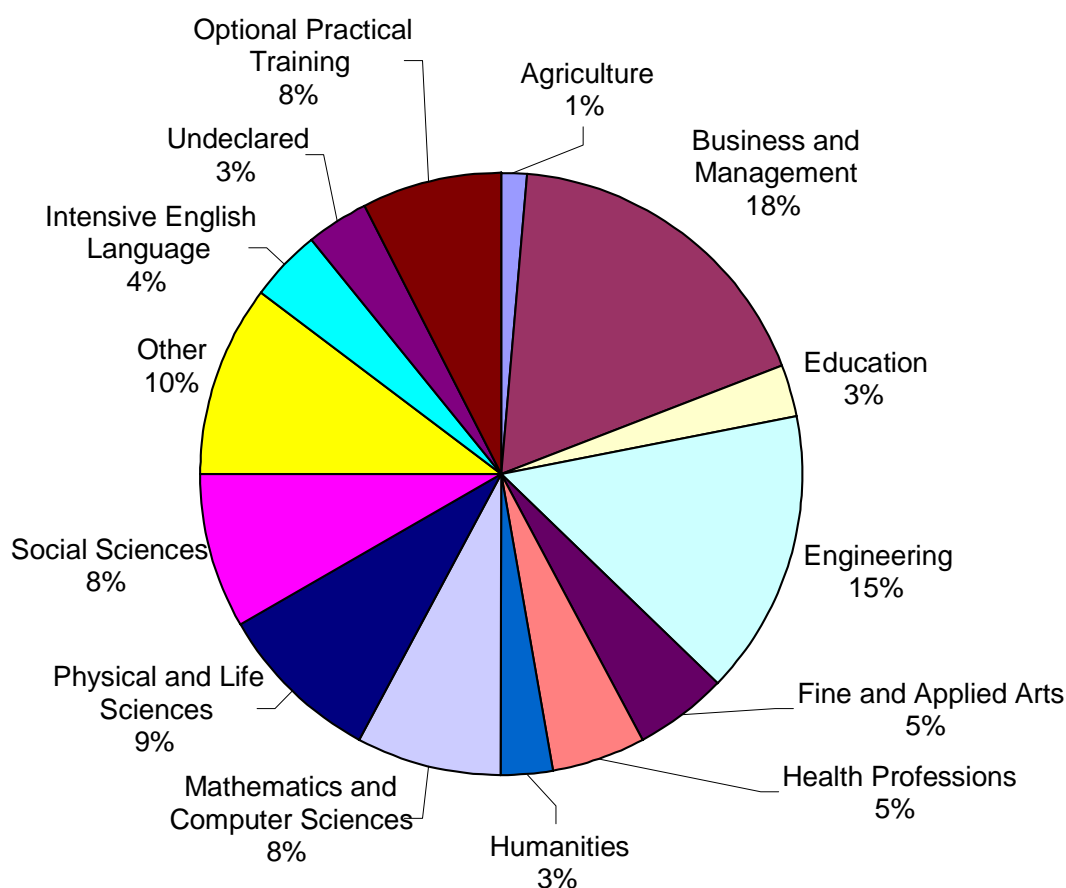
⁴⁰ Trade schools, such as flight schools, generally do not participate in this privately-conducted annual survey.

Figure 3. Academic Levels of Foreign Students, 2006-2007

Source: CRS Presentation of data from Koh Chin, Hey-Kyong, and Rajika Bhandari, *Open Doors 2006: Report on International Educational Exchange*, New York: Institute of International Education, 2006.

The fields of study undertaken by foreign students appear to be quite diverse, as **Figure 4** shows. The largest category is business and management, which is the field of study for 18% of foreign students. Engineering along with physical and life sciences follow with 15% and 9%, respectively. Mathematics and computer sciences and social sciences each accounted for 8% of the student population. The number of students participating in optional practical training has seen a marked increase in the last couple of years and currently accounts for 8% of foreign students' major study fields.⁴¹

⁴¹ For example, in 2006/07 there were 43,883 foreign students in optional practical training, while in 2004/05 there were 28,432 foreign students in these same programs (Koh Chin, Hey-Kyong, and Rajika Bhandari, *Open Doors 2006: Report on International Educational Exchange*, New York: Institute of International Education, 2006).

Figure 4. Major Fields of Study for Foreign Students, 2006-2007

Source: CRS Presentation of data from Koh Chin, Hey-Kyong, and Rajika Bhandari, *Open Doors 2006: Report on International Educational Exchange*, New York: Institute of International Education, 2006.

Note: N = 582,984.

Foreign Students on Non-Student Visas

Although the INA contains specific categories for intending students, almost all classes of nonimmigrant visitors are permitted to attend schools in the United States. Generally, the visa holders' course work must be incidental to their primary purpose for being in the United States. As shown in **Table 1** below, the principal visa holder in all classes of nonimmigrants except "B" visitors,⁴² "C" aliens in transit,⁴³ and "D" crewmen may attend school.⁴⁴ Moreover, the majority of these categories also permit spouses and minor children to attend school. However, because school attendance

⁴² 8 CFR §214.2(b)(7). Recreational and avocational types of studies, however, are permitted.

⁴³ 8 CFR §214.2(c).

⁴⁴ 8 CFR §214.2(d).

is incidental to the visa's primary purpose, the visas may not be extended to complete a course of study. As such, all nonimmigrant categories except aliens in transit, crewmen, "K" fiancées and spouses of U.S. citizens,⁴⁵ and "S" witnesses and informants⁴⁶ are allowed to change status to the F, J, or M nonimmigrant categories.

Nonimmigrant students who are in the United States on other than F, J, or M visas may attend the school of their choice on either a part-time or full-time basis (with exceptions noted in **Table 1**), including schools that are not approved by the (SEVP). Provided that school enrollment and attendance does not supercede the nonimmigrant's primary intent under his or her existing visa category (or in no other way violates the terms of the visa), the nonimmigrant may continue to pursue course work. Investigation of student activities and the determination of visa violations are made by ICE agents. ICE generally encourages nonimmigrants who wish to pursue education in the United States to apply for change of status to an F, J, or M nonimmigrant visa.⁴⁷ Moreover, if the nonimmigrant wishes to pursue employment resulting from educational attainment, he or she must apply for work authorization, as well as for change of status to a qualifying nonimmigrant visa.

The reporting requirements of SEVIS transfer to neither non-educational visa holders nor programs without enrolled F, J, or M visa holders. A foreign national enrolled on a non-educational visa is not required to submit documentation in the SEVIS system. Schools are required to report only on foreign students with F, J, or M visas, and if the school does not enroll those classes of nonimmigrants, it is not required to be SEVP approved for nonimmigrant visa holders to attend. The application and admissions process for both SEVP and non-SEVP-certified programs varies from school to school, but with the exception of the SEVIS document requirements,⁴⁸ the required documentation standard is set by the school.

In the wake of the September 11 terrorist attacks, Congress chose to increase the monitoring of educational visas. However, it did not create restrictions on other nonimmigrant visas to prevent school attendance by nonimmigrants without one of the three educational visas. Therefore, SEVIS serves as a monitoring system for foreign nationals admitted on educational visas, but it does not monitor foreign students as a whole. As an example, a trucking school may not be SEVP-certified but may still enroll a nonimmigrant on an "E" treaty trader or investor visa. Although the school would still have other reporting requirements, they would not be immigration-related; rather, they would represent the aggregate data on legal operations, as well as the distribution of federal and state-provided student funding. If the students do not receive federal funds and none of the students are on F, J, or M

⁴⁵ 8 CFR §214.2(k).

⁴⁶ 8 CFR §214.2(t)(12).

⁴⁷ For example, see DHS Immigration and Customs Enforcement, *Becoming a Nonimmigrant Student in the United States*, June 2007, at [http://www.ice.gov/sevis/becoming_nonimmigrant_student_52007.htm], visited December 5, 2007.

⁴⁸ Thus, F and M visa holders must have a SEVIS I-20 Form, while J visa holders must have a Form DS-2019 as provided by the program sponsor. All educational nonimmigrants must also submit the SEVIS I-901 Form along with the required \$100 fee for students.

visas, the trucking school has neither the incentive, nor an instrument, for reporting on its foreign student population to immigration authorities.

Table 1. Nonimmigrant Eligibility for Student Status, by Class

Nonimmigrant Class	8 CFR Reference Allowing Spouses And Children	Principal May Attend School	Spouse May Attend School	K-12 Allowed For Minor Children	Post Secondary Allowed for Unmarried Minor Children	Full-Time Study Required for Children 21 to 23(25) to Maintain Dependent Status	May Apply to Change Status to F- 1, M-1 or J- 1
A. Foreign Government Official	214.2(a)(1)(i) & (iii)	yes	yes	yes	yes	yes (1)	yes
B. Visitors		no (2)	NP	no (3)	no	NP	yes (4)
C. Aliens in Transit		no	NP	NP	NP	NP	NP
D. Crewmen		no	NP	NP	NP	NP	NP
E. Treaty Traders and Treaty Investors	214.2(e)(4)	yes	yes	yes	NP	NP	yes
F. Academic or Language Students	214.2(f)(15)	yes (5)	yes (6)	yes	yes (7)	NP	NP
G. Representatives to International Organizations	214.2(g)(1)(iii) & (iv)	yes	yes	yes	yes	yes (8)	yes
H. Temporary Workers	214.2(h)(9)(iv)	yes	yes	yes	yes	NP	yes
I. Foreign Media Representatives		yes	NP	NP	NP	NP	yes
J. Exchange Visitors	214.2(j)(1)(i)	yes	yes	yes	yes	NP	yes (9)
K. Fiancé(e)s and Spouses of U.S. citizens	214.2(k)(3)	yes	yes	yes	yes	NP	no
L. Intracompany Transferees	214.2(l)(7)(ii)	yes	yes	yes	yes	NP	yes
M. Vocational or other Nonacademic Students	214.2(m)(17)	yes (10)	yes (11)	yes	yes (12)	NP	yes (13)
N. Certain Parents and Children of Section 101(a)(27)(I) Special Immigrants	214.2(n)	yes	NP	yes	yes	NP	yes
O. Workers with Extraordinary Abilities	214.2(o)(6)(iv)	yes	yes	yes	yes	NP	yes
P. Artists, Athletes, and Entertainers	214.2(p)(1) and (8)(iii)(D)	yes	yes	yes	yes	NP	yes
Q. International Cultural Exchange Visitors	214.2(q)(1)(ii)	yes	yes	yes	yes	NP	yes
R. Religious Workers	214.2(r)(4) and (8)	yes	yes	yes	yes	NP	yes
NATO North Atlantic Treaty Organization	214.2(s)(1) and (2)	yes	yes	yes	yes	yes (14)	yes
S. Witnesses and Informants	214.2(t)(3)	yes	yes	yes	yes (15)	NP	NP
T. Alien Victims of Human Trafficking	214.11(o)(11)	yes (16)	yes	yes	yes	NP	yes
U. Alien Victims of Certain Crimes	Pending	yes (16)	yes	yes	yes	NP	yes
V. Certain Second Preference Beneficiaries	214.15(a) and (g)	yes	yes	yes	yes	NP	yes

Source: CRS presentation of information from DHS Immigration and Customs Enforcement, *Nonimmigrants: Who Can Study?*, May 2006, at [<http://www.ice.gov/doclib/sevis/pdf/Nonimmigrant%20Class%20Who%20Can%20Study.pdf>], visited November 30, 2007.

Notes: NP = No Provision in Statute or Regulation. Only F, J and M students are limited to attendance at SEVP-approved schools and programs. Nonimmigrants who are attending school incidental to their primary purpose for being in the United States may attend the school of their choice either part-time or full-time (unless otherwise noted). However, these nonimmigrants must abide by the rules of their current status and cannot extend their stay in the United States for the purposes of completing a program of study or a degree. Spouses and children who derive their status from that of the principal may not remain in the United States beyond the period approved for the principal in order to continue schooling. In most cases, children lose their derivative status at the age of 21 and must apply for a change of status to F-1 or M-1 if they wish to remain in the United States to continue their course of study.

(1) Dependent children of Foreign Government Officials who are age 21 to 23 (and up to age 25 if a bilateral agreement exists) may remain in the United States with derivative status if the child attends a post-secondary school full-time. Consular officials may also issue dependent visas to other close relatives. Anyone with derivative A status may study incidental to that status.

(2) Visitors may, however, engage in study that is merely avocational or recreational in nature.

(3) In some cases, a B-2 child is allowed to study if accompanying a parent and the study is incidental to reason for the parent traveling to the United States. For example, missionaries may enter as a B-2 and the children may attend K-12 school while the parent is pursuing the primary purpose of the visit. The length of stay will not be extended to allow a minor child to complete a school year.

(4) B nonimmigrants that apply for a change of status to an F or M nonimmigrant student may not begin attending school until the change of status is approved

(5) F-1 nonimmigrants must attend a SEVP Certified School full-time.

(6) An F-2 spouse may not engage in a full course of study, but may engage in study that is merely avocational or recreational in nature. To engage in a full course of study, an F-2 spouse must apply for and be granted F-1, M-1, or J-1 status.

(7) An F-2 child may not engage in study at the post-secondary level, but may engage in recreational or avocational study. To study at the post-secondary level, the child must apply for and be granted F-1, M-1, or J-1 status.

(8) Dependent children of Representatives to International Organizations who are age 21 to 23 (and up to age 25 if a bilateral agreement exists) may remain in the United States with derivative status if the child attends a post-secondary school full-time.

(9) J-1 nonimmigrants who are subject to the section 212(e) two-year foreign residence requirement must fulfill or obtain a waiver of that requirement before they may apply for immigrant status or status as an H or L nonimmigrant. J nonimmigrants who are subject to the INA 212(e) two-year foreign residence requirement cannot change from J to F-1 status, but can consular process to F-1. J nonimmigrants who received graduate medical education are not eligible for change of status to F-1 regardless of whether or not they are subject to 212(e), but also may consular process to F-1.

(10) M-1 nonimmigrants must attend an SEVP Certified School full-time.

(11) An M-2 spouse may not engage in a full course of study, but may engage in study that is merely avocational or recreational in nature. To engage in a full course of study, an M-2 spouse must apply for and be granted F-1, M-1, or J-1 status.

(12) An M-2 child may not engage in study at the post-secondary level, but may engage in recreational or avocational study. To study at the post-secondary level, the child must apply for and be granted F-1, M-1, or J-1 status.

(13) An M-1 cannot apply for a change of status to an F-1.

(14) Dependent children of North Atlantic Treaty Organization (NATO) Officials who are age 21 to 23 (and up to age 25 if a bilateral agreement exists) may remain in the United States with derivative status if the child attends a post-secondary school full-time.

(15) Includes a married or unmarried son or daughter. There is no age limit.

(16) Where the principal is under 21, their parents and unmarried siblings under 18 who are in T/U status are also allowed to study.

Current Issues

After dedicating the years since the September 11 terrorist attacks to improving security and tracking measures for foreign students, universities are now gearing their efforts toward attracting foreign students in high-demand fields of study.

Foreign Students and Funding

A newly emerging foreign student focus is the targeting of students intending to specialize in the areas of STEM. This focus is part of a broader movement within higher education that emphasizes STEM-related skill development.⁴⁹ Foreign students in these fields of study represent a particularly attractive demographic for most universities since they provide skilled assistants and other forms of research labor during their time of study. Furthermore, undergraduate foreign students pay full tuition and are therefore an important source of revenues for many universities. This is highly relevant in discussions of STEM students, because foreign students constitute a significant portion of the overall STEM student population. For example, data from the National Science Foundation (NSF) show that in 2004, foreign students on nonimmigrant visas accounted for 28.4% of all the doctorates in the sciences and 57.2% of all the doctorates in engineering.⁵⁰ Institute of International Education's (IIE) Open Doors data collection shows that STEM students accounted for 33.1% of foreign students in the 2005-2006 academic year.⁵¹

An ongoing point of contention for both STEM and non-STEM alike has been the availability of fellowships and teaching assistantship funding for foreign graduate students. Although these foreign graduate students are ineligible for direct aid from the government, most receive work-supported aid from the universities, where the funds stem from federally funded research grants to the university. This arrangement has been an ongoing source of controversy.⁵² A 2004 study revealed that a greater percentage of financial support for doctoral students goes to non-U.S. citizens than to U.S. citizens. According to the survey, 85.5% of temporary visa doctoral recipients received some form of assistantship, traineeship, fellowship, or dissertation grant as their primary source of funding. By comparison, similar funding support was received by 75.9% of permanent visa holders, 61.6% of U.S. citizens, and 69%

⁴⁹ For discussion on domestic STEM development, see CRS Report RL33434, *Science, Technology, Engineering, and Mathematics (STEM) Education Issues and Legislative Options*, by Jeffrey J. Kuenzi, Christine M. Matthews, and Bonnie F. Mangan.

⁵⁰ National Science Foundation, Division of Science Resources Statistics, *Science and Engineering Doctorate Awards: 2004*, NSF 06-308, Project Officer, Susan T. Hill (Arlington, VA, 2006), pp. 3-6, 66-67.

⁵¹ *Open Doors 2005: Report on International Educational Exchange*, Hey-Kyung Koh Chin, ed. (New York: Institute of International Education, 2005).

⁵² See for example House Subcommittee on Immigration and Claims, Impact of Immigration on Recent Immigrants and Black and Hispanic Citizens, 106th Cong., 1st Sess., March 11, 1999, p. 22, prepared statement of Julian R. Betts, Associate Professor, Department of Economics, University of California, San Diego.

of all doctoral recipients.⁵³ U.S. minority groups argue being particularly disadvantaged by the university support of foreign students because these foreign students may financial support allotted for minorities.⁵⁴ Among ethnic groups, approximately 44.0% of African Americans and 48.3% of American Indians use their own resources to support their graduate studies, as compared with 32.8% of Caucasians, 32.7% of Hispanics, and 18.1% of Asian Americans.⁵⁵

Foreign Students and Language Competence

Complaints have been levied against the support of foreign graduate students due to the lack of English competence.⁵⁶ Foreign students are required to take the Test of English as a Foreign Language (TOEFL) in order to demonstrate that they could effectively study and provide instruction in English. In Asian countries, such as China, cases of identity fraud have occurred at the test taking centers.⁵⁷ Students with lower levels of English competence have reportedly paid others to conduct the test in their place while falsely presenting themselves as the student seeking admission to a U.S. institution.⁵⁸ Universities have had difficulty determining whether TOEFL scores are fraudulent until the student actually arrives in the United States. At this time, written offers of support have already been extended to the student and accepted. Although English-language competency persists as a problem for many programs, some university programs have reacted by not admitting any graduate students from countries with a history of fraudulent TOEFL scores, or requiring additional in-person interviews and making admission conditional upon successfully completing such interviews.⁵⁹

⁵³ T.B. Hoffer, V. Welch, Jr., K. Williams, M. Hess, K. Webber, B. Lisek, D. Loew, and I. Guzman-Barron, *Doctorate Recipients from United States Universities: Summary Report 2004* (Chicago: National Opinion Research Center, 2005). (The report gives the results of data collected in the Survey of Earned Doctorates, conducted for six federal agencies, NSF, NIH, USED, NEH, USDA, and NASA by NORC), p. 60.

⁵⁴ See for example House Subcommittee on Immigration and Claims, Impact of Immigration on Recent Immigrants and Black and Hispanic Citizens, 106th Cong., 1st Sess., March 11, 1999, p. 33, prepared statement of Frank L. Morris, former Dean, Morgan State University.

⁵⁵ *Doctorate Recipients from United States Universities: Summary Report 2004*, p. 60.

⁵⁶ Gravois, John, "Teach Impediment - When Students Can't Understand the Instructor, Who Is to Blame?," *The Chronicle of Higher Education*, vol. 51, April 8, 2005, p. A10, and Bollag, Burton, "New Test of English as a Foreign Language Puts an Emphasis on Speaking," *The Chronicle of Higher Education*, vol. 52, October 7, 2005, p. A49.

⁵⁷ Mooney, Paul. "Chinese Court Reduces Penalty for Pirating Exams." *The Chronicle of Higher Education*, January 14, 2005, p.35.

⁵⁸ For example, see Louie Valencia, U.S. uncovers TOEFL exam scam, Niner Online, October 25, 2002, at [<http://media.www.nineronline.com/media/storage/paper971/news/2002/10/25/StateNational/U.s-Uncovers.Toefl.Exam.Scam-2004539.shtml>], visited December 5, 2007.

⁵⁹ Bollag, Burton. "New Test of English as a Foreign Language Puts an Emphasis on Speaking," *The Chronicle of Higher Education*, vol. 52, October 7, 2005, p. A49.

New Pathways to Permanent Residence

Many employers in STEM-related fields find the hiring of U.S. trained alien graduates to be an enticing prospect because of the diminishing proportion of U.S. citizens to foreign nationals among STEM-trained graduates. For those students on F-category nonimmigrant visas, a relationship with an employer can be built through the use of the optional training period. For up to 12 months after graduation, an F-visa student can serve as an intern for a United States firm without having to adjust his or her visa. Some firms find this option appealing because it can help bring in needed skills without being restricted to numerical limits or the same strict criteria as the H-1B visa for nonimmigrant professional workers.⁶⁰

For those students who pursue optional practical training with a U.S. employer, the training period becomes a valuable opportunity to develop a relationship with an employer that could eventually result in an employment-based petition for permanent residence. Any individual wishing to come to the United States as an employment-based legal permanent resident (LPR) must have the employer submit a petition on his/her behalf. Because of the diminishing proportion of U.S. citizens to foreign nationals among STEM-trained graduates, some employers have pushed for the lengthening of the optional practical training period, as well as the creation of direct pathways to LPR status for foreign students in U.S. higher education institutions.⁶¹ Such proposals are reflected in some recent legislation.

On April 8, 2008, USCIS published an interim final rule (with request for comments)⁶² on extending the optional practical training (OPT) period by 17 months⁶³ for F-1 nonimmigrant students with STEM degrees.⁶⁴ Only STEM students

⁶⁰ There are many anecdotal accounts of foreign students using the optional practical training period as a means of creating the necessary employer relations for LPR petitions. While some policymakers consider this a natural and positive chain of events, others consider this “F-1 to H-1B to LPR” pathway an abuse of the temporary element of nonimmigrant status and a way to circumvent U.S. worker protection laws. For more discussion of the H-1B nonimmigrant visa, see CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem.

⁶¹ For example, see “Ease Immigration for Foreign Grad Students,” *Minneapolis Star Tribune*, editorial, November 28, 2005.

⁶² U.S. Citizenship and Immigration Services, “Extending Period of Optional Practical training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B Petitions,” *Federal Register*, vol. 73, no. 68 (April 8, 2008), pp.18944-18956.

⁶³ This 17 month extension would be added to the existing 12 month OPT period available to all qualifying F-1 students, thereby providing the option of up to 29 months of OPT for F-1 nonimmigrant STEM students.

⁶⁴ A full list of STEM degrees is available at ICE’s Student and Exchange Visitors Program website, at [<http://www.ice.gov/sevis>], visited April 15, 2008.

who accept employment with employers enrolled in E-Verify⁶⁵ would be eligible for the 17-month OPT extension.⁶⁶ The student must request a recommendation for an extension from his or her designated school official (DSO). If the DSO recommends the student, this recommendation would be entered by the DSO into SEVIS, at which time the student would submit Form I-765 and any appropriate fees to USCIS.⁶⁷ The student would also be required to report to the DSO at his or her school certain employment-related information⁶⁸ and verify this information every six months during the extension.⁶⁹ If a student with an OPT extension leaves employment, the employer must report this information to the DSO within 48 hours.

As a complement to the new OPT extension, USCIS provided two technical changes to the post-completion OPT. The first change allows all F-1 students to apply for OPT during the 60-day departure preparation period following the completion of their course requirements. Previously, applications had to be submitted prior to completing required course work. The second technical change clarifies when a period of unemployment during authorized OPT violates the F-1 status requirements.⁷⁰ The interim final rule specifies that for students on a 12-month OPT, the aggregate maximum allowed period of unemployment is 90 days. For students with a 17-month OPT extension, this maximum period is increased by 30

⁶⁵ Under the interim final rule, an employer must participate in E-Verify (which includes entering into a Memorandum of Understanding (MOU) with DHS and the Social Security Administration) in order to employ F-1 students with a 17-month extension of post-completion OPT. If the student is a new hire, the employer must verify the student's employment eligibility, as well as the eligibility of all other new hires. However, if the employer enrolls in E-Verify to retain a current OPT student, the employer may not verify that student's eligibility, nor any other current employees, as the verification of existing employees is prohibited under the MOU.

⁶⁶ According to DHS records, as of April 2008 there were approximately 70,000 students participating in OPT, of which approximately 23,000 were studying in designated STEM fields. The educational distribution in this population includes 4,000 bachelor's degrees, 13,000 master's degrees, and 6,000 students with a doctorate. DHS estimates that of these 23,000 students, roughly 12,000 will apply for the 17 month OPT extension. (U.S. Citizenship and Immigration Services, "Extending Period of Optional Practical training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B Petitions," *Federal Register*, vol. 73, no. 68 (April 8, 2008), p. 18951.)

⁶⁷ According to the interim final rule, provided that an F-1 student has properly filed Form I-765 before the end date of his or her OPT, that student would be allowed to maintain continuous employment for up to 180 days while USCIS adjudicates the request for an extension. If USCIS grants an OPT extension, any continuous employment past the OPT end date would count towards the maximum OPT period of 29 months.

⁶⁸ This employment-related information includes the student's name, the student's residential and mailing address, the student's employer, and the address of the student's employer.

⁶⁹ This information is reported by the DSO in the Student and Exchange Visitor Information System (SEVIS).

⁷⁰ Regulations did not previously specify how long a student with authorized OPT could be unemployed before violating his or her F-1 student status.

days (for a maximum aggregate of 120 days over the course of the entire 29-month OPT period). These unemployment periods are permitted with the intention of allowing for job searches and providing breaks when switching employers.

In addition to the OPT extension, the USCIS rule change also addresses the commonly referred to “cap-gap” for H-1B nonimmigrant employment authorization. The cap-gap occurs when the period of admission for an F-1 student with an approved H-1B petition expires before the start date of the H-1B employment, thus creating a gap between the end of the F-1 status and beginning of the H-1B status. Under previous regulations, USCIS could authorize extensions for students caught in a cap-gap, but only when the H-1B cap was likely to be reached by the end of the fiscal year. USCIS was also previously required to announce the extension of status in the *Federal Register*. The interim final rule of April 8, 2008, removes these limitations, thereby allowing automatic extensions of status and employment authorizations for F-1 students with pending H-1B petitions.⁷¹ The extension of status applies to all F-1 students with pending H-1B petitions during a fiscal year.⁷²

SEVIS Fee Increase

On April 21, 2008, ICE published a proposed rule in the *Federal Register*⁷³ that would raise program fees and establish SEVIS recertification procedures for participating schools by the Student and Exchange Visitor Program (SEVP). Current SEVIS fees are \$100 for most applicants.⁷⁴ The new rule would raise fees for each

⁷¹ For those F-1 students whose H-1B petitions are denied, they will have the standard 60 day period from notification of denial or rejection of the petition before they must depart from the United States.

⁷² With regard to students who had filed for H-1B petitions for FY2009, USCIS issued a short-term, immediate measure, stating:

“Since the rule was published after the filing period had closed for new FY 2009 H-1B petitions, many petitioners of F-1 students did not include a request for a change of status with the H-1B petition. Instead, petitioners requested consular notification based on the assumption that these students would have been required to leave the United States to obtain an H-1B visa at a consular office abroad.

USCIS has determined that it will allow petitioners of F-1 students whose H-1B petitions were randomly selected to receive an H-1B visa number for FY2009 following the closure of the filing period, to now request a change of status on behalf of qualified beneficiaries, if such requests are received within 30 days of the issuance of the receipt notice.” (U.S. Citizenship and Immigration Services, “USCIS to Allow F-1 Students Opportunity to Request Change of Status: Short-term, Immediate Measure for Beneficiaries of Selected H-1B Petitions,” Press release, April 18, 2008)

⁷³ U.S. Immigration and Customs Enforcement, “Adjusting Program Fees and Establishing Procedures for Out-of-Cycle Review and Recertification of Schools Certified by the Student and Exchange Visitor Program To Enroll F or M Nonimmigrant Students,” *Federal Register*, vol. 73, no. 77 (April 21, 2008), pp. 21260-21286. ICE is accepting comments on the proposed rule until June 20, 2008.

⁷⁴ Although the current fee is set in statute (8 U.S.C. §1372(e)(4)(A)), the statute also provides that the Secretary of Homeland Security may adjust these fees on a regular basis to account for changes in the cost of carrying out the program (8 U.S.C. §1372(g)). The fee
(continued...)

F or M student to \$200, while most J exchange visitors would be charged \$180. Exchange visitors such as camp counselors, au pairs, and summer work/travel program participants would pay a fee of \$35.⁷⁵ Also, ICE proposes raising the fee for submitting a school certification petition for a school seeking to admit F or M students. The new certification fee would be set to \$1,700. Moreover, each school campus would require a mandatory site review with an accompanying fee of \$655.⁷⁶ ICE is seeking to make the proposed rule effective on October 1, 2008.

The published rationale for the proposed fee increase is based largely upon financing increased enforcement activities and the development of SEVIS II.⁷⁷ SEVIS II would be a person centric, automated system with an person-centric configuration that would incorporate electronic forms. The shift in SEVIS is necessary, ICE claims, because the current configuration is based on tracking documents (including distinct and unassociated documents for the same individual within the system), which leaves the system exposed to security threats.⁷⁸ The FY2008 enacted budget for ICE included \$56 million for the SEVP. The FY2009 presidential budget request included an SEVP request of \$120 million, an increase of \$64 million, or roughly 113%. Most of the funding increase would be directed toward equipment, services, and personnel related to the increased enforcement and SEVIS transformation.⁷⁹

⁷⁴ (...continued)

adjustments are statutorily permitted once SEVIS covers nationals of all countries. Spouses and dependent children of students and exchange visitors do not have to pay the Form I-901 fee.

⁷⁵ Government-sponsored exchange visitors in G-1 programs would be fee exempt.

⁷⁶ The current certification fee is \$230, plus an additional \$350 for each initial site visit to a school campus. There would be no cost to schools for recertification as this cost is built in to the fee for Form I-901. Consequently, schools that have already received certification by SEVP should be unaffected by the certification fee increases, provided they are in compliance with the program's terms. However, many schools might still be affected by the increases to F, J, and M students, since many schools pay for these fees as incentives or scholarships for certain foreign students. Thus, schools may in some cases have to decide whether or not to absorb this additional fee amount.

⁷⁷ U.S. Immigration and Customs Enforcement, "Adjusting Program Fees and Establishing Procedures for Out-of-Cycle Review and Recertification of Schools Certified by the Student and Exchange Visitor Program To Enroll F or M Nonimmigrant Students," *Federal Register*, vol. 73, no. 77 (April 21, 2008), p. 21264.

⁷⁸ *Ibid.*

⁷⁹ According to the *ICE FY2009 Congressional Budget Justifications*, the Compliance Enforcement Unit would account for \$45 million of the SEVP budget, while SEVIS II development would account for \$25 million. Combined, these two items would account for approximately 58% of the SEVP budget for FY2009.

Legislation in the 110th Congress

Comprehensive immigration reform was the subject of much discussion at the start of the 110th Congress, but because of stalled efforts, it is unclear whether such legislative reform (including student visa reform) will be taken up again in the 110th Congress.⁸⁰ Student visa reform is included as a part of more comprehensive immigration reform in H.R. 1645, the Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (STRIVE), as well as in S. 1639 (entitled “A Bill to Provide for Comprehensive Immigration Reform and for Other Purposes”). Each of these bills would create a new F-1 visa category specifically designed for foreign students intending to pursue studies in a STEM-related field, while renumbering the old F visa categories.⁸¹ Students obtaining a newly created F-1 nonimmigrant visa would not need to demonstrate an intent of departing the United States upon completion of their studies.⁸² Students in this category could also pursue optional practical training periods of up to 24 months after completing their degree. Furthermore, foreign students on F-class nonimmigrant visas would be allowed to pursue off-campus work provided that the employer attempted to first hire a similarly qualified U.S. citizen for a period of 21 days prior to employment. Employers would be required to pay foreign students the higher of the average or prevailing wage in the field of employment. The act would also preserve the visa status of foreign students and exchange visitors who resided within a district declared to have been affected by Hurricane Katrina or Hurricane Rita.

Generally, the STRIVE Act contains several foreign student provisions not included in S. 1639. The STRIVE Act would remove LPR numerical limits on foreign nationals who obtained a master’s degree or higher at a U.S. accredited university. Others exempted from the numerical limit on LPR status would be aliens who have earned a master’s degree or higher in science, technology, engineering, or math (STEM) and have been working in a related field in the United States in a nonimmigrant status during the three-year period preceding their application for an employment-based immigrant visa. These exemptions from LPR numerical limits would not only apply to current and future students, but would also apply to foreign degree recipients of U.S. universities who received their degree prior to the legislation.

Another bill entitled the Securing Knowledge, Innovation and Leadership Act of 2007 (SKIL), or S. 1083, would provide the same visa reforms as those of the STRIVE Act, with the exception of the provisions for off-campus employment and displaced students from natural disasters. The bill would create a new F-1 visa

⁸⁰ For an overview of immigration reform issues before the 110th Congress, see CRS Report RS22574, *Immigration Reform: Brief Synthesis of Issue*, by Ruth Ellen Wasem.

⁸¹ This new category would not displace the other categories. Instead, the other F-visas would be renumbered such that the current F-1 would become an F-2, the current F-2 would become an F-3, and the current F-3 would become an F-4.

⁸² Under current statute, in order for an applicant to qualify for an F visa, the applicant must appear to have no intention of abandoning his or her foreign residence to permanently migrate to the United States. (INA §101(a)(15)(F))

category for STEM students and remove the same LPR numerical limits as those proposed to be removed through the STRIVE Act. The SKIL Act was previously included as part of the Comprehensive Immigration Reform Act of 2006 (S. 2611 as passed by the Senate) in the 109th Congress.⁸³

The comprehensive immigration legislation introduced by Senators Ted Kennedy and Arlen Specter on May 21, 2007 (as S.Amdt 1150 to S. 1348)⁸⁴ includes the same provision for a new category for STEM students as the STRIVE Act. Unlike the STRIVE Act, the new STEM category in the Senate proposal would be numbered F-4. Students on F visas would be allowed to work off-campus as well. However, the Senate proposal has no provisions for removing LPR numerical limits on foreign nationals who obtained a master's degree or higher at a U.S. accredited university. On June 18, 2007, Senators Kennedy and Specter introduced a subsequent version of the comprehensive immigration reform legislation as S. 1639, which although not identical to S.Amdt. 1150 keeps the same foreign student provisions intact. Among those publically associated with negotiating the compromise legislation are Homeland Security Secretary Michael Chertoff and Commerce Secretary Carlos Guterrez. S. 1639 stalled in the Senate on June 28, 2007, when the key cloture vote failed.

Finally, on December 13, 2007, Representative Bilirakis and eight co-sponsors introduced H.R. 4577, entitled the "Student Visa Security Improvement Act." Under this bill, consular officers would have to review all applications for F, M, or J visas with special emphasis on determining whether applicants are inadmissible for terrorist activities.⁸⁵ Additionally, reporting guidelines to the SEVIS system would be tightened, requiring institutions or program sponsors to report whether educational visa holders (1) have active program or institutional attendance; (2) have gone unobserved for more than 30 days during academic terms; (3) have gone unobserved for more than 60 days outside academic terms; or (4) have transferred to another institution or program, or been hospitalized or otherwise incapacitated necessitating

⁸³ One provision that existed in S. 2611 as passed by the Senate that does not exist in the SKIL Act or STRIVE Act is a provision for exchange students. Under the Comprehensive Immigration Reform Act of 2006, a new J-STEM nonimmigrant category would have been created for advanced students in higher education cultural exchange programs. In addition to not needing to demonstrate an intent to depart the United States at the conclusion of their visa duration, J-STEM visa holders would also not have been subject to the two year foreign residency requirement before adjusting to a new status, which current J-class visa holders are subject. (INA §212(e))

⁸⁴ S. 1348 was introduced by Senate Majority Leader Harry Reid as a placeholder while the language for the new immigration reform bill was being negotiated. The placeholder bill that Senator Reid introduced was S. 2611 from the 109th Congress — a bill which had previously passed the Senate.

⁸⁵ The relevant inadmissibility criteria for terrorist activities is listed in statute under 8 U.S.C. 1182(a)(3)(B). For more information on inadmissibility on terrorist grounds see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

a program absence within the previous 21 days.⁸⁶ DHS would grant enhanced access to SEVIS for appropriate additional employees of academic institutions, with at least one additional authorized user for every 200 educational visa holders. In addition to existing data entry requirements, authorized users would be required to enter whether educational visa holders' performance meet the minimum academic standards at their institution, as well as the timely entry of academic majors, including changes to majors.

⁸⁶ Although the bill authorizes appropriations for its implementation, it is unclear if institutions and exchange programs would be reimbursed for any additional administrative costs of complying with the reporting requirements.