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Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)

Updated January 14, 2005

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Summary

There has been increased interest in monitoring foreign students while maintaining the long tradition of permitting international scholars to study in the United States. 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. 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. Recently, the Department of Homeland Security (DHS) implemented an electronic foreign student monitoring system.

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 foreign students from at least five countries, and mandated that by 2003, the data collection include all countries. IIRIRA required the former Immigration and Naturalization Service (INS) to collect the information electronically "where practical." The USA Patriot Act of 2001 included provisions to expand the foreign student tracking system and authorized appropriations for the system, which was supposed to be funded through fees, paid by the students. The Enhanced Border Security and Visa Entry Reform Act of 2002 increased monitoring of foreign students and closed perceived loopholes.

The foreign student monitoring system created by the former INS, and mandated in IIRIRA, is referred to as the Student and Exchange Visitor Information System (SEVIS). SEVIS, which automated an existing manual data collection process, became operational for all incoming students on February 15, 2003, the deadline for all institutions which had previously been approved to admit foreign students to apply for SEVIS certification and enter all new students into the SEVIS system. The educational institutions were given until August 1, 2003 to enter all continuing students into the system, and to have their SEVIS certification completed. There have been few stories in the press of foreign students having problems entering the United States as a result of the implementation of SEVIS. Nonetheless, schools have reported technical difficulties operating SEVIS, and reported discrepancies between information received from different bureaus in DHS regarding SEVIS operations and requirements. In addition, some have concerns that it may be difficult for foreign students to pay the fee in the manner outlined in regulations, while others contend that the fee payment rules will not be a burden on students as most have already made similar types of payments to apply to schools. Additionally, some have noted delays in student visa processing. Prior to the implementation of SEVIS it was difficult to know when foreign students overstayed their visas. Through SEVIS, DHS should be able to identify students who have violated the terms of their visas; however, some question whether DHS has the staff to locate all student visa violators, and whether it is a beneficial use of DHS resources to do so. Others are concerned that clerical errors will lead to unwarranted enforcement actions. This report will be updated as needed.

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Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)

Background

Since the Immigration Act of 1924, the United States has expressly permitted foreign students to study in U.S. institutions. 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. 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. 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.¹

Legislative History of the Student Monitoring System

Illegal Immigration Reform and Immigrant Responsibility Act

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 the following data on foreign students from at least five countries:

- identity and address of the alien;
- nonimmigrant classification of the alien (i.e., F, J, or M classification), 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.

¹ Parts of this report are taken from CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by Ruth Ellen Wasem.

The law mandated that the data collection be extended to include all countries by 2003. IIRIRA required the former Immigration and Naturalization Service (INS)² to collect the information electronically “where practical.” It also mandated that educational institutions report this information to INS as a condition of continued approval to enroll foreign students. In addition, the law 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 the INS rather than the institutions would collect the fee (P.L. 106-396).³

The USA Patriot Act

The USA Patriot Act (P.L. 107-56) included provisions to expand the foreign student tracking system and authorized \$36.8 million in appropriations for the foreign student monitoring system. It also required that by January 1, 2003, the INS was to have the foreign student tracking system established by §641 of IIRIRA fully operational. The act required the Attorney General, in consultation with the Secretary of State, to include information on the date of entry and port of entry on every foreign student. The act also expanded the foreign student tracking system to include “other approved educational institutions” such as air flight schools, language training schools, or vocational schools approved by the Attorney General, in consultation with the Secretaries of State and Education.

Enhanced Border Security and Visa Reform Act

The Enhanced Border Security and Visa Reform Act of 2002 (P.L. 107-173) further strengthened the foreign student tracking system by establishing electronic means to monitor and verify:

- documentation of acceptance of student by approved school or designated exchange program;
- transmittal of documentation to the Department of State (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

² The Homeland Security Act of 2002 (P.L. 107-296) abolished the Immigration and Naturalization Service (INS) and transferred most of its functions to various bureaus in the new Department of Homeland Security (DHS) effective Mar. 1, 2003. The Bureau of Immigration and Customs Enforcement (ICE) within DHS is charged with maintaining the foreign student tracking system.

³ Reportedly, the fee was not collected until Sept. 1, 2004.

- any other relevant act by the nonimmigrant, including changing schools or programs.⁴

Student and Exchange Visitor Information System (SEVIS)

The foreign student monitoring system created by the INS is referred to as the Student and Exchange Visitor Information System (SEVIS).⁵ SEVIS automated an existing manual data collection process. INS issued a final rule regarding the retention and reporting of information regarding foreign students on December 11, 2002. The December 11, 2002 regulation implemented SEVIS, establishing a process for the electronic reporting of information on foreign students. SEVIS became operational for all incoming students on February 15, 2003, the deadline for all institutions which had previously been approved to admit foreign students to apply for SEVIS certification⁶ and enter all new students into the SEVIS system.⁷ On May 23, 2003, DHS issued an interim regulation, effective on the same date, amending previous regulations dealing with foreign students and establishing the verification and reporting procedures required for SEVIS.⁸ The educational institutions were given until August 1, 2003, the same day in which all schools were required to have their SEVIS certification completed, to enter all continuing students into the system.

Fee Collection

IIRIRA required, as of April 1, 1997, that the educational institutions collect a fee (not to exceed \$100) from each foreign student to remit to the Attorney General to carry out the program. On December 21, 1999, INS published a proposed regulation regarding the collection of the fee by schools and remittance of the fees

⁴ For further discussion and analysis, see CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by Ruth Ellen Wasem.

⁵ From June 1997 to Oct. 1999, the 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 Texas Service Processing Center. In July 2001, the 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 Nov. 2001.

⁶ Prior to the implementation of SEVIS, schools that wished to enroll foreign students had to seek approval from DHS. Certification to enroll in SEVIS now functions as approval to admit foreign students. The rules for certification are codified in 8 CFR §214.3. Institutions which admitted foreign students prior to the creation of SEVIS were required to apply for SEVIS certification. At this time, schools not certified to enroll in SEVIS cannot accept foreign students.

⁷ *Federal Register*, vol. 67, no. 283, Dec. 11, 2002, pp. 76256-76280; *Federal Register*, vol. 68, no. 100, May 23, 2003, p. 28129.

⁸ *Federal Register*, vol. 68, no. 100, May 23, 2003, pp. 28129-28132.

to the Attorney General.⁹ INS received 4,617 comments on the regulation, the majority of which responded that fee collection for a governmental agency was not an appropriate activity for academic institutions. The 106th Congress amended the fee provision in IIRIRA so that INS rather than the institutions would collect the fee (P.L. 106-396). Interim regulations on fee collection were issued on October 27, 2003,¹⁰ and the final regulation was issued on July 1, 2004.¹¹ The regulation specifies that the fee is to be \$100,¹² 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.¹³ Since September 1, 2004, fees for the SEVIS program have been collected from potential foreign students (i.e., those applying for student visas, or to change their nonimmigrant status to students). The fee is not being collected from those who have already been issued a student visa. The operating budget for SEVIS comes from the fee collection.¹⁴

Admissions and Tracking Process

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.¹⁵ The foreign student may then apply for a student visa with the United States Embassy or Consulate in their home country.¹⁶ The consular officer then enters the visa information into SEVIS, confirming that the student is in the SEVIS database. The consular officer also checks the prospective student against other databases to ascertain whether the student is eligible for a visa (i.e., the prospective student is not a security risk, does not have criminal record, or any other issue which would render the prospective student inadmissible to the United States under the Immigration and Nationality Act).¹⁷

⁹ *Federal Register*, vol 64, no. 244, Dec. 21, 1999, pp. 71323-71331.

¹⁰ *Federal Register*, vol. 68, no. 207, Oct. 27, 2003, pp. 61148-61157.

¹¹ *Federal Register*, vol. 69, no. 126, July 1, 2004, pp. 39814-19827.

¹² 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, while 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 Dec. 21, 2000).

¹³ This regulation also exempts from paying the fee aliens who paid the SEVIS fee, but their original visa application was denied, if they reapply for a student visa within nine months.

¹⁴ Prior to the fee collection, the operating budget for SEVIS came from general DHS/INS appropriations. Congress only appropriated funds specifically for SEVIS in FY2002.

¹⁵ This process generates an I-20 form (Certificate of Eligibility for Nonimmigrant Student Status) which is generated by the SEVIS computer program.

¹⁶ 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.

¹⁷ For more information on the role of consular officers in determining eligibility for nonimmigrant visas see CRS Report RL31381, *U.S. Immigration Policy on Temporary* (continued...)

When the student arrives at a port of entry in the United States, an immigration inspector confirms that the student has a record in the SEVIS database, and enters the student's arrival into the SEVIS database. The schools are then responsible, 30 days after the start of the academic term, to note in the SEVIS system if the student has shown up for class, and the course of study being pursued. The school has an ongoing responsibility to report any change in the student's status (i.e., expulsion, suspension, change in major, graduation) in SEVIS. Schools are also required to provide information on people who have derivative status (such as a student's spouse or child) on a student's visa.

Issues

Management of SEVIS. Congress has held several hearings on SEVIS.¹⁸ Although no hearings have been held after the full implementation of SEVIS, many of the issues raised during the hearings seem to remain. There are reportedly issues with SEVIS that stem from the abolition of INS and the division of many of its functions into three components in DHS — the Bureau of Citizenship and Immigration Services (USCIS), the Bureau of Immigration and Customs Enforcement (ICE), and the Bureau of Customs and Border Protection (CBP). SEVIS was developed by the INS' Immigration Services Division which is now part of USCIS, but responsibility for SEVIS was placed in ICE. Reportedly, as of November 1, 2003, all SEVIS responsibilities have been transferred to ICE. Specifically, ICE is responsible for maintaining the SEVIS database, SEVIS policy, and certifying schools. Nonetheless, schools have reported discrepancies between information received from USCIS and ICE regarding SEVIS operations and requirements. The lack of consistent information and guidance has reportedly led to some frustration, but the consistency of information may improve now that all SEVIS functions are concentrated in one bureau. Others have noted problems with inexperienced staff in the new DHS, and the difficulty of people at the district levels (who are under USCIS and with whom the schools have the most contact) in getting information from ICE.¹⁹

¹⁷ (...continued)

Admissions, by Ruth Ellen Wasem. For more information on specific databases (such as TIPOFF and CLASS) which are used by consular officers to aid in determining an applicant's eligibility for a visa see CRS Report RL31019, *Terrorism: Automated Lookout Systems and Border Security Options and Issues*, by William J. Krouse and Raphael F. Perl.

¹⁸ For example, House Committee on Science, *Dealing with Foreign Students and Scholars in the Age of Terrorism: Visa Backlogs and Tracking Systems*, Mar. 26, 2003; House Subcommittee on Immigration, Border Security, and Claims, *Nonimmigrant Student Tracking: Implementation and Proposed Modifications*, hearing, Apr. 2, 2003; House Subcommittee on Infrastructure and Border Security, *Balancing Security and Commerce*, hearing, June 13, 2003.

¹⁹ Conversation with Victor Johnson, of NAFSA, Association of International Educators, Nov. 20, 2003. (Hereafter cited as *Conversation with Victor Johnson*.)

Nonetheless, there have been few stories in the press of foreign students having problems entering the United States as a result of the implementation of SEVIS.²⁰ Possibly one reason is that, to aid in the transition to SEVIS, DHS established a SEVIS Response Team to work with inspectors, schools and students to resolve issues and problems related to student admissions to the United States.²¹ In fact, some have praised DHS' responsiveness to issues raised by the schools.²²

Technical Support. In addition, Johnny N. Williams, Interim Director, Immigration Interior Enforcement at ICE, testified that since SEVIS is a new system that was developed and deployed under an aggressive schedule, that he could not guarantee that there would not be technical problems with the system, but that the department would work quickly to address the problems.²³ Indeed, as predicted, schools have reported technical difficulties operating SEVIS, and noted that to circumvent some of the technical problems, they need to create incorrect records.²⁴ Other concerns have been expressed about the fact that SEVIS system information is kept by record number and not names. Some students have more than one record and this can make it difficult to update the database, and possibly cause issues when and if SEVIS becomes part of U.S. VISIT, DHS' automated entry/exit system.

Reporting Burdens. Additionally, some contend that SEVIS has placed an added burden on schools, as they are now responsible for noting in the SEVIS system changes of those accompanying the students such as spouses and children. They are required to report on people who are not enrolled in their institutions.

Schools are required to note in SEVIS when a student has entered the country, but has not shown up for classes. Thus, schools are supposed to be notified when a student enters at a port of entry (POE), but, reportedly, this does not always happen.

²⁰ For examples of stories see "Student Tracking System a Bear," *Times Union* (Albany, NY), Sept. 4, 2003, p. B3; Susanne Gamboa, "Nearly 200 Who Tried to Enter U.S. on Student Visas Turned Away," *Associated Press*, Sept. 9, 2003; and Kendra Hamilton, "Spending Time on SEVIS," *Black Issues in Higher Education*, vol. 20, no. 15, Sept. 11, 2003, pp. 24-26. Asa Hutchinson, the Undersecretary for BTS, reported that one of the cases turned away led the agency to investigate a possible conspiracy to bring people illegally to the United States. See Asa Hutchinson, "190 Missing from Database Turned Away," *Milwaukee Journal Sentinel*, Sept. 10, 2003, p. A4.

²¹ Jill Drury, Director, SEVIS Program Office, Bureau of Immigration and Customs Enforcement, *Memorandum for All Academic Institutions that Admit Foreign Students*, July 25, 2003.

²² *Conversation with Victor Johnson.*

²³ Technical difficulties have included bleeding — the unintended merging of data from one school to another, intermittent inability of schools to access the system, inability of schools to use the batch mode of data entry, inability to alphabetize entries, and problems with real-time access. Johnny N. Williams, Interim Director, Immigration Interior Enforcement, Bureau of Immigration and Customs Enforcement, and David Ward, President, American Council on Education, Testimony before the House Subcommittee on Immigration, Border Security, and Claims, *Nonimmigrant Student Tracking: Implementation and Proposed Modifications*, hearing, Apr. 2, 2003.

²⁴ *Conversation with Victor Johnson.*

As a result, schools are worried about sanctions that may be applied if they do not report a student who failed to attend classes, and who the school was unaware had entered the country.²⁵

Followup on Overstays. Furthermore, prior to the implementation of SEVIS it was difficult to know when foreign students overstayed their visas, because the visas lack a fixed termination date and schools, although required to report students who stopped attending, were not required to systematically report data on the progress of each foreign student. Through SEVIS, DHS should be able to identify students who have violated the terms of their visas;²⁶ however, some have questioned whether DHS has the staff to locate all student visa violators, and whether it is a beneficial use of DHS resources to do so. There are also concerns that SEVIS errors will lead to unwarranted enforcement action taken against innocent students.

Fee Collection. Concerns have been raised about the methods available for students to pay the SEVIS fee, specifically that it may be difficult for some foreign students to pay the fee in either of the prescribed manners: 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. DHS addressed this issue in the regulation contending that the fee payment rules will not be much of a burden on students as most have already made similar types of payments to apply to schools, and to take standardized tests that are sometimes required for admission. DHS also noted that many foreign banks are able to issue checks or money orders drawn on U.S. banks. In addition, DHS said that it will accept payment from a third party and will explore other payment possibilities in the future including conducting a pilot program with DOS to collect the fee at consular offices.²⁷ Furthermore, some are concerned that the fee is excessive and will discourage students from studying in the United States. Others note that immigration services are supported by fees, not by appropriations, and that the foreign students, not the taxpayers, should be responsible for funding SEVIS. DHS contends that it studied the fee issue, and will reexamine the fee every two years to determine if the fee amount is appropriate.²⁸

Delays in Visa Issuances. Lastly, one issue tangentially related to SEVIS, which has been receiving interest, is reports of delays in issuing student visas.²⁹ Nonetheless, the delays appear to be the result of increased screening by DOS

²⁵ Ibid.

²⁶ Johnny N. Williams, Testimony, Nonimmigrant Student Tracking, Apr. 2, 2003.

²⁷ *Federal Register*, vol. 69, no. 126, July 1, 2004, p. 39817. Some groups, such as NAFSA: Association of International Educators, have suggested having the Department of State (DOS) collect the fee at the same time that the fee for the visa application is collected. Others contend that this would cause an extra burden on DOS and would be an added cost for those whose visa applications were not approved.

²⁸ *Federal Register*, vol. 69, no. 126, July 1, 2004, p. 39816.

²⁹ For examples see Jaime Swanson, "In the Dark: Foreign Students May Have to Wait Months for Visas," *Northern Star*, Sept. 22, 2003, p. A4; Eric Rowley, "International Students, Faculty Have Long Delays for Visas," *Iowa State Daily*, p. A1.

consular officers and not the implementation of SEVIS. In May 2003, DOS released a notice on the current visa processing situation which stated:

Responding to the attacks of September 11, 2001,...[v]isa applications are now subject to a greater degree of scrutiny than in the past. For many applicants, a personal appearance interview is required as a standard part of visa processing. Additionally, applicants affected by these procedures are informed of the need for additional screening at the time they submit their applications and are being advised to expect delays. The time needed for adjudication of individual cases will continue to be difficult to predict.³⁰

For example, the Government Accountability Office (GAO) released a study examining the length of time for a science student or scholar from a foreign country to get a visa.³¹ GAO found that DOS is unable to easily identify the amount of time that it takes to process visas for science students or scholars, and that the time it takes to adjudicate a visa depends largely on whether the applicant has to undergo a Visa Mantis check. Visa Mantis is a type of specialized clearance procedure, known as the security advisory opinion (SAO) used to screen visa applicants for employment or study that would give the foreign national access to controlled technologies, e.g., those that could be used to upgrade military capabilities.³² GAO examined a random sample of Visa Mantis cases for science students or scholars sent from U.S. consular posts between April and June 2003, and found it took an average of 67 days for the security check to be processed. In September 2003, GAO visited posts in China, India, and Russia and found many Visas Mantis cases that had been pending 60 days or more.

DOS responded to the GAO study and noted that a backlog did occur in the summer of 2002 when DOS mandated a response³³ to all SAO requests, including Visa Mantis checks. That requirement, combined with the sudden increase in requests for SAO's following the attacks of September 11, 2001, overburdened the system. DOS contends new processes have solved many of the problems encountered during the start-up period.³⁴

³⁰ Notice on Current Visa Processing Situation available at [<http://www.travel.state.gov/specialnotice.html>].

³¹ U.S. Government Accountability Office, *Border Security: Improvements Needed to Reduce Time Taken to Adjudicate Visas for Science Students and Scholars*, GAO-04-371, Feb. 2004.

³² U.S. Government Accountability Office, *Export Controls: Department of Commerce Controls Over Transfers of Technology to Foreign Nationals Needs Improvement*, GAO-02-972, Sept. 2002.

³³ Prior to that time, posts were often only notified if the background check revealed something negative about the applicant. If posts had not received information on an applicant's SAO after 60 days, the post assumed that the applicant was cleared.

³⁴ Testimony of Deputy Assistant Secretary of State for Visa Services Janice L. Jacobs, in U.S. Congress, House of Representatives Committee on Science, *The Conflict Between Science and Security in Visa Policy: Status and Next Steps*, hearings, 108th Cong., 2nd sess., (Feb. 25, 2004). (Hereafter cited as Testimony, Janice L. Jacobs.)

In addition, new regulations, implemented on July 7, 2003, which limited the ability of consular officers to waive the personal appearance for nonimmigrant visa applicants,³⁵ have increased the wait time for an interview and may extend the visa processing time of students seeking to come to the United States. Other factors including the biometric visa program and staffing levels have also been cited as affecting visa processing times.³⁶ Nonetheless, DOS has instructed all visa-adjudicating posts to make special arrangements to facilitate visa interviews for students and researchers, and some posts reserve appointment slots for students, or assign specific days to student processing.

³⁵ Personal interviews are generally required for foreign nationals seeking nonimmigrant visas. Interviews, however, may be waived in certain cases. Prior to the Sept. 11, 2001, terrorist attacks, personal interviews for applicants for visitor visas reportedly were often waived. Under the current regulation, personal interview waivers may be granted only to children under age 16, persons 60 years or older, diplomats and representatives of international organizations, aliens who are renewing a visa they obtained within the prior 12 months, and individual cases for whom a waiver is warranted for national security or unusual circumstances. *Federal Register*, vol. 68, no. 129, July 7, 2003, pp. 40127-40129. 22 CFR §41.102.

³⁶ By Oct. 2004, all visas issued by the United States must use biometric identifiers (e.g., finger scans) in addition to the photograph that has been collected for some time. Testimony, Janice L. Jacobs.