Testimony before the U.S. Senate
Committee on Finance
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Thank you Chairman Baucus, Ranking Member Grassley, and Distinguished Members of the Committee for the invitation to appear before you today to speak about the visa categories which are exempt from Social Security Federal Insurance Contribution Act (FICA) taxes, including analysis by the Social Security Actuaries of the economic effect of removing the exemptions. I am Alison Siskin a Specialist in Immigration Policy at the Congressional Research Service. Importantly, I will focus on the FICA tax exemption for Social Security, not for Medicare.

There are more than 20 major nonimmigrant visa categories, and they are commonly referred to by the letter that denotes their subsection in the law.[1] Nonimmigrants are aliens admitted to the United States for a specific period of time and a specific purpose. The following nonimmigrant visa categories permit aliens to work in the United States, but exempt the aliens from paying FICA taxes:

- H-2A, temporary agricultural workers;
- F-1, foreign academic students;
- J-1, exchange visitors;
- M-1, foreign vocational students;
- Q-1, cultural exchange visitors; and
- Q-2, Irish peace process cultural exchange visitors.

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[1] Most of these nonimmigrant visa categories are defined in §101(a)(15) of the Immigration and Nationality Act (INA). These visa categories are commonly referred to by the letter and numeral that denotes their subsection in §101(a)(15), e.g., B-2 tourists, E-2 treaty investors, F-1 foreign students, H-1B temporary professional workers, J-1 cultural exchange participants, or S-4 terrorist informants.

Overview

The Social Security program provides monthly cash benefits to qualified retired and disabled workers, their dependents, and survivors. Generally, a worker must have 10 years of Social Security-covered employment to be eligible for retirement benefits (less time is required for disability and survivor benefits). Most jobs in the United States are covered under Social Security. Noncitizens (aliens) who work in Social Security-covered employment must pay Social Security payroll taxes, including those who are in the United States working temporarily and those working in the United States without authorization.[2] There are some exceptions. For example, by statute, the work of aliens under certain visa categories is not covered by Social Security.[3] The following sections examine these visa categories.

Table 1. H-2A, F-1, J-1, M-1, Q-1, Q-2 Visas Issued: FY2006

Visa Category	Number Issued
H-2A	37,149
F-1	273,870
J-1	309,951
M-1	7,227
Q-1	1,541
Q-2	80
Total	629,818

Source: Data from the Department of State, available at http://travel.state.gov/pdf/FY06AnnualReportTableXVIB.pdf, visited July 18, 2007. Data is preliminary.

Agricultural Worker (H-2A) Visas

The H-2A program allows for the temporary admission of foreign workers to the United States to perform agricultural work of a seasonal or temporary nature, provided that U.S. workers are not

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[2] For more information on Social Security benefits for noncitizens, as well as the payment rules, see CRS Report RL32004, *Social Security Benefits for Noncitizens*, by Dawn Nuschler and Alison Siskin.

[3] Another exception includes the work of aliens who are citizens of a country with which the United States has a "totalization agreement." A totalization agreement with a foreign country allows the coordination of the collection of payroll taxes and the payment of benefits under each country's Social Security system for workers who split their careers between the two countries. Totalization agreements also allow workers who divide their careers between the two countries to combine earnings credits under both systems to qualify for benefits if they lack sufficient coverage under either system. While a worker may combine earnings credits to *qualify* for benefits under one or both systems, his/her benefit is prorated to reflect only the number of years the worker paid into each system.

available.[4] An approved H-2A visa petition is generally valid for an initial period of up to one year. An alien's total period of stay as an H-2A worker may not exceed three consecutive years. H-2A employers must pay their H-2A workers and similarly employed U.S. workers the highest of the federal or applicable state minimum wage, the prevailing wage rate,[5] or the adverse effect wage rate (AEWR).[6] They also must provide workers with housing, transportation, and other benefits, including workers' compensation insurance.[7]

Employers who want to import H-2A workers must first apply to the Department of Labor (DOL) for a certification that (1) there are not sufficient U.S. workers who are qualified and available to perform the work; and (2) the employment of foreign workers will not adversely affect the wages and working conditions of U.S. workers who are similarly employed. As part of this labor certification process, employers must attempt to recruit U.S. workers and must cooperate with DOL-funded state employment service agencies (also known as state workforce agencies) in local, intrastate, and interstate recruitment efforts.

As **Table 1** shows, in FY2006, according to preliminary data, 37,149 H-2A visas were issued.[8] The H-2A program, however, remains quite small relative to total hired farm employment, which stood at about 1.1 million in 2005, according to the Department of Agriculture's National Agricultural Statistics Service.[9]

FICA Exemption for H-2A Visa Holders

Current Law. Under current law, work performed by foreign agricultural workers is not subject to FICA taxation. Section 210(a)(1) of the Social Security Act excludes from the definition of covered employment, "service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor."

Legislative History. Prior to 1956, the exclusion for foreign agricultural workers applied only to services performed by agricultural workers from the Bahamas, Jamaica, and the other British West Indies under the British West Indies (BWI) program, a temporary worker program that originated in 1943 that was used mainly by farmers in the eastern United States,[10] and to workers from Mexico

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[4] The program takes its name from the section of the INA that established it — Section 101(a)(15)(H)(ii)(a). For more information on H-2A visas, see CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno.

[5] The prevailing wage rate is the average wage paid to similarly employed workers in the occupation in the area of intended employment.

[6] The AEWR is an hourly wage rate set by the Department of Labor for each state or region, based upon data gathered by the Department of Agriculture in quarterly wage surveys.

[7] Required wages and benefits under the H-2A program are set forth in 20 C.F.R. §655.102.

[8] Unpublished data from the Department of State.

[9] For additional discussion, see CRS Report RL30395, *Farm Labor Shortages and Immigration Policy*, by Linda Levine.

[10] To create the BWI program, Congress needed to waive certain provisions of the Immigration and Nationality Act. P.L. 78-45, §5(g) stated that these provisions were waived "[i]n order to facilitate the (continued...)

hired under contracts in accordance with the Agricultural Act of 1949. The FICA tax exemption for the Mexican workers was included as part of the Agricultural Act Amendments of 1951. The Senate report (S. Rept. 82-214) for the bill stated:

> Under the amendments to the Social Security Act, enacted by Congress in 1950, a limited group of "regularly employed" agricultural workers were brought in under the insurance provisions effective January 1, 1951. In order for an agricultural worker and his employer to become subject to the insurance contributions, an individual must work for one employer for at least 60 days each out of two consecutive quarters, before any of his agricultural work becomes subject to the contribution provisions of the insurance program. In most cases, it will be necessary for an individual to work 6 to 8 months for one agricultural employer before any of his agricultural work will be subject to contributions under the insurance program. Due to the relatively short period of time that Mexican contract workers work for a single employer, very few of them will meet the stringent requirements of the new law and consequently, very few of them and their employers will be subject to the social-security contributions. It is estimated that not more than 3,000 to 5,000 Mexican workers would become subject to the social-security provisions under the terms of the proposed program and, of course, if all the Mexican agricultural labor brought into this country return to Mexico within about 5 to 6 months, there would be none of the Mexican nationals who would become subject to the contribution provisions of the insurance program.

Interestingly, the minority view against the FICA tax exemption for Mexican agricultural workers in S. Rept. 82-214 stated:

> ...the exclusion of Mexican workers from the insurance program could result in the hiring of such workers in preference to American workers since their employers would have the competitive advantage of not paying social-security contributions... Since its enactment in 1935, the insurance program under the Social Security Act has covered individuals in specific types of jobs in the United States without regard to the nationality of the individual. It should be noted that the social-insurance systems in a number of foreign countries, including Mexico, do not discriminate against American nationals performing services in covered employment. This principle of nondiscrimination as between the United States nationals and the nationals of other countries has been advocated and endorsed by the International Labor Organization, by numerous representatives of social-security institutions of various countries, and by the Inter-American Committee on Social Security. A change in this policy which would establish the principle of exclusion because of nationality may eventually result in more harm than good because of the possibility of criticism arising against the United States for discrimination in the application of its social laws. Such criticism would not be in the long-run interest of the United States in world affairs.

The Social Security Amendments of 1956 (P.L. 84-880) extended the FICA tax exclusion of agricultural workers from the Bahamas, Jamaica, and the other British West Indies and the contract workers from Mexico, to foreign workers admitted to perform agricultural labor from any foreign country. According to the Senate report for the 1956 Social Security amendments (S. Rept. 84-2133), the exemption was extended because the committee had "previously recognized the undesirability of covering foreign agricultural workers who serve only temporarily in the United States... The bill

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[10] (...continued)
employment by agricultural employers in the United States of native-born residents of North America, South America, and Central America, and the islands adjacent thereto,... during continuation of hostilities in the present war..." In addition, §5(b) of the Act stated that, "[a]ny payments made by the United States or public or private agencies or employers to aliens brought into the United States under this joint resolution shall not be subject to deduction or withholding under section 143 (b) of the Internal Revenue Code."

would broaden the current exclusions so that it would apply uniformly to service performed by foreign workers admitted on a temporary basis from any foreign country to perform agricultural labor."

Student (F, M, and J) and Exchange Visitor (J and Q) Visas

The earnings of aliens on student or exchange visitor visas are exempt from FICA taxation. 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. 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.[11] Whereas the F and M visa categories are solely for foreign students, the J visa category is more varied and includes aliens in diverse cultural exchange programs such as foreign medical graduates, international visitors, and au pairs. The Q visa category is for specific types of cultural exchanges which include training and employment.

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.[12] 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. In FY2006, 273,870 F-1 visas were issued.[13]

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.[14]
- They must document that they have sufficient funds or have made other arrangements to cover all of their expenses for 12 months.[15]
- 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

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[11] For more information on these visa categories, see CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by Chad C. Haddal.

[12] Those entering as secondary school students are only admitted for one year.

[13] Department of State, *Report of the Visa Office: FY2005,* Table XVII. Available at [http://travel.state.gov/visa/about/report/report_2787.html], visited Feb. 22, 2007.

[14] Schools that wish to receive foreign students must file a petition with Department of Homeland Security (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.

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

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-1 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. F-1 students are permitted to engage in on-campus employment if the employment does not displace a U.S. resident.[16] In addition, F-1 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-1 visa who otherwise accepts employment violates the terms of the visa and is subject to removal. F-2 visa holders, who are the spouses and children of F-1 visa holders, are not allowed employment while in the United States.[17]

M Visa

Foreign students who wish to pursue a non-academic (e.g., vocational) course of study apply for an M-1 visa. This visa is the least used of the foreign student visas. Similar to the F-1 students, those seeking an M-1 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, and are not authorized to work in the United States. 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 barred from working in the United States, including in on-campus employment. In FY2006, there were 7,227 M visas issued.[18]

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. In FY2006, 309,951 J-1 visas were issued.[19]

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)[20] has designated.[21] They are admitted for the period of the program.[22] Their spouses and children may

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[16] U.S. residents include U.S. citizens, legal permanent residents, and other categories of immigrants (e.g., asylees and refugees).

[17] 8 CFR 214.2(f)(15)(i).

[18] Department of State, *Report of the Visa Office: FY2005,* Table XVII. Available at [http://travel.state.gov/visa/about/report/report_2787.html], visited Feb. 22, 2007.

[19] Ibid.

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

[21] 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 (continued...)

accompany them as J-2 nonimmigrants. As with F-2 visa holders, J-2 visa holders are not authorized to be employed while they are in the United States.

As with F-1 visas, those seeking J-1 visas must have a foreign residence they have no intention of abandoning. However, many of those with J-1 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-1 nonimmigrants who meet any of the three following conditions:

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

There are very few exceptions to the foreign residency requirement for J visa holders who meet any of these criteria — even J visa holders who marry U.S. citizens are required to return home for two years.[23] 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.

As discussed above, the J visa category includes many different types of exchange programs. The regulations (22 *CFR* §62.20-§62.32) divide the J exchange programs into several categories.[24] These categories are:

- government visitors;
- international visitors;
- professors and research scholars;
- short-term scholars;
- specialists;
- college and university students (discussed above);

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[21] (...continued)
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. (22 CFR §514.)

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

[23] 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.

[24] For more information, see [http://exchanges.state.gov/education/jexchanges/about.htm], visited Mar. 5, 2007.

- alien physicians;[25]
- au pairs;
- camp counselors;
- secondary students;
- summer work/travel;
- teachers, and
- trainees.

Government Visitors. This category is for exchange visitors who are sponsored by federal, state, or local government agencies. Participants in this category include editors, business and professional persons, government officials and labor leaders. The objective of this category is to develop and strengthen professional and personal ties between key foreign nationals and U.S. governmental institutions. Under this exchange program, foreign nationals recognized as influential or distinguished persons participate in observation tours, discussions, consultations, professional meetings, conferences, workshops, and travel. The participants may receive stipends or travel expenses which are paid for by the sponsoring governmental agency. The exchange program is limited to18 months.[26]

International Visitors. The International Visitor category of the J visa is for visitors sponsored by the Department of State (DOS). Under this program, foreign nationals who are recognized as potential leaders participate in observation, tours, discussions, consultation, professional meetings, conferences, workshops, and travel. DOS may pay the participants stipends or travel expenses. The program may last for no more than one year.[27]

Professors and Research Scholars. Foreign professors and research scholars are admitted under the J visa category to perform research, teach, and lecture at U.S. colleges and universities.[28] Participants in these exchange programs receive salaries from the sponsoring colleges and universities. The exchange program is limited to three years.[29]

Short-Term Scholar. Those admitted on J visas as short-term scholars include professors, research scholars, or persons with similar education or accomplishments who visit the United States to lecture, observe, consult, train, or demonstrate special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. The duration of the program is the time needed to complete the objective, up to a maximum of six months with no extensions. The institution which invited the alien may give the alien a stipend or travel expenses.

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[25] These are also known as "foreign medical graduates."

[26] 22 *CFR* §62.29.

[27] 22 *CFR* §62.28.

[28] Alien physicians in graduate medical education or training and short-term scholars are not included in this category. 22 *CFR* §62.20.

[29] A participant's program may be extended for up to six months to allow the research scholar or professor to complete a specific project or research activity. Extensions for a period longer than six months must be approved in writing by the Department of State.

Specialists. Those admitted on J visas under specialists exchange programs are experts in a field of specialized knowledge or skill, who come to the United States to observe, consult, or demonstrate special skills.[30] Examples of fields under the specialist programs include mass media communication, environmental science, youth leadership, international educational exchange, museum exhibitions, labor law, public administration, and library science. The purpose of the specialist category is to facilitate exchange among experts at scientific institutions, government agencies, museums, corporations, libraries, and similar types of institutions. Participants in these exchange programs are paid by the sponsoring entity. The maximum duration of an exchange program under this category is one year.[31]

College and University Students. To be admitted as a foreign student under the J visa category the alien's college studies or their program in the United States must be financed directly or indirectly by the U.S. Government, the government of their home country, or an international organization of which the United States is a member by treaty or statute, or be supported substantially by funding from any source other than personal or family funds. Foreign students are also eligible for J status if their program is carried out pursuant to an agreement between the U.S. Government and a foreign government, or pursuant to a written agreement between an U.S. and foreign educational institutions, an U.S. educational institution and a foreign government, or a state or local government in the United States and a foreign government.

Under the J visa category, foreign students may engage in part-time employment under certain conditions. The employment must be pursuant to the terms of a scholarship, fellowship or assistantship, and must occur on the premises of the institution at which the student is authorized to attend. Employment may be off-campus only if the student is in serious, urgent, and unforeseen economic circumstances that have arisen since acquiring exchange visitor status. The foreign student may not work more than 20 hours per week except during official school breaks, and students must continue a full course of study.[32]

Alien Physicians. Through the J visa category, foreign medical graduates may pursue graduate medical education or training at accredited schools of medicine or scientific institutions. For example, aliens in this exchange program may work as residents. To be eligible, foreign medical graduates must meet several criteria, including having adequate prior education and training, being competent in oral and written English, and passing certain qualifying exams that are specified in regulations. Program participants must provide a written statement from the government of the native country or last legal permanent residence, that provides assurances that there is a need in the country for persons with the skills which the alien is seeking to acquire. Participants must also have an agreement or contract from an accredited medical school, an affiliated hospital, or a scientific institution in the United States that provides the accredited medical education.[33] Participants in these exchange programs receive salaries from the sponsoring school of medicine or scientific institutions.

Au Pairs. The J visa Au Pair program allows foreign nationals between 18 and 26 years of age to live with a host family for 12 months, providing childcare services. Childcare is limited to no

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[30] The specialist category excludes, professors, research scholars, short term scholars, and alien physicians.

[31] 22 *CFR* §62.26.

[32] 22 CFR §62.23. For more information on this type of exchange program, see [http://exchanges.state.gov/education/jexchanges/academic/ucstudent.htm], visited Feb. 28, 2007.

[33] 22 *CFR* §62.27.

more than 10 hours per day, and to a maximum of 45 hours per week. The au pairs are compensated by the host family for their work according to the Fair Labor Standards Act as interpreted and implemented by the Department of Labor. Participants in the Au Pair program must be proficient in spoken English, and are required to complete at least six hours of academic credit or its equivalent at an accredited post-secondary educational institution. Host families are required to pay up to $500 toward the cost of the au pair's required academic course work.[34]

In addition, the J visa Au Pair program includes the EduCare component, which is for families who have school-aged children and require childcare before and after school hours. An EduCare au pair may work no more than 10 hours per day, and a maximum of 30 hours per week. EduCare au pairs receive 75% of the weekly rate paid to regular program au pairs, and must complete a minimum of 12 hours of academic credit or its equivalent during the program year. The host family is required to provide the first $1,000 toward the cost of the EduCare au pair's required academic course work.

Camp Counselors. J visa holders may also act as camp counselors, overseeing activities in a camp setting during the summer. Although the regulations note that "non-counseling" chores may be an occasional part of a camp counselor's job, program participants may not serve as "camp staff" (e.g., administrative personnel, cooks, dishwashers or janitors). Foreign university students, youth workers, and other specially qualified individuals at least 18 years of age and proficient in English may work as counselors for up to four months. J visa camp counselors receive pay and benefits from the camp commensurate with those offered to their U.S. counterparts.[35]

Secondary (High School) Students. Through the J visa high school exchange program, foreign secondary school students attend an accredited public or private secondary school in the United States as full time students for up to one year. During their stay, participants live with American host families or reside at accredited boarding schools. Participants must be between the age of 15 and 18.5 years at the time of school enrollment, or have not completed more than 11 years of primary and secondary school (excluding kindergarten). Students may not be employed, but may accept occasional work such as yard work or baby-sitting.[36]

Summer Work/Travel. Foreign post-secondary students may enter the United States on J visas to work and travel for a maximum of four months during their summer vacations. Participants receive the same pay and benefits from the employer as U.S. workers in the same or similar positions. Regulations prohibit the placement of program participants as domestics in a household, or in positions requiring them to invest their own money for inventory, such as door-to-door sales. Most participants typically work in service positions at resorts, hotels, restaurants, and amusement parks. Summer internships in businesses and other organizations (i.e., architecture, science research, graphic art/publishing and other media communication, advertising, computer software and electronics, and legal offices, etc.) are also allowed under this program.[37]

Teachers. Foreign nationals on J visas may teach in primary and secondary accredited educational institutions in the United States for up to three years. To be eligible, the participants

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[34] 22 *CFR* §62.31.

[35] 22 *CFR* §62.30.

[36] 22 *CFR* §62.25.

[37] 22 *CFR* §62.32.

must meet the qualifications for teaching in primary or secondary schools in their country of nationality or last legal residence, have a minimum of three years of teaching or related professional experience, and satisfy the standards of the state in which they will teach. They must also be of good reputation and character and proficient in English. These exchange participants receive salaries form the schools where they are employed.[38]

Trainees. The training program provides exchange visitors the opportunity to enhance their skills in their chosen career field through participation in a structured training program and to improve their knowledge of American techniques, methodologies, or expertise within their field of endeavor. These exchange visitors may be paid by the company where they are training. Such training may not exceed 18 months.

Use of the Exchange Visitor Program for ordinary employment or work purposes is strictly prohibited. Sponsors may not place trainee participants in positions which are filled or would be filled by full-time or part-time employees. In addition, the Department of State defines occupations into three categories: (1) specialty; (2) non-specialty; and (3) unskilled. Training programs are not permitted for unskilled occupations.[39] Specialty training programs are for participants who have completed a four-year degree in their field or received a recognized professional certificate.[40] Non-specialty training programs do not require participants to have completed a degree, but program participants must have at least two years of education, training or experience in the field in which they are to receive training.[41]

Q Visas

The "Q" international cultural exchange visa is for the purpose of providing practical training and employment, and sharing of the history, culture, and traditions of the participant's home country in the United States. The holders of the Q cultural exchange visa participate in a structured program, and the purpose of employment or training aspect of the Q cultural exchange program is to accomplish the cultural component.

An alien holding a Q-1 visa may stay up to 15 months and must be employed under the same wages and working conditions as U.S. workers. An alien holding a Q-2 visa must be a citizen of the United Kingdom or the Republic of Ireland who maintains a residence in one of the designated counties of those countries. Q-2 visa holders may stay up to 3 years in the United States so long as they are participants in a program that has been approved under the Irish Peace Process Cultural and Training Program Act of 1998. The State Department issued 1,621 Q-1 and Q-2 visas in FY2006.[42]

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[38] 22 *CFR* §62.24.

[39] Unskilled occupations include such occupations such as bartenders, bookkeepers, housekeepers, janitors, and hotel cleaners. For a full list of DOS defined unskilled occupations see, [http://exchanges.state.gov/education/jexchanges/private/trainee_unskilled.htm] last visited Feb. 28, 2007.

[40] 22 CFR §62.2. Examples of specialty occupations are public and business administration, architecture, engineering, and computer sciences.

[41] 22 *CFR* §62.22.

[42] Department of State, *Report of the Visa Office: FY2005,* Table XVII. Available at [http://travel.state.gov/visa/about/report/report_2787.html], visited Feb. 28, 2007.

FICA Tax Exemption Student and Exchange Visitor (F, M, J, and Q) Visas

Current Law. The Social Security Act specifically excludes the work of F, J, M, and Q visa holders from covered employment:

> Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q) as the case may be.[43]

If an F-1, J-1, M-1 or Q visa holder performs work which is not connected to the purpose for which they were admitted to the United States, the work is covered by Social Security, unless otherwise specifically excluded by law. Nonetheless, the very act of performing work which is not allowed under the visa category, would be a violation of the visa and subject the alien to removal from the United States.

Legislative History of the F, J, and M Visa Exemptions. The Mutual Educational and Cultural Exchange Act of 1961 (P.L. 87-256) established the J visa category and provided the FICA tax exemption for F (academic students) and J (cultural exchange) visa holders. The conference report for P.L. 87-256 (H. Rept. 87-1197) stated:

> Nonresident aliens are now subject to the 3-percent FICA, or Social Security, tax. Since they are temporarily in the United States, they scarcely have any expectation of realizing benefits from such a tax payment. Section 110(e) exempts foreign students and exchange visitors from payment of FICA tax on amounts earned in performing services to carry out the purposes for which they were admitted, such as studying, teaching, or conducting research. If they are employed for other purposes, consequent payments would not be exempt.

Notably, since 1950 earnings by U.S. citizen students employed by their schools have been exempt from FICA taxes under §210(a)(10) of the Social Security Act.[44]

In 1981, Congress divided the F visa category into two visa categories: F visas for academic students and M visas for vocational students.[45] At that time, Congress did not amend §210(a)(19) of the Social Security Act and as a result, between 1981 and 1988, F visa holders but not M visa holders were exempted from FICA taxes. In 1988, with the passage of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647, §123), Congress extended the FICA tax exemption to M visa holders. It appears that the change was made so that the policy towards M visa holders would be consistent with that of F visa holders.

Legislative History of the Q Visa Exemption. The FICA tax exemption for Q visa holders was part of the Social Security Independence and Program Improvement Act of 1994 (P.L. 103-296). According to Congressional records, the exemption was added so that Q visa holders would receive consistent treatment with J cultural exchange visa holders. Specifically the House report noted when the Q visa category was created in 1990, that §101(a)(15)(Q) of the Immigration and Nationality Act (INA) was not expressly referenced in §210(a)(19) of the Social Security Act,

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[43] Section 210(a)(19) of the Social Security Act.

[44] This was added as part of the Social Security Amendments of 1950 (P.L. 81-734).

[45] Immigration and Nationality Act Amendments of 1981 (P.L. 97-116)

and as a result, such visa holders would not be subject to the same taxation treatment as J visa holders.[46]

Since the FICA tax exemption under §210(a)(19) was for aliens who entered the United States under §101(a)(15)(Q), when the Q-2 visa category was created in 1998, it was covered under the existing exemption provision. Congressional records were silent on whether the FICA exemption for Q-2 visa holders was intentional.

Estimate of the Financial Effects of Removing the Visa Category Exemption

Actuaries at the Social Security Administration (SSA) estimated the financial effect on the Social Security Trust Funds of covering the earnings of aliens in these visa categories. The Actuaries found that extending Social Security coverage to aliens in the currently exempt visa categories would increase payroll tax revenues. Assuming that the provision takes effect in 2008, it would increase the number of workers covered by Social Security by approximately 174,000 in 2008 (primarily J-1 visa holders).[47]

The Actuaries estimate that, on average, each newly covered visa worker would have earnings of approximately $26,000 subject to the FICA tax in 2008. Therefore, the provision increases the wages subject to the Social Security payroll tax and increases payroll tax revenue by approximately $521 million in 2008. The annual tax revenue would increase to $834 million by 2017. Because these workers are not anticipated to be employed in the United States for the 10 years generally required to qualify for Social Security benefits, the Actuaries estimate that the increased costs to the Trust Funds from increased benefit payments to these workers would be small. Over a 10 year period, 2008-2017, the proposal would increase Social Security payroll tax revenues by $6.9 billion.

Thank you again for the opportunity to speak here today, and I look forward to your questions.

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[46] H. Rept 103-506, p. 77.

[47] In addition, the Actuaries assumed that most F-1 visa holders would still be exempt from FICA taxation on their wages, due to the existing exemption for work performed by students at their college or university.