To amend the Mutual Educational and Cultural Exchange Act of 1961 to facilitate United States openness to international students, scholars, scientists, and exchange visitors, and for other purposes.

A BILL

To amend the Mutual Educational and Cultural Exchange Act of 1961 to facilitate United States openness to international students, scholars, scientists, and exchange visitors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Competitiveness Through International Openness Now Act of 2005” or as the “ACTION Act of 2005”.

SEC. 2. FINDINGS.

Congress makes the following findings:
1 (1) The United States has a strategic interest in encouraging international students, scholars, scientists, and exchange visitors to visit the United States to study, collaborate in research, and to develop personal relationships.

2 (2) Openness to international students, scholars, scientists, and exchange visitors serves vital and longstanding national foreign policy, educational, and economic interests and the erosion of such openness undermines the national security interests of the United States.

3 (3) Educating successive generations of future world leaders has long been a foundation of the United States international influence and leadership.

4 (4) Open scientific exchange enables the United States to benefit from the knowledge of the world’s top students and scientists and has been a critical factor in maintaining the United States leadership in science and technology.

5 (5) International students studying in the United States and their families contribute nearly $13,000,000,000 to the United States economy each year, making higher education a major service sector export.
(6) The total number of applications submitted by foreign applicants to graduate schools in the United States for enrollment during the fall of 2004 declined 28 percent from the number of such applications submitted for enrollment during the fall of 2003.

(7) The total number of foreign students enrolled in graduate schools in the United States during the fall of 2004 declined 6 percent from the number of such enrollments during the fall of 2003.

(8) The number of foreign students enrolled in schools in the United States during the 2003–2004 academic year decreased by 2.4 percent from the number of such students the 2002–2003 academic year, marking the first absolute decline in foreign enrollments since the 1971–1972 academic year.

(9) The policies implemented by the United States since September 11, 2001, and the public perceptions they have engendered, have discouraged many foreign students from studying in the United States and have frustrated the efforts of many foreign scholars and exchange visitors from visiting the United States.

(10) The United States must improve its student, scholar, scientist, and exchange visitor screen-
ing process to protect against terrorists seeking to harm the United States.

(11) The United States has seen a dramatic increase in requests for Visa Mantis checks, checks designed to protect against illegal transfers of sensitive technology, from approximately 1,000 in fiscal year 2000 to approximately 18,500 in fiscal year 2004.

(12) Concerns related to the international student monitoring system known as “SEVIS” have also contributed to the decline in the number of foreign applicants to educational institutions in the United States.

(13) Other countries have instituted aggressive strategies for attracting foreign students, scholars, and scientists, and have adjusted their policies to encourage and accommodate access to universities and scientific exchange. One such country, Australia, has increased enrollment by foreign students in educational institutions in Australia by more than 53 percent since 2001.

(14) The European Union has set forth a comprehensive strategy to be the “most competitive and dynamic knowledge-based economy in the world” by 2010. Part of this strategy is aimed at enhancing economic competitiveness by making the European
Union the most favorable destination for students, scholars, and researchers from other regions of the world.

(15) In order to maintain United States competitiveness in the world economy, build vital relationships with future world leaders, and improve popular perceptions of the United States overseas, the United States requires a comprehensive strategy for recruiting foreign students, scholars, scientists, and exchange visitors.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(2) **SEVIS.**—The term “SEVIS” means the program to collect information relating to non-immigrant foreign students and other exchange program participants required by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Division C of Public Law 104–208; 110 Stat. 3009–546).

The Mutual Education and Cultural Exchange Act of 1961 (22 U.S.C. 2451 et seq.) is amended by adding at the end the following:

“SEC. 115. STRATEGIC PLAN FOR INTERNATIONAL EDUCATIONAL EXCHANGE.

“(a) REQUIREMENT FOR PLAN.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of the ACTION Act of 2005, the President, in consultation with institutions of higher education in the United States, organizations that participate in international exchange programs, and other appropriate groups, shall develop a strategic plan for enhancing the access of foreign students, scholars, scientists, and exchange visitors to the United States for study and exchange activities.

“(2) CONTENT.—The strategic plan shall include the following:

“(A) A marketing plan that utilizes the Internet and other media resources to promote and facilitate study in the United States by foreign students.

“(B) A clear division of responsibility that eliminates duplication and promotes inter-agen-
cy cooperation with regard to the roles of the
Departments of State, Commerce, Education,
Homeland Security, and Energy in promoting
and facilitating access to the United States for
foreign students, scholars, scientists, and ex-
change visitors.

“(C) A mechanism for institutionalized co-
ordination of the efforts of Departments of
State, Commerce, Education, and Homeland
Security in facilitating access to the United
States for foreign students, scholars, scientists,
and exchange visitors.

“(D) A plan to utilize the educational ad-
vising centers of the Department of State that
are located in foreign countries to promote
study in the United States and to prescreen
visa applicants.

“(E) A description of the lines of authority
and responsibility for foreign students in the
Department of Commerce.

“(F) A description of the mandate related
to foreign student and scholar access to edu-
cational institutions in the United States for
the Department of Education.
“(G) Streamlined procedures within the Department of Homeland Security related to foreign students, scholars, scientists, and exchange visitors.

“(H) Streamlined procedures to facilitate international scientific collaboration.

“(3) SUBMISSION TO CONGRESS.—Not later than 180 days after the date of enactment of the ACTION Act of 2005, the President shall submit the strategic plan to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

“(b) RECIPROCITY AGREEMENTS.—It is the sense of Congress that the United States should negotiate reciprocity agreements with foreign countries with the goal of mutual agreement on extending the validity of student and scholar visas to 4 years and permitting multiple entry on student and scholar visas.

“(c) ANNUAL REPORT.—

“(1) REQUIREMENT.—The President, acting through the Secretary of State, in consultation with the Secretary of Education, Secretary of Commerce, Secretary of Homeland Security, and Secretary of Energy, shall submit to Congress an annual report on the implementation of the strategic plan required
by subsection (a) and on any negotiations with for-
egn countries related to the reciprocity agreements
referred to in subsection (b).

“(2) CONTENT.—An annual report submitted
under this subsection shall include a description of
the following:

“(A) Measures undertaken to enhance ac-
access to the United States by foreign students,
scholars, scientists, and exchange visitors and
to improve inter-agency coordination with re-
gard to foreign students, scholars, scientists,
and exchange visitors.

“(B) Measures taken to negotiate recip-
rocal agreements referred to in subsection (b).

“(C) The number of foreign students,
scholars, scientists, and exchange visitors who
applied for visas to enter the United States,
disaggregated by applicants’ fields of study or
expertise, the number of such visa applications
that are approved, the number of such visa ap-
lications that are denied, and the reasons for
such denials.

“(D) The average processing time for an
application for a visa submitted by a foreign
student, scholar, scientist, or exchange visitor.
“(E) The number of applications for a visa submitted by foreign students, scholars, scientists, or exchange visitors that require interagency review.

“(F) The number of applications for a visa submitted by foreign students, scholars, scientists, or exchange visitors that were approved after receipt of such applications in each of the following:

“(i) Less than 15 days.

“(ii) Between 15 and 30 days.

“(iii) Between 31 and 45 days.

“(iv) Between 46 and 60 days.

“(v) Between 61 and 90 days.

“(vi) More than 90 days.

“(3) Submission of report.—Not later than November 30 2005, and annually thereafter through 2008, the President shall submit to Congress the report described in this subsection.”.

SEC. 5. FAIRNESS IN THE SEVIS PROCESS.

(a) Reduced Fee for Short-Term Study.—

(1) In general.—Section 641(e)(4)(A) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(e)(4)(A)) is amended by striking the second sentence and insert-
Except as provided in subsection (g)(2), the fee imposed on any individual may not exceed $100, except that in the case of an alien admitted under subparagraph (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $35 and that in the case of an alien admitted under subparagraph (F) of such section (8 U.S.C. 1101(a)(15)(F)) for a program that will not exceed 90 days, the fee shall not exceed $35.”.

(2) TECHNICAL AMENDMENTS.—Such section is further amended—

(A) in the first sentence, by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(B) in the third sentence, by striking “Attorney General’s” and inserting “Secretary’s”.

(b) REPORT ON IMPROVING FEE COLLECTION.—Not later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security and the Secretary of State shall jointly submit to the appropriate congressional committees a report on the feasibility of—

(1) entering data into the SEVIS database and collecting the fee required by section 641(e) of the
Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(e)) only after the applicant’s visa has been approved; or

(2) refunding the fee required by such section in the event that the applicant’s visa has been denied.

SEC. 6. REFORMING SEVIS DATABASE MANAGEMENT.

(a) IN GENERAL.—The Secretary of Homeland Security and the Secretary of State shall—

(1) develop policies that permit authorized representatives of SEVIS-approved schools or programs to make corrections to a student, scholar, or exchange visitor’s record directly within the SEVIS database;

(2) in the case of such corrections that cannot be made by such representatives, ensure that sufficient resources are made available to enable such corrections to be made in a timely manner;

(3) develop policies to prohibit the detention or deportation of a student who is found to be out of status as a result of a SEVIS database error; and

(4) review the regulations and technology used in the SEVIS system, in order to streamline processes and reduce the time required for SEVIS-ap-
proved universities and programs to perform data entry tasks.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security and the Secretary of State shall jointly submit to the appropriate congressional committees a report on the implementation of this section.

SEC. 7. INTEROPERABLE DATA SYSTEMS.

(a) RESPONSIBILITIES OF THE FBI DIRECTOR.—The Director of the Federal Bureau of Investigation shall take the steps necessary to ensure that the Federal Bureau of Investigation has full connectivity to the Consular Consolidated Database.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the Director’s progress in ensuring that the Federal Bureau of Investigation has full connectivity to the Consular Consolidated Database.

SEC. 8. FACILITATING ACCESS.

(a) FINDING.—Congress finds that improvements in visa processing would enhance the national security of the United States by—
(1) permitting closer scrutiny of visa applicants who might pose threats to national security; and

(2) permitting the timely adjudication of visa applications of those whose presence in the United States serves important national interests.

(b) SENSE OF CONGRESS.—It is the sense of Congress that improvements in visa processing should include—

(1) an operational visa policy that articulates the national interest of the United States in denying entry to visitors who seek to harm the United States and in opening entry to legitimate visitors, to guide consular officers in achieving the appropriate balance;

(2) a greater focus by the visa system on visitors who require special screening, while minimizing delays for legitimate visitors;

(3) a timely, transparent, and predictable visa process, through appropriate guidelines for inter-agency review of visa applications; and

(4) a provision of the necessary resources to fund a visa processing system that meets the requirements of this Act.

(c) VISA PROCESSING.—
(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 60 days after the date of enactment of this Act, the Secretary of State shall issue appropriate guidance to consular officers in order to—

(A) give consulates appropriate discretion to grant waivers of personal appearance for foreign students, scholars, scientists and exchange visitors in order to minimize delays for legitimate travelers while permitting more thorough interviews of visa applicants in appropriate cases;

(B) establish a presumption of visa approval for frequent visitors who have previously been granted visas for the same purpose and who have no status violations and for people previously approved for visas who had to depart the United States for family emergencies; and

(C) give appropriate discretion, according to criteria developed at each post and approved by the Secretary of State, to view as “recreational in nature” courses of a duration no more than 1 semester or its equivalent, and not awarding certification, license or degree, for
purposes of determining appropriateness to visitor status.

(2) **Timeliness Standards.**—Not later than 60 days after the date of enactment of this Act, the President shall publish final regulations for inter-agency review of visa applications requiring security clearances which establish the following standards for timeliness for international student, scholar, scientist, and exchange visitor visas that—

(A) establish a 15-day standard for responses to the Department of State by other agencies involved in the clearance process;

(B) establish a 30-day standard for completing the entire inter-agency review and advising the consulate of the result of the review;

(C) provide for expedited processing of any visa application with respect to which a review is not completed within 30 days, and for advising the consulate of the delay and the estimated processing time remaining; and

(D) establish a special review process to resolve any cases whose resolution is still pending after 60 days.

(d) **Standards for Visa Evaluations.**—

(A) by striking “having a residence in a foreign country which he has no intention of abandoning” and inserting “having the intention, capability, and sufficient financial resources to complete a course of study in the United States”; and

(B) by striking “and solely” after “temporarily”.

(2) PRESUMPTION OF STATUS.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by striking “subparagraph (L) or” and inserting “subparagraph (F), (J), (L), or”.

(e) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of State shall report to appropriate congressional committees on—

(1) the feasibility of expediting visa processing for participants in official exchange programs, and for students, scholars, scientists and exchange visitors through prescreening of applicants by the government or a university in the country in which the individual resides, a Department of State edu-
cational advising center located in a foreign country, or other appropriate entity;

(2) the feasibility of developing the capability to collect biometric data without requiring an applicant for a visa to appear in person at a United States mission in a foreign country; and

(3) the implementation of the guidance described in subsection (b), including the training of consular officers, and the effect of such guidance and training on visa processing volume and timeliness.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act, including for the consular affairs and educational and cultural exchange functions of the Department of State, the visa application review and SEVIS database management function of the Department of Homeland Security, for the Departments of Education, Commerce, and State to develop an implement a marketing plan to attract international students, scholars, scientists, and exchange visitors, and for database improvements in the Federal Bureau of Investigations as specified in section 7.