



Economic Policy Institute

The State Department's J visa Exchange Visitor Program: Facilitating Diplomacy and Cultural Exchange, or Providing Temporary Labor?

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The J visa Exchange Visitor Program: *statement of purpose*

...enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; to promote international cooperation for educational and cultural advancement; and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world. (Fulbright-Hays Act)



The J visa Exchange Visitor Program: an introduction

- Categories
- Sponsors
 - Employers
 - Third country “cooperators” or recruiters
- SEVIS



The J visa Exchange Visitor Program: an introduction – *categories*

- Professors and research scholars
- Short-term scholars
- Trainees and interns
- College and university students
- Teachers
- Secondary school students
- Specialists
- Physicians
- International visitors
- Government visitors
- Camp counselors
- Au pairs
- Summer work/travel for postsecondary students
- Same sex domestic partners of U.S. employees in the Foreign Service on domestic assignment



The J visa Exchange Visitor Program: an introduction – *sponsors*

How to become a sponsor?

- Apply for designation with the Office of Exchange Visitor Program Designation in the State Department
- Pay \$2700

Who can become a sponsor?

- United States local, state and federal government agencies;
- International agencies or organizations of which the United States is a member and which have an office in the United States; or
- Reputable organizations which are "citizens of the United States," as that term is defined in [22 C.F.R.] §62.2.

("Citizens of the United States" includes nonprofit and for-profit corporations and other legal entities)

For how long?

- Initial sponsor designation is valid for two years, after which it is subject to a redesignation review, which must then occur every two years



The J visa Exchange Visitor Program: an introduction – *sponsors*

How many are there?

- It is unclear exactly how many sponsors exist: ICE reports that there are 1,456 “active” exchange visitor programs, and the data provided on the State Department’s new J-1 Visa website lists 3,416 “total sponsors.”

If an organization or business wishes to host exchange visitors, but does not want to become designated as a program sponsor, they can go through an already existing program sponsor (known as an “umbrella” sponsor for the Intern and Trainee categories).

Sponsors responsibilities

- Designate Responsible Officers (ROs) and Alternate Responsible Officers (AROs).
 - Are “ultimately responsible for ensuring that the program is administered and implemented in accordance with the Department’s Regulations within the Student and Exchange Visitor Information System (SEVIS).”
- Submit an annual summary report to the State Department detailing the program’s activities and evaluating its effectiveness.
- Keep records of the programs and exchange visitors for at least 3 years.



The J visa Exchange Visitor Program: an introduction – *SEVIS*

Collected data

- 171,978 “active” Exchange Visitors
- 50,702 J-2 Dependents
- 8.3 million total records (F-1, M-1, J-1)

Fees and revenue

- Active F-1 and M-1 students in the SEVIS database as of March 31, 2011
=\$164 million
- Approximately \$37 million from J-1 visa fees in FY 2008
- Millions from denied visas? In 2008, 58,321 J-1 visa applications were denied. (169,936 F-1 denials and 3,353 M-1 denials)

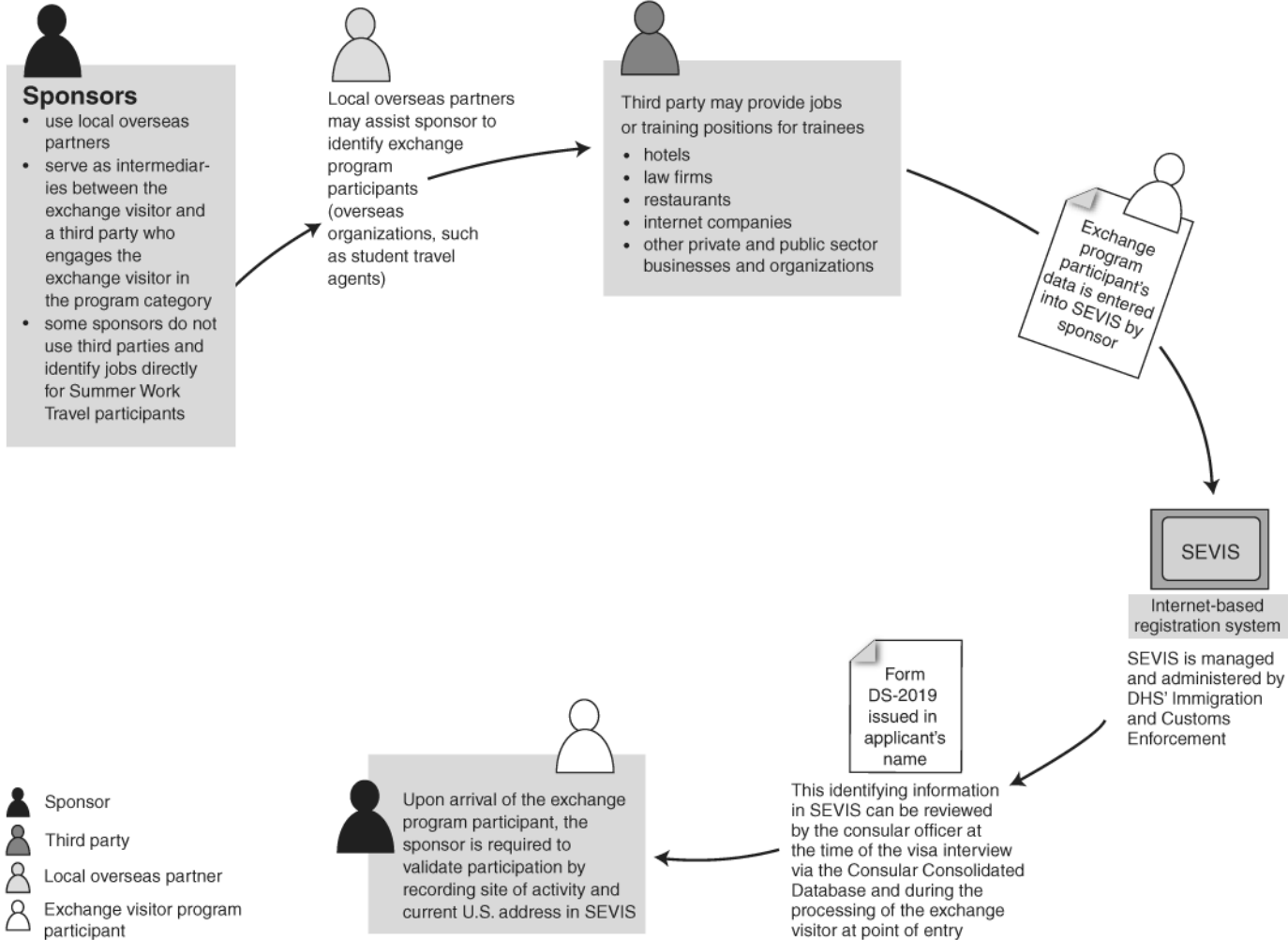


Sponsoring organizations

- nonprofit organizations
- businesses
- state, local, or federal government agencies
- educational institutions
- hospitals and related institutions

Sponsoring organizations' responsibilities

1. identify and screen applicants for program eligibility
2. assist exchange participants in finding jobs or trainee positions
3. enter the exchange participant information in the Department of Homeland Security's (DHS) Student and Exchange Visitor Information System (SEVIS)
4. oversee the operations of their local overseas partners and any third parties they work with





The J visa Exchange Visitor Program: an introduction

LEGAL/REGULATORY AUTHORITY

- Fulbright-Hays Act of 1961
- 22 C.F.R. Part 62
- Some provisions at 8 C.F.R. §§ 212 and 214
- DOS/DHS Memorandum of Understanding
- State Department Cables?
- Foreign Affairs Manual (for guidance)
- Case law, Guidance Directives, etc.
- Administrative Procedure Act?
 - “Foreign Affairs exception” for rulemaking
 - Decisions/sanctions at State can be challenged in federal court



The J visa Exchange Visitor Program: an introduction

LEGAL/REGULATORY AUTHORITY

Au Pair Program permanent authority at:

- Pub. L. No. 105-49, 111 Stat. 1165 (Oct. 1, 1997)
 - Before this was passed, GAO/internal auditors stated: program not consistent with the act (leaked CRS report)

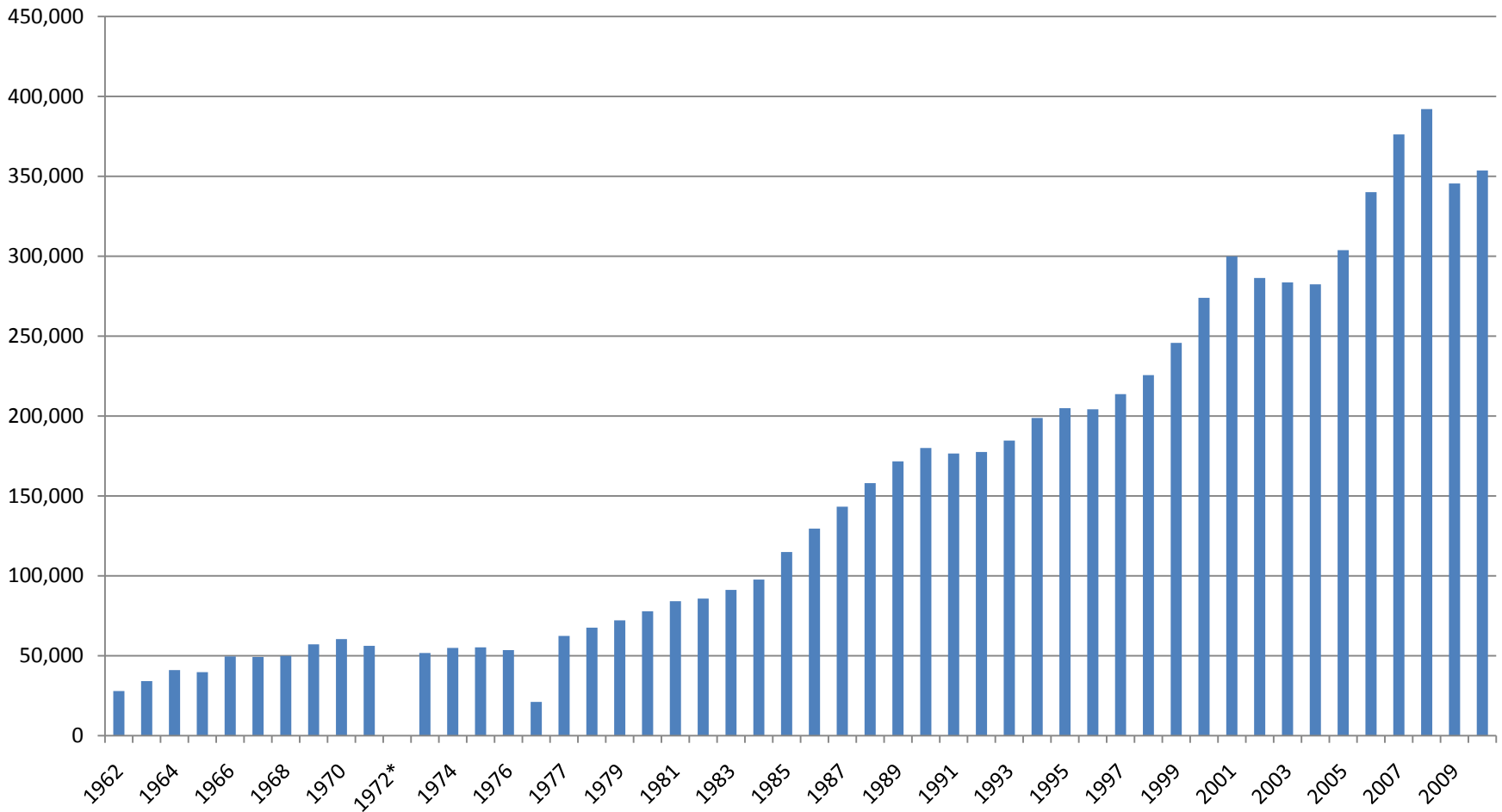
SWT Program permanent authority at:

- § 846, Pub. L. No. 105-244, 112 Stat. 1822 (Oct. 7, 1998)
- § 405, Pub. L. No. 105-277, 112 Stat. 2681 (Oct. 21, 1998) (line in appropriations bill)
- Codified at 22 U.S.C. § 1474, note (legality of notes?)



The J visa Exchange Visitor Program: reviewing the data

J visa exchange visitors and spouse/dependent(s), 1962-2010





The J visa Exchange Visitor Program: reviewing the data – *categories*

Exchange Visitor Program participants, by category, 2002-2010*

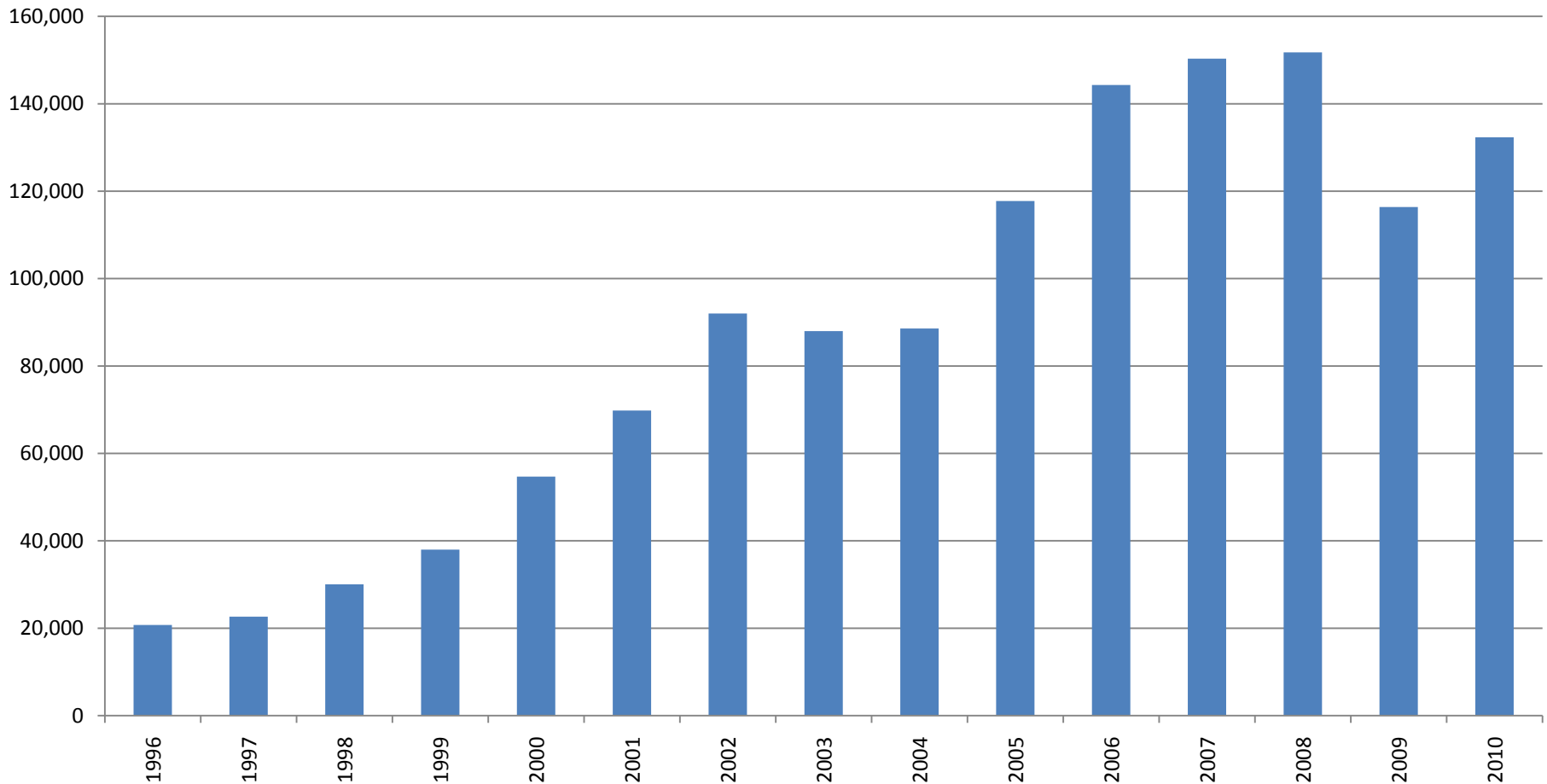
Exchange Visitor Category	2002	2003	2004	2005	2006	2007	2008	2009	2010
Alien Physician	9,257	8,000	7,295	1,533	1,480	1,779	1,853	2,038	1,997
Au Pair	11,855	11,901	16,093	12,659	14,054	17,149	17,503	14,160	13,297
Camp Counselor	24,377	23,490	20,602	20,895	20,296	22,205	21,485	18,354	17,190
College and University Student/Intern	29,812	14,158	32,780	19,268	22,925	29,097	34,504	39,023	40,492
Intern (created in 2007)						634	15,934	15,047	16,054
Trainee	35,745	30,500	27,214	23,219	24,619	29,998	12,553	8,495	8,727
Professor			2,980	2,279	2,304	1,903	1,557	1,398	1,313
Research Scholar			49,472	23,480	26,663	27,884	27,900	26,658	27,612
Short-term Scholar	56,250	22,233	7,513	9,550	11,976	16,802	19,475	18,225	18,396
Secondary Student	26,142	28,000	24,084	24,608	26,711	29,512	28,627	26,601	26,509
Specialist	6,432	1,132	1,151	945	1,150	1,537	2,289	2,406	2,216
Summer Work Travel	71,218	88,851	77,323	88,557	106,725	147,645	152,726	116,387	132,342
Teacher	8,300	2,366	5,292	2,447	2,534	3,052	2,456	1,509	1,224
TOTALS (Fiscal Year)	279,388	230,631	271,799	229,440	261,437	329,197	338,862	290,301	307,369

*Does not include government visitors, international visitors and government sponsored exchange visitors in other categories (except for 2010 SWT)



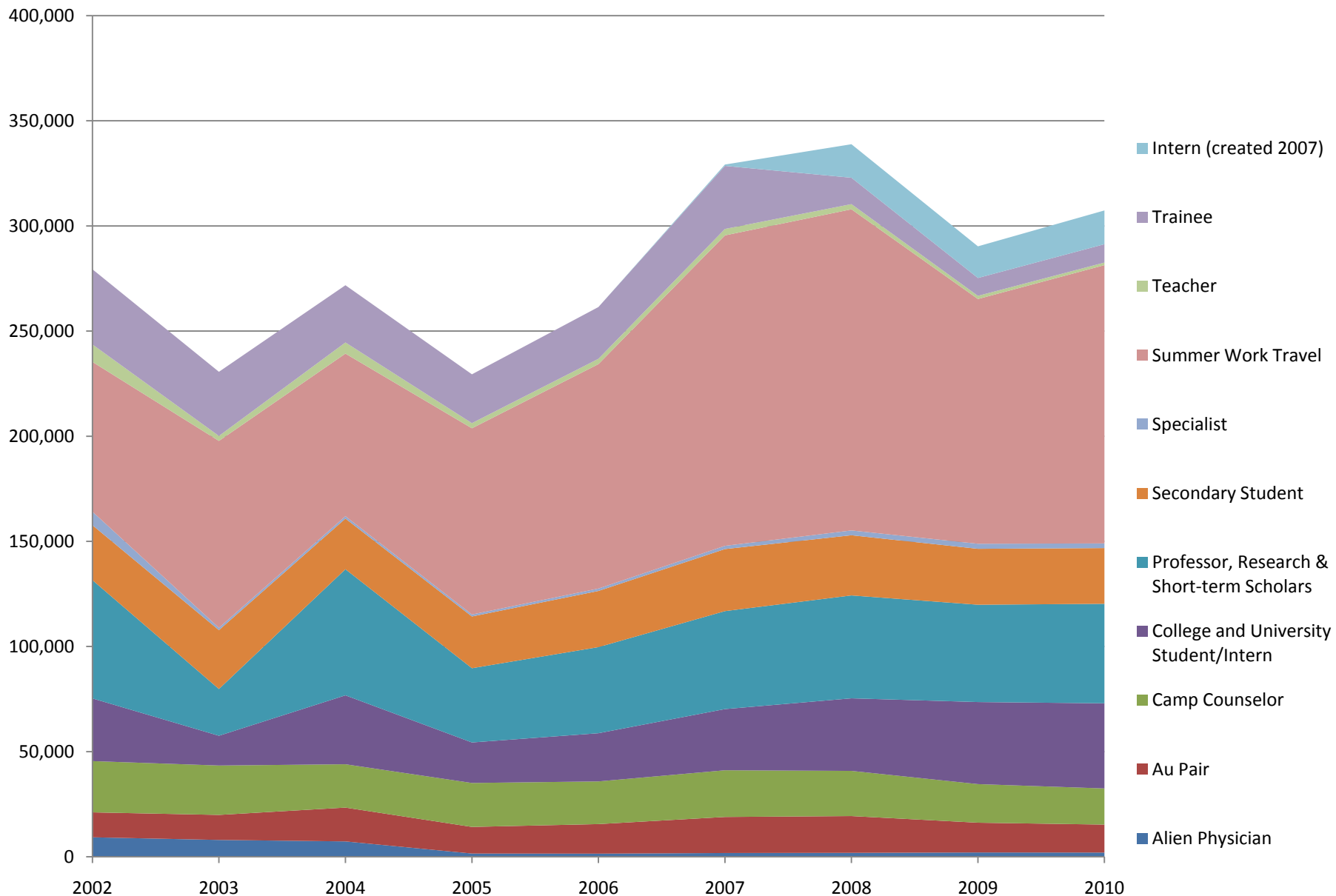
The J visa Exchange Visitor Program: reviewing the data - *SWT*

Total Summer Work Travel program participants, 1996-2010





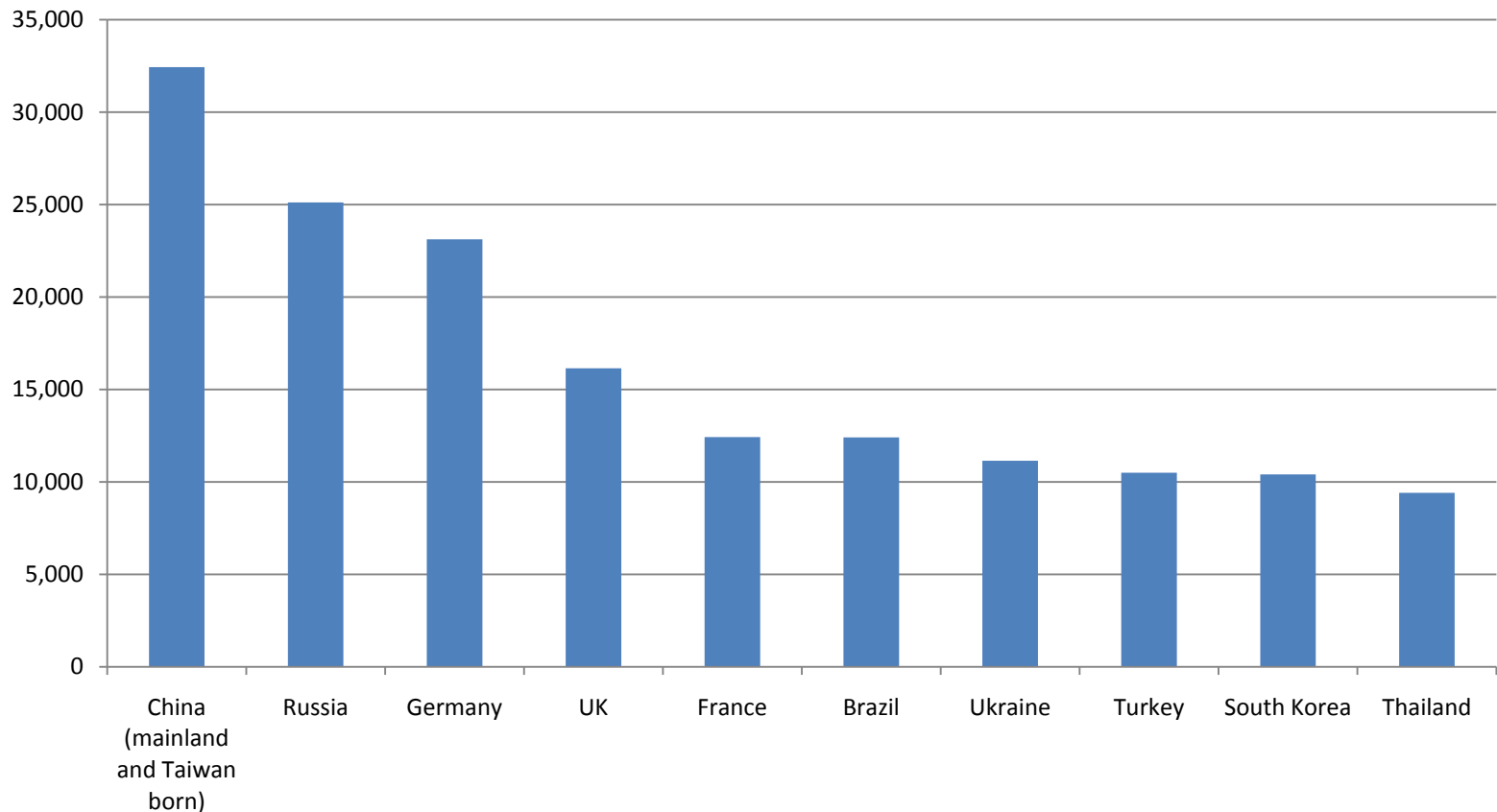
Exchange Visitor Program participants, by category, 2002-2010*





The J visa Exchange Visitor Program: reviewing the data – *source countries*

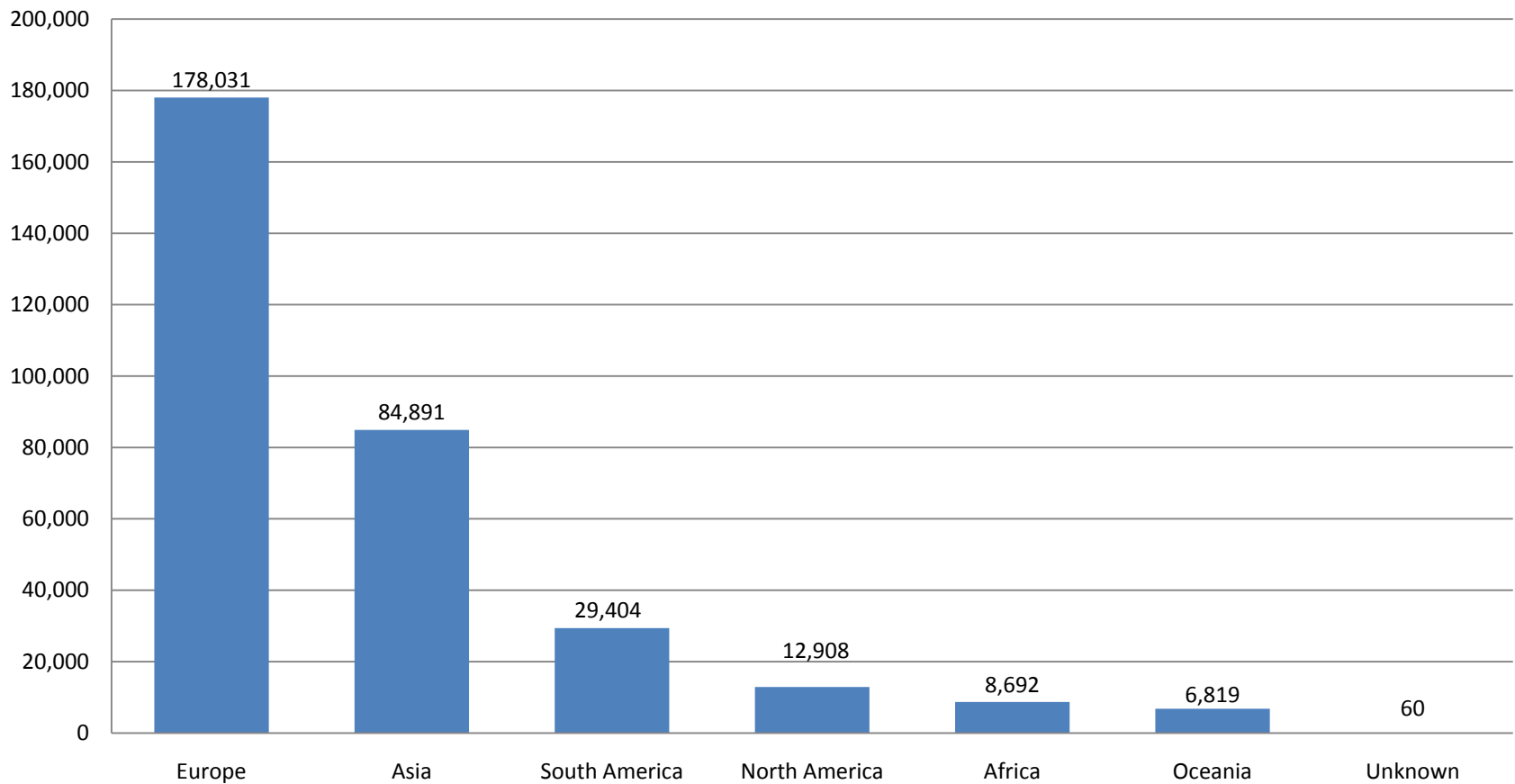
Exchange Visitor Program participants, top 10 source countries, 2010





The J visa Exchange Visitor Program: reviewing the data – *source regions*

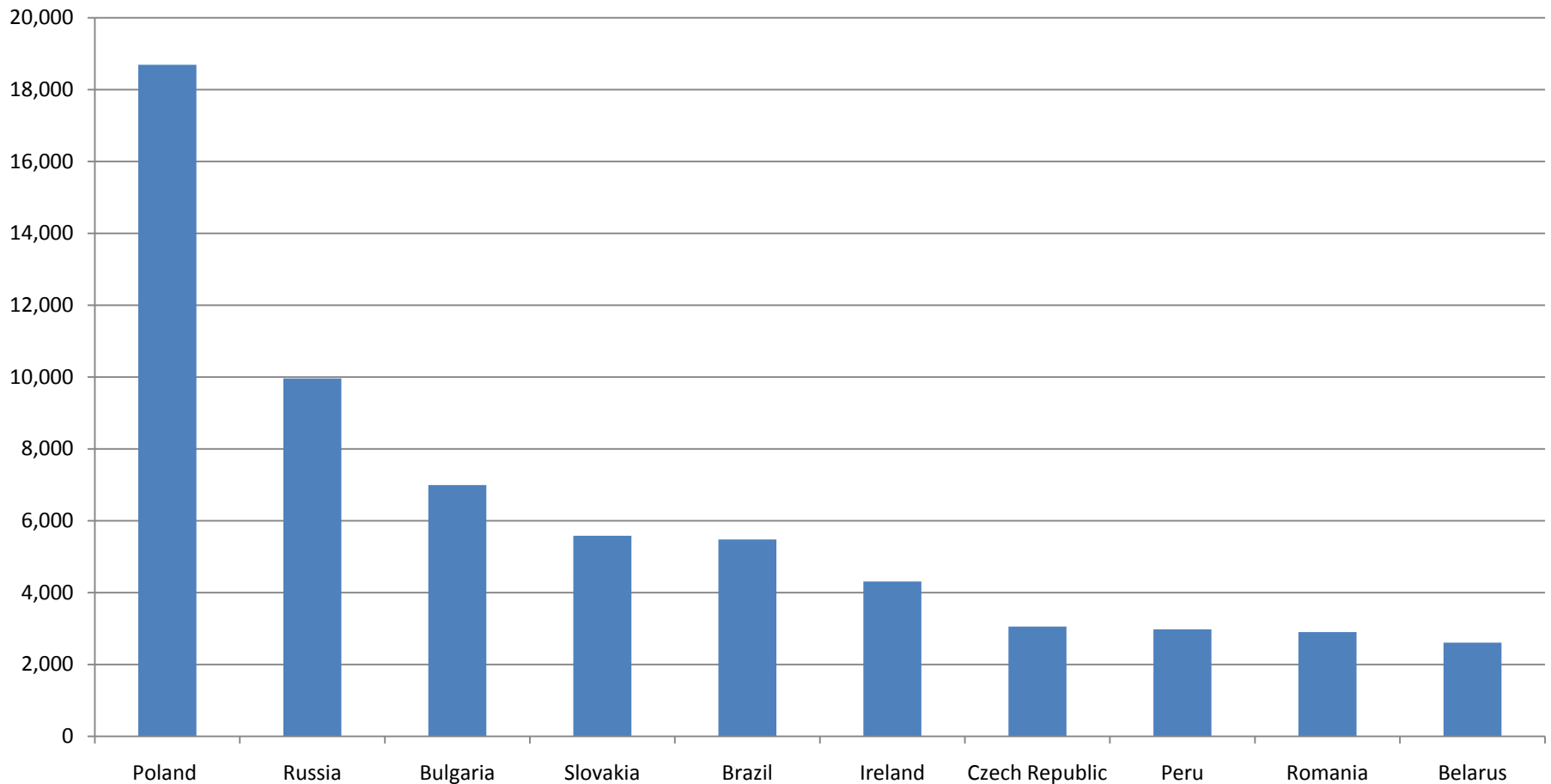
Exchange Visitor Program participants, by source region, 2010





The J visa Exchange Visitor Program: reviewing the data – *SWT source countries*

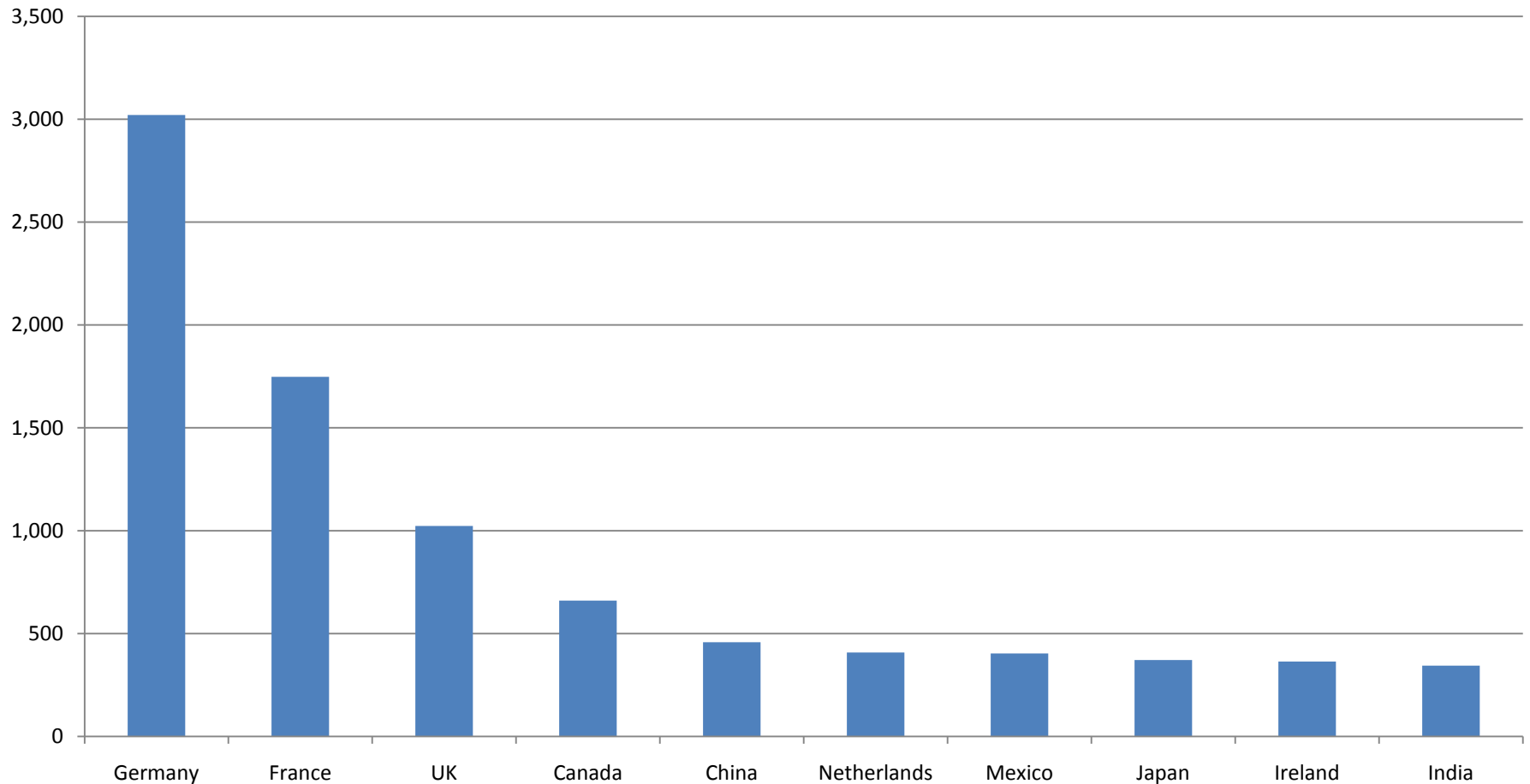
Summer Work Travel program participants, top 10 sending countries, 2004





The J visa Exchange Visitor Program: reviewing the data – *Trainee source countries*

Trainee program participants, top 10 sending countries, 2004





The J visa Exchange Visitor Program: public criticism – *government auditors*

- **GAO: 1990, 2005**
- **STATE DEPARTMENT'S OIG: 2000**



The J visa Exchange Visitor Program: public criticism – *government auditors*

GAO AND OIG'S FINDINGS

- Regulations are inadequate
- Deficient management and oversight by the State Department
- Some program categories are employment programs that displace U.S. workers
- Financial incentives for sponsor organizations
- Program's inconsistencies with legislative intent
- Lack of data



The J visa Exchange Visitor Program: public criticism – *media attention*

ASSOCIATED PRESS: 2010

- Many foreign students pay recruiters to help find employment, then don't get work or wind up making little or no money at menial jobs. Labor recruiters charge students exorbitant rent for packing them into filthy, sparsely furnished apartments so crowded that some endure "hotbunking," where they sleep in shifts.
- Hotels, restaurants and other businesses often hire third-party labor recruiters to supply the J-1 workers. Many of those brokers are people from the students' native countries... These middlemen commonly dock students' pay so heavily for lodging, transportation and other necessities that the wages work out to \$1 an hour or less.
- The program generates millions of dollars for the sponsor companies and third-party labor recruiters.
- Students routinely get threatened with deportation or eviction if they quit, or even if they just complain too loudly. Some resort to stealing essentials like food, toothpaste and underwear, according to police.
- The State Department failed to even keep up with the number of student complaints until this year, and has consistently shifted responsibility for policing the program to the 50 or so companies that sponsor students for fees that can run up to several thousand dollars. That has left businesses to monitor their own treatment of participants.
- Strip clubs and adult entertainment companies openly solicit J-1 workers, even though government regulations ban students from taking jobs "that might bring the Department of State into notoriety or disrepute."



The J visa Exchange Visitor Program: labor market impacts?

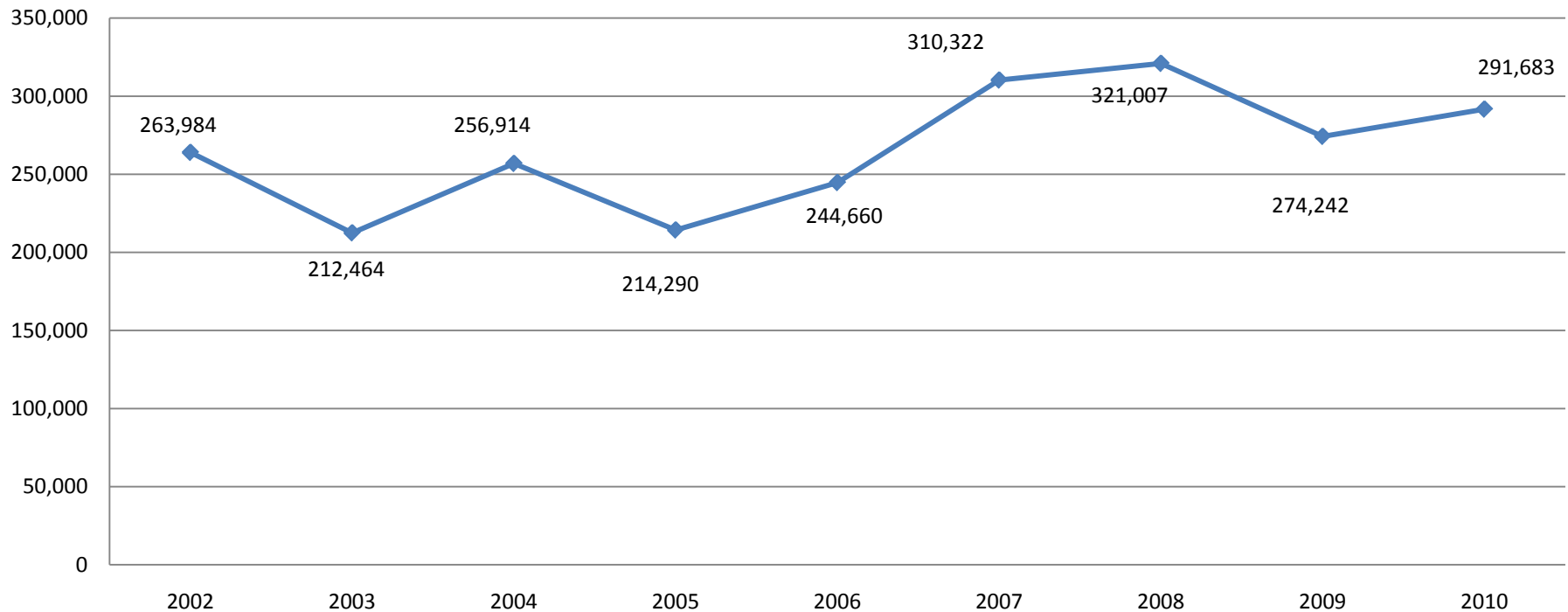
Difficult to assess – large data gaps

- Wage data?
 - Likely that no one has this
- Occupational data?
 - Sponsors *might* have this
- Data on complaints, enforcement activities/sanctions?
 - State admits they just started keeping track of complaints in November 2010.



The J visa Exchange Visitor Program: “workers” and skill distribution

Estimated number of exchange visitors working in the U.S., 2002-2010*



*Totals represent new Exchange Visitor Program Participants who worked part- or full-time at some point during the year they were issued their J visa (not the total stock of J visa holders working in the country the entire year). Totals include 1/3 of all J-2 beneficiaries, and exclude secondary students, government visitors, international visitors and government sponsored exchange visitors in other categories.

Source: Author's estimate based on report of the Interagency Working Group on U.S. Government-Sponsored International Exchanges and Training; State Department (J-1 Visa website).



The J visa Exchange Visitor Program: “workers” & skill distribution

Worker skill level, maximum duration of status and weekly work hours, by category

Exchange Visitor Category	Skill Level				Maximum duration of status	Estimated hours worked per week	Admissions (FY 2010)
	Low	Middle	High	Mixed			
Alien Physician					7 years	40 (no restriction)	1,997
Au Pair					1 - 2 years	up to 45	13,297
Camp Counselor					4 months	40 (no restriction)	17,190
College and University Student/Intern					18 months - 3 years	20 - 40*	40,492
Intern					1 year	40 (no restriction)	16,054
Trainee					18 months	40 (no restriction)	8,727
Professor					5 years	40 (no restriction)	1,313
Research Scholar					5 years	40 (no restriction)	27,612
Short-term Scholar					6 months	40 (no restriction)	18,396
Specialist					1 year	40 (no restriction)	2,216
Summer Work Travel					4 months or 1 year**	40 (no restriction)	132,342
Teacher					3 years	40 (no restriction)	1,224
J-2 Spouses/Dependents					Same as principal J-1	40 (no restriction)	32,797

*Full-time students are restricted to 20 hours per week, but no hourly restrictions apply during school breaks and vacations. Students in academic training programs are unrestricted in terms of work hours.

**Australia and New Zealand Pilot Program.



The J visa Exchange Visitor Program: why worry?

Employer incentives to hire J-1 vs U.S. workers or other nonimmigrants

- Payroll savings
 - Save on FICA/FUTA, state taxes, health care costs
 - Disney saves \$15 million per on wages year by using J-1s
- Virtual indentured servitude
 - Participants arrive in debt (Peru example; limited portability, scared to complain)
- J-1s are cheaper, faster and easier to obtain than other nonimmigrant visas that permit employment
 - Immigration lawyers advertise this (6 weeks; only one agency)
 - No prevailing wage, labor market test, labor certification



The J visa Exchange Visitor Program: why worry?

This is exactly what's happening...

- Employers are using the J-1 program to fill their yearly/seasonal staffing needs
 - Honestly and openly brag about hiring J-1 workers instead of U.S. workers or H-2B guestworkers
- Importing labor even in high unemployment areas
- Foregone federal revenue for the U.S.
 - FY08 SWT workers, 40 hours/week, 4 months = employers paid \$116 million less in Medicare, Social Security and Federal Unemployment taxes than if those hours had been worked by a U.S. worker earning the federal minimum wage.
 - Impact on the social safety net? (more unemployed U.S. workers, less funds for benefits)



The J visa Exchange Visitor Program: U.S. worker protections?

- No labor market test or recruiting requirements (this is the big one)
 - Employers aren't required to advertise openings; can entirely bypass U.S. workers
- No wage protections
 - Would a prevailing wage help? (maybe for physicians, teachers, etc. – but not for others)
- No private right of action/enforcement options or remedies for overlooked U.S. workers



The J visa Exchange Visitor Program: compliance, oversight and enforcement

- 4 compliance officers at State in 2005
- 13 compliance officers as of January 2009 (responsible for 350K exchange visitors)
- Underfunded and understaffed, and lacks the appropriate expertise to protect workers
 - Not enough staff/time to read program reports
 - Investigations were conducted by email, phone and fax
 - No travel budget
 - 1% of SWT sponsors visited per year (8 site visits between 2001-2004)
 - As a result, because the department has virtually no evidence about how sponsors are administering the programs in practice, “the vast majority of sponsors who apply for redesignation are approved.”
- Regulations are toothless and unenforceable
- Absurd conflict of interest
 - Outsourced responsibilities to sponsors
 - Sponsors outsource responsibilities to employers
 - If everyone is profiting, why rock the boat by reporting yourself?



The J visa Exchange Visitor Program: major program flaws

- No labor market test or recruiting requirements
- Other nonimmigrant visa categories already exist for most J-1 categories
 - This diminishes the integrity and rules of other visa categories, especially the H-2A, H-2B, H-1B, F-1, M-1
- Many sponsors are money making enterprises (OIG) masquerading as facilitators of diplomacy
- Fulbright-Hays Act does not authorize guestworker programs for employers to fill labor shortages
- State Department can create new guestworker categories on an ad hoc basis



The J visa Exchange Visitor Program: solutions?