

amended section 1281 of this title. Section 543(a) of the Act amended sections 1221, former 1227, 1229 (now 1224), 1284, 1285, 1286, 1287, 1321, 1322, and 1323 of this title.

Section 605 of Public Law 104-134, referred to in subsec. (b)(3)(C), is section 101(a) [title VI, §605] of Pub. L. 104-134, title I, Apr. 26, 1996, 110 Stat. 1321, 1321-63, which is not classified to the Code.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-208, §308(g)(4)(C), substituted “1224, 1253(c)(2)” for “1227, 1229, 1253”.

Subsec. (b). Pub. L. 104-208, §382(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Notwithstanding section 3302 of title 31, the increase in penalties collected resulting from the amendments made by sections 203(b), 543(a), and 544 of the Immigration Act of 1990 shall be credited to the appropriation—

“(1) for the Immigration and Naturalization Service for activities that enhance enforcement of provisions of this subchapter, including—

“(A) the identification, investigation, and apprehension of criminal aliens,

“(B) the implementation of the system described in section 1252(a)(3)(A) of this title, and

“(C) for the repair, maintenance, or construction on the United States border, in areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States; and

“(2) for the Executive Office for Immigration Review in the Department of Justice for the purpose of removing the backlogs in the preparation of transcripts of deportation proceedings conducted under section 1252 of this title.”

1994—Subsec. (b)(1)(C). Pub. L. 103-416 substituted “maintenance” for “maintainance”.

1990—Pub. L. 101-649 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(4)(C) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Section 382(c) of div. C of Pub. L. 104-208 provided that: “The amendments made by this section [amending this section and section 1356 of this title] shall apply to fines and penalties collected on or after the date of the enactment of this Act [Sept. 30, 1996].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 219(dd) of Pub. L. 103-416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 542(b) of Pub. L. 101-649 provided that: “The amendment made by subsection (a) [amending this section] shall apply to fines and penalties collected on or after January 1, 1991.”

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

PART IX—MISCELLANEOUS

§ 1351. Nonimmigrant visa fees

The fees for the furnishing and verification of applications for visas by nonimmigrants of each foreign country and for the issuance of visas to nonimmigrants of each foreign country shall be

prescribed by the Secretary of State, if practicable, in amounts corresponding to the total of all visa, entry, residence, or other similar fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents: *Provided*, That nonimmigrant visas issued to aliens coming to the United States in transit to and from the headquarters district of the United Nations in accordance with the provisions of the Headquarters Agreement shall be gratis. Subject to such criteria as the Secretary of State may prescribe, including the duration of stay of the alien and the financial burden upon the charitable organization, the Secretary of State shall waive or reduce the fee for application and issuance of a nonimmigrant visa for any alien coming to the United States primarily for, or in activities related to, a charitable purpose involving health or nursing care, the provision of food or housing, job training, or any other similar direct service or assistance to poor or otherwise needy individuals in the United States.

(June 27, 1952, ch. 477, title II, ch. 9, §281, 66 Stat. 230; Pub. L. 89-236, §14, Oct. 3, 1965, 79 Stat. 919; Pub. L. 90-609, §1, Oct. 21, 1968, 82 Stat. 1199; Pub. L. 105-54, §2(a), Oct. 6, 1997, 111 Stat. 1175.)

REFERENCES IN TEXT

The Headquarters Agreement, referred to in text, is set out as a note under section 287 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1997—Pub. L. 105-54 inserted at end “Subject to such criteria as the Secretary of State may prescribe, including the duration of stay of the alien and the financial burden upon the charitable organization, the Secretary of State shall waive or reduce the fee for application and issuance of a nonimmigrant visa for any alien coming to the United States primarily for, or in activities related to, a charitable purpose involving health or nursing care, the provision of food or housing, job training, or any other similar direct service or assistance to poor or otherwise needy individuals in the United States.”

1968—Pub. L. 90-609 struck out provisions fixing statutory fees for specified immigration and nationality benefits and services rendered, including those pertaining to immigrant visas, reentry permits, adjustments of status to permanent residence, creation of record of admission for permanent residence, suspension of deportation, extension of stay to nonimmigrants, and application for admission to practice as attorney or representative before the Service.

1965—Subsec. (a). Pub. L. 89-236, §14(a), (b), designated opening provision beginning “The following fees shall be charged:” and ending with the end of par. (7) as subsec. (a) and substituted reference to section 1154 of this title for sections 1154(b) and 1155(b) of this title in par. (6).

Subsec. (b). Pub. L. 89-236, §14(c), added subsec. (b).

Subsec. (c). Pub. L. 89-236, §14(d), designated closing provision consisting of the paragraph beginning “The fees for the furnishing” as subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 2(b) of Pub. L. 105-54 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 6, 1997].”

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89-236, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

SURCHARGE FOR PROCESSING MACHINE-READABLE
NONIMMIGRANT VISAS

Pub. L. 110-457, title II, §239, Dec. 23, 2008, 122 Stat. 5085, provided that:

“(a) INCREASE IN FEE.—Notwithstanding any other provision of law, not later than October 1, 2009, the Secretary of State shall increase by \$1 the fee or surcharge assessed under section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236; 8 U.S.C. 1351 note) for processing machine-readable nonimmigrant visas and machine-readable combined border crossing identification cards and nonimmigrant visas.

“(b) DEPOSIT OF AMOUNTS.—Notwithstanding section 140(a)(2) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236; 8 U.S.C. 1351 note), the additional amount collected pursuant [to] the fee increase under subsection (a) shall be deposited in the Treasury.

“(c) DURATION OF INCREASE.—The fee increase authorized under subsection (a) shall terminate on the date that is 3 years after the first date on which such increased fee is collected.”

Pub. L. 110-293, title V, §501, July 30, 2008, 122 Stat. 2968, provided that:

“(a) FEE INCREASE.—Notwithstanding any other provision of law—

“(1) not later than October 1, 2010, the Secretary of State shall increase by \$1 the fee or surcharge authorized under section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236; 8 U.S.C. 1351 note) for processing machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas; and

“(2) not later than October 1, 2013, the Secretary shall increase the fee or surcharge described in paragraph (1) by an additional \$1.

“(b) DEPOSIT OF AMOUNTS.—Notwithstanding section 140(a)(2) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236; 8 U.S.C. 1351 note), fees collected under the authority of subsection (a) shall be deposited in the Treasury.”

Pub. L. 107-77, title IV, Nov. 28, 2001, 115 Stat. 783, which provided in part that notwithstanding section 140(a)(5), and the second sentence of section 140(a)(3), of Pub. L. 103-236 [below], fees could be collected during fiscal years 2002 and 2003, under the authority of section 140(a)(1), and that all fees so collected would be deposited in fiscal years 2002 and 2003 as an offsetting collection to appropriations made under this heading to recover costs under section 140(a)(2) and would remain available until expended, was from the Department of State and Related Agency Appropriations Act, 2002, and was not repeated in subsequent appropriation acts.

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 106-553, §1(a)(2) [title IV], Dec. 21, 2000, 114 Stat. 2762, 2762A-90.

Pub. L. 106-113, div. B, §1000(a)(1) [title IV], Nov. 29, 1999, 113 Stat. 1535, 1501A-39.

Pub. L. 105-277, div. A, §101(b) [title IV], Oct. 21, 1998, 112 Stat. 2681-50, 2681-93.

Pub. L. 105-119, title IV, Nov. 26, 1997, 111 Stat. 2494.

Pub. L. 105-46, §116, Sept. 30, 1997, 111 Stat. 1157.

Pub. L. 104-208, div. A, title I, §101(a) [title IV], Sept. 30, 1996, 110 Stat. 3009, 3009-46.

Pub. L. 104-134, title I, §101[(a)] [title IV], Apr. 26, 1996, 110 Stat. 1321, 1321-36; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 105-277, div. A, §101(b) [title IV, §410(a)], Oct. 21, 1998, 112 Stat. 2681-50, 1681-102, provided that:

“(1)(A) Notwithstanding any other provision of law and subject to subparagraph (B), the Secretary of State and the Attorney General shall impose, for the processing of any application for the issuance of a machine readable combined border crossing card and nonimmigrant visa under section 101(a)(15)(B) of the Immi-

gration and Nationality Act [8 U.S.C. 1101(a)(15)(B)], a fee of \$13 (for recovery of the costs of manufacturing the combined card and visa) in the case of any alien under 15 years of age where the application for the machine readable combined border crossing card and nonimmigrant visa is made in Mexico by a citizen of Mexico who has at least one parent or guardian who has a visa under such section or is applying for a machine readable combined border crossing card and nonimmigrant visa under such section as well.

“(B) The Secretary of State and the Attorney General may not commence implementation of the requirement in subparagraph (A) until the later of—

“(i) the date that is 6 months after the date of enactment of this Act [Oct. 21, 1998]; or

“(ii) the date on which the Secretary sets the amount of the fee or surcharge in accordance with paragraph (3).

“(2)(A) Except as provided in subparagraph (B), if the fee for a machine readable combined border crossing card and nonimmigrant visa issued under section 101(a)(15)(B) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(B)] has been reduced under paragraph (1) for a child under 15 years of age, the machine readable combined border crossing card and nonimmigrant visa shall be issued to expire on the earlier of—

“(i) the date on which the child attains the age of 15; or

“(ii) ten years after its date of issue.

“(B) At the request of the parent or guardian of any alien under 15 years of age otherwise covered by subparagraph (A), the Secretary of State and the Attorney General may charge the non-reduced fee for the processing of an application for the issuance of a machine readable combined border crossing card and nonimmigrant visa under section 101(a)(15)(B) of the Immigration and Nationality Act provided that the machine readable combined border crossing card and nonimmigrant visa is issued to expire as of the same date as is usually provided for visas issued under that section.

“(3) Notwithstanding any other provision of law, the Secretary of State shall set the amount of the fee or surcharge authorized pursuant to section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236; 8 U.S.C. 1351 note [set out below]) for the processing of machine readable nonimmigrant visas and machine readable combined border crossing cards and nonimmigrant visas at a level that will ensure the full recovery by the Department of State of the costs of processing such machine readable nonimmigrant visas and machine readable combined border crossing cards and nonimmigrant visas, including the costs of processing the machine readable combined border crossing cards and nonimmigrant visas for which the fee is reduced pursuant to this subsection.”

[Pub. L. 106-113, div. B, §1000(a)(1) [title IV, §404], Nov. 29, 1999, 113 Stat. 1535, 1501A-45, provided that: “Beginning in fiscal year 2000 and thereafter, section 410(a) of the Department of State and Related Agencies Appropriations Act, 1999, as included in Public Law 105-277 [set out above], shall be in effect.”]

[For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.]

Pub. L. 103-236, title I, §140(a), Apr. 30, 1994, 108 Stat. 399, as amended by Pub. L. 103-415, §1(bb), Oct. 25, 1994, 108 Stat. 4302; Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title II, §231], Nov. 29, 1999, 113 Stat. 1536, 1501A-425; Pub. L. 107-173, title I, §103(a), May 14, 2002, 116 Stat. 547; Pub. L. 107-228, div. A, title II, §234, Sept. 30, 2002, 116 Stat. 1373, provided that:

“(1) Notwithstanding any other provision of law, the Secretary of State is authorized to charge a fee or surcharge for processing machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas.

“(2) Fees collected under the authority of paragraph (1) shall be deposited as an offsetting collection to any

Department of State appropriation, to recover the costs of providing consular services. Such fees shall remain available for obligation until expended.

“(3) For the fiscal year 2003, any amount that exceeds \$460,000,000 may be made available only if a notification is submitted to Congress in accordance with the procedures applicable to reprogramming notifications under section 34 of the State Department Basic Authorities Act of 1956 [22 U.S.C. 2706].”

Provisions directing the continuing effect for specific periods of authorities provided under section 140(a) of Pub. L. 103–236, set out above, were contained in the following appropriation acts:

- Pub. L. 104–92, title I, §112, Jan. 6, 1996, 110 Stat. 18.
- Pub. L. 104–56, title I, §118, Nov. 20, 1995, 109 Stat. 552.
- Pub. L. 104–54, title I, §118, Nov. 19, 1995, 109 Stat. 544.
- Pub. L. 104–31, §119, Sept. 30, 1995, 109 Stat. 281.

§ 1352. Printing of reentry permits and blank forms of manifest and crew lists; sale to public

(a) Reentry permits issued under section 1203 of this title shall be printed on distinctive safety paper and shall be prepared and issued under regulations prescribed by the Attorney General.

(b) The Public Printer is authorized to print for sale to the public by the Superintendent of Documents, upon prepayment, copies of blank forms of manifests and crew lists and such other forms as may be prescribed and authorized by the Attorney General to be sold pursuant to the provisions of this subchapter.

(June 27, 1952, ch. 477, title II, ch. 9, § 282, 66 Stat. 231.)

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1353. Travel expenses and expense of transporting remains of officers and employees dying outside of United States

When officers, inspectors, or other employees of the Service are ordered to perform duties in a foreign country, or are transferred from one station to another, in the United States or in a foreign country, or while performing duties in any foreign country become eligible for voluntary retirement and return to the United States, they shall be allowed their traveling expenses in accordance with such regulations as the Attorney General may deem advisable, and they may also be allowed, within the discretion and under written orders of the Attorney General, the expenses incurred for the transfer of their wives and dependent children, their household effects and other personal property, including the expenses for packing, crating, freight, unpacking, temporary storage, and drayage thereof in accordance with subchapter II of chapter 57 of title 5. The expense of transporting the remains of such officers, inspectors, or other employees who die while in, or in transit to, a foreign country in the discharge of their official duties, to their former homes in this country for interment, and the ordinary and necessary expenses of such interment and of preparation for shipment, are authorized to be paid on the written order of the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 9, § 283, 66 Stat. 231; Pub. L. 100–525, §9(p), Oct. 24, 1988, 102 Stat. 2621.)

AMENDMENTS

1988—Pub. L. 100–525 substituted “subchapter II of chapter 57 of title 5” for “the Act of August 2, 1946 (60 Stat. 806; 5 U.S.C., sec. 73b–1)”.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1353a. Officers and employees; overtime services; extra compensation; length of working day

The Attorney General shall fix a reasonable rate of extra compensation for overtime services of immigration officers and employees of the Immigration and Naturalization Service who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform duties in connection with the examination and landing of passengers and crews of steamships, trains, airplanes, or other vehicles, arriving in the United States from a foreign port by water, land, or air, such rates to be fixed on a basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian) and two additional days' pay for Sunday and holiday duty; in those ports where the customary working hours are other than those heretofore mentioned, the Attorney General is vested with authority to regulate the hours of such employees so as to agree with the prevailing working hours in said ports, but nothing contained in this section shall be construed in any manner to affect or alter the length of a working day for such employees or the overtime pay herein fixed.

(Mar. 2, 1931, ch. 368, §1, 46 Stat. 1467; Ex. Ord. No. 6166, §14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238; June 27, 1952, ch. 477, title IV, §402(i)(1), 66 Stat. 278.)

CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

Ex. Ord. No. 6166, is authority for the substitution of “Immigration and Naturalization Service” for “Immigration Service”; and 1940 Reorg. Plan No. V. is authority for the substitution of “Attorney General” for “Secretary of Labor.” See note set out under section 1551 of this title.

Section was formerly classified to section 342c of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109a of this title.

AMENDMENTS

1952—Act June 27, 1952, substituted “immigration officers” for “inspectors”.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees by 1950 Reorg. Plan No. 2, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1353b. Extra compensation; payment

The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance arriving in the United States from a foreign port to the Attorney General, who shall pay the same to the several immigration officers and employees entitled thereto as provided in this section and section 1353a of this title. Such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual inspection or examination of passengers or crew takes place or not: *Provided*, That this section shall not apply to the inspection at designated ports of entry of passengers arriving by international ferries, bridges, or tunnels, or by aircraft, railroad trains, or vessels on the Great Lakes and connecting waterways, when operating on regular schedules.

(Mar. 2, 1931, ch. 368, §2, 46 Stat. 1467; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238.)

CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

1940 Reorg. Plan No. V is authority for the substitution of "Attorney General" for "Secretary of Labor." See note set out under section 1551 of this title.

Section was formerly classified to section 342d of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109b of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1353c. Immigration officials; service in foreign contiguous territory

Nothing in section 209 of title 18 relative to augmenting salaries of Government officials from outside sources shall prevent receiving reimbursements for services of immigration officials incident to the inspection of aliens in foreign contiguous territory and such reimbursement shall be credited to the appropriation, "Immigration and Naturalization Service—Salaries and Expenses."

(Mar. 4, 1921, ch. 161, §1, 41 Stat. 1424; Sept. 3, 1954, ch. 1263, §6, 68 Stat. 1227.)

CODIFICATION

"Section 209 of title 18" substituted in text for "section 1914 of title 18" on authority of section 2 of Pub. L. 87-849, Oct. 23, 1962, 76 Stat. 1126, which repealed section 1914 and supplanted it with section 209, and which provided that exemptions from section 1914 shall be deemed exemptions from section 209. For further details, see Exemptions note set out under section 203 of Title 18, Crimes and Criminal Procedure.

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

Section constituted a part of section 1 of act Mar. 4, 1921, ch. 161, 41 Stat. 1424, which rendered act Mar. 3, 1917, ch. 163, §1, 39 Stat. 1106 (section 66 of former Title 5), inapplicable to immigration officials under the circumstances stated.

Section was formerly classified to section 68 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109c of this title.

AMENDMENTS

1954—Act Sept. 3, 1954, amended section generally, substituting "section 1914 of title 18" for reference to the proviso in the Act of March 3, 1917 (5 U.S.C. 66), and substituting "Immigration and Naturalization Service—Salaries and Expenses" for "Expenses of regulating immigration".

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1353d. Disposition of money received as extra compensation

Moneys collected on or after July 1, 1941, as extra compensation for overtime service of immigration officers and employees of the Immigration Service pursuant to sections 1353a and 1353b of this title, shall be deposited in the Treasury of the United States to the credit of the appropriation for the payment of salaries, field personnel of the Immigration and Naturalization Service, and the appropriation so credited shall be available for the payment of such compensation.

(Aug. 22, 1940, ch. 688, 54 Stat. 858; June 27, 1952, ch. 477, title IV, §402(i)(2), 66 Stat. 278.)

CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

Section was formerly classified to section 342e of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by

Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109d of this title.

AMENDMENTS

1952—Act June 27, 1952, substituted “immigration officers” for “inspectors”.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1354. Applicability to members of the Armed Forces

(a) Nothing contained in this subchapter shall be construed so as to limit, restrict, deny, or affect the coming into or departure from the United States of an alien member of the Armed Forces of the United States who is in the uniform of, or who bears documents identifying him as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces: *Provided*, That nothing contained in this section shall be construed to give to or confer upon any such alien any other privileges, rights, benefits, exemptions, or immunities under this chapter, which are not otherwise specifically granted by this chapter.

(b) If a person lawfully admitted for permanent residence is the spouse or child of a member of the Armed Forces of the United States, is authorized to accompany the member and reside abroad with the member pursuant to the member's official orders, and is so accompanying and residing with the member (in marital union if a spouse), then the residence and physical presence of the person abroad shall not be treated as—

- (1) an abandonment or relinquishment of lawful permanent resident status for purposes of clause (i) of section 1101(a)(13)(C) of this title; or
- (2) an absence from the United States for purposes of clause (ii) of such section.

(June 27, 1952, ch. 477, title II, ch. 9, § 284, 66 Stat. 232; Pub. L. 110-181, div. A, title VI, § 673, Jan. 28, 2008, 122 Stat. 185.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110-181 designated existing provisions as subsec. (a) and added subsec. (b).

§ 1355. Disposal of privileges at immigrant stations; rentals; retail sale; disposition of receipts

(a) Subject to such conditions and limitations as the Attorney General shall prescribe, all exclusive privileges of exchanging money, transporting passengers or baggage, keeping eating houses, or other like privileges in connection with any United States immigrant station, shall be disposed of to the lowest responsible and capable bidder (other than an alien) in accordance with the provision of section 6101 of title 41 and for the use of Government property in connection with the exercise of such exclusive privileges a reasonable rental may be charged. The feeding of aliens, or the furnishing of any other necessary service in connection with any United States immigrant station, may be performed by the Service without regard to the foregoing provisions of this subsection if the Attorney General shall find that it would be advantageous to the Government in terms of economy and efficiency. No intoxicating liquors shall be sold at any immigrant station.

(b) Such articles determined by the Attorney General to be necessary to the health and welfare of aliens detained at any immigrant station, when not otherwise readily procurable by such aliens, may be sold at reasonable prices to such aliens through Government canteens operated by the Service, under such conditions and limitations as the Attorney General shall prescribe.

(c) All rentals or other receipts accruing from the disposal of privileges, and all moneys arising from the sale of articles through Service-operated canteens, authorized by this section, shall be covered into the Treasury to the credit of the appropriation for the enforcement of this subchapter.

(June 27, 1952, ch. 477, title II, ch. 9, § 285, 66 Stat. 232.)

CODIFICATION

In subsec. (a), “section 6101 of title 41” substituted for “section 3709 of the Revised Statutes, as amended (41 U.S.C. 5),” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1356. Disposition of moneys collected under the provisions of this subchapter

(a) Detention, transportation, hospitalization, and all other expenses of detained aliens; expenses of landing stations

All moneys paid into the Treasury to reimburse the Service for detention, transportation, hospitalization, and all other expenses of detained aliens paid from the appropriation for the enforcement of this chapter, and all moneys paid into the Treasury to reimburse the Service for expenses of landing stations referred to in section 1223(b) of this title paid by the Service

from the appropriation for the enforcement of this chapter, shall be credited to the appropriation for the enforcement of this chapter for the fiscal year in which the expenses were incurred.

(b) Purchase of evidence

Moneys expended from appropriations for the Service for the purchase of evidence and subsequently recovered shall be reimbursed to the current appropriation for the Service.

(c) Fees and administrative fines and penalties; exception

Except as otherwise provided in subsection (a) and subsection (b) of this section, or in any other provision of this subchapter, all moneys received in payment of fees and administrative fines and penalties under this subchapter shall be covered into the Treasury as miscellaneous receipts: *Provided, however,* That all fees received from applicants residing in the Virgin Islands of the United States, and in Guam, required to be paid under section 1351 of this title, shall be paid over to the Treasury of the Virgin Islands and to the Treasury of Guam, respectively.

(d) Schedule of fees

In addition to any other fee authorized by law, the Attorney General shall charge and collect \$7 per individual for the immigration inspection of each passenger arriving at a port of entry in the United States, or for the preinspection of a passenger in a place outside of the United States prior to such arrival, aboard a commercial aircraft or commercial vessel.

(e) Limitations on fees

(1) Except as provided in paragraph (3), no fee shall be charged under subsection (d) of this section for immigration inspection or preinspection provided in connection with the arrival of any passenger, other than aircraft passengers, whose journey originated in the following:

- (A) Canada,
- (B) Mexico,
- (C) a State, territory or possession of the United States, or
- (D) any adjacent island (within the meaning of section 1101(b)(5) of this title).

(2) No fee may be charged under subsection (d) of this section with respect to the arrival of any passenger—

- (A) who is in transit to a destination outside the United States, and
- (B) for whom immigration inspection services are not provided.

(3) The Attorney General shall charge and collect \$3 per individual for the immigration inspection or pre-inspection of each commercial vessel passenger whose journey originated in the United States or in any place set forth in paragraph (1): *Provided,* That this requirement shall not apply to immigration inspection at designated ports of entry of passengers arriving by ferry, or by Great Lakes vessels on the Great Lakes and connecting waterways when operating on a regular schedule. For the purposes of this paragraph, the term “ferry” means a vessel, in other than ocean or coastwise service, having provisions only for deck passengers and/or vehi-

cles, operating on a short run on a frequent schedule between two points over the most direct water route, and offering a public service of a type normally attributed to a bridge or tunnel.

(f) Collection

(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the United States shall—

- (A) collect from that individual the fee charged under subsection (d) of this section at the time the document or ticket is issued; and
- (B) identify on that document or ticket the fee charged under subsection (d) of this section as a Federal inspection fee.

(2) If—

- (A) a document or ticket for transportation of a passenger into the United States is issued in a foreign country; and
- (B) the fee charged under subsection (d) of this section is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Attorney General at any time before the date that is thirty-one days after the close of the calendar quarter in which the fees are collected, except the fourth quarter payment for fees collected from airline passengers shall be made on the date that is ten days before the end of the fiscal year, and the first quarter payment shall include any collections made in the preceding quarter that were not remitted with the previous payment. Regulations issued by the Attorney General under this subsection with respect to the collection of the fees charged under subsection (d) of this section and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of title 26, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(g) Provision of immigration inspection and pre-inspection services

Notwithstanding section 1353b of this title, or any other provision of law, the immigration services required to be provided to passengers upon arrival in the United States on scheduled airline flights shall be adequately provided when needed and at no cost (other than the fees imposed under subsection (d) of this section) to airlines and airline passengers at:

- (1) immigration serviced airports, and
- (2) places located outside of the United States at which an immigration officer is stationed for the purpose of providing such immigration services.

(h) Disposition of receipts

(1)(A) There is established in the general fund of the Treasury a separate account which shall

be known as the “Immigration User Fee Account”. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the Immigration User Fee Account all fees collected under subsection (d) of this section, to remain available until expended.¹ At the end of each 2-year period, beginning with the creation of this account, the Attorney General, following a public rulemaking with opportunity for notice and comment, shall submit a report to the Congress concerning the status of the account, including any balances therein, and recommend any adjustment in the prescribed fee that may be required to ensure that the receipts collected from the fee charged for the succeeding two years equal, as closely as possible, the cost of providing these services.

(B) Notwithstanding any other provisions of law, all civil fines or penalties collected pursuant to sections 1253(c), 1321, and 1323 of this title and all liquidated damages and expenses collected pursuant to this chapter shall be deposited in the Immigration User Fee Account.

(2)(A) The Secretary of the Treasury shall refund out of the Immigration User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Attorney General in providing immigration inspection and preinspection services for commercial aircraft or vessels and in—

(i) providing overtime immigration inspection services for commercial aircraft or vessels;

(ii) administration of debt recovery, including the establishment and operation of a national collections office;

(iii) expansion, operation and maintenance of information systems for nonimmigrant control and debt collection;

(iv) detection of fraudulent documents used by passengers traveling to the United States, including training of, and technical assistance to, commercial airline personnel regarding such detection;

(v) providing detention and removal services for inadmissible aliens arriving on commercial aircraft and vessels and for any alien who is inadmissible under section 1182(a) of this title who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry; and

(vi) providing removal and asylum proceedings at air or sea ports-of-entry for inadmissible aliens arriving on commercial aircraft and vessels including immigration removal proceedings resulting from presentation of fraudulent documents and failure to present documentation and for any alien who is inadmissible under section 1182(a) of this title who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry.

The Attorney General shall provide for expenditures for training and assistance described in clause (iv) in an amount, for any fiscal year, not less than 5 percent of the total of the expenses incurred that are described in the previous sentence.

(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Attorney General of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amount required to be refunded under subparagraph (A).

(i) Reimbursement

Notwithstanding any other provision of law, the Attorney General is authorized to receive reimbursement from the owner, operator, or agent of a private or commercial aircraft or vessel, or from any airport or seaport authority for expenses incurred by the Attorney General in providing immigration inspection services which are rendered at the request of such person or authority (including the salary and expenses of individuals employed by the Attorney General to provide such immigration inspection services). The Attorney General's authority to receive such reimbursement shall terminate immediately upon the provision for such services by appropriation.

(j) Regulations

The Attorney General may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.

(k) Advisory committee

In accordance with the provisions of the Federal Advisory Committee Act, the Attorney General shall establish an advisory committee, whose membership shall consist of representatives from the airline and other transportation industries who may be subject to any fee or charge authorized by law or proposed by the Immigration and Naturalization Service for the purpose of covering expenses incurred by the Immigration and Naturalization Service. The advisory committee shall meet on a periodic basis and shall advise the Attorney General on issues related to the performance of the inspectional services of the Immigration and Naturalization Service. This advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Attorney General shall give substantial consideration to the views of the advisory committee in the exercise of his duties.

(l) Report to Congress

In addition to the reporting requirements established pursuant to subsection (h) of this section, the Attorney General shall prepare and submit annually to the Congress, not later than March 31st of each year, a statement of the financial condition of the “Immigration User Fee Account” including beginning account balance, revenues, withdrawals and their purpose, ending balance, projections for the ensuing fiscal year and a full and complete workload analysis showing on a port by port basis the current and projected need for inspectors. The statement shall indicate the success rate of the Immigration and

¹ So in original.

Naturalization Service in meeting the forty-five minute inspection standard and shall provide detailed statistics regarding the number of passengers inspected within the standard, progress that is being made to expand the utilization of United States citizen by-pass, the number of passengers for whom the standard is not met and the length of their delay, locational breakdown of these statistics and the steps being taken to correct any nonconformity.

(m) Immigration Examinations Fee Account

Notwithstanding any other provisions of law, all adjudication fees as are designated by the Attorney General in regulations shall be deposited as offsetting receipts into a separate account entitled "Immigration Examinations Fee Account" in the Treasury of the United States, whether collected directly by the Attorney General or through clerks of courts: *Provided, however*, That all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States, and in Guam, under this subsection shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam: *Provided further*, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

(n) Reimbursement of administrative expenses; transfer of deposits to General Fund of United States Treasury

All deposits into the "Immigration Examinations Fee Account" shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the "Immigration Examinations Fee Account".

(o) Annual financial reports to Congress

The Attorney General shall prepare and submit annually to Congress statements of financial condition of the "Immigration Examinations Fee Account", including beginning account balance, revenues, withdrawals, and ending account balance and projections for the ensuing fiscal year.

(p) Additional effective dates

The provisions set forth in subsections (m), (n), and (o) of this section apply to adjudication and naturalization services performed and to related fees collected on or after October 1, 1988.

(q) Land Border Inspection Fee Account

(1)(A)(i) Notwithstanding any other provision of law, the Attorney General is authorized to establish, by regulation, not more than 96 projects under which a fee may be charged and collected for inspection services provided at one or more land border points of entry. Such projects may include the establishment of commuter lanes to be made available to qualified United States citizens and aliens, as determined by the Attorney General.

(ii) This subparagraph shall take effect, with respect to any project described in clause (1)² that was not authorized to be commenced before September 30, 1996, 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of such project.

(iii) The Attorney General shall prepare and submit on a quarterly basis a status report on each land border inspection project implemented under this subparagraph.

(B) The Attorney General, in consultation with the Secretary of the Treasury, may conduct pilot projects to demonstrate the use of designated ports of entry after working hours through the use of card reading machines or other appropriate technology.

(2) All of the fees collected under this subsection, including receipts for services performed in processing forms I-94, I-94W, and I-68, and other similar applications processed at land border ports of entry, shall be deposited as offsetting receipts in a separate account within the general fund of the Treasury of the United States, to remain available until expended. Such account shall be known as the Land Border Inspection Fee Account.

(3)(A) The Secretary of the Treasury shall refund, at least on a quarterly basis amounts to any appropriations for expenses incurred in providing inspection services at land border points of entry. Such expenses shall include—

(i) the providing of overtime inspection services;

(ii) the expansion, operation and maintenance of information systems for non-immigrant control;

(iii) the hire of additional permanent and temporary inspectors;

(iv) the minor construction costs associated with the addition of new traffic lanes (with the concurrence of the General Services Administration);

(v) the detection of fraudulent documents used by passengers travelling to the United States;

(vi) providing for the administration of said account.

(B) The amounts required to be refunded from the Land Border Inspection Fee Account for fiscal years 1992 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years: *Provided*, That any proposed changes in the amounts designated in said budget requests shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of Public Law 101-162.

(4) The Attorney General will prepare and submit annually to the Congress statements of financial condition of the Land Border Immigration Fee Account, including beginning account balance, revenues, withdrawals, and ending account balance and projection for the ensuing fiscal year.

(r) Breached Bond/Detention Fund

(1) Notwithstanding any other provision of law, there is established in the general fund of

² So in original. Probably should be clause "(i)".

the Treasury a separate account which shall be known as the Breached Bond/Detention Fund (in this subsection referred to as the “Fund”).

(2) There shall be deposited as offsetting receipts into the Fund all breached cash and surety bonds, in excess of \$8,000,000, posted under this chapter which are recovered by the Department of Justice, and amount³ described in section 1255(i)(3)(b)⁴ of this title.

(3) Such amounts as are deposited into the Fund shall remain available until expended and shall be refunded out of the Fund by the Secretary of the Treasury, at least on a quarterly basis, to the Attorney General for the following purposes—

(i) for expenses incurred in the collection of breached bonds, and

(ii) for expenses associated with the detention of illegal aliens.

(4) The amounts required to be refunded from the Fund for fiscal year 1998 and thereafter shall be refunded in accordance with estimates made in the budget request of the President for those fiscal years. Any proposed changes in the amounts designated in such budget requests shall only be made after Congressional reprogramming notification in accordance with the reprogramming guidelines for the applicable fiscal year.

(5) The Attorney General shall prepare and submit annually to the Congress, statements of financial condition of the Fund, including the beginning balance, receipts, refunds to appropriations, transfers to the general fund, and the ending balance.

(6) For fiscal year 1993 only, the Attorney General may transfer up to \$1,000,000 from the Immigration User Fee Account to the Fund for initial expenses necessary to enhance collection efforts: *Provided*, That any such transfers shall be refunded from the Fund back to the Immigration User Fee Account by December 31, 1993.

(s) H-1B Nonimmigrant Petitioner Account

(1) In general

There is established in the general fund of the Treasury a separate account, which shall be known as the “H-1B Nonimmigrant Petitioner Account”. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the account all fees collected under paragraphs (9) and (11) of section 1184(c) of this title.

(2) Use of fees for job training

50 percent of amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 2916a of title 29.

(3) Use of fees for low-income scholarship program

30 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended for

scholarships described in section 1869c of title 42 for low-income students enrolled in a program of study leading to a degree in mathematics, engineering, or computer science.

(4) National Science Foundation competitive grant program for K-12 math, science and technology education

(A) In general

10 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to carry out a direct or matching grant program to support private-public partnerships in K-12 education.

(B) Types of programs covered

The Director shall award grants to such programs, including those which support the development and implementation of standards-based instructional materials models and related student assessments that enable K-12 students to acquire an understanding of science, mathematics, and technology, as well as to develop critical thinking skills; provide systemic improvement in training K-12 teachers and education for students in science, mathematics, and technology; support the professional development of K-12 math and science teachers in the use of technology in the classroom; stimulate system-wide K-12 reform of science, mathematics, and technology in rural, economically disadvantaged regions of the United States; provide externships and other opportunities for students to increase their appreciation and understanding of science, mathematics, engineering, and technology (including summer institutes sponsored by an institution of higher education for students in grades 7-12 that provide instruction in such fields); involve partnerships of industry, educational institutions, and community organizations to address the educational needs of disadvantaged communities; provide college preparatory support to expose and prepare students for careers in science, mathematics, engineering, and technology; and provide for carrying out systemic reform activities under section 1862(a)(1) of title 42.

(5) Use of fees for duties relating to petitions

5 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Homeland Security until expended to carry out duties under paragraphs (1) and (9) of section 1184(c) of this title related to petitions made for nonimmigrants described in section 1101(a)(15)(H)(i)(b) of this title, under paragraph (1)(C) or (D) of section 1154⁵ of this title related to petitions for immigrants described in section 1153(b) of this title.

(6) Use of fees for application processing and enforcement

For fiscal year 1999, 4 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the

³ So in original.

⁴ So in original. Probably should be section “1255(i)(3)(B)”.

⁵ So in original. Probably should be section “1154(a)”.

Secretary of Labor until expended for decreasing the processing time for applications under section 1182(n)(1) of this title and for carrying out section 1182(n)(2) of this title. Beginning with fiscal year 2000, 5 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 1182(n)(1) of this title and section 1182(a)(5)(A) of this title.

(t) Genealogy Fee

(1) There is hereby established the Genealogy Fee for providing genealogy research and information services. This fee shall be deposited as offsetting collections into the Examinations Fee Account. Fees for such research and information services may be set at a level that will ensure the recovery of the full costs of providing all such services.

(2) The Attorney General will prepare and submit annually to Congress statements of the financial condition of the Genealogy Fee.

(3) Any officer or employee of the Immigration and Naturalization Service shall collect fees prescribed under regulation before disseminating any requested genealogical information.

(u) Premium fee for employment-based petitions and applications

The Attorney General is authorized to establish and collect a premium fee for employment-based petitions and applications. This fee shall be used to provide certain premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer-service processes. For approval of the benefit applied for, the petitioner/applicant must meet the legal criteria for such benefit. This fee shall be set at \$1,000, shall be paid in addition to any normal petition/application fee that may be applicable, and shall be deposited as offsetting collections in the Immigration Examinations Fee Account. The Attorney General may adjust this fee according to the Consumer Price Index.

(v) Fraud Prevention and Detection Account

(1) In general

There is established in the general fund of the Treasury a separate account, which shall be known as the "Fraud Prevention and Detection Account". Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under paragraph (12) or (13) of section 1184(c) of this title.

(2) Use of fees to combat fraud

(A) Secretary of State

One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of State until expended for programs and activities at United States embassies and consulates abroad—

(i) to increase the number⁶ diplomatic security personnel assigned exclusively or primarily to the function of preventing

and detecting fraud by applicants for visas described in subparagraph (H)(i), (H)(ii), or (L) of section 1101(a)(15) of this title;

(ii) otherwise to prevent and detect visa fraud, including primarily fraud by applicants for visas described in subparagraph (H)(i), (H)(ii), or (L) of section 1101(a)(15) of this title, in cooperation with the Secretary of Homeland Security or pursuant to the terms of a memorandum of understanding or other agreement between the Secretary of State and the Secretary of Homeland Security; and

(iii) upon request by the Secretary of Homeland Security, to assist such Secretary in carrying out the fraud prevention and detection programs and activities described in subparagraph (B).

(B) Secretary of Homeland Security

One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect immigration benefit fraud, including fraud with respect to petitions filed under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in subparagraph (H) or (L) of section 1101(a)(15) of this title.

(C) Secretary of Labor

One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for wage and hour enforcement programs and activities otherwise authorized to be conducted by the Secretary of Labor that focus on industries likely to employ nonimmigrants, including enforcement programs and activities described in section 1182(n) of this title and enforcement programs and activities related to section 1184(c)(14)(A)(i) of this title.

(D) Consultation

The Secretary of State, the Secretary of Homeland Security, and the Secretary of Labor shall consult one another with respect to the use of the funds in the Fraud Prevention and Detection Account or for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in section 1101(a)(15)(H)(ii) of this title.

(June 27, 1952, ch. 477, title II, ch. 9, § 286, 66 Stat. 232; Pub. L. 97-116, § 13, Dec. 29, 1981, 95 Stat. 1618; Pub. L. 99-500, § 101(b) [title II, § 205(a), formerly § 205], Oct. 18, 1986, 100 Stat. 1783-39, 1783-53, renumbered § 205(a), Pub. L. 100-525, § 4(a)(2)(A), Oct. 24, 1988, 102 Stat. 2615; Pub. L. 99-591, § 101(b) [title II, § 205], Oct. 30, 1986, 100 Stat. 3341-39, 3341-53; Pub. L. 99-653, § 7(d)(1), Nov. 14, 1986, as added Pub. L. 100-525, § 8(f), Oct. 24, 1988, 102 Stat. 2617; Pub. L. 100-71, title I, § 1, July 11, 1987, 101 Stat. 394; Pub. L. 100-459, title II, § 209(a), Oct. 1, 1988, 102 Stat. 2203; Pub. L. 100-525, § 4(a)(1), (d), Oct. 24, 1988, 102 Stat. 2614, 2615; Pub. L. 101-162, title II, Nov. 21, 1989, 103

⁶ So in original. Probably should be followed by "of".

Stat. 1000; Pub. L. 101-515, title II, §210(a), (d), Nov. 5, 1990, 104 Stat. 2120, 2121; Pub. L. 102-232, title III, §309(a)(1)(A)(i), (B), (2), (b)(12), Dec. 12, 1991, 105 Stat. 1757-1759; Pub. L. 102-395, title I, §112, Oct. 6, 1992, 106 Stat. 1843; Pub. L. 103-121, title I, Oct. 27, 1993, 107 Stat. 1161; Pub. L. 103-416, title II, §219(t), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104-208, div. C, title I, §§122(a), 124(a)(1), title III, §§308(d)(3)(A), (4)(K), (e)(1)(L), (g)(1), 376(b), 382(b), title VI, §671(b)(11), (e)(5), (6), Sept. 30, 1996, 110 Stat. 3009-560, 3009-562, 3009-617 to 3009-619, 3009-622, 3009-648, 3009-651, 3009-722, 3009-723; Pub. L. 105-119, title I, §110(1), (2), Nov. 26, 1997, 111 Stat. 2457; Pub. L. 105-277, div. A, §101(b) [title I, §114], div. C, title IV, §414(b), Oct. 21, 1998, 112 Stat. 2681-50, 2681-68, 2681-652; Pub. L. 106-113, div. B, §1000(a)(1) [title I, §118], Nov. 29, 1999, 113 Stat. 1535, 1501A-22; Pub. L. 106-313, title I, §§110(a), 113, Oct. 17, 2000, 114 Stat. 1255, 1261; Pub. L. 106-553, §1(a)(2) [title I, §112], Dec. 21, 2000, 114 Stat. 2762, 2762A-68; Pub. L. 106-554, §1(a)(1) [title I, §106], Dec. 21, 2000, 114 Stat. 2763, 2763A-11; Pub. L. 107-77, title I, §§109, 110, Nov. 28, 2001, 115 Stat. 765; Pub. L. 107-173, title IV, §403(a), May 14, 2002, 116 Stat. 559; Pub. L. 107-206, title I, §202, Aug. 2, 2002, 116 Stat. 832; Pub. L. 107-273, div. C, title I, §11016(2), Nov. 2, 2002, 116 Stat. 1824; Pub. L. 107-296, title IV, §457, Nov. 25, 2002, 116 Stat. 2201; Pub. L. 108-7, div. B, title I, §108, div. L, §107, Feb. 20, 2003, 117 Stat. 67, 532; Pub. L. 108-77, title IV, §402(d)(2), Sept. 3, 2003, 117 Stat. 946; Pub. L. 108-447, div. J, title IV, §§426(b), 427, Dec. 8, 2004, 118 Stat. 3357, 3358; Pub. L. 109-13, div. A, title VI, §6046, div. B, title IV, §403(b), May 11, 2005, 119 Stat. 295, 319; Pub. L. 109-472, §2, Jan. 11, 2007, 120 Stat. 3554; Pub. L. 111-117, div. D, title V, §524(a), Dec. 16, 2009, 123 Stat. 3283.)

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 108-77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (h)(1)(B), and (r)(2), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Subchapter C of chapter 33 of title 26, referred to in subsec. (f)(3), is classified to section 4261 et seq. of Title 26, Internal Revenue Code.

The Federal Advisory Committee Act, referred to in subsec. (k), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Section 606 of Public Law 101-162, referred to in subsec. (q)(3)(B), is section 606 of Pub. L. 101-162, title VI, Nov. 21, 1989, 103 Stat. 1031, which is not classified to the Code.

AMENDMENTS

2009—Subsec. (v)(2)(B), (C). Pub. L. 111-117, which directed substitution of subpars. (B) and (C) for “subparagraphs (B) and (C) that appear within section 426(b) of division J of” Pub. L. 108-447, was executed by adding subpars. (B) and (C) to subsec. (v)(2) and striking out former subpars. (B) and (C), to reflect the probable intent of Congress. See 2004 Amendment note below. Prior to amendment, subpars. (B) and (C) read as follows:

“(B) SECRETARY OF HOMELAND SECURITY.—One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in subparagraph (H)(i), (H)(ii), or (L) of section 1101(a)(15) of this title.

“(C) SECRETARY OF LABOR.—One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for enforcement programs and activities described in section 1182(n) of this title.”

2007—Subsec. (v)(2)(A)(i). Pub. L. 109-472, §2(1), inserted “or primarily” after “exclusively”.

Subsec. (v)(2)(A)(ii). Pub. L. 109-472, §2(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “otherwise to prevent and detect such fraud pursuant to the terms of a memorandum of understanding or other cooperative agreement between the Secretary of State and the Secretary of Homeland Security; and”.

2005—Subsec. (s)(6). Pub. L. 109-13, §6046, inserted “and section 1182(a)(5)(A) of this title” before period at end.

Subsec. (v). Pub. L. 109-13, §403(b)(2), struck out “H-1B and L” before “Fraud Prevention” in heading.

Subsec. (v)(1). Pub. L. 109-13, §403(b)(1)(A), (B), struck out “H-1B and L” before “Fraud Prevention” and substituted “paragraph (12) or (13) of section 1184(c) of this title” for “section 1184(c)(12) of this title”.

Subsec. (v)(2)(A). Pub. L. 109-13, §403(b)(1)(A), struck out “H-1B and L” before “Fraud Prevention” in introductory provisions.

Subsec. (v)(2)(A)(i). Pub. L. 109-13, §403(b)(1)(C), substituted “(H)(i), (H)(ii),” for “(H)(i)”.

Subsec. (v)(2)(B). Pub. L. 109-13, §403(b)(1)(A), (C), struck out “H-1B and L” before “Fraud Prevention” and substituted “(H)(i), (H)(ii),” for “(H)(i)”.

Subsec. (v)(2)(C). Pub. L. 109-13, §403(b)(1)(A), struck out “H-1B and L” before “Fraud Prevention”.

Subsec. (v)(2)(D). Pub. L. 109-13, §403(b)(1)(A), (D), struck out “H-1B and L” before “Fraud Prevention” and inserted “or for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in section 1101(a)(15)(H)(ii) of this title” before period at end.

2004—Subsec. (s)(2). Pub. L. 108-447, §427(1), substituted “50 percent” for “55 percent”.

Subsec. (s)(3). Pub. L. 108-447, §427(2), substituted “30 percent” for “22 percent”.

Subsec. (s)(4)(A). Pub. L. 108-447, §427(3), substituted “10 percent” for “15 percent”.

Subsec. (s)(5). Pub. L. 108-447, §427(4), substituted “5 percent” for “4 percent” and “Secretary of Homeland Security” for “Attorney General”.

Subsec. (s)(6). Pub. L. 108-447, §427(5), substituted “Beginning with fiscal year 2000, 5 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 1182(n)(1) of this title” for “Beginning with fiscal year 2000, 2 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 1182(n)(1) of this title and section 1182(a)(5)(A) of this title, and 2 percent of such amounts shall remain available to such Secretary until expended for carrying out section 1182(n)(2) of this title. Notwithstanding the preceding sentence, both of the amounts made available for any fiscal year (beginning with fiscal year 2000) pursuant to the preceding sentence shall be available to such Secretary, and shall remain available until expended, only for decreasing the processing time for applications under section 1182(n)(1) of this title until the Secretary submits to the Congress a report containing a certification that, during the most recently concluded cal-

endar year, the Secretary substantially complied with the requirement in section 1182(n)(1) of this title relating to the provision of the certification described in section 1101(a)(15)(H)(i)(b) of this title within a 7-day period”.

Subsec. (v). Pub. L. 108-447, §426(b), added subsec. (v). 2003—Subsec. (e)(3). Pub. L. 108-7, §108, added par. (3) and struck out former par. (3) which read as follows: “The Attorney General shall charge and collect \$3 per individual for the immigration inspection or pre-inspection of each commercial vessel passenger whose journey originated in the United States or in any place set forth in paragraph (1): *Provided*, That this requirement shall not apply to immigration inspection at designated ports of entry of passengers arriving by the following vessels, when operating on a regular schedule: Great Lakes international ferries, or Great Lakes Vessels on the Great Lakes and connecting waterways.”

Subsec. (m). Pub. L. 108-7, §107, repealed Pub. L. 107-296, §457. See 2002 Amendment note below.

Subsec. (s)(1). Pub. L. 108-77, §§107(c), 402(d)(2), temporarily substituted “paragraphs (9) and (11) of section 1184(c) of this title” for “section 1184(c)(9) of this title”. See Effective and Termination Dates of 2003 Amendment note below.

2002—Subsec. (e)(3). Pub. L. 107-206 substituted “shall” for “is authorized to” and “requirement” for “authorization”.

Subsec. (g). Pub. L. 107-173 struck out “, within forty-five minutes of their presentation for inspection,” after “adequately provided” in introductory provisions.

Subsec. (m). Pub. L. 107-296, §457, which directed the substitution of “such services.” for “such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.”, was repealed by Pub. L. 108-7, §107.

Subsec. (q)(2). Pub. L. 107-273 inserted “, including receipts for services performed in processing forms I-94, I-94W, and I-68, and other similar applications processed at land border ports of entry,” after “subsection”.

2001—Subsec. (d). Pub. L. 107-77, §109(1), substituted “\$7” for “\$6”.

Subsec. (e)(1). Pub. L. 107-77, §109(2), substituted “Except as provided in paragraph (3), no” for “No”.

Subsec. (e)(3). Pub. L. 107-77, §109(3), added par. (3). Subsec. (q)(1)(A)(i). Pub. L. 107-77, §110, which directed the substitution of “96” for “6” in section 286(q)(1)(A) of the Immigration and Nationality Act of 1953, was executed by making the substitution in section 286(q)(1)(A) of the Immigration and Nationality Act to reflect the probable intent of Congress.

2000—Subsec. (s)(2). Pub. L. 106-313, §110(a)(1), substituted “55 percent” for “56.3 percent”.

Subsec. (s)(3). Pub. L. 106-313, §113(b), provided that in the amendment made by section 110(a)(2) of Pub. L. 106-313 the figure to be inserted is deemed to be “22 percent”. See below.

Pub. L. 106-313, §110(a)(2), substituted “23.5 percent” for “28.2 percent”. See above.

Subsec. (s)(4). Pub. L. 106-313, §110(a)(3), amended heading and text of par. (4) generally. Prior to amendment, text read as follows:

“(A) GRANTS FOR MATHEMATICS, ENGINEERING, OR SCIENCE ENRICHMENT COURSES.—4 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to make merit-reviewed grants, under section 1862(a)(1) of title 42, for programs that provide opportunities for enrollment in year-round academic enrichment courses in mathematics, engineering, or science.

“(B) SYSTEMIC REFORM ACTIVITIES.—4 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to carry out systemic reform activities administered by the National Science Foundation under section 1862(a)(1) of title 42.”

Subsec. (s)(5). Pub. L. 106-313, §113(a), amended text of par. (5) generally. Prior to amendment, text read as follows: “1.5 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Attorney General until expended to carry out duties under paragraphs (1) and (9) of section 1184(c) of this title related to petitions made for non-immigrants described in section 1101(a)(15)(H)(i)(b) of this title, to decrease the processing time for such petitions, and to carry out duties under section 416 of the American Competitiveness and Workforce Improvement Act of 1998. Such amounts shall be available in addition to any other fees authorized to be collected by the Attorney General with respect to such petitions.”

Subsec. (s)(6). Pub. L. 106-554, which directed amendment of section 286(s)(6) of the Immigration and Naturalization Act by inserting “and section 1182(a)(5)(A) of this title” after “decreasing the processing time for applications under section 1182(n)(1) of this title”, was executed by making the amendment to subsec. (s)(6) of this section, which is section 286 of the Immigration and Nationality Act, to reflect the probable intent of Congress.

Pub. L. 106-313, §113(b), provided that in the amendments made by section 110(a)(4) and (5) of Pub. L. 106-313 the figures to be inserted are deemed to be “4 percent” and “2 percent”, respectively. See below.

Pub. L. 106-313, §110(a)(4), substituted “5 percent” for “6 percent”. See above.

Pub. L. 106-313, §110(a)(5), substituted “2.5 percent” for “3 percent” in two places. See above.

Subsecs. (t), (u). Pub. L. 106-553 added subsecs. (t) and (u).

1999—Subsec. (q)(1)(A)(ii) to (iv). Pub. L. 106-113, which directed amendment of section 286(q)(1)(A) of the Immigration and Nationality Act of 1953 by striking out cl. (ii), redesignating cl. (iii) as (ii), striking out “, until September 30, 2000,” after “submit on a quarterly basis” in cl. (iv), and redesignating cl. (iv) as (iii), was executed by making the amendment to this section, which is section 286 of the Immigration and Nationality Act, to reflect the probable intent of Congress. Prior to amendment, cl. (ii) read as follows: “The program authorized in this subparagraph shall terminate on September 30, 2000, unless further authorized by an Act of Congress.”

1998—Subsec. (e)(1)(C). Pub. L. 105-277, §101(b) [title I, §114], inserted “State,” before “territory”.

Subsec. (s). Pub. L. 105-277, §414(b), added subsec. (s).

1997—Subsec. (r)(2). Pub. L. 105-119, §110(2)(A), inserted “, and amount described in section 1255(i)(3)(b) of this title” after “recovered by the Department of Justice”.

Subsec. (r)(3). Pub. L. 105-119, §110(2)(B), substituted “Attorney General” for “Immigration and Naturalization Service” in introductory provisions.

Subsec. (r)(4). Pub. L. 105-119, §110(2)(C), added par. (4) and struck out former par. (4) which read as follows: “The amount required to be refunded from the Fund for fiscal year 1994 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years: *Provided*, That any proposed changes in the amounts designated in said budget requests shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of Public Law 102-395.”

Subsec. (s). Pub. L. 105-119, §110(1), struck out heading and text of subsec. (s) which established Immigration Detention Account in general fund of the Treasury to be drawn upon to refund to any appropriation amounts paid out for expenses incurred by Attorney General for detention of aliens.

1996—Subsec. (a). Pub. L. 104-208, §308(g)(1), substituted “section 1223(b)” for “section 1228(b)”.

Subsec. (h)(1)(A). Pub. L. 104-208, §671(e)(5), inserted period after “expended”.

Subsec. (h)(1)(B). Pub. L. 104-208, §382(b), substituted “1253(c), 1321,” for “1321”.

Subsec. (h)(2)(A). Pub. L. 104-208, §124(a)(1)(B), inserted concluding provisions “The Attorney General

shall provide for expenditures for training and assistance described in clause (iv) in an amount, for any fiscal year, not less than 5 percent of the total of the expenses incurred that are described in the previous sentence.”

Subsec. (h)(2)(A)(iv). Pub. L. 104-208, § 671(e)(6)(A), struck out “and” at end.

Pub. L. 104-208, § 124(a)(1)(A), inserted “, including training of, and technical assistance to, commercial airline personnel regarding such detection” after “United States”.

Subsec. (h)(2)(A)(v). Pub. L. 104-208, § 671(e)(6)(B)–(E), struck out colon after “services for”, substituted “and for any alien” for “; and any alien”, adjusted margins, and substituted “entry; and” for “entry.” at end.

Pub. L. 104-208, § 308(e)(1)(L), substituted “removal” for “deportation”.

Pub. L. 104-208, § 308(d)(3)(A), substituted “inadmissible” for “excludable” in two places.

Subsec. (h)(2)(A)(vi). Pub. L. 104-208, § 671(e)(6)(B)–(D), struck out colon after “ports-of-entry for”, substituted “and for any alien” for “; and any alien”, and adjusted margins.

Pub. L. 104-208, § 308(d)(4)(K), substituted “removal” for “exclusion” in two places.

Pub. L. 104-208, § 308(d)(3)(A), substituted “inadmissible” for “excludable” in two places.

Subsec. (q)(1). Pub. L. 104-208, § 122(a)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “Notwithstanding any other provision of law, the Attorney General is authorized to establish, by regulation, a project under which a fee may be charged and collected for inspection services provided at one or more land border points of entry. Such project may include the establishment of commuter lanes to be made available to qualified United States citizens and aliens, as determined by the Attorney General.”

Subsec. (q)(5). Pub. L. 104-208, § 122(a)(2), struck out par. (5) which read as follows:

“(5)(A) The program authorized in this subsection shall terminate on September 30, 1993, unless further authorized by an Act of Congress.

“(B) The provisions set forth in this subsection shall take effect 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of the project specified in paragraph (1).

“(C) If implemented, the Attorney General shall prepare and submit on a quarterly basis, until September 30, 1993, a status report on the land border inspection project.”

Subsec. (r)(4), (6). Pub. L. 104-208, § 671(b)(11), substituted “the Fund” for “Fund” wherever appearing.

Subsec. (s). Pub. L. 104-208, § 376(b), added subsec. (s). 1994—Subsec. (r). Pub. L. 103-416, § 219(t)(1), substituted “Fund” for “Account” in heading.

Subsec. (r)(1). Pub. L. 103-416, § 219(t)(2), substituted “(in this subsection referred to as the ‘Fund’)” for “(hereafter referred to as the Fund)”.

Subsec. (r)(2). Pub. L. 103-416, § 219(t)(3), made technical amendment to reference to this chapter involving corresponding provision of original act.

Subsec. (r)(4). Pub. L. 103-416, § 219(t)(4), struck out “the Breached Bond/Detention” before “Fund”.

Pub. L. 103-416, § 219(t)(5), substituted “of Public Law 102-395” for “of this Act”.

Subsec. (r)(5). Pub. L. 103-416, § 219(t)(6), substituted “Fund” for “account” after “condition of the”.

Subsec. (r)(6). Pub. L. 103-416, § 219(t)(4), struck out “the Breached Bond/Detention” before “Fund” in two places.

1993—Subsec. (d). Pub. L. 103-121 substituted “\$6” for “\$5”.

Subsec. (h)(2)(A)(v), (vi). Pub. L. 103-121, which directed the amendment of subpar. (A) by “deleting subsection (v)” and adding new cls. (v) and (vi), was executed by adding cls. (v) and (vi) and striking out former cl. (v) which read as follows: “providing detention and deportation services for excludable aliens arriving on commercial aircraft and vessels.”, to reflect the probable intent of Congress.

1992—Subsec. (r). Pub. L. 102-395 added subsec. (r).

1991—Subsec. (e)(1)(D). Pub. L. 102-232, § 309(b)(12), made an amendment to reference to section 1101(b)(5) of this title involving corresponding provision of original act.

Subsec. (f)(3). Pub. L. 102-232, § 309(a)(2)(B), made technical correction to directory language of Pub. L. 101-515, § 210(a)(2). See 1990 Amendment note below.

Subsec. (h)(1)(A). Pub. L. 102-232, § 309(a)(2)(A)(i), inserted a period after “available until expended”.

Subsec. (m). Pub. L. 102-232, § 309(a)(2)(A)(ii), substituted “additional” for “additional”.

Pub. L. 102-232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100-459. See 1988 Amendment note below.

Subsec. (n). Pub. L. 102-232, § 309(a)(1)(B), amended directory language of Pub. L. 101-162. See 1989 Amendment note below.

Pub. L. 102-232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100-459. See 1988 Amendment note below.

Subsec. (o). Pub. L. 102-232, § 309(a)(1)(A)(i)(II), substituted “shall” for “will”.

Pub. L. 102-232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100-459. See 1988 Amendment note below.

Subsec. (p). Pub. L. 102-232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100-459. See 1988 Amendment note below.

Subsec. (q)(2). Pub. L. 102-232, § 309(a)(2)(A)(iii), realigned margin.

Subsec. (q)(3)(A). Pub. L. 102-232, § 309(a)(2)(A)(iii), (iv), inserted “the” after “The Secretary of” and realigned margin.

Subsec. (q)(5)(B). Pub. L. 102-232, § 309(a)(2)(A)(v), substituted “paragraph (1)” for “subsection (q)(1)”.

1990—Subsec. (e)(1). Pub. L. 101-515, § 210(a)(1), inserted “, other than aircraft passengers,” after “arrival of any passenger”.

Subsec. (f)(3). Pub. L. 101-515, § 210(a)(2), as amended by Pub. L. 102-232, § 309(a)(2)(B), inserted “, except the fourth quarter payment for fees collected from airline passengers shall be made on the date that is ten days before the end of the fiscal year, and the first quarter payment shall include any collections made in the preceding quarter that were not remitted with the previous payment” after “in which the fees are collected”.

Subsec. (g). Pub. L. 101-515, § 210(a)(3), inserted “, within forty-five minutes of their presentation for inspection,” before “when needed and”.

Subsec. (h)(1)(A). Pub. L. 101-515, § 210(a)(4), substituted “There is established in the general fund of the Treasury a separate account which shall be known as the ‘Immigration User Fee Account’. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the Immigration User Fee Account all fees collected under subsection (d) of this section, to remain available until expended” for “All of the fees collected under subsection (d) of this section shall be deposited in a separate account within the general fund of the Treasury of the United States, to remain available until expended. Such account shall be known as the ‘Immigration User Fee Account’.”

Subsec. (i). Pub. L. 101-515, § 210(a)(5), added subsec. (i).

Subsec. (m). Pub. L. 101-515, § 210(d)(1), (2), inserted “as offsetting receipts” after “shall be deposited” and inserted before period at end “: *Provided further*, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional [sic] costs associated with the administration of the fees collected”.

Subsec. (q). Pub. L. 101-515, § 210(d)(3), added subsec. (q).

1989—Subsec. (n). Pub. L. 101-162, as amended by Pub. L. 102-232, § 309(a)(1)(B), struck out “in excess of

\$50,000,000” before “shall remain available” and struck out after first sentence “At least annually, deposits in the amount of \$50,000,000 shall be transferred from the ‘Immigration Examinations Fee Account’ to the General Fund of the Treasury of the United States.”

1988—Subsec. (a). Pub. L. 100-525, § 8(f), added Pub. L. 99-653, § 7(d)(1). See 1986 Amendment note below.

Subsecs. (d) to (l). Pub. L. 100-525, § 4(a)(2)(A), (d), amended Pub. L. 99-500 and Pub. L. 99-591. See 1986 Amendment note below.

Subsec. (f)(3). Pub. L. 100-525, § 4(a)(1)(A), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (g). Pub. L. 100-525, § 4(a)(1)(B), substituted “section 1353b of this title” for “section 1353(a) of this title”.

Subsec. (h)(1)(A). Pub. L. 100-525, § 4(a)(1)(C)(i), amended that portion of the first sentence of subpar. (A) following “Treasury of the United States” so as to read “, to remain available until expended”. See 1987 Amendment note below.

Pub. L. 100-525, § 4(a)(1)(C)(ii), substituted “Fee Account” for “Fee Account.”

Subsec. (h)(1)(B). Pub. L. 100-525, § 4(a)(1)(C)(iii)-(v), substituted “civil fines or penalties” for “fines, penalties, liquidated damages or expenses”, inserted “and all liquidated damages and expenses collected pursuant to this chapter” after “this title”, and struck out quotation marks before and after the term “Immigration User Fee Account”.

Subsec. (h)(2)(A). Pub. L. 100-525, § 4(a)(1)(C)(vi), substituted “vessels and in—” for “vessels and:” in introductory provisions and inserted “and” at end of cl. (iv).

Subsec. (i). Pub. L. 100-525, § 4(a)(1)(D), inserted “Reimbursement” as heading.

Subsec. (l). Pub. L. 100-525, § 4(a)(1)(E), struck out subsec. (l) which read as follows:

“(1) The provisions of this section and the amendments made by this section, shall apply with respect to immigration inspection services rendered after November 30, 1986.

“(2) Fees may be charged under subsection (d) of this section only with respect to immigration inspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1986.”

Subsecs. (m) to (p). Pub. L. 100-459, as amended by Pub. L. 102-232, § 309(a)(1)(A)(i)(I), added subsecs. (m) to (p).

1987—Subsec. (h)(1)(A). Pub. L. 100-71, directed the general amendment of first sentence of section 205(h)(1)(A) of the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act, 1987, in Pub. L. 99-500 and Pub. L. 99-591. Section 205 of such act does not contain a subsec. (h)(1)(A) but did enact subsec. (h)(1)(A) of this section and had such amendment been executed to first sentence of subsec. (h)(1)(A) of this section it would have resulted in inserting “, to remain available until expended” after “Treasury of the United States”. See 1988 Amendment note above.

1986—Subsec. (a). Pub. L. 99-653, § 7(d)(1), as added by Pub. L. 100-525, § 8(f), substituted “section 1228(b) of this title” for “section 1228(c) of this title”.

Subsecs. (d) to (l). Pub. L. 99-500, § 101(b) [title II, § 205(a), formerly § 205], as redesignated by Pub. L. 100-525, § 4(a)(2)(A), added subsecs. (d) to (l).

Pub. L. 99-591, § 101(b) [title II, § 205], a corrected version of Pub. L. 99-500, § 101(b) [title II, § 205(a)], was repealed by Pub. L. 100-525, § 4(d), effective as of Oct. 30, 1986.

1981—Subsecs. (b), (c). Pub. L. 97-116 added subsec. (b), redesignated former subsec. (b) as (c), and inserted “and subsection (b)” after “subsection (a)”.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-117, div. D, title V, § 524(b), Dec. 16, 2009, 123 Stat. 3284, provided that: “The amendment made by

subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 16, 2009].”

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 403(b) of Pub. L. 109-13 effective 14 days after May 11, 2005, and applicable to filings for a fiscal year after fiscal year 2005, see section 403(c) of Pub. L. 109-13, set out as a note under section 1184 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 426(b) of Pub. L. 108-447 effective Dec. 8, 2004, and the fees imposed under such amendment applicable to petitions under section 1184(c) of this title, and applications for nonimmigrant visas under section 1202 of this title, filed on or after the date that is 90 days after Dec. 8, 2004, see section 426(c) of Pub. L. 108-447, set out as a note under section 1184 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108-77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and ceases to be effective on the date the Agreement ceases to be in force, see section 107 of Pub. L. 108-77, set out in a note under section 3805 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 124(a)(2) of div. C of Pub. L. 104-208 provided that: “The amendments made by paragraph (1) [amending this section] shall apply to expenses incurred during or after fiscal year 1997.”

Amendment by section 308(d)(3)(A), (4)(K), (e)(1)(L), (g)(1) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Amendment by section 376(b) of Pub. L. 104-208 applicable to applications made on or after the end of the 90-day period beginning Sept. 30, 1996, see section 376(c) of Pub. L. 104-208, set out as a note under section 1255 of this title.

Amendment by section 382(b) of Pub. L. 104-208 applicable to fines and penalties collected on or after Sept. 30, 1996, see section 382(c) of Pub. L. 104-208, set out as a note under section 1330 of this title.

Amendment by section 671(b)(11) of Pub. L. 104-208 effective as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, see section 671(b)(14) of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(t) of Pub. L. 103-416 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 102-395.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 309(a)(3) of Pub. L. 102-232, as amended by Pub. L. 103-416, title II, § 219(z)(6), Oct. 25, 1994, 108 Stat. 4318, provided that: “The amendments made by paragraphs (1)(A) [amending this section and section 1455 of this title] and (1)(B) [amending this section] shall be effective as if they were included in the enactment of the Department of Justice Appropriations Act, 1989 [Pub. L. 100-459, title II] and the Department of Justice Appropriations Act, 1990 [Pub. L. 101-162, title II], respectively.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 210(b) of Pub. L. 101-515 provided that: “The amendment made by subsection (a)(1) of this section [amending this section] shall apply to fees charged only with respect to immigration inspection or pre-inspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1990.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 4(a)(1), (2)(A) of Pub. L. 100-525 effective as if included in enactment of Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Pub. L. 99-500), see section 4(c) of Pub. L. 100-525, set out as a note under section 1222 of this title.

Amendment by section 8(f) of Pub. L. 100-525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99-653, see section 309(b)(15) of Pub. L. 102-232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 7(d)(1) of Pub. L. 99-653 applicable to visas issued, and admissions occurring, on or after Nov. 14, 1986, see section 23(a) of Pub. L. 99-653, set out as a note under section 1101 of this title.

Pub. L. 99-500, §101(b) [title II, §205(b)], as added by Pub. L. 100-525, §4(a)(2)(B), Oct. 24, 1988, 102 Stat. 2615, provided that:

“(1) The amendments made by subsection (a) [amending this section] shall apply with respect to immigration inspection services rendered after November 30, 1986.

“(2) Fees may be charged under section 286(d) of the Immigration and Nationality Act [8 U.S.C. 1356(d)] only with respect to immigration inspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1986.”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

RESTORATION OF PROVISION REGARDING FEES TO COVER THE FULL COSTS OF ALL ADJUDICATION SERVICES

Pub. L. 108-7, div. L, §107, Feb. 20, 2003, 117 Stat. 532, provided in part: “That no court shall have jurisdiction over any cause or claim arising under the provisions of section 457 of the Homeland Security Act of 2002 (Public Law 107-296) [amending this section], this section [repealing section 457 of Pub. L. 107-296], or any regulations promulgated thereunder.”

REPORTING REQUIREMENT

Pub. L. 105-277, div. C, title IV, §414(e), as added by Pub. L. 106-313, title I, §110(c), Oct. 17, 2000, 114 Stat. 1256, provided that:

“The Secretary of Labor and the Director of the National Science Foundation shall—

“(1) track and monitor the performance of programs receiving H-1B Nonimmigrant Fee grant money; and

“(2) not later than one year after the date of enactment of this subsection [Oct. 17, 2000], submit a report to the Committees on the Judiciary of the House of Representatives and the Senate—[sic]

“(A) the tracking system to monitor the performance of programs receiving H-1B grant funding; and

“(B) the number of individuals who have completed training and have entered the high-skill workforce through these programs.”

DEPOSIT OF RECEIPTS FROM INCREASED CHARGE FOR IMMIGRANT VISAS CAUSED BY PROCESSING FINGERPRINTS

Pub. L. 103-317, title V, Aug. 26, 1994, 108 Stat. 1760, provided in part: “That hereafter all receipts received from an increase in the charge for Immigrant Visas in effect on September 30, 1994, caused by processing an applicant’s fingerprints, shall be deposited in this account as an offsetting collection and shall remain available until expended.”

EXTENSION OF LAND BORDER FEE PILOT PROJECT

Pub. L. 104-208, div. A, §101(a) [title I], Sept. 30, 1996, 110 Stat. 3009, 3009-10, provided in part: “That the Land Border Fee Pilot Project scheduled to end September 30, 1996 [see subsec. (q) of this section], is extended to September 30, 1999, for projects on both the northern and southern borders of the United States, except that no pilot program may implement a universal land border crossing toll”.

Similar provisions were contained in the following prior appropriations act:

Pub. L. 103-121, title I, Oct. 27, 1993, 107 Stat. 1161, as amended by Pub. L. 103-317, title I, §111, Aug. 26, 1994, 108 Stat. 1736, and repealed by Pub. L. 104-208, div. C, title I, §122(b), Sept. 30, 1996, 110 Stat. 3009-560.

§ 1357. Powers of immigration officers and employees**(a) Powers without warrant**

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for

the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;

(4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be taken without unnecessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States; and

(5) to make arrests—

(A) for any offense against the United States, if the offense is committed in the officer's or employee's presence, or

(B) for any felony cognizable under the laws of the United States, if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony,

if the officer or employee is performing duties relating to the enforcement of the immigration laws at the time of the arrest and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest.

Under regulations prescribed by the Attorney General, an officer or employee of the Service may carry a firearm and may execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. The authority to make arrests under paragraph (5)(B) shall only be effective on and after the date on which the Attorney General publishes final regulations which (i) prescribe the categories of officers and employees of the Service who may use force (including deadly force) and the circumstances under which such force may be used, (ii) establish standards with respect to enforcement activities of the Service, (iii) require that any officer or employee of the Service is not authorized to make arrests under paragraph (5)(B) unless the officer or employee has received certification as having completed a training program which covers such arrests and standards described in clause (ii), and (iv) establish an expedited, internal review process for violations of such standards, which process is consistent with standard agency procedure regarding confidentiality of matters related to internal investigations.

(b) Administration of oath; taking of evidence

Any officer or employee of the Service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this chapter and the administration of the Service; and any person to whom such oath has been administered, (or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury

as permitted under section 1746 of title 28) under the provisions of this chapter, who shall knowingly or willfully give false evidence or swear (or subscribe under penalty of perjury as permitted under section 1746 of title 28) to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621 of title 18.

(c) Search without warrant

Any officer or employee of the Service authorized and designated under regulations prescribed by the Attorney General, whether individually or as one of a class, shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for denial of admission to the United States under this chapter which would be disclosed by such search.

(d) Detainer of aliens for violation of controlled substances laws

In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)—

(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien,

the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.

(e) Restriction on warrantless entry in case of outdoor agricultural operations

Notwithstanding any other provision of this section other than paragraph (3) of subsection (a) of this section, an officer or employee of the Service may not enter without the consent of the owner (or agent thereof) or a properly executed warrant onto the premises of a farm or other outdoor agricultural operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States.

(f) Fingerprinting and photographing of certain aliens

(1) Under regulations of the Attorney General, the Commissioner shall provide for the fingerprinting and photographing of each alien 14 years of age or older against whom a proceeding is commenced under section 1229a of this title.

(2) Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies, upon request.

(g) Performance of immigration officer functions by State officers and employees

(1) Notwithstanding section 1342 of title 31, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General.

(4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written agreement between the Attorney General and the State or political subdivision.

(6) The Attorney General may not accept a service under this subsection if the service will be used to displace any Federal employee.

(7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of title 5 (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.

(9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—

(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

(h) Protecting abused juveniles

An alien described in section 1101(a)(27)(J) of this title who has been battered, abused, neglected, or abandoned, shall not be compelled to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for special immigrant juvenile status, including after a request for the consent of the Secretary of Homeland Security under section 1101(a)(27)(J)(iii)(I) of this title.

(June 27, 1952, ch. 477, title II, ch. 9, § 287, 66 Stat. 233; Pub. L. 94-550, § 7, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 99-570, title I, § 1751(d), Oct. 27, 1986, 100 Stat. 3207-47; Pub. L. 99-603, title I, § 116, Nov. 6, 1986, 100 Stat. 3384; Pub. L. 100-525, §§ 2(e), 5, Oct. 24, 1988, 102 Stat. 2610, 2615; Pub. L. 101-649, title V, § 503(a), (b)(1), Nov. 29, 1990, 104 Stat. 5048, 5049; Pub. L. 102-232, title III, § 306(a)(3), Dec. 12, 1991, 105 Stat. 1751; Pub. L. 104-208, div. C, title I, § 133, title III, § 308(d)(4)(L), (e)(1)(M), (g)(5)(A)(i), Sept. 30, 1996, 110 Stat. 3009-563, 3009-618, 3009-619, 3009-623; Pub. L. 109-162, title VIII, § 826, Jan. 5, 2006, 119 Stat. 3065; Pub. L. 109-271, § 6(g), Aug. 12, 2006, 120 Stat. 763.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

2006—Subsecs. (h), (i). Pub. L. 109-271 redesignated subsec. (i) as (h).

Subsec. (i). Pub. L. 109-162, which directed the amendment of this section "as amended by section 726" by adding cl. (i) at end, was executed by adding subsec. (i) at end to reflect the probable intent of Congress. Pub. L. 109-162 does not contain a section 726.

1996—Subsec. (a)(2), (4). Pub. L. 104-208, § 308(d)(4)(L)(i), substituted "expulsion, or removal" for "or expulsion".

Subsec. (c). Pub. L. 104-208, § 308(d)(4)(L)(ii), substituted "denial of admission to" for "exclusion from".

Subsec. (f)(1). Pub. L. 104-208, § 308(g)(5)(A)(i), substituted "section 1229a" for "section 1252".

Subsec. (g). Pub. L. 104-208, § 308(e)(1)(M), which directed amendment of subsec. (g) by substituting "removal" for "deportation" wherever appearing, could not be executed because the word "deportation" did not appear in subsec. (g).

Pub. L. 104-208, § 133, added subsec. (g).

1991—Subsec. (a)(4). Pub. L. 102-232 substituted a semicolon for comma at end.

1990—Subsec. (a). Pub. L. 101-649, § 503(a), struck out "and" at end of par. (3), substituted "United States, and" for "United States. Any such employee shall also

have the power to execute any warrant or other process issued by any officer under any law regulating the admission, exclusion, or expulsion of aliens." at end of par. (4), and added par. (5) and concluding provisions.

Subsec. (f). Pub. L. 101-649, § 503(b)(1), added subsec. (f).

1988—Subsec. (d). Pub. L. 100-525, § 5, added par. (3) and closing provisions and struck out former par. (3) which read as follows: "requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien."

Subsec. (e). Pub. L. 100-525, § 2(e)(2), made technical amendment to directory language of Pub. L. 99-603, § 116, and redesignated the subsec. (d) added by such § 116, as (e). See 1986 Amendment note below.

1986—Subsec. (d). Pub. L. 99-570 added subsec. (d).

Subsec. (e). Pub. L. 99-603, as amended by Pub. L. 100-525, § 2(e), added subsec. (e), which prior to amendment by Pub. L. 100-525, was designated as a second subsec. (d) of this section.

1976—Subsec. (b). Pub. L. 94-550 inserted "(or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28)" after "to whom such oath has been administered" and "(or subscribe under penalty of perjury as permitted under section 1746 of title 28)" after "give false evidence or swear".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(L), (e)(1)(M), (g)(5)(A)(i) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 2(e) of Pub. L. 100-525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99-603, see section 2(s) of Pub. L. 100-525, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1358. Local jurisdiction over immigrant stations

The officers in charge of the various immigrant stations shall admit therein the proper State and local officers charged with the enforcement of the laws of the State or Territory of the United States in which any such immigrant station is located in order that such State and local officers may preserve the peace and make arrests for crimes under the laws of the States and Territories. For the purpose of this section the jurisdiction of such State and local officers and of the State and local courts shall extend over such immigrant stations.

(June 27, 1952, ch. 477, title II, ch. 9, § 288, 66 Stat. 234.)

§ 1359. Application to American Indians born in Canada

Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.

(June 27, 1952, ch. 477, title II, ch. 9, § 289, 66 Stat. 234.)

§ 1360. Establishment of central file; information from other departments and agencies

(a) Establishment of central file

There shall be established in the office of the Commissioner, for the use of security and enforcement agencies of the Government of the United States, a central index, which shall contain the names of all aliens heretofore admitted or denied admission to the United States, insofar as such information is available from the existing records of the Service, and the names of all aliens hereafter admitted or denied admission to the United States, the names of their sponsors of record, if any, and such other relevant information as the Attorney General shall require as an aid to the proper enforcement of this chapter.

(b) Information from other departments and agencies

Any information in any records kept by any department or agency of the Government as to the identity and location of aliens in the United States shall be made available to the Service upon request made by the Attorney General to the head of any such department or agency.

(c) Reports on social security account numbers and earnings of aliens not authorized to work

(1) Not later than 3 months after the end of each fiscal year (beginning with fiscal year 1996), the Commissioner of Social Security shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the aggregate quantity of social security account numbers issued to aliens not authorized to be employed, with respect to which, in such fiscal year, earnings were reported to the Social Security Administration.

(2) If earnings are reported on or after January 1, 1997, to the Social Security Administration on a social security account number issued to an alien not authorized to work in the United States, the Commissioner of Social Security shall provide the Attorney General with information regarding the name and address of the alien, the name and address of the person reporting the earnings, and the amount of the earnings. The information shall be provided in an electronic form agreed upon by the Commissioner and the Attorney General.

(d) Certification of search of Service records

A written certification signed by the Attorney General or by any officer of the Service designated by the Attorney General to make such certification, that after diligent search no record or entry of a specified nature is found to

exist in the records of the Service, shall be admissible as evidence in any proceeding as evidence that the records of the Service contain no such record or entry, and shall have the same effect as the testimony of a witness given in open court.

(June 27, 1952, ch. 477, title II, ch. 9, § 290, 66 Stat. 234; Pub. L. 100-525, § 9(q), Oct. 24, 1988, 102 Stat. 2621; Pub. L. 104-208, div. C, title III, § 308(d)(4)(M), title IV, § 414(a), Sept. 30, 1996, 110 Stat. 3009-618, 3009-669.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-208, § 308(d)(4)(M), substituted “admitted or denied admission to the United States” for “admitted to the United States, or excluded therefrom” in two places.

Subsec. (c). Pub. L. 104-208, § 414(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The Secretary of Health and Human Services shall notify the Attorney General upon request whenever any alien is issued a social security account number and social security card. The Secretary shall also furnish such available information as may be requested by the Attorney General regarding the identity and location of aliens in the United States.”

1988—Subsec. (c). Pub. L. 100-525 substituted “Secretary of Health and Human Services” for “Federal Security Administrator” and “The Secretary” for “The Administrator”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(M) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS

Pub. L. 104-208, div. C, title IV, § 414(b), Sept. 30, 1996, 110 Stat. 3009-669, as amended by Pub. L. 108-156, § 3(d), Dec. 3, 2003, 117 Stat. 1945, directed the Commissioner of Social Security to transmit to the Secretary of Homeland Security, by not later than 1 year after Sept. 30, 1996, a report on the extent to which social security account numbers and cards were used by aliens for fraudulent purposes.

§ 1361. Burden of proof upon alien

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this chapter, and, if an alien, that he is entitled to the nonimmigrant, immigrant,

special immigrant, immediate relative, or refugee status claimed, as the case may be. If such person fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the Attorney General that he is not inadmissible under any provision of this chapter. In any removal proceeding under part IV of this subchapter against any person, the burden of proof shall be upon such person to show the time, place, and manner of his entry into the United States, but in presenting such proof he shall be entitled to the production of his visa or other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry in the custody of the Service. If such burden of proof is not sustained, such person shall be presumed to be in the United States in violation of law.

(June 27, 1952, ch. 477, title II, ch. 9, § 291, 66 Stat. 234; Pub. L. 97-116, § 18(k)(1), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 104-208, div. C, title III, § 308(d)(4)(N), (e)(1)(N), (g)(9)(A), Sept. 30, 1996, 110 Stat. 3009-618, 3009-619, 3009-624.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104-208, § 308(g)(9)(A), substituted “part IV” for “Part V”.

Pub. L. 104-208, § 308(e)(1)(N), substituted “removal” for “deportation”.

Pub. L. 104-208, § 308(d)(4)(N), substituted “inadmissible” for “subject to exclusion” in two places.

1981—Pub. L. 97-116 substituted “immigrant, special immigrant, immediate relative, or refugee” for “quota immigrant, or nonquota immigrant”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1362. Right to counsel

In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall

have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.

(June 27, 1952, ch. 477, title II, ch. 9, § 292, 66 Stat. 235; Pub. L. 104-208, div. C, title III, §§ 308(d)(4)(O), 371(b)(9), Sept. 30, 1996, 110 Stat. 3009-619, 3009-645.)

AMENDMENTS

1996—Pub. L. 104-208, § 371(b)(9), substituted “an immigration judge” for “a special inquiry officer”.

Pub. L. 104-208, § 308(d)(4)(O), substituted “removal” for “exclusion or deportation” in two places.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(O) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Amendment by section 371(b)(9) of Pub. L. 104-208 effective Sept. 30, 1996, see section 371(d)(1) of Pub. L. 104-208, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1363. Deposit of and interest on cash received to secure immigration bonds

(a) Cash received by the Attorney General as security on an immigration bond shall be deposited in the Treasury of the United States in trust for the obligor on the bond, and shall bear interest payable at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum. Such interest shall accrue from date of deposit occurring after April 27, 1966, to and including date of withdrawal or date of breach of the immigration bond, whichever occurs first: *Provided*, That cash received by the Attorney General as security on an immigration bond, and deposited by him in the postal savings system prior to discontinuance of the system, shall accrue interest as provided in this section from the date such cash ceased to accrue interest under the system. Appropriations to the Treasury Department for interest on uninvested funds shall be available for payment of said interest.

(b) The interest accruing on cash received by the Attorney General as security on an immigration bond shall be subject to the same disposition as prescribed for the principal cash, except that interest accruing to the date of breach of the immigration bond shall be paid to the obligor on the bond.

(June 27, 1952, ch. 477, title II, ch. 9, § 293, as added Pub. L. 91-313, § 2, July 10, 1970, 84 Stat. 413.)

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1363a. Undercover investigation authority

(a) In general

With respect to any undercover investigative operation of the Service which is necessary for the detection and prosecution of crimes against the United States—

(1) sums appropriated for the Service may be used for leasing space within the United States and the territories and possessions of the United States without regard to the following provisions of law:

(A) section 1341(a) of title 31,

(B) section 6301(a) and (b)(1) to (3) of title 41,

(C) chapter 45 of title 41,

(D) section 8141 of title 40,

(E) section 3324(a) and (b) of title 31,

(F) section 6306 of title 41, and

(G) section 3901 of title 41;

(2) sums appropriated for the Service may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to the provisions of section 9102 of title 31;

(3) sums appropriated for the Service, and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18 and of section 3302(a) of title 31; and

(4) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302(b) of title 31.

The authority set forth in this subsection may be exercised only upon written certification of the Commissioner, in consultation with the Deputy Attorney General, that any action authorized by paragraph (1), (2), (3), or (4) is necessary for the conduct of the undercover operation.

(b) Disposition of proceeds no longer required

As soon as practicable after the proceeds from an undercover investigative operation, carried out under paragraphs (3) and (4) of subsection (a) of this section, are no longer necessary for the conduct of the operation, the proceeds or the balance of the proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Disposition of certain corporations and business entities

If a corporation or business entity established or acquired as part of an undercover operation under paragraph (2) of subsection (a) of this section with a net value of over \$50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or Commissioner's designee determines practicable, shall report the circumstances to the Attorney General, the Director of the Office of Management and Budget, and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) Financial audits

The Service shall conduct detailed financial audits of closed undercover operations on a quarterly basis and shall report the results of the audits in writing to the Deputy Attorney General.

(June 27, 1952, ch. 477, title II, ch. 9, §294, as added Pub. L. 104-208, div. C, title II, §205(a), Sept. 30, 1996, 110 Stat. 3009-567.)

CODIFICATION

In subsec. (a)(1)(A), (E), (2) to (4), “section 1341(a) of title 31” substituted for “section 3679(a) of the Revised Statutes (31 U.S.C. 1341)”, “section 3324(a) and (b) of title 31” substituted for “section 3648 of the Revised Statutes (31 U.S.C. 3324)”, “section 9102 of title 31” substituted for “section 304 of the Government Corporation Control Act (31 U.S.C. 9102)”, “section 3302(a) of title 31” substituted for “section 3639 of the Revised Statutes (31 U.S.C. 3302)”, and “section 3302(b) of title 31” substituted for “section 3617 of the Revised Statutes (31 U.S.C. 3302)”, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

In subsec. (a)(1)(B), (C), (F), “section 6301(a) and (b)(1) to (3) of title 41” substituted for “section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))”, “chapter 45 of title 41” substituted for “section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255)”, and “section 6306 of title 41” substituted for “section 3741 of the Revised Statutes (41 U.S.C. 22)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(1)(D), “section 8141 of title 40” substituted for “the third undesignated paragraph under the heading ‘Miscellaneous’ of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (a)(1)(G), “section 3901 of title 41” substituted for “subsections (a) and (c) of section 304 of the Federal Property and Administrative Services Act of 1949 (63 Stat. 395; 41 U.S.C. 254(a) and (c))” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts and because subsec. (c) was previously repealed by Pub. L. 103-355, title II, §2251(b), Oct. 13, 1994, 108 Stat. 3320.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1363b. Repealed. Pub. L. 105-277, div. A, § 101(b) [title I, §109(b)], Oct. 21, 1998, 112 Stat. 2681-50, 2681-67

Section, act June 27, 1952, ch. 477, title II, ch. 9, §295, as added Pub. L. 104-208, div. C, title VI, §626(a), Sept. 30, 1996, 110 Stat. 3009-700, related to transportation of remains of immigration officers and border patrol agents killed in the line of duty. Pub. L. 105-277, which directed the repeal of section 626 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which is section 626 of Pub. L. 104-208, div. C, title VI, Sept. 30, 1996, 110 Stat. 3009-700, was executed by repealing this section, which was section 295 of the Immigration and Nationality Act and was enacted by section 626(a) of Pub. L. 104-208, to reflect the probable intent of Congress.

§ 1364. Triennial comprehensive report on immigration**(a) Triennial report**

The President shall transmit to the Congress, not later than January 1, 1989, and not later than January 1 of every third year thereafter, a comprehensive immigration-impact report.

(b) Details in each report

Each report shall include—

(1) the number and classification of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preferences classifications, or as nonimmigrants), paroled, or granted asylum, during the relevant period;

(2) a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 237 of the Immigration and Nationality Act [8 U.S.C. 1227]; and

(3) a description of the impact of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the period on the economy, labor and housing markets, the educational system, social services, foreign policy, environmental quality and resources, the rate, size, and distribution of population growth in the United States, and the impact on specific States and local units of government of high rates of immigration resettlement.

(c) History and projections

The information (referred to in subsection (b) of this section) contained in each report shall be—

(1) described for the preceding three-year period, and

(2) projected for the succeeding five-year period, based on reasonable estimates substantiated by the best available evidence.

(d) Recommendations

The President also may include in such report any appropriate recommendations on changes in numerical limitations or other policies under title II of the Immigration and Nationality Act [8 U.S.C. 1151 et seq.] bearing on the admission and entry of such aliens to the United States.

(Pub. L. 99-603, title IV, §401, Nov. 6, 1986, 100 Stat. 3440; Pub. L. 104-208, div. C, title III, §308(g)(1), Sept. 30, 1996, 110 Stat. 3009-622.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (d), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended. Title II of the Act is classified principally to subchapter II (§1151 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

CODIFICATION

Section was enacted as part of the Immigration Reform and Control Act of 1986, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104-208 substituted “section 237” for “section 241”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

EX. ORD. NO. 12789. DELEGATION OF REPORTING FUNCTIONS UNDER THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, as amended by Ex. Ord. No. 13286, §32, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and title IV of the Immigration Reform and Control Act of 1986, Public Law 99-603 ("Reform Act") [title IV of Pub. L. 99-603, Nov. 6, 1986, 100 Stat. 3440, which enacted section 1364 of this title and provisions set out as notes under sections 1101, 1187, 1188, 1255a, and 1324a of this title], it is hereby ordered as follows:

SECTION 1. The Secretary of Homeland Security shall: (a) perform, in coordination with the Secretary of Labor, the functions vested in the President by section 401 of the Reform Act (8 U.S.C. 1364);

(b) perform, except for the functions in section 402(3)(A), the functions vested in the President by section 402 of the Reform Act (8 U.S.C. 1324a note); and

(c) perform, insofar as they relate to the initial report described in section 404(b), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

SEC. 2. The Secretary of Labor shall: (a) perform the functions vested in the President by section 402(3)(A) of the Reform Act (8 U.S.C. 1324a note);

(b) perform the functions vested in the President by section 403 of the Reform Act (8 U.S.C. 1188 note); and

(c) perform, insofar as they relate to the second report described in section 404(c), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

SEC. 3. The functions delegated by sections 1 and 2 of this order shall be performed in accordance with the procedures set forth in OMB Circular A-19.

SEC. 4. This order shall be effective immediately.

GEORGE BUSH.

§ 1365. Reimbursement of States for costs of incarcerating illegal aliens and certain Cuban nationals

(a) Reimbursement of States

Subject to the amounts provided in advance in appropriation Acts, the Attorney General shall reimburse a State for the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony by such State.

(b) Illegal aliens convicted of a felony

An illegal alien referred to in subsection (a) of this section is any alien who is any alien convicted of a felony who is in the United States unlawfully and—

(1) whose most recent entry into the United States was without inspection, or

(2) whose most recent admission to the United States was as a nonimmigrant and—

(A) whose period of authorized stay as a nonimmigrant expired, or

(B) whose unlawful status was known to the Government,

before the date of the commission of the crime for which the alien is convicted.

(c) Marielito Cubans convicted of a felony

A Marielito Cuban convicted of a felony referred to in subsection (a) of this section is a national of Cuba who—

(1) was allowed by the Attorney General to come to the United States in 1980,

(2) after such arrival committed any violation of State or local law for which a term of imprisonment was imposed, and

(3) at the time of such arrival and at the time of such violation was not an alien lawfully admitted to the United States—

(A) for permanent or temporary residence, or

(B) under the terms of an immigrant visa or a nonimmigrant visa issued,

under the laws of the United States.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(e) "State" defined

The term "State" has the meaning given such term in section 1101(a)(36) of this title.

(Pub. L. 99-603, title V, §501, Nov. 6, 1986, 100 Stat. 3443.)

CODIFICATION

Section was enacted as part of the Immigration Reform and Control Act of 1986, and not as part of the Immigration and Nationality Act which comprises this chapter.

REGULATIONS

Pub. L. 103-317, title VIII, Aug. 26, 1994, 108 Stat. 1778, provided in part: "That the Attorney General shall promulgate regulations to (a) prescribe requirements for program participation eligibility for States, (b) require verification by States of the eligible incarcerated population data with the Immigration and Naturalization Service, (c) prescribe a formula for distributing assistance to eligible States, and (d) award assistance to eligible States".

[For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.]

§ 1365a. Integrated entry and exit data system

(a) Requirement

The Attorney General shall implement an integrated entry and exit data system.

(b) Integrated entry and exit data system defined

For purposes of this section, the term "integrated entry and exit data system" means an electronic system that—

(1) provides access to, and integrates, alien arrival and departure data that are—

(A) authorized or required to be created or collected under law;

(B) in an electronic format; and

(C) in a data base of the Department of Justice or the Department of State, including those created or used at ports of entry and at consular offices;

(2) uses available data described in paragraph (1) to produce a report of arriving and departing aliens by country of nationality, classification as an immigrant or non-

immigrant, and date of arrival in, and departure from, the United States;

(3) matches an alien's available arrival data with the alien's available departure data;

(4) assists the Attorney General (and the Secretary of State, to the extent necessary to carry out such Secretary's obligations under immigration law) to identify, through on-line searching procedures, lawfully admitted non-immigrants who may have remained in the United States beyond the period authorized by the Attorney General; and

(5) otherwise uses available alien arrival and departure data described in paragraph (1) to permit the Attorney General to make the reports required under subsection (e) of this section.

(c) Construction

(1) No additional authority to impose documentary or data collection requirements

Nothing in this section shall be construed to permit the Attorney General or the Secretary of State to impose any new documentary or data collection requirements on any person in order to satisfy the requirements of this section, including—

(A) requirements on any alien for whom the documentary requirements in section 1182(a)(7)(B) of this title have been waived by the Attorney General and the Secretary of State under section 1182(d)(4)(B) of this title; or

(B) requirements that are inconsistent with the North American Free Trade Agreement.

(2) No reduction of authority

Nothing in this section shall be construed to reduce or curtail any authority of the Attorney General or the Secretary of State under any other provision of law.

(d) Deadlines

(1) Airports and seaports

Not later than December 31, 2003, the Attorney General shall implement the integrated entry and exit data system using available alien arrival and departure data described in subsection (b)(1) of this section pertaining to aliens arriving in, or departing from, the United States at an airport or seaport. Such implementation shall include ensuring that such data, when collected or created by an immigration officer at an airport or seaport, are entered into the system and can be accessed by immigration officers at other airports and seaports.

(2) High-traffic land border ports of entry

Not later than December 31, 2004, the Attorney General shall implement the integrated entry and exit data system using the data described in paragraph (1) and available alien arrival and departure data described in subsection (b)(1) of this section pertaining to aliens arriving in, or departing from, the United States at the 50 land border ports of entry determined by the Attorney General to serve the highest numbers of arriving and departing aliens. Such implementation shall include ensuring that such data, when collected

or created by an immigration officer at such a port of entry, are entered into the system and can be accessed by immigration officers at airports, seaports, and other such land border ports of entry.

(3) Remaining data

Not later than December 31, 2005, the Attorney General shall fully implement the integrated entry and exit data system using all data described in subsection (b)(1) of this section. Such implementation shall include ensuring that all such data are available to immigration officers at all ports of entry into the United States.

(e) Reports

(1) In general

Not later than December 31 of each year following the commencement of implementation of the integrated entry and exit data system, the Attorney General shall use the system to prepare an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate.

(2) Information

Each report shall include the following information with respect to the preceding fiscal year, and an analysis of that information:

(A) The number of aliens for whom departure data was collected during the reporting period, with an accounting by country of nationality of the departing alien.

(B) The number of departing aliens whose departure data was successfully matched to the alien's arrival data, with an accounting by the alien's country of nationality and by the alien's classification as an immigrant or nonimmigrant.

(C) The number of aliens who arrived pursuant to a nonimmigrant visa, or as a visitor under the visa waiver program under section 1187 of this title, for whom no matching departure data have been obtained through the system or through other means as of the end of the alien's authorized period of stay, with an accounting by the alien's country of nationality and date of arrival in the United States.

(D) The number of lawfully admitted non-immigrants identified as having remained in the United States beyond the period authorized by the Attorney General, with an accounting by the alien's country of nationality.

(f) Authority to provide access to system

(1) In general

Subject to subsection (d) of this section, the Attorney General, in consultation with the Secretary of State, shall determine which officers and employees of the Departments of Justice and State may enter data into, and have access to the data contained in, the integrated entry and exit data system.

(2) Other law enforcement officials

The Attorney General, in the discretion of the Attorney General, may permit other Federal, State, and local law enforcement officials to have access to the data contained in the in-

tegrated entry and exit data system for law enforcement purposes.

(g) Use of task force recommendations

The Attorney General shall continuously update and improve the integrated entry and exit data system as technology improves and using the recommendations of the task force established under section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2008.

(Pub. L. 104-208, div. C, title I, §110, Sept. 30, 1996, 110 Stat. 3009-558; Pub. L. 105-259, §1, Oct. 15, 1998, 112 Stat. 1918; Pub. L. 105-277, div. A, §101(b) [title I, §116], Oct. 21, 1998, 112 Stat. 2681-50, 2681-68; Pub. L. 106-215, §2(a), June 15, 2000, 114 Stat. 337.)

REFERENCES IN TEXT

Section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000, referred to in subsec. (g), is section 3 of Pub. L. 106-215, set out as a note below.

CODIFICATION

Section was formerly set out as a note under section 1221 of this title.

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

2000—Pub. L. 106-215 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) SYSTEM.—Not later than October 15, 1998 (and not later than March 30, 2001, in the case of land border ports of entry and sea ports), the Attorney General shall develop an automated entry and exit control system that will—

“(1) collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien’s arrival in the United States;

“(2) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General; and

“(3) not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border ports of entry.

“(b) REPORT.—

“(1) DEADLINE.—Not later than December 31 of each year following the development of the system under subsection (a) of this section, the Attorney General shall submit an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate on such system.

“(2) INFORMATION.—The report shall include the following information:

“(A) The number of departure records collected, with an accounting by country of nationality of the departing alien.

“(B) The number of departure records that were successfully matched to records of the alien’s prior arrival in the United States, with an accounting by the alien’s country of nationality and by the alien’s classification as an immigrant or nonimmigrant.

“(C) The number of aliens who arrived as nonimmigrants, or as a visitor under the visa waiver

program under section 1187 of this title, for whom no matching departure record has been obtained through the system or through other means as of the end of the alien’s authorized period of stay, with an accounting by the alien’s country of nationality and date of arrival in the United States.

“(c) USE OF INFORMATION ON OVERSTAYS.—Information regarding aliens who have remained in the United States beyond their authorized period of stay identified through the system shall be integrated into appropriate data bases of the Immigration and Naturalization Service and the Department of State, including those used at ports of entry and at consular offices.”

1998—Subsec. (a). Pub. L. 105-277, §116(1), in introductory provisions, substituted “later than October 15, 1998 (and not later than March 30, 2001, in the case of land border ports of entry and sea ports), the Attorney” for “later than October 15, 1998, the Attorney”.

Pub. L. 105-259 in introductory provisions, substituted “October 15, 1998” for “2 years after September 30, 1996”.

Subsec. (a)(3). Pub. L. 105-277, §116(2)–(4), added par. (3).

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

VISA INTEGRITY AND SECURITY

Pub. L. 107-56, title IV, §414, Oct. 26, 2001, 115 Stat. 353, as amended by Pub. L. 107-173, title II, §201(b)(2), May 14, 2002, 116 Stat. 547, provided that:

“(a) SENSE OF CONGRESS REGARDING THE NEED TO EXPEDITE IMPLEMENTATION OF INTEGRATED ENTRY AND EXIT DATA SYSTEM.—

“(1) SENSE OF CONGRESS.—In light of the terrorist attacks perpetrated against the United States on September 11, 2001, it is the sense of the Congress that—

“(A) the Attorney General, in consultation with the Secretary of State, should fully implement the integrated entry and exit data system for airports, seaports, and land border ports of entry, as specified in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), with all deliberate speed and as expeditiously as practicable; and

“(B) the Attorney General, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of the Treasury, and the Office of Homeland Security, should immediately begin establishing the Integrated Entry and Exit Data System Task Force, as described in section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106-215) [set out as a note below].

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to fully implement the system described in paragraph (1)(A).

“(b) DEVELOPMENT OF THE SYSTEM.—In the development of the integrated entry and exit data system under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), the Attorney General and the Secretary of State shall particularly focus on—

“(1) the utilization of biometric technology; and

“(2) the development of tamper-resistant documents readable at ports of entry.

“(c) INTERFACE WITH LAW ENFORCEMENT DATABASES.—The entry and exit data system described in this section shall be able to interface with law enforcement databases for use by Federal law enforcement to identify and detain individuals who pose a threat to the national security of the United States.”

TASK FORCE

Pub. L. 106-215, §3, June 15, 2000, 114 Stat. 339, as amended by Pub. L. 107-56, title IV, §415, Oct. 26, 2001, 115 Stat. 354, provided that:

“(a) ESTABLISHMENT.—Not later than 6 months after the date of the enactment of this Act [June 15, 2000], the Attorney General, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of the Treasury, and the Office of Homeland Security[,] shall establish a task force to carry out the duties described in subsection (c) (in this section referred to as the ‘Task Force’).

“(b) MEMBERSHIP.—

“(1) CHAIRPERSON; APPOINTMENT OF MEMBERS.—The Task Force shall be composed of the Attorney General and 16 other members appointed in accordance with paragraph (2). The Attorney General shall be the chairperson and shall appoint the other members.

“(2) APPOINTMENT REQUIREMENTS.—In appointing the other members of the Task Force, the Attorney General shall include—

“(A) representatives of Federal, State, and local agencies with an interest in the duties of the Task Force, including representatives of agencies with an interest in—

“(i) immigration and naturalization;

“(ii) travel and tourism;

“(iii) transportation;

“(iv) trade;

“(v) law enforcement;

“(vi) national security; or

“(vii) the environment; and

“(B) private sector representatives of affected industries and groups.

“(3) TERMS.—Each member shall be appointed for the life of the Task Force. Any vacancy shall be filled by the Attorney General.

“(4) COMPENSATION.—

“(A) IN GENERAL.—Each member of the Task Force shall serve without compensation, and members who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

“(B) TRAVEL EXPENSES.—The members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Task Force.

“(c) DUTIES.—The Task Force shall evaluate the following:

“(1) How the Attorney General can efficiently and effectively carry out section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note [8 U.S.C. 1365a]), as amended by section 2 of this Act.

“(2) How the United States can improve the flow of traffic at airports, seaports, and land border ports of entry through—

“(A) enhancing systems for data collection and data sharing, including the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note [8 U.S.C. 1365a]), as amended by section 2 of this Act, by better use of technology, resources, and personnel;

“(B) increasing cooperation between the public and private sectors;

“(C) increasing cooperation among Federal agencies and among Federal and State agencies; and

“(D) modifying information technology systems while taking into account the different data systems, infrastructure, and processing procedures of airports, seaports, and land border ports of entry.

“(3) The cost of implementing each of its recommendations.

“(d) STAFF AND SUPPORT SERVICES.—

“(1) IN GENERAL.—The Attorney General may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Task Force to perform its duties. The employment and termination of an executive director shall be subject to confirmation by a majority of the members of the Task Force.

“(2) COMPENSATION.—The executive director shall be compensated at a rate not to exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code. The Attorney General may fix the compensation of other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

“(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privilege.

“(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Attorney General may procure temporary and intermittent services for the Task Force under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

“(5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Attorney General, the Administrator of General Services shall provide to the Task Force, on a reimbursable basis, the administrative support services necessary for the Task Force to carry out its responsibilities under this section.

“(e) HEARINGS AND SESSIONS.—The Task Force may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Task Force considers appropriate.

“(f) OBTAINING OFFICIAL DATA.—The Task Force may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Attorney General, the head of that department or agency shall furnish that information to the Task Force.

“(g) REPORTS.—

“(1) DEADLINE.—Not later than December 31, 2002, and not later than December 31 of each year thereafter in which the Task Force is in existence, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate containing the findings, conclusions, and recommendations of the Task Force. Each report shall also measure and evaluate how much progress the Task Force has made, how much work remains, how long the remaining work will take to complete, and the cost of completing the remaining work.

“(2) DELEGATION.—The Attorney General may delegate to the Commissioner, Immigration and Naturalization Service, the responsibility for preparing and transmitting any such report.

“(h) LEGISLATIVE RECOMMENDATIONS.—

“(1) IN GENERAL.—The Attorney General shall make such legislative recommendations as the Attorney General deems appropriate—

“(A) to implement the recommendations of the Task Force; and

“(B) to obtain authorization for the appropriation of funds, the expenditure of receipts, or the reprogramming of existing funds to implement such recommendations.

“(2) DELEGATION.—The Attorney General may delegate to the Commissioner, Immigration and Natu-

ralization Service, the responsibility for preparing and transmitting any such legislative recommendations.

“(i) **TERMINATION.**—The Task Force shall terminate on a date designated by the Attorney General as the date on which the work of the Task Force has been completed.

“(j) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2003.”

§ 1365b. Biometric entry and exit data system

(a) Finding

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that completing a biometric entry and exit data system as expeditiously as possible is an essential investment in efforts to protect the United States by preventing the entry of terrorists.

(b) Definition

In this section, the term “entry and exit data system” means the entry and exit system required by applicable sections of—

- (1) the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208);
- (2) the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–205)¹;
- (3) the Visa Waiver Permanent Program Act (Public Law 106–396);
- (4) the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173) [8 U.S.C. 1701 et seq]; and
- (5) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56).

(c) Plan and report

(1) Development of plan

The Secretary of Homeland Security shall develop a plan to accelerate the full implementation of an automated biometric entry and exit data system.

(2) Report

Not later than 180 days after December 17, 2004, the Secretary shall submit a report to Congress on the plan developed under paragraph (1), which shall contain—

- (A) a description of the current functionality of the entry and exit data system, including—
 - (i) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric entry data systems in use and whether such screening systems are located at primary or secondary inspection areas;
 - (ii) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric exit data systems in use;
 - (iii) a listing of databases and data systems with which the entry and exit data system are interoperable;

(iv) a description of—

(I) identified deficiencies concerning the accuracy or integrity of the information contained in the entry and exit data system;

(II) identified deficiencies concerning technology associated with processing individuals through the system; and

(III) programs or policies planned or implemented to correct problems identified in subclause (I) or (II); and

(v) an assessment of the effectiveness of the entry and exit data system in fulfilling its intended purposes, including preventing terrorists from entering the United States;

(B) a description of factors relevant to the accelerated implementation of the biometric entry and exit data system, including—

(i) the earliest date on which the Secretary estimates that full implementation of the biometric entry and exit data system can be completed;

(ii) the actions the Secretary will take to accelerate the full implementation of the biometric entry and exit data system at all ports of entry through which all aliens must pass that are legally required to do so; and

(iii) the resources and authorities required to enable the Secretary to meet the implementation date described in clause (i);

(C) a description of any improvements needed in the information technology employed for the biometric entry and exit data system;

(D) a description of plans for improved or added interoperability with any other databases or data systems; and

(E) a description of the manner in which the Department of Homeland Security’s US-VISIT program—

- (i) meets the goals of a comprehensive entry and exit screening system, including both entry and exit biometric; and
- (ii) fulfills the statutory obligations under subsection (b) of this section.

(d) Collection of biometric exit data

The entry and exit data system shall include a requirement for the collection of biometric exit data for all categories of individuals who are required to provide biometric entry data, regardless of the port of entry where such categories of individuals entered the United States.

(e) Integration and interoperability

(1) Integration of data system

Not later than 2 years after December 17, 2004, the Secretary shall fully integrate all databases and data systems that process or contain information on aliens, which are maintained by—

- (A) the Department of Homeland Security, at—
 - (i) the United States Immigration and Customs Enforcement;
 - (ii) the United States Customs and Border Protection; and

¹ So in original. Probably should be “(Public Law 106–215)”.

(iii) the United States Citizenship and Immigration Services;

(B) the Department of Justice, at the Executive Office for Immigration Review; and

(C) the Department of State, at the Bureau of Consular Affairs.

(2) Interoperable component

The fully integrated data system under paragraph (1) shall be an interoperable component of the entry and exit data system.

(3) Interoperable data system

Not later than 2 years after December 17, 2004, the Secretary shall fully implement an interoperable electronic data system, as required by section 202 of the Enhanced Border Security and Visa Entry Reform Act² (8 U.S.C. 1722) to provide current and immediate access to information in the databases of Federal law enforcement agencies and the intelligence community that is relevant to determine—

(A) whether to issue a visa; or

(B) the admissibility or deportability of an alien.

(f) Maintaining accuracy and integrity of entry and exit data system

(1) Policies and procedures

(A) Establishment

The Secretary of Homeland Security shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, the entry and exit data system that ensure the accuracy and integrity of the data.

(B) Training

The Secretary shall develop training on the rules, guidelines, policies, and procedures established under subparagraph (A), and on immigration law and procedure. All personnel authorized to access information maintained in the databases and data system shall receive such training.

(2) Data collected from foreign nationals

The Secretary of Homeland Security, the Secretary of State, and the Attorney General, after consultation with directors of the relevant intelligence agencies, shall standardize the information and data collected from foreign nationals, and the procedures utilized to collect such data, to ensure that the information is consistent and valuable to officials accessing that data across multiple agencies.

(3) Data maintenance procedures

Heads of agencies that have databases or data systems linked to the entry and exit data system shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, such databases or data systems that ensure the accuracy and integrity of the data and for limiting access to the information in the databases or data systems to authorized personnel.

(4) Requirements

The rules, guidelines, policies, and procedures established under this subsection shall—

(A) incorporate a simple and timely method for—

(i) correcting errors in a timely and effective manner;

(ii) determining which government officer provided data so that the accuracy of the data can be ascertained; and

(iii) clarifying information known to cause false hits or misidentification errors;

(B) include procedures for individuals to—

(i) seek corrections of data contained in the databases or data systems; and

(ii) appeal decisions concerning data contained in the databases or data systems;

(C) strictly limit the agency personnel authorized to enter data into the system;

(D) identify classes of information to be designated as temporary or permanent entries, with corresponding expiration dates for temporary entries; and

(E) identify classes of prejudicial information requiring additional authority of supervisory personnel before entry.

(5) Centralizing and streamlining correction process

(A) In general

The President, or agency director designated by the President, shall establish a clearinghouse bureau in the Department of Homeland Security, to centralize and streamline the process through which members of the public can seek corrections to erroneous or inaccurate information contained in agency databases, which is related to immigration status, or which otherwise impedes lawful admission to the United States.

(B) Time schedules

The process described in subparagraph (A) shall include specific time schedules for reviewing data correction requests, rendering decisions on such requests, and implementing appropriate corrective action in a timely manner.

(g) Integrated biometric entry-exit screening system

The biometric entry and exit data system shall facilitate efficient immigration benefits processing by—

(1) ensuring that the system's tracking capabilities encompass data related to all immigration benefits processing, including—

(A) visa applications with the Department of State;

(B) immigration related filings with the Department of Labor;

(C) cases pending before the Executive Office for Immigration Review; and

(D) matters pending or under investigation before the Department of Homeland Security;

(2) utilizing a biometric based identity number tied to an applicant's biometric algorithm established under the entry and exit data system to track all immigration related matters concerning the applicant;

(3) providing that—

²So in original. Probably should be followed by "of 2002".

(A) all information about an applicant's immigration related history, including entry and exit history, can be queried through electronic means; and

(B) database access and usage guidelines include stringent safeguards to prevent misuse of data;

(4) providing real-time updates to the information described in paragraph (3)(A), including pertinent data from all agencies referred to in paragraph (1); and

(5) providing continuing education in counterterrorism techniques, tools, and methods for all Federal personnel employed in the evaluation of immigration documents and immigration-related policy.

(h) Entry-exit system goals

The Department of Homeland Security shall operate the biometric entry and exit system so that it—

(1) serves as a vital counterterrorism tool;

(2) screens travelers efficiently and in a welcoming manner;

(3) provides inspectors and related personnel with adequate real-time information;

(4) ensures flexibility of training and security protocols to most effectively comply with security mandates;

(5) integrates relevant databases and plans for database modifications to address volume increase and database usage; and

(6) improves database search capacities by utilizing language algorithms to detect alternate names.

(i) Dedicated specialists and front line personnel training

In implementing the provisions of subsections (g) and (h) of this section, the Department of Homeland Security and the Department of State shall—

(1) develop cross-training programs that focus on the scope and procedures of the entry and exit data system;

(2) provide extensive community outreach and education on the entry and exit data system's procedures;

(3) provide clear and consistent eligibility guidelines for applicants in low-risk traveler programs; and

(4) establish ongoing training modules on immigration law to improve adjudications at our ports of entry, consulates, and embassies.

(j) Compliance status reports

Not later than 1 year after December 17, 2004, the Secretary of Homeland Security, the Secretary of State, the Attorney General, and the head of any other department or agency subject to the requirements of this section, shall issue individual status reports and a joint status report detailing the compliance of the department or agency with each requirement under this section.

(k) Expediting registered travelers across international borders

(1) Findings

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(A) Expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority.

(B) The process of expediting known travelers across the borders of the United States can permit inspectors to better focus on identifying terrorists attempting to enter the United States.

(2) Definition

In this subsection, the term “registered traveler program” means any program designed to expedite the travel of previously screened and known travelers across the borders of the United States.

(3) International registered traveler program

(A) In general

The Secretary of Homeland Security shall establish an international registered traveler program that incorporates available technologies, such as biometrics and e-passports, and security threat assessments to expedite the screening and processing of international travelers, including United States Citizens and residents, who enter and exit the United States. The program shall be coordinated with the United States Visitor and Immigrant Status Indicator Technology program, other pre-screening initiatives, and the Visa Waiver Program.

(B) Fees

The Secretary may impose a fee for the program established under subparagraph (A) and may modify such fee from time to time. The fee may not exceed the aggregate costs associated with the program and shall be credited to the Department of Homeland Security for purposes of carrying out the program. Amounts so credited shall remain available until expended.

(C) Rulemaking

Within 365 days after December 26, 2007, the Secretary shall initiate a rulemaking to establish the program, criteria for participation, and the fee for the program.

(D) Implementation

Not later than 2 years after December 26, 2007, the Secretary shall establish a phased-implementation of a biometric-based international registered traveler program in conjunction with the United States Visitor and Immigrant Status Indicator Technology entry and exit system, other pre-screening initiatives, and the Visa Waiver Program at United States airports with the highest volume of international travelers.

(E) Participation

The Secretary shall ensure that the international registered traveler program includes as many participants as practicable by—

(i) establishing a reasonable cost of enrollment;

(ii) making program enrollment convenient and easily accessible; and

(iii) providing applicants with clear and consistent eligibility guidelines.

(4) Report

Not later than 1 year after December 17, 2004, the Secretary shall submit to Congress a report describing the Department's progress on the development and implementation of the registered traveler program.

(I) Authorization of appropriations

There are authorized to be appropriated to the Secretary, for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 108-458, title VII, §7208, Dec. 17, 2004, 118 Stat. 3817; Pub. L. 110-161, div. E, title V, §565, Dec. 26, 2007, 121 Stat. 2091.)

REFERENCES IN TEXT

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsec. (b)(1), is div. C of Pub. L. 104-208, Sept. 30, 1996, 110 Stat. 3009-546. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1101 of this title and Tables.

The Immigration and Naturalization Service Data Management Improvement Act of 2000, referred to in subsec. (b)(2), is Pub. L. 106-215, June 15, 2000, 114 Stat. 337, which amended section 1365a of this title and enacted provisions set out as notes under sections 1101 and 1365a of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1101 of this title and Tables.

The Visa Waiver Permanent Program Act, referred to in subsec. (b)(3), is Pub. L. 106-396, Oct. 30, 2000, 114 Stat. 1637. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1101 of this title and Tables.

The Enhanced Border Security and Visa Entry Reform Act of 2002, referred to in subsec. (b)(4), is Pub. L. 107-173, May 14, 2002, 116 Stat. 543, as amended, which is classified principally to chapter 15 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, referred to in subsec. (b)(5), was Pub. L. 107-56, Oct. 26, 2001, 115 Stat. 272. Pub. L. 107-56 was renamed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or the USA PATRIOT Act by Pub. L. 109-177, title I, §101(b), Mar. 9, 2006, 120 Stat. 194. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

December 26, 2007, referred to in subsec. (k)(3)(C), (D), was in the original "the date of enactment of this paragraph" and was translated a meaning the date of enactment of Pub. L. 110-161, which amended subsec. (k)(3) of this section generally, to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the 9/11 Commission Implementation Act of 2004, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

2007—Subsec. (k)(3). Pub. L. 110-161 amended heading and text of par. (3) generally. Prior to amendment, text related to development and implementation of a registered traveler program.

§ 1366. Annual report on criminal aliens

Not later than 12 months after September 30, 1996, and annually thereafter, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report detailing—

(1) the number of illegal aliens incarcerated in Federal and State prisons for having committed felonies, stating the number incarcerated for each type of offense;

(2) the number of illegal aliens convicted of felonies in any Federal or State court, but not sentenced to incarceration, in the year before the report was submitted, stating the number convicted for each type of offense;

(3) programs and plans underway in the Department of Justice to ensure the prompt removal from the United States of criminal aliens subject to removal; and

(4) methods for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the United States and removed from the United States.

(Pub. L. 104-208, div. C, title III, §332, Sept. 30, 1996, 110 Stat. 3009-634.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1367. Penalties for disclosure of information**(a) In general**

Except as provided in subsection (b) of this section, in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)—

(1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] using information furnished solely by—

(A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,

(B) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty,

(C) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty),

(D) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty.

(E) in the case of an alien applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(U)], the perpetrator of the substantial physical or mental abuse and the criminal activity,¹

(F) in the case of an alien applying for status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)), under section 7105(b)(1)(E)(i)(II)(bb) of title 22, under section 244(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1254a(a)(3)), as in effect prior to March 31, 1999, or as a VAWA self-petitioner (as defined in section 101(a)(51) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(51))², the trafficker or perpetrator,

unless the alien has been convicted of a crime or crimes listed in section 241(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1227(a)(2)]; or

(2) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T), (U), (51)] or section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)].

The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

(b) Exceptions

(1) The Attorney General may provide, in the Attorney General's discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13.

(2) The Attorney General may provide in the discretion of the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.

(3) Subsection (a) of this section shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.

(4) Subsection (a)(2) of this section shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.

(5) The Attorney General is authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 1641(c) of this title.

(6) Subsection (a) of this section may not be construed to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals).

(7) Government entities adjudicating applications for relief under subsection (a)(2) of this section, and government personnel carrying out mandated duties under section 101(i)(1) of the Immigration and Nationality Act [8 U.S.C. 1101(i)(1)], may, with the prior written consent of the alien involved, communicate with non-profit, nongovernmental victims' service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims. Agencies receiving referrals are bound by the provisions of this section. Nothing in this paragraph shall be construed as affecting the ability of an applicant to designate a safe organization through whom governmental agencies may communicate with the applicant.

(c) Penalties for violations

Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act [8 U.S.C. 1229(e)] shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than \$5,000 for each such violation.

(d) Guidance

The Attorney General and the Secretary of Homeland Security shall provide guidance to officers and employees of the Department of Justice or the Department of Homeland Security who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence from harm that could result from the inappropriate disclosure of covered information.

(Pub. L. 104-208, div. C, title III, §§308(g)(8)(D), 384, Sept. 30, 1996, 110 Stat. 3009-624, 3009-652; Pub. L. 105-33, title V, §5572(b), Aug. 5, 1997, 111 Stat. 641; Pub. L. 106-386, div. B, title V, §1513(d), Oct. 28, 2000, 114 Stat. 1536; Pub. L. 109-162, title VIII, §817, Jan. 5, 2006, 119 Stat. 3060; Pub. L. 109-271, §6(h), Aug. 12, 2006, 120 Stat. 763.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

¹ So in original. Probably should be followed by "or".

² So in original. Probably should be followed by a closing parenthesis.

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

Section is comprised of section 384 of div. C of Pub. L. 104-208. Another subsec. (d) of section 384 of div. C of Pub. L. 104-208 amended sections 1160 and 1255a of this title and enacted provisions set out as a note under section 1160 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-162, §817(1)(A), substituted “, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)” for “(including any bureau or agency of such Department)” in introductory provisions.

Subsec. (a)(1)(F). Pub. L. 109-162, §817(1)(B), added subpar. (F).

Subsec. (a)(2). Pub. L. 109-271 substituted “paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act or section 240A(b)(2) of such Act” for “clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B), section 216(c)(4)(C), section 101(a)(15)(U), or section 240A(a)(3) of such Act as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty”.

Subsec. (b)(6), (7). Pub. L. 109-162, §817(2), added pars. (6) and (7).

Subsec. (c). Pub. L. 109-162, §817(3), inserted “or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act” after “in violation of this section”.

Subsec. (d). Pub. L. 109-162, §817(4), added subsec. (d).

2000—Subsec. (a)(1)(E). Pub. L. 106-386, §1513(d)(1)-(3), added subpar. (E).

Subsec. (a)(2). Pub. L. 106-386, §1513(d)(4), inserted “section 101(a)(15)(U),” after “section 216(c)(4)(C).”

1997—Subsec. (b)(5). Pub. L. 105-33 added par. (5).

1996—Subsec. (a)(2). Pub. L. 104-208, §308(g)(8)(D), which directed amendment of section 364(a)(2) of div. C of Pub. L. 104-208 by substituting “240A(a)(3)” for “244(a)(3)”, was executed by making the substitution in subsec. (a)(2) of this section to reflect the probable intent of Congress. Div. C of Pub. L. 104-208 does not contain a section 364.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5582 of title V of Pub. L. 105-33 provided that: “Except as otherwise provided, the amendments made by this chapter [chapter 4 (§§5561-5582) of subtitle F of title V of Pub. L. 105-33, amending this section, sections 1611 to 1613, 1621, 1622, 1631, 1632, 1641 to 1643, and 1645 of this title, and sections 608, 1383, and 1437y of Title 42, The Public Health and Welfare] shall be effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104-193].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(8)(D) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1368. Increase in INS detention facilities; report on detention space**(a) Increase in detention facilities**

Subject to the availability of appropriations, the Attorney General shall provide for an increase in the detention facilities of the Immigration and Naturalization Service to at least 9,000 beds before the end of fiscal year 1997.

(b) Report on detention space**(1) In general**

Not later than 6 months after September 30, 1996, and every 6 months thereafter, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate estimating the amount of detention space that will be required, during the fiscal year in which the report is submitted and the succeeding fiscal year, to detain—

(A) all aliens subject to detention under section 1226(c) of this title and section 1231(a) of this title;

(B) all inadmissible or deportable aliens subject to proceedings under section 1228 of this title or section 1225(b)(2)(A) or 1229a of this title; and

(C) other inadmissible or deportable aliens in accordance with the priorities established by the Attorney General.

(2) Estimate of number of aliens released into the community**(A) Criminal aliens****(i) In general**

The first report submitted under paragraph (1) shall include an estimate of the number of criminal aliens who, in each of the 3 fiscal years concluded prior to the date of the report—

(I) were released from detention facilities of the Immigration and Naturalization Service (whether operated directly by the Service or through contract with other persons or agencies); or

(II) were not taken into custody or detention by the Service upon completion of their incarceration.

(ii) Aliens convicted of aggravated felonies

The estimate under clause (i) shall estimate separately, with respect to each year described in such clause, the number of criminal aliens described in such clause who were convicted of an aggravated felony.

(B) All inadmissible or deportable aliens

The first report submitted under paragraph (1) shall also estimate the number of inadmissible or deportable aliens who were released into the community due to a lack of detention facilities in each of the 3 fiscal years concluded prior to the date of the report notwithstanding circumstances that the Attorney General believed justified detention (for example, a significant probability that the released alien would not appear, as agreed, at subsequent exclusion or deportation proceedings).

(C) Subsequent reports

Each report under paragraph (1) following the first such report shall include the estimates under subparagraphs (A) and (B), made with respect to the 6-month period immediately preceding the date of the submission of the report.

(Pub. L. 104-208, div. C, title III, §§ 308(g)(10)(G), 386, Sept. 30, 1996, 110 Stat. 3009-625, 3009-653.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-208, § 308(g)(10)(G), substituted “inadmissible” for “excludable” in pars. (1)(B), (C) and (2)(B).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(10)(G) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1369. Treatment of expenses subject to emergency medical services exception**(a) In general**

Subject to such amounts as are provided in advance in appropriation Acts, each State or political subdivision of a State that provides medical assistance for care and treatment of an emergency medical condition (as defined in subsection (d) of this section) through a public hospital or other public facility (including a non-profit hospital that is eligible for an additional payment adjustment under section 1395ww of title 42) or through contract with another hospital or facility to an individual who is an alien not lawfully present in the United States is eligible for payment from the Federal Government of its costs of providing such services, but only to the extent that such costs are not otherwise reimbursed through any other Federal program and cannot be recovered from the alien or another person.

(b) Confirmation of immigration status required

No payment shall be made under this section with respect to services furnished to an individual unless the immigration status of the individual has been verified through appropriate procedures established by the Secretary of Health and Human Services and the Attorney General.

(c) Administration

This section shall be administered by the Attorney General, in consultation with the Secretary of Health and Human Services.

(d) “Emergency medical condition” defined

For purposes of this section, the term “emergency medical condition” means a medical con-

dition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

- (1) placing the patient's health in serious jeopardy,
- (2) serious impairment to bodily functions, or
- (3) serious dysfunction of any bodily organ or part.

(e) Effective date

Subsection (a) of this section shall apply to medical assistance for care and treatment of an emergency medical condition furnished on or after January 1, 1997.

(Pub. L. 104-208, div. C, title V, § 562, Sept. 30, 1996, 110 Stat. 3009-682.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1370. Reimbursement of States and localities for emergency ambulance services

Subject to the availability of appropriations, the Attorney General shall fully reimburse States and political subdivisions of States for costs incurred by such a State or subdivision for emergency ambulance services provided to any alien who—

- (1) is injured while crossing a land or sea border of the United States without inspection or at any time or place other than as designated by the Attorney General; and
- (2) is under the custody of the State or subdivision pursuant to a transfer, request, or other action by a Federal authority.

(Pub. L. 104-208, div. C, title V, § 563, Sept. 30, 1996, 110 Stat. 3009-683.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1371. Reports

Not later than 180 days after the end of each fiscal year, the Attorney General shall submit a report to the Inspector General of the Department of Justice and the Committees on the Judiciary of the House of Representatives and of the Senate describing the following:

(1) Public charge deportations

The number of aliens deported on public charge grounds under section 1227(a)(5)¹ of this title during the previous fiscal year.

(2) Indigent sponsors

The number of determinations made under section 1631(e) of this title during the previous fiscal year.

(3) Reimbursement actions

The number of actions brought, and the amount of each action, for reimbursement under section 1183a of this title (including private collections) for the costs of providing public benefits.

(Pub. L. 104-208, div. C, title V, §565, Sept. 30, 1996, 110 Stat. 3009-684.)

REFERENCES IN TEXT

Section 1227(a)(5) of this title, referred to in par. (1), was in the original a reference to “section 241(a)(5) of the Immigration and Nationality Act”, which has been translated as referring to section 237(a)(5) of the Immigration and Nationality Act to reflect the probable intent of Congress and the renumbering of section 241 as 237 by Pub. L. 104-208, div. C, title III, §305(a)(2), Sept. 30, 1996, 110 Stat. 3009-598. Pub. L. 104-208, §305(a)(3), enacted a new section 241 of the Immigration and Nationality Act which is classified to section 1231 of this title, but subsec. (a)(5) of that section does not relate to deportation on public charge grounds.

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1372. Program to collect information relating to nonimmigrant foreign students and other exchange program participants**(a) In general****(1) Program**

The Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall develop and conduct a program to collect from approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs in the United States the information described in subsection (c) of this section with respect to aliens who—

(A) have the status, or are applying for the status, of nonimmigrants under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title; and

(B) are nationals of the countries designated under subsection (b) of this section.

(2) Deadline

The program shall commence not later than January 1, 1998.

¹ See References in Text note below.

(3) Aliens for whom a visa is required

The Attorney General, in consultation with the Secretary of State, shall establish an electronic means to monitor and verify—

(A) the issuance of documentation of acceptance of a foreign student by an approved institution of higher education or other approved educational institution, or of an exchange visitor program participant by a designated exchange visitor program;

(B) the transmittal of the documentation referred to in subparagraph (A) to the Department of State for use by the Bureau of Consular Affairs;

(C) the issuance of a visa to a foreign student or an exchange visitor program participant;

(D) the admission into the United States of the foreign student or exchange visitor program participant;

(E) the notification to an approved institution of higher education, other approved educational institution, or exchange visitor program sponsor that the foreign student or exchange visitor participant has been admitted into the United States;

(F) the registration and enrollment of that foreign student in such approved institution of higher education or other approved educational institution, or the participation of that exchange visitor in such designated exchange visitor program, as the case may be; and

(G) any other relevant act by the foreign student or exchange visitor program participant, including a changing of school or designated exchange visitor program and any termination of studies or participation in a designated exchange visitor program.

(4) Reporting requirements

Not later than 30 days after the deadline for registering for classes for an academic term of an approved institution of higher education or other approved educational institution for which documentation is issued for an alien as described in paragraph (3)(A), or the scheduled commencement of participation by an alien in a designated exchange visitor program, as the case may be, the institution or program, respectively, shall report to the Immigration and Naturalization Service any failure of the alien to enroll or to commence participation.

(b) Covered countries

The Attorney General, in consultation with the Secretary of State, shall designate countries for purposes of subsection (a)(1)(B) of this section. The Attorney General shall initially designate not less than 5 countries and may designate additional countries at any time while the program is being conducted.

(c) Information to be collected**(1) In general**

The information for collection under subsection (a) of this section with respect to an alien consists of—

(A) the identity and current address in the United States of the alien;

(B) the nonimmigrant classification of the alien and the date on which a visa under the

classification was issued or extended or the date on which a change to such classification was approved by the Attorney General;

(C) in the case of a student at an approved institution of higher education, or other approved educational institution,¹ the current academic status of the alien, including whether the alien is maintaining status as a full-time student or, in the case of a participant in a designated exchange visitor program, whether the alien is satisfying the terms and conditions of such program;

(D) in the case of a student at an approved institution of higher education, or other approved educational institution,¹ any disciplinary action taken by the institution against the alien as a result of the alien's being convicted of a crime or, in the case of a participant in a designated exchange visitor program, any change in the alien's participation as a result of the alien's being convicted of a crime; and²

(E) the date of entry and port of entry;

(F) the date of the alien's enrollment in an approved institution of higher education, other approved educational institution, or designated exchange visitor program in the United States;

(G) the degree program, if applicable, and field of study; and

(H) the date of the alien's termination of enrollment and the reason for such termination (including graduation, disciplinary action or other dismissal, and failure to re-enroll).

(2) FERPA

The Family Educational Rights and Privacy Act of 1974 [20 U.S.C. 1232g] shall not apply to aliens described in subsection (a) of this section to the extent that the Attorney General determines necessary to carry out the program under subsection (a) of this section.

(3) Electronic collection

The information described in paragraph (1) shall be collected electronically, where practicable.

(4) Computer software

(A) Collecting institutions

To the extent practicable, the Attorney General shall design the program in a manner that permits approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs to use existing software for the collection, storage, and data processing of information described in paragraph (1).

(B) Attorney General

To the extent practicable, the Attorney General shall use or enhance existing software for the collection, storage, and data processing of information described in paragraph (1).

(5) Reporting requirements

The Attorney General shall prescribe by regulation reporting requirements by taking into

account the curriculum calendar of the approved institution of higher education, other approved educational institution, or exchange visitor program.

(d) Participation by institutions of higher education and exchange visitor programs

(1) Condition

The information described in subsection (c) of this section shall be provided by institutions of higher education, other approved educational institutions, or exchange visitor programs as a condition of—

(A) in the case of an approved institution of higher education, or other approved educational institution,¹ the continued approval of the institution under subparagraph (F) or (M) of section 1101(a)(15) of this title; and

(B) in the case of an approved institution of higher education or a designated exchange visitor program, the granting of authority to issue documents to an alien demonstrating the alien's eligibility for a visa under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Effect of failure to provide information

If an approved institution of higher education, other approved educational institution, or a designated exchange visitor program fails to provide the specified information, such approvals and such issuance of visas shall be revoked or denied.

(e) Funding

(1) In general

Beginning on April 1, 1997, the Attorney General shall impose on, and collect from, each alien described in paragraph (3), with respect to whom the institution or program is required by subsection (a) of this section to collect information, a fee established by the Attorney General under paragraph (4) at a time prior to the alien being classified under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Remittance

The fees collected under paragraph (1) shall be remitted by the alien pursuant to a schedule established by the Attorney General for immediate deposit and availability as described under section 1356(m) of this title.

(3) Aliens described

An alien referred to in paragraph (1) is an alien who seeks nonimmigrant status under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title (other than a nonimmigrant under section 1101(a)(15)(J) of this title who seeks to come to the United States as a participant in a program sponsored by the Federal Government).

(4) Amount and use of fees

(A) Establishment of amount

The Attorney General shall establish the amount of the fee to be imposed on, and collected from, an alien under paragraph (1). Except as provided in subsection (g)(2) of this section, the fee imposed on any individ-

¹ So in original.

² So in original. The word "and" probably should not appear.

ual may not exceed \$100, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed \$40, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed \$35.³ The amount of the fee shall be based on the Attorney General's estimate of the cost per alien of conducting the information collection program described in this section.

(B) Use

Fees collected under paragraph (1) shall be deposited as offsetting receipts into the Immigration Examinations Fee Account (established under section 1356(m) of this title) and shall remain available until expended for the Attorney General to reimburse any appropriation the amount paid out of which is for expenses in carrying out this section. Such expenses include, but are not necessarily limited to, those incurred by the Secretary of State in connection with the program under subsection (a) of this section.

(5) Proof of payment

The alien shall present proof of payment of the fee before the granting of—

(A) a visa under section 1202 of this title or, in the case of an alien who is exempt from the visa requirement described in section 1182(d)(4) of this title, admission to the United States; or

(B) change of nonimmigrant classification under section 1258 of this title to a classification described in paragraph (3).

(6) Implementation

The provisions of section 553 of title 5 (relating to rule-making) shall not apply to the extent the Attorney General determines necessary to ensure the expeditious, initial implementation of this section.

(f) Joint report

Not later than 4 years after the commencement of the program established under subsection (a) of this section, the Attorney General, the Secretary of State, and the Secretary of Education shall jointly submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the operations of the program and the feasibility of expanding the program to cover the nationals of all countries.

(g) Worldwide applicability of program

(1) Expansion of program

Not later than 12 months after the submission of the report required by subsection (f) of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

(2) Revision of fee

After the program has been expanded, as provided in paragraph (1), the Attorney Gen-

eral may, on a periodic basis, revise the amount of the fee imposed and collected under subsection (e) of this section in order to take into account changes in the cost of carrying out the program.

(h) Definitions

As used in this section:

(1) Approved institution of higher education

The term "approved institution of higher education" means a college or university approved by the Attorney General, in consultation with the Secretary of Education, under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Designated exchange visitor program

The term "designated exchange visitor program" means a program that has been—

(A) designated by the Secretary of State for purposes of section 1101(a)(15)(J) of this title; and

(B) selected by the Attorney General for purposes of the program under this section.

(3) Other approved educational institution

The term "other approved educational institution" includes any air flight school, language training school, or vocational school, approved by the Attorney General, in consultation with the Secretary of Education and the Secretary of State, under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(Pub. L. 104-208, div. C, title VI, § 641, Sept. 30, 1996, 110 Stat. 3009-704; Pub. L. 106-396, title IV, §§ 404-406, Oct. 30, 2000, 114 Stat. 1649, 1650; Pub. L. 106-553, § 1(a)(2) [title I, § 110], Dec. 21, 2000, 114 Stat. 2762, 2762A-68; Pub. L. 107-56, title IV, § 416(c), Oct. 26, 2001, 115 Stat. 354; Pub. L. 107-173, title V, § 501(a), May 14, 2002, 116 Stat. 560.)

REFERENCES IN TEXT

The Family Educational Rights and Privacy Act of 1974, referred to in subsec. (c)(2), is section 513 of Pub. L. 93-380, title V, Aug. 21, 1974, 88 Stat. 571, which enacted section 1232g of Title 20, Education, and provisions set out as notes under sections 1221 and 1232g of Title 20. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 1221 of Title 20 and Tables.

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

2002—Subsec. (a)(3), (4). Pub. L. 107-173, § 501(a)(1), added pars. (3) and (4).

Subsec. (c)(1)(E) to (H). Pub. L. 107-173, § 501(a)(2), added subpars. (E) to (H).

Subsec. (c)(5). Pub. L. 107-173, § 501(a)(3), added par. (5).

2001—Subsec. (a)(1). Pub. L. 107-56, § 416(c)(1), inserted "other approved educational institutions," after "higher education" in introductory provisions.

Subsec. (c)(1)(C), (D). Pub. L. 107-56, § 416(c)(2), inserted "or other approved educational institution," after "higher education".

Subsec. (c)(4)(A). Pub. L. 107-56, § 416(c)(1), inserted "other approved educational institutions," after "higher education".

³ So in original. See 2000 amendment notes below.

Subsec. (d)(1). Pub. L. 107-56, § 416(c)(1), inserted “, other approved educational institutions,” after “higher education” in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 107-56, § 416(c)(2), inserted “, or other approved educational institution,” after “higher education”.

Subsec. (d)(2). Pub. L. 107-56, § 416(c)(3), inserted “, other approved educational institution,” after “higher education”.

Subsec. (e)(1), (2). Pub. L. 107-56, § 416(c)(3), which directed insertion of “, other approved educational institution,” after “higher education” in pars. (1) and (2), could not be executed because the words “higher education” did not appear. See 2000 Amendment notes below.

Subsec. (h)(3). Pub. L. 107-56, § 416(c)(4), added par. (3). 2000—Subsec. (d)(1). Pub. L. 106-396, § 406(2), inserted “institutions of higher education or exchange visitor programs” after “by” in introductory provisions.

Subsec. (e)(1). Pub. L. 106-396, § 404(1), in introductory provisions, substituted “the Attorney General” for “an approved institution of higher education and a designated exchange visitor program” and “a time prior to the alien being classified under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.” for “the time—

“(A) when the alien first registers with the institution or program after entering the United States; or

“(B) in a case where a registration under subparagraph (A) does not exist, when the alien first commences activities in the United States with the institution or program.”

Subsec. (e)(2). Pub. L. 106-396, § 404(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “An approved institution of higher education and a designated exchange visitor program shall remit the fees collected under paragraph (1) to the Attorney General pursuant to a schedule established by the Attorney General.”

Subsec. (e)(3). Pub. L. 106-396, § 404(3), substituted “alien who seeks” for “alien who has” and “who seeks to come” for “who has come”.

Subsec. (e)(4)(A). Pub. L. 106-553 inserted before period at end of second sentence “, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed \$35” without reference to amendment made by Pub. L. 106-396, § 404(4)(A). See below.

Pub. L. 106-396, § 404(4)(A), inserted before period at end of second sentence “, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed \$40”. See amendment note above.

Subsec. (e)(4)(B). Pub. L. 106-396, § 404(4)(B), inserted at end “Such expenses include, but are not necessarily limited to, those incurred by the Secretary of State in connection with the program under subsection (a) of this section.”

Subsec. (e)(5), (6). Pub. L. 106-396, § 404(5), added pars. (5) and (6).

Subsec. (g)(1). Pub. L. 106-396, § 405, amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

“(A) IN GENERAL.—Not later than 6 months after the submission of the report required by subsection (f) of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

“(B) DEADLINE.—Such expansion shall be completed not later than 1 year after the date of the submission of the report referred to in subsection (f) of this section.”

Subsec. (h)(2)(A). Pub. L. 106-396, § 406(1), substituted “Secretary of State” for “Director of the United States Information Agency”.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

FOREIGN STUDENT MONITORING PROGRAM

Pub. L. 107-56, title IV, § 416(a), (b), Oct. 26, 2001, 115 Stat. 354, provided that:

“(a) FULL IMPLEMENTATION AND EXPANSION OF FOREIGN STUDENT VISA MONITORING PROGRAM REQUIRED.—The Attorney General, in consultation with the Secretary of State, shall fully implement and expand the program established by section 641(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(a)).

“(b) INTEGRATION WITH PORT OF ENTRY INFORMATION.—For each alien with respect to whom information is collected under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), the Attorney General, in consultation with the Secretary of State, shall include information on the date of entry and port of entry.”

§ 1373. Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

(Pub. L. 104-208, div. C, title VI, § 642, Sept. 30, 1996, 110 Stat. 3009-707.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1374. Information regarding female genital mutilation

(a) Provision of information regarding female genital mutilation

The Immigration and Naturalization Service (in cooperation with the Department of State) shall make available for all aliens who are issued immigrant or nonimmigrant visas, prior to or at the time of entry into the United States, the following information:

(1) Information on the severe harm to physical and psychological health caused by female genital mutilation which is compiled and presented in a manner which is limited to the practice itself and respectful to the cultural values of the societies in which such practice takes place.

(2) Information concerning potential legal consequences in the United States for (A) performing female genital mutilation, or (B) allowing a child under his or her care to be subjected to female genital mutilation, under criminal or child protection statutes or as a form of child abuse.

(b) Limitation

In consultation with the Secretary of State, the Commissioner of Immigration and Naturalization shall identify those countries in which female genital mutilation is commonly practiced and, to the extent practicable, limit the provision of information under subsection (a) of this section to aliens from such countries.

(c) “Female genital mutilation” defined

For purposes of this section, the term “female genital mutilation” means the removal or infibulation (or both) of the whole or part of the clitoris, the labia minora, or labia majora.

(Pub. L. 104–208, div. C, title VI, §644, Sept. 30, 1996, 110 Stat. 3009–708.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1375. Repealed. Pub. L. 109–162, title VIII, § 833(g), Jan. 5, 2006, 119 Stat. 3077

Section, Pub. L. 104–208, div. C, title VI, §652, Sept. 30, 1996, 110 Stat. 3009–712, related to mail-order bride business.

§ 1375a. Domestic violence information and resources for immigrants and regulation of international marriage brokers

(a) Information for K nonimmigrants on legal rights and resources for immigrant victims of domestic violence

(1) In general

The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, shall develop an information pamphlet, as described in paragraph (2), on legal rights and resources for immigrant victims of domestic violence and distribute and make such pamphlet available as described in paragraph (5). In preparing such materials, the Secretary of Homeland Security shall consult with nongovernmental organizations with expertise on the legal rights of immigrant victims of battery, extreme cruelty, sexual assault, and other crimes.

(2) Information pamphlet

The information pamphlet developed under paragraph (1) shall include information on the following:

(A) The K nonimmigrant visa application process and the marriage-based immigration process, including conditional residence and adjustment of status.

(B) The illegality of domestic violence, sexual assault, and child abuse in the United States and the dynamics of domestic violence.

(C) Domestic violence and sexual assault services in the United States, including the National Domestic Violence Hotline and the National Sexual Assault Hotline.

(D) The legal rights of immigrant victims of abuse and other crimes in immigration, criminal justice, family law, and other matters, including access to protection orders.

(E) The obligations of parents to provide child support for children.

(F) Marriage fraud under United States immigration laws and the penalties for committing such fraud.

(G) A warning concerning the potential use of K nonimmigrant visas by United States citizens who have a history of committing domestic violence, sexual assault, child abuse, or other crimes and an explanation that such acts may not have resulted in a criminal record for such a citizen.

(H) Notification of the requirement under subsection (d)(3)(A) of this section that international marriage brokers provide foreign national clients with background information gathered on United States clients from searches of Federal and State sex offender public registries and collected from United States clients regarding their marital history and domestic violence or other violent criminal history, but that such information may not be complete or accurate because the United States client may not have a criminal record or may not have truthfully reported their marital or criminal record.

(3) Summaries

The Secretary of Homeland Security, in consultation with the Attorney General and the

Secretary of State, shall develop summaries of the pamphlet developed under paragraph (1) that shall be used by Federal officials when reviewing the pamphlet in interviews under subsection (b) of this section.

(4) Translation

(A) In general

In order to best serve the language groups having the greatest concentration of K nonimmigrant visa applicants, the information pamphlet developed under paragraph (1) shall, subject to subparagraph (B), be translated by the Secretary of State into foreign languages, including Russian, Spanish, Tagalog, Vietnamese, Chinese, Ukrainian, Thai, Korean, Polish, Japanese, French, Arabic, Portuguese, Hindi, and such other languages as the Secretary of State, in the Secretary's discretion, may specify.

(B) Revision

Every 2 years, the Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, shall determine at least 14 specific languages into which the information pamphlet is translated based on the languages spoken by the greatest concentrations of K nonimmigrant visa applicants.

(5) Availability and distribution

The information pamphlet developed under paragraph (1) shall be made available and distributed as follows:

(A) Mailings to K nonimmigrant visa applicants

(i) The pamphlet shall be mailed by the Secretary of State to each applicant for a K nonimmigrant visa at the same time that the instruction packet regarding the visa application process is mailed to such applicant. The pamphlet so mailed shall be in the primary language of the applicant or in English if no translation into the applicant's primary language is available.

(ii) The Secretary of Homeland Security shall provide to the Secretary of State, for inclusion in the mailing under clause (i), a copy of the petition submitted by the petitioner for such applicant under subsection (d) or (r) of section 1184 of this title.

(iii) The Secretary of Homeland Security shall provide to the Secretary of State any criminal background information the Secretary of Homeland Security possesses with respect to a petitioner under subsection (d) or (r) of section 1184 of this title. The Secretary of State, in turn, shall share any such criminal background information that is in government records or databases with the K nonimmigrant visa applicant who is the beneficiary of the petition. The visa applicant shall be informed that such criminal background information is based on available records and may not be complete. The Secretary of State also shall provide for the disclosure of such criminal background information to the visa applicant at the consular interview in the primary language of the visa applicant. Nothing in this clause shall

be construed to authorize the Secretary of Homeland Security to conduct any new or additional criminal background check that is not otherwise conducted in the course of adjudicating such petitions.

(B) Consular access

The pamphlet developed under paragraph (1) shall be made available to the public at all consular posts. The summaries described in paragraph (3) shall be made available to foreign service officers at all consular posts.

(C) Posting on Federal websites

The pamphlet developed under paragraph (1) shall be posted on the websites of the Department of State and the Department of Homeland Security, as well as on the websites of all consular posts processing applications for K nonimmigrant visas.

(D) International marriage brokers and victim advocacy organizations

The pamphlet developed under paragraph (1) shall be made available to any international marriage broker, government agency, or nongovernmental advocacy organization.

(6) Deadline for pamphlet development and distribution

The pamphlet developed under paragraph (1) shall be distributed and made available (including in the languages specified under paragraph (4)) not later than 120 days after January 5, 2006.

(b) Visa and adjustment interviews

(1) Fiancé(e)s, spouses and their derivatives

During an interview with an applicant for a K nonimmigrant visa, a consular officers shall—

(A) provide information, in the primary language of the visa applicant, on protection orders or criminal convictions collected under subsection (a)(5)(A)(iii) of this section;

(B) provide a copy of the pamphlet developed under subsection (a)(1) of this section in English or another appropriate language and provide an oral summary, in the primary language of the visa applicant, of that pamphlet; and

(C) ask the applicant, in the primary language of the applicant, whether an international marriage broker has facilitated the relationship between the applicant and the United States petitioner, and, if so, obtain the identity of the international marriage broker from the applicant and confirm that the international marriage broker provided to the applicant the information and materials required under subsection (d)(3)(A)(iii) of this section.

(2) Family-based applicants

The pamphlet developed under subsection (a)(1) of this section shall be distributed directly to applicants for family-based immigration petitions at all consular and adjustment interviews for such visas. The Department of State or Department of Homeland Security officer conducting the interview shall review the summary of the pamphlet with the applicant

orally in the applicant's primary language, in addition to distributing the pamphlet to the applicant in English or another appropriate language.

(c) Confidentiality

In fulfilling the requirements of this section, no official of the Department of State or the Department of Homeland Security shall disclose to a nonimmigrant visa applicant the name or contact information of any person who was granted a protection order or restraining order against the petitioner or who was a victim of a crime of violence perpetrated by the petitioner, but shall disclose the relationship of the person to the petitioner.

(d) Regulation of international marriage brokers

(1) Prohibition on marketing children

An international marriage broker shall not provide any individual or entity with the personal contact information, photograph, or general information about the background or interests of any individual under the age of 18.

(2) Requirements of international marriage brokers with respect to mandatory collection of background information

(A) In general

(i) Search of sex offender public registries

Each international marriage broker shall search the National Sex Offender Public Registry or State sex offender public registry, as required under paragraph (3)(A)(i).

(ii) Collection of background information

Each international marriage broker shall also collect the background information listed in subparagraph (B) about the United States client to whom the personal contact information of a foreign national client would be provided.

(B) Background information

The international marriage broker shall collect a certification signed (in written, electronic, or other form) by the United States client accompanied by documentation or an attestation of the following background information about the United States client:

(i) Any temporary or permanent civil protection order or restraining order issued against the United States client.

(ii) Any Federal, State, or local arrest or conviction of the United States client for homicide, murder, manslaughter, assault, battery, domestic violence, rape, sexual assault, abusive sexual contact, sexual exploitation, incest, child abuse or neglect, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or stalking.

(iii) Any Federal, State, or local arrest or conviction of the United States client for—

(I) solely, principally, or incidentally engaging in prostitution;

(II) a direct or indirect attempt to procure prostitutes or persons for the purpose of prostitution; or

(III) receiving, in whole or in part, of the proceeds of prostitution.

(iv) Any Federal, State, or local arrest or conviction of the United States client for offenses related to controlled substances or alcohol.

(v) Marital history of the United States client, including whether the client is currently married, whether the client has previously been married and how many times, how previous marriages of the client were terminated and the date of termination, and whether the client has previously sponsored an alien to whom the client was engaged or married.

(vi) The ages of any of the United States client's children who are under the age of 18.

(vii) All States and countries in which the United States client has resided since the client was 18 years of age.

(3) Obligation of international marriage brokers with respect to informed consent

(A) Limitation on sharing information about foreign national clients

An international marriage broker shall not provide any United States client or representative with the personal contact information of any foreign national client unless and until the international marriage broker has—

(i) performed a search of the National Sex Offender Public Registry, or of the relevant State sex offender public registry for any State not yet participating in the National Sex Offender Public Registry in which the United States client has resided during the previous 20 years, for information regarding the United States client;

(ii) collected background information about the United States client required under paragraph (2);

(iii) provided to the foreign national client—

(I) in the foreign national client's primary language, a copy of any records retrieved from the search required under paragraph (2)(A)(i) or documentation confirming that such search retrieved no records;

(II) in the foreign national client's primary language, a copy of the background information collected by the international marriage broker under paragraph (2)(B); and

(III) in the foreign national client's primary language (or in English or other appropriate language if there is no translation available into the client's primary language), the pamphlet developed under subsection (a)(1) of this section; and

(iv) received from the foreign national client a signed, written consent, in the foreign national client's primary language, to release the foreign national client's personal contact information to the specific United States client.

(B) Confidentiality

In fulfilling the requirements of this paragraph, an international marriage broker

shall disclose the relationship of the United States client to individuals who were issued a protection order or restraining order as described in clause (i) of paragraph (2)(B), or of any other victims of crimes as described in clauses (ii) through (iv) of such paragraph, but shall not disclose the name or location information of such individuals.

(C) Penalty for misuse of information

A person who knowingly discloses, uses, or causes to be used any information obtained by an international marriage broker as a result of the obligations imposed on it under paragraph (2) and this paragraph for any purpose other than the disclosures required under this paragraph shall be fined in accordance with title 18 or imprisoned not more than 1 year, or both. These penalties are in addition to any other civil or criminal liability under Federal or State law which a person may be subject to for the misuse of that information, including to threaten, intimidate, or harass any individual. Nothing in this section shall prevent the disclosure of such information to law enforcement or pursuant to a court order.

(4) Limitation on disclosure

An international marriage broker shall not provide the personal contact information of any foreign national client to any person or entity other than a United States client. Such information shall not be disclosed to potential United States clients or individuals who are being recruited to be United States clients or representatives.

(5) Penalties

(A) Federal civil penalty

(i) Violation

An international marriage broker that violates (or attempts to violate) paragraph (1), (2), (3), or (4) is subject to a civil penalty of not less than \$5,000 and not more than \$25,000 for each such violation.

(ii) Procedures for imposition of penalty

A penalty may be imposed under clause (i) by the Attorney General only after notice and an opportunity for an agency hearing on the record in accordance with subchapter II of chapter 5 of title 5 (popularly known as the Administrative Procedure Act).

(B) Federal criminal penalty

In circumstances in or affecting interstate or foreign commerce, an international marriage broker that, within the special maritime and territorial jurisdiction of the United States, violates (or attempts to violate) paragraph (1), (2), (3), or (4) shall be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(C) Additional remedies

The penalties and remedies under this subsection are in addition to any other penalties or remedies available under law.

(6) Nonpreemption

Nothing in this subsection shall preempt—

(A) any State law that provides additional protections for aliens who are utilizing the services of an international marriage broker; or

(B) any other or further right or remedy available under law to any party utilizing the services of an international marriage broker.

(7) Effective date

(A) In general

Except as provided in subparagraph (B), this subsection shall take effect on the date that is 60 days after January 5, 2006.

(B) Additional time allowed for information pamphlet

The requirement for the distribution of the pamphlet developed under subsection (a)(1) of this section shall not apply until 30 days after the date of its development and initial distribution under subsection (a)(6) of this section.

(e) Definitions

In this section:

(1) Crime of violence

The term “crime of violence” has the meaning given such term in section 16 of title 18.

(2) Domestic violence

The term “domestic violence” has the meaning given such term in section 3 of this Act.¹

(3) Foreign national client

The term “foreign national client” means a person who is not a United States citizen or national or an alien lawfully admitted to the United States for permanent residence and who utilizes the services of an international marriage broker. Such term includes an alien residing in the United States who is in the United States as a result of utilizing the services of an international marriage broker and any alien recruited by an international marriage broker or representative of such broker.

(4) International marriage broker

(A) In general

The term “international marriage broker” means a corporation, partnership, business, individual, or other legal entity, whether or not organized under any law of the United States, that charges fees for providing dating, matrimonial, matchmaking services, or social referrals between United States citizens or nationals or aliens lawfully admitted to the United States as permanent residents and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals.

(B) Exceptions

Such term does not include—

(i) a traditional matchmaking organization of a cultural or religious nature that operates on a nonprofit basis and otherwise operates in compliance with the laws of the countries in which it operates, including the laws of the United States; or

¹ See References in Text note below.

(ii) an entity that provides dating services if its principal business is not to provide international dating services between United States citizens or United States residents and foreign nationals and it charges comparable rates and offers comparable services to all individuals it serves regardless of the individual's gender or country of citizenship.

(5) K nonimmigrant visa

The term “K nonimmigrant visa” means a nonimmigrant visa under clause (i) or (ii) of section 1101(a)(15)(K) of this title.

(6) Personal contact information

(A) In general

The term “personal contact information” means information, or a forum to obtain such information, that would permit individuals to contact each other, including—

(i) the name or residential, postal, electronic mail, or instant message address of an individual;

(ii) the telephone, pager, cellphone, or fax number, or voice message mailbox of an individual; or

(iii) the provision of an opportunity for an in-person meeting.

(B) Exception

Such term does not include a photograph or general information about the background or interests of a person.

(7) Representative

The term “representative” means, with respect to an international marriage broker, the person or entity acting on behalf of such broker. Such a representative may be a recruiter, agent, independent contractor, or other international marriage broker or other person conveying information about or to a United States client or foreign national client, whether or not the person or entity receives remuneration.

(8) State

The term “State” includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(9) United States

The term “United States”, when used in a geographic sense, includes all the States.

(10) United States client

The term “United States client” means a United States citizen or other individual who resides in the United States and who utilizes the services of an international marriage broker, if a payment is made or a debt is incurred to utilize such services.

(f) GAO study and report

(1) Study

The Comptroller General of the United States shall conduct a study—

(A) on the impact of this section and section 832¹ on the K nonimmigrant visa process, including specifically—

(i) annual numerical changes in petitions for K nonimmigrant visas;

(ii) the annual number (and percentage) of such petitions that are denied under subsection (d)(2) or (r) of section 1184 of this title, as amended by this Act;

(iii) the annual number of waiver applications submitted under such a subsection, the number (and percentage) of such applications granted or denied, and the reasons for such decisions;

(iv) the annual number (and percentage) of cases in which the criminal background information collected and provided to the applicant as required by subsection (a)(5)(A)(iii) of this section contains one or more convictions;

(v) the annual number and percentage of cases described in clause (iv) that were granted or were denied waivers under section 1184(d)(2) of this title, as amended by this Act;

(vi) the annual number of fiancé(e) and spousal K nonimmigrant visa petitions or family-based immigration petitions filed by petitioners or applicants who have previously filed other fiancé(e) or spousal K nonimmigrant visa petitions or family-based immigration petitions;

(vii) the annual number of fiancé(e) and spousal K nonimmigrant visa petitions or family-based immigration petitions filed by petitioners or applicants who have concurrently filed other fiancé(e) or spousal K nonimmigrant visa petitions or family-based immigration petitions; and

(viii) the annual and cumulative number of petitioners and applicants tracked in the multiple filings database established under paragraph (4) of section 1184(r) of this title, as added by this Act;

(B) regarding the number of international marriage brokers doing business in the United States, the number of marriages resulting from the services provided, and the extent of compliance with the applicable requirements of this section;

(C) that assesses the accuracy and completeness of information gathered under section 832¹ and this section from clients and petitioners by international marriage brokers, the Department of State, or the Department of Homeland Security;

(D) that examines, based on the information gathered, the extent to which persons with a history of violence are using either the K nonimmigrant visa process or the services of international marriage brokers, or both, and the extent to which such persons are providing accurate and complete information to the Department of State or the Department of Homeland Security and to international marriage brokers in accordance with subsections (a) and (d)(2)(B) of this section; and

(E) that assesses the accuracy and completeness of the criminal background check performed by the Secretary of Homeland Security at identifying past instances of domestic violence.

(2) Report

Not later than 2 years after January 5, 2006, the Comptroller General shall submit to the

Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report setting forth the results of the study conducted under paragraph (1).

(3) Data collection

The Secretary of Homeland Security and the Secretary of State shall collect and maintain the data necessary for the Comptroller General of the United States to conduct the study required by paragraph (1).

(Pub. L. 109-162, title VIII, §833, Jan. 5, 2006, 119 Stat. 3068.)

REFERENCES IN TEXT

Section 3 of this Act, referred to in subsec. (e)(2), is section 3 of Pub. L. 109-162, which enacted sections 3796gg-2 and 13925 of Title 42, The Public Health and Welfare, amended sections 3796gg-3, 3796hh-4, 10420, 13975, and 14039 of Title 42, repealed former section 3796gg-2 of Title 42, and amended provisions set out as a note under section 3796gg-2 of Title 42.

Section 832, referred to in subsec. (f)(1)(A), (C), is section 832 of Pub. L. 109-162, which amended section 1184 of this title and enacted provisions set out as notes under section 1184 of this title.

This Act, referred to in subsec. (f)(1)(A)(ii), (v), and (viii), is Pub. L. 109-162, Jan. 5, 2006, 119 Stat. 2960, known as the Violence Against Women and Department of Justice Reauthorization Act of 2005. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 13701 of Title 42, The Public Health and Welfare, and Tables.

CODIFICATION

Section was enacted as part of the International Marriage Broker Regulation Act of 2005, and also as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Immigration and Nationality Act which comprises this chapter.

Section is comprised of section 833 of Pub. L. 109-162. Subsec. (g) of section 833 of Pub. L. 109-162 repealed section 1375 of this title.

§ 1375b. Protections for domestic workers and other nonimmigrants

(a) Information pamphlet

(1) Development and distribution

The Secretary of State, in consultation with the Secretary of Homeland Security, the Attorney General, and the Secretary of Labor, shall develop an information pamphlet on legal rights and resources for aliens applying for employment- or education-based non-immigrant visas.

(2) Consultation

In developing the information pamphlet under paragraph (1), the Secretary of State shall consult with nongovernmental organizations with expertise on the legal rights of workers and victims of severe forms of trafficking in persons.

(b) Contents

The information pamphlet developed under subsection (a) shall include information concerning items such as—

- (1) the nonimmigrant visa application processes, including information about the portability of employment;
- (2) the legal rights of employment or education-based nonimmigrant visa holders under

Federal immigration, labor, and employment law;

(3) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;

(4) the legal rights of immigrant victims of trafficking in persons and worker exploitation, including—

(A) the right of access to immigrant and labor rights groups;

(B) the right to seek redress in United States courts;

(C) the right to report abuse without retaliation;

(D) the right of the nonimmigrant to relinquish possession of his or her passport to his or her employer;

(E) the requirement of an employment contract between the employer and the non-immigrant; and

(F) an explanation of the rights and protections included in the contract described in subparagraph (E); and

(5) information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including—

(A) anti-trafficking in persons telephone hotlines operated by the Federal Government;

(B) the Operation Rescue and Restore hotline; and

(C) a general description of the types of victims services available for individuals subject to trafficking in persons or worker exploitation.

(c) Translation

(1) In general

To best serve the language groups having the greatest concentration of employment-based nonimmigrant visas, the Secretary of State shall translate the information pamphlet developed under subsection (a) into all relevant foreign languages, to be determined by the Secretary based on the languages spoken by the greatest concentrations of employment- or education-based non-immigrant visa applicants.

(2) Revision

Every 2 years, the Secretary of State, in consultation with the Attorney General and the Secretary of Homeland Security, shall determine the specific languages into which the information pamphlet will be translated based on the languages spoken by the greatest concentrations of employment- or education-based nonimmigrant visa applicants.

(d) Availability and distribution

(1) Posting on Federal websites

The information pamphlet developed under subsection (a) shall be posted on the websites of the Department of State, the Department of Homeland Security, the Department of Justice, the Department of Labor, and all United States consular posts processing applications for employment- or education-based non-immigrant visas.

(2) Other distribution

The information pamphlet developed under subsection (a) shall be made available to any—

- (A) government agency;
- (B) nongovernmental advocacy organization; or
- (C) foreign labor broker doing business in the United States.

(3) Deadline for pamphlet development and distribution

Not later than 180 days after December 23, 2008, the Secretary of State shall distribute and make available the information pamphlet developed under subsection (a) in all the languages referred to in subsection (c).

(e) Responsibilities of consular officers of the Department of State**(1) Interviews**

A consular officer conducting an interview of an alien for an employment-based non-immigrant visa shall—

- (A)(i) confirm that the alien has received, read, and understood the contents of the pamphlet described in subsections (a) and (b); and
- (ii) if the alien has not received, read, or understood the contents of the pamphlet described in subsections (a) and (b), distribute and orally disclose to the alien the information described in paragraphs (2) and (3) in a language that the alien understands; and

(B) offer to answer any questions the alien may have regarding the contents of the pamphlet described in subsections (a) and (b).

(2) Legal rights

The consular officer shall disclose to the alien—

- (A) the legal rights of employment-based nonimmigrants under Federal immigration, labor, and employment laws;
- (B) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States; and
- (C) the legal rights of immigrant victims of trafficking in persons, worker exploitation, and other related crimes, including—
 - (i) the right of access to immigrant and labor rights groups;
 - (ii) the right to seek redress in United States courts; and
 - (iii) the right to report abuse without retaliation.

(3) Victim services

In carrying out the disclosure requirement under this subsection, the consular officer shall disclose to the alien the availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.

(f) Definitions

In this section:

(1) Employment- or education-based non-immigrant visa

The term “employment- or education-based nonimmigrant visa” means—

(A) a nonimmigrant visa issued under subparagraph (A)(iii), (G)(v), (H), or (J) of section 1101(a)(15) of this title; and

(B) any nonimmigrant visa issued to a personal or domestic servant who is accompanying or following to join an employer.

(2) Severe forms of trafficking in persons

The term “severe forms of trafficking in persons” has the meaning given the term in section 7102 of title 22.

(3) Secretary

The term “Secretary” means the Secretary of State.

(4) Abusing and exploiting

The term “abusing and exploiting” means any conduct which would constitute a violation of section 1466A, 1589, 1591, 1592, 2251, or 2251A of title 18.

(Pub. L. 110-457, title II, §202, Dec. 23, 2008, 122 Stat. 5055.)

CODIFICATION

Section was enacted as part of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 1375c. Protections, remedies, and limitations on issuance for A-3 and G-5 visas**(a) Limitations on issuance of A-3 and G-5 visas****(1) Contract requirement**

Notwithstanding any other provision of law, the Secretary of State may not issue—

- (A) an A-3 visa unless the applicant is employed, or has signed a contract to be employed containing the requirements set forth in subsection (d)(2),¹ by an officer of a diplomatic mission or consular post; or
- (B) a G-5 visa unless the applicant is employed, or has signed a contract to be employed by an employee in an international organization.

(2) Suspension requirement

Notwithstanding any other provision of law, the Secretary shall suspend, for such period as the Secretary determines necessary, the issuance of A-3 visas or G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that 1 or more employees of such mission or international organization have abused or exploited 1 or more nonimmigrants holding an A-3 visa or a G-5 visa, and that the diplomatic mission or international organization tolerated such actions.

(3) Action by diplomatic missions or international organizations

The Secretary may suspend the application of the limitation under paragraph (2) if the Secretary determines and reports to the appropriate congressional committees that a mechanism is in place to ensure that such abuse or exploitation does not reoccur with respect to any alien employed by an employee of such mission or institution.

¹ So in original. Probably should be “(b)(2),”.

(b) Protections and remedies for A-3 and G-5 nonimmigrants employed by diplomats and staff of international organizations

(1) In general

The Secretary may not issue or renew an A-3 visa or a G-5 visa unless—

(A) the visa applicant has executed a contract with the employer or prospective employer containing provisions described in paragraph (2); and

(B) a consular officer has conducted a personal interview with the applicant outside the presence of the employer or any recruitment agent in which the officer reviewed the terms of the contract and the provisions of the pamphlet required under section 1375b of this title.

(2) Mandatory contract

The contract between the employer and domestic worker required under paragraph (1) shall include—

(A) an agreement by the employer to abide by all Federal, State, and local laws in the United States;

(B) information on the frequency and form of payment, work duties, weekly work hours, holidays, sick days, and vacation days; and

(C) an agreement by the employer not to withhold the passport, employment contract, or other personal property of the employee.

(3) Training of consular officers

The Secretary shall provide appropriate training to consular officers on the fair labor standards described in the pamphlet required under section 1375b of this title, trafficking in persons, and the provisions of this section.

(4) Record keeping

(A) In general

The Secretary shall maintain records on the presence of nonimmigrants holding an A-3 visa or a G-5 visa in the United States, including—

(i) information about when the nonimmigrant entered and permanently exited the country of residence;

(ii) the official title, contact information, and immunity level of the employer; and

(iii) information regarding any allegations of employer abuse received by the Department of State.

(c) Protection from removal during legal actions against former employers

(1) Remaining in the United States to seek legal redress

(A) Effect of complaint filing

Except as provided in subparagraph (B), if a nonimmigrant holding an A-3 visa or a G-5 visa working in the United States files a civil action under section 1595 of title 18 or a civil action regarding a violation of any of the terms contained in the contract or violation of any other Federal, State, or local law in the United States governing the terms and conditions of employment of the non-

immigrant that are associated with acts covered by such section, the Attorney General and the Secretary of Homeland Security shall permit the nonimmigrant to remain legally in the United States for time sufficient to fully and effectively participate in all legal proceedings related to such action.

(B) Exception

An alien described in subparagraph (A) may be deported before the conclusion of the legal proceedings related to a civil action described in such subparagraph if such alien is—

(i) inadmissible under paragraph (2)(A)(i)(II), (2)(B), (2)(C), (2)(E), (2)(H), (2)(I), (3)(A)(i), (3)(A)(iii), (3)(B), (3)(C), or (3)(F) of section 1182(a) of this title; or

(ii) deportable under paragraph (2)(A)(ii), (2)(A)(iii), (4)(A)(i), (4)(A)(iii), (4)(B), or (4)(C) of section 1227(a) of this title.

(C) Failure to exercise due diligence

If the Secretary of Homeland Security, after consultation with the Attorney General, determines that the nonimmigrant holding an A-3 visa or a G-5 visa has failed to exercise due diligence in pursuing an action described in subparagraph (A), the Secretary may terminate the status of the A-3 or G-5 nonimmigrant.

(2) Authorization to work

The Attorney General and the Secretary of Homeland Security shall authorize any nonimmigrant described in paragraph (1) to engage in employment in the United States during the period the nonimmigrant is in the United States pursuant to paragraph (1).

(d) Study and report

(1) Investigation report

(A) In general

Not later than 180 days after December 23, 2008, and every 2 years thereafter for the following 10 years, the Secretary shall submit a report to the appropriate congressional committees on the implementation of this section.

(B) Contents

The report submitted under subparagraph (A) shall include—

(i) an assessment of the actions taken by the Department of State and the Department of Justice to investigate allegations of trafficking or abuse of nonimmigrants holding an A-3 visa or a G-5 visa; and

(ii) the results of such investigations.

(2) Feasibility of oversight of employees of diplomats and representatives of other institutions report

Not later than 180 days after December 23, 2008, the Secretary shall submit a report to the appropriate congressional committees on the feasibility of—

(A) establishing a system to monitor the treatment of nonimmigrants holding an A-3 visa or a G-5 visa who have been admitted to the United States;

(B) a range of compensation approaches, such as a bond program, compensation fund,

or insurance scheme, to ensure that such nonimmigrants receive appropriate compensation if their employers violate the terms of their employment contracts; and

(C) with respect to each proposed compensation approach described in subparagraph (B), an evaluation and proposal describing the proposed processes for—

- (i) adjudicating claims of rights violations;
- (ii) determining the level of compensation; and
- (iii) administering the program, fund, or scheme.

(e) Assistance to law enforcement investigations

The Secretary shall cooperate, to the fullest extent possible consistent with the United States obligations under the Vienna Convention on Diplomatic Relations, done at Vienna, April 18, 1961, (23 U.S.T. 3229),² with any investigation by United States law enforcement authorities of crimes related to abuse or exploitation of a nonimmigrant holding an A-3 visa or a G-5 visa.

(f) Definitions

In this section:

(1) A-3 visa

The term “A-3 visa” means a nonimmigrant visa issued pursuant to section 1101(a)(15)(A)(iii) of this title.

(2) G-5 visa

The term “G-5 visa” means a nonimmigrant visa issued pursuant to section 1101(a)(15)(G)(v) of this title.

(3) Secretary

The term “Secretary” means the Secretary of State.

(4) Appropriate congressional committees

The term “appropriate congressional committees” means—

- (A) the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives; and
- (B) the Committee on Foreign Relations and the Committee on the Judiciary of the Senate.

(Pub. L. 110-457, title II, § 203, Dec. 23, 2008, 122 Stat. 5057.)

CODIFICATION

Section was enacted as part of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 1376. Data on nonimmigrant overstay rates

(a) Collection of data

Not later than the date that is 180 days after April 27, 1998, the Attorney General shall implement a program to collect data, for each fiscal year, regarding the total number of aliens within each of the classes of nonimmigrant aliens described in section 1101(a)(15) of this title whose authorized period of stay in the United States

²So in original. Probably should be “April 18, 1961 (23 U.S.T. 3227).”

terminated during the previous fiscal year, but who remained in the United States notwithstanding such termination.

(b) Annual report

Not later than June 30, 1999, and not later than June 30 of each year thereafter, the Attorney General shall submit an annual report to the Congress providing numerical estimates, for each country for the preceding fiscal year, of the number of aliens from the country who are described in subsection (a) of this section.

(Pub. L. 105-173, § 2, Apr. 27, 1998, 112 Stat. 56.)

CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1377. Collection of data on detained asylum seekers

(a) In general

The Attorney General shall regularly collect data on a nation-wide¹ basis with respect to asylum seekers in detention in the United States, including the following information:

- (1) The number of detainees.
- (2) An identification of the countries of origin of the detainees.
- (3) The percentage of each gender within the total number of detainees.
- (4) The number of detainees listed by each year of age of the detainees.
- (5) The location of each detainee by detention facility.
- (6) With respect to each facility where detainees are held, whether the facility is also used to detain criminals and whether any of the detainees are held in the same cells as criminals.
- (7) The number and frequency of the transfers of detainees between detention facilities.
- (8) The average length of detention and the number of detainees by category of the length of detention.
- (9) The rate of release from detention of detainees for each district of the Immigration and Naturalization Service.
- (10) A description of the disposition of cases.

(b) Annual reports

Beginning October 1, 1999, and not later than October 1 of each year thereafter, the Attorney General shall submit to the Committee on the Judiciary of each House of Congress a report setting forth the data collected under subsection (a) of this section for the fiscal year ending September 30 of that year.

(c) Availability to public

Copies of the data collected under subsection (a) of this section shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

¹So in original. Probably should be “nationwide”.

(Pub. L. 105-277, div. A, §101(h) [title IX, §903], Oct. 21, 1998, 112 Stat. 2681-480, 2681-541.)

CODIFICATION

Section was enacted as part of the Haitian Refugee Immigration Fairness Act of 1998, and also as part of the Treasury and General Government Appropriations Act, 1999, and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1378. Collection of data on other detained aliens

(a) In general

The Attorney General shall regularly collect data on a nationwide basis on aliens being detained in the United States by the Immigration and Naturalization Service other than the aliens described in section 1377 of this title, including the following information:

- (1) The number of detainees who are criminal aliens and the number of detainees who are noncriminal aliens who are not seeking asylum.
- (2) An identification of the ages, gender, and countries of origin of detainees within each category described in paragraph (1).
- (3) The types of facilities, whether facilities of the Immigration and Naturalization Service or other Federal, State, or local facilities, in which each of the categories of detainees described in paragraph (1) are held.

(b) Length of detention, transfers, and dispositions

With respect to detainees who are criminal aliens and detainees who are noncriminal aliens who are not seeking asylum, the Attorney General shall also collect data concerning—

- (1) the number and frequency of transfers between detention facilities for each category of detainee;
- (2) the average length of detention of each category of detainee;
- (3) for each category of detainee, the number of detainees who have been detained for the same length of time, in 3-month increments;
- (4) for each category of detainee, the rate of release from detention for each district of the Immigration and Naturalization Service; and
- (5) for each category of detainee, the disposition of detention, including whether detention ended due to deportation, release on parole, or any other release.

(c) Criminal aliens

With respect to criminal aliens, the Attorney General shall also collect data concerning—

- (1) the number of criminal aliens apprehended under the immigration laws and not detained by the Attorney General; and
- (2) a list of crimes committed by criminal aliens after the decision was made not to detain them, to the extent this information can

be derived by cross-checking the list of criminal aliens not detained with other databases accessible to the Attorney General.

(d) Annual reports

Beginning on October 1, 1999, and not later than October 1 of each year thereafter, the Attorney General shall submit to the Committee on the Judiciary of each House of Congress a report setting forth the data collected under subsections (a), (b), and (c) of this section for the fiscal year ending September 30 of that year.

(e) Availability to public

Copies of the data collected under subsections (a), (b), and (c) of this section shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

(Pub. L. 105-277, div. A, §101(h) [title IX, §904], Oct. 21, 1998, 112 Stat. 2681-480, 2681-542.)

CODIFICATION

Section was enacted as part of the Haitian Refugee Immigration Fairness Act of 1998, and also as part of the Treasury and General Government Appropriations Act, 1999, and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1379. Technology standard to confirm identity

(1) In general

The Attorney General and the Secretary of State jointly, through the National Institute of Standards and Technology (NIST), and in consultation with the Secretary of the Treasury and other Federal law enforcement and intelligence agencies the Attorney General or Secretary of State deems appropriate and in consultation with Congress, shall within 15 months after October 26, 2001, develop and certify a technology standard, including appropriate biometric identifier standards, that can be used to verify the identity of persons applying for a United States visa or such persons seeking to enter the United States pursuant to a visa for the purposes of conducting background checks, confirming identity, and ensuring that a person has not received a visa under a different name or such person seeking to enter the United States pursuant to a visa.

(2) Interoperable

The technology standard developed pursuant to paragraph (1), shall be the technological basis for a cross-agency, cross-platform electronic system that is a cost-effective, efficient, fully interoperable means to share law enforcement and intelligence information necessary to confirm the identity of such persons applying for a United States visa or such person seeking to enter the United States pursuant to a visa.

(3) Accessible

The electronic system described in paragraph (2), once implemented, shall be readily and easily accessible to—

(A) all consular officers responsible for the issuance of visas;

(B) all Federal inspection agents at all United States border inspection points; and

(C) all law enforcement and intelligence officers as determined by regulation to be responsible for investigation or identification of aliens admitted to the United States pursuant to a visa.

(4) Report

Not later than one year after October 26, 2001, and every 2 years thereafter, the Attorney General and the Secretary of State shall jointly, in consultation with the Secretary of Treasury, report to Congress describing the development, implementation, efficacy, and privacy implications of the technology standard and electronic database system described in this section.

(5) Funding

There is authorized to be appropriated to the Secretary of State, the Attorney General, and the Director of the National Institute of Standards and Technology such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 107-56, title IV, §403(c), Oct. 26, 2001, 115 Stat. 344; Pub. L. 107-173, title II, §§201(c)(5), 202(a)(4)(B), May 14, 2002, 116 Stat. 548, 549.)

CODIFICATION

Section was enacted as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or USA PATRIOT Act, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

2002—Par. (1). Pub. L. 107-173, §§201(c)(5)(A), 202(a)(4)(B)(i), substituted “15 months” for “2 years” and inserted “, including appropriate biometric identifier standards,” after “technology standard”.

Par. (2). Pub. L. 107-173, §202(a)(4)(B)(ii), substituted “Interoperable” for “Integrated” in heading and “interoperable” for “integrated” in text.

Par. (4). Pub. L. 107-173, §201(c)(5)(B), substituted “one year” for “18 months”.

REPORT ON THE INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM FOR PORTS OF ENTRY AND OVERSEAS CONSULAR POSTS

Pub. L. 107-56, title IV, §405, Oct. 26, 2001, 115 Stat. 345, provided that:

“(a) IN GENERAL.—The Attorney General, in consultation with the appropriate heads of other Federal agencies, including the Secretary of State, Secretary of the Treasury, and the Secretary of Transportation, shall report to Congress on the feasibility of enhancing the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation and other identification systems in order to better identify a person who holds a foreign passport or a visa and may be wanted in connection with a criminal investigation in the United States or abroad, before the issuance of a visa to that person or the entry or exit from the United States by that person.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not less than \$2,000,000 to carry out this section.”

§ 1380. Maintenance of statistics by the Department of Homeland Security

(a) In general

The Department of Homeland Security shall maintain statistics regarding petitions filed, ap-

proved, extended, and amended with respect to nonimmigrants described in section 1101(a)(15)(L) of this title, including the number of such nonimmigrants who are classified on the basis of specialized knowledge and the number of nonimmigrants who are classified on the basis of specialized knowledge in order to work primarily at offsite locations.

(b) Applicability

Subsection (a) of this section shall apply to petitions filed on or after the effective date of this subtitle.

(Pub. L. 108-447, div. J, title IV, §414, Dec. 8, 2004, 118 Stat. 3352.)

REFERENCES IN TEXT

This subtitle, referred to in subsec. (b), means subtitle A (§§411-417) of title IV of div. J of Pub. L. 108-447. For the effective date of subtitle A, see section 417 of Pub. L. 108-447, set out as an Effective Date of 2004 Amendment note under section 1184 of this title.

CODIFICATION

Section was enacted as part of the L-1 Visa (Intracompany Transferee) Reform Act of 2004, and also as part of the L-1 Visa and H-1B Visa Reform Act and the Consolidated Appropriations Act, 2005, and not as part of the Immigration and Nationality Act which comprises this chapter.

EFFECTIVE DATE

Section effective 180 days after Dec. 8, 2004, see section 417 of Pub. L. 108-447, set out as an Effective Date of 2004 Amendment note under section 1184 of this title.

§ 1381. Secretary of Labor report

Not later than January 31 of each year, the Secretary of Labor shall report to the Committees on the Judiciary of the Senate and the House of Representatives on the investigations undertaken based on—

(1) the authorities described in clauses (i) and (ii) of section 1182(n)(2)(G) of this title; and

(2) the expenditures by the Secretary of Labor described in section 1356(v)(2)(D) of this title.

(Pub. L. 108-447, div. J, title IV, §424(c), Dec. 8, 2004, 118 Stat. 3356.)

CODIFICATION

Section was enacted as part of the H-1B Visa Reform Act of 2004, and also as part of the L-1 Visa and H-1B Visa Reform Act and the Consolidated Appropriations Act, 2005, and not as part of the Immigration and Nationality Act which comprises this chapter.

EFFECTIVE DATE

Section effective 90 days after Dec. 8, 2004, see section 430 of Pub. L. 108-447, set out as an Effective Date of 2004 Amendment note under section 1182 of this title.

SUBCHAPTER III—NATIONALITY AND NATURALIZATION

PART I—NATIONALITY AT BIRTH AND COLLECTIVE NATURALIZATION

§ 1401. Nationals and citizens of United States at birth

The following shall be nationals and citizens of the United States at birth: