

Issue Brief for Congress

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Immigration Legislation and Issues in the 107th Congress

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Immigration Legislation and Issues in the 107th Congress

SUMMARY

Top immigration issues before the 107th Congress include the reorganization of the Immigration and Naturalization Service (INS), a part of the Department of Justice (DOJ); admissions policy; and the eligibility of non-citizens for public assistance. Also pending are measures to enable unauthorized aliens to become legal permanent residents (LPRs) and to reform temporary guest worker programs.

On July 26, 2002, the House passed a bill to create a new homeland security department (H.R. 5005). Under the bill, INS's enforcement functions would be transferred to the new department, while INS's service functions would remain in DOJ in a new bureau. On July 25, the Senate Governmental Affairs Committee agreed to the Lieberman amendment, as a substitute to S. 2452, which would transfer all of INS to a new homeland security department under a directorate of immigration affairs. The Administration has proposed transferring all of INS to a new homeland security department, but placing it under a border and transportation security division.

Admissions policy, particularly responsibility for issuing visas, is a key issue in discussions about establishing a homeland security department. The State Department currently has authority over visa issuances. Under H.R. 5005, as passed by the House, and the substitute to S. 2452, as agreed to by the Senate Governmental Affairs Committee, the homeland security department and the State Department would each have some responsibilities for visa issuances.

Congress is addressing noncitizen eligibility for public assistance in the context of bills to reauthorize federal public benefit programs. The "farm bill" (P.L. 107-171) expands eligibility for food stamps for certain

classes of LPRs. H.R. 4737 would reauthorize Temporary Assistance for Needy Families. The House-passed version would not change the eligibility rules for noncitizens. The substitute version of H.R. 4737 that was reported by the Senate Finance Committee, however, would give states the option to use TANF funds to assist all LPRs. The reauthorization of the Medicaid program is the subject of separate legislation.

The 107th Congress also has considered legislation (H.R. 1885) to enable certain unauthorized aliens in the United States to adjust to LPR status. This legislation would extend a provision of the Immigration and Nationality Act — §245(i) — that currently covers illegal aliens whose sponsors filed petitions or applications on their behalf by April 30, 2001. H.R. 1885 has been passed in different forms by the House and Senate. Other pending bills would establish mechanisms to allow particular groups of unauthorized aliens — such as agricultural workers and students — to become LPRs.

Temporary guest worker programs are also the subject of pending bills. Among these bills are measures that would make significant changes to the H-2A program for foreign agricultural workers and the H-1C program for foreign nurses.

Congress has enacted various pieces of immigration-related legislation to date. In addition to the farm bill mentioned above, the most significant of these measures address immigration-related counterterrorism and security issues. Both the USA PATRIOT Act (P.L. 107-56) and the Enhanced Border Security and Visa Entry Reform Act (P.L. 107-173) contain provisions on border security, admissions policy, and foreign students.



MOST RECENT DEVELOPMENTS

On July 26, 2002, the House passed the Homeland Security Act of 2002 (H.R. 5005). On July 25, 2002, the Senate Governmental Affairs Committee agreed to the Lieberman amendment, as a substitute to the National Homeland Security and Combating Terrorism Act of 2002 (S. 2452). The full Senate is expected to take up homeland security legislation in September. In addition, on August 6, 2002, President Bush signed the Child Status Protection Act into law (P.L. 107-208).

BACKGROUND AND ANALYSIS

Introduction

The basic U.S. law regulating immigration, the Immigration and Nationality Act (INA), was enacted in 1952 and has been amended since then. The last major overhaul of the INA occurred in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA; Division C of P.L. 104-208). The Immigration and Naturalization Service (INS) of the Department of Justice (DOJ) administers and enforces the INA. (For a basic introduction to immigration, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*.)

In the aftermath of the September 11, 2001 terrorist attacks, congressional interest in immigration was focused primarily on security-related issues, such as border security, admissions policy, and the tracking of foreign nationals in the United States. Major legislation was enacted in these areas. While security-related issues remain on the agenda and have gained renewed prominence with the Administration's proposal to establish a homeland security department, the 107th Congress is also considering other immigration issues. Top immigration-related issues currently before Congress are the reorganization of INS, admissions policy, and noncitizen eligibility for federal benefits. These issues are discussed, in turn, in the initial sections of this report. These discussions are followed by coverage of various proposed mechanisms for unauthorized aliens to obtain legal permanent resident (LPR) status and other immigration issues of significant congressional interest. (The "Legislation" section at the end of the report lists enacted legislation and selected bills receiving action.)

INS Reorganization

INS is the primary agency charged with enforcing U.S. immigration law. Under its current organizational structure, INS has struggled with carrying out its many tasks. The underlying theme of most of the criticism hinges on what many believe are overlapping and unclear chains of command with respect to INS's two core functions: facilitating legal immigration (service) and stemming illegal immigration (enforcement). There appears to be a consensus among the Bush Administration, Congress, and commentators that the immigration system, primarily INS, is in need of restructuring.

The Administration has made several proposals to restructure INS. The most recent one would transfer INS, along with other agencies and units, to a new cabinet-level homeland security department. The goal of this proposal is to consolidate into a single federal agency many of the homeland security functions currently performed by various federal agencies and departments. To this end, the Administration would place all INS functions under the border and transportation security division of the proposed department.

On June 24, 2002, the “Homeland Security Act of 2002” (**H.R. 5005**) was introduced in the House to enact the Administration’s plan. As amended and passed by the House on July 26, H.R. 5005 would place INS’s enforcement programs in a newly created homeland security department under a border and transportation security division. It would leave INS’s service functions in DOJ under a newly created bureau of citizenship and immigration services. On July 25, 2002, the Senate Governmental Affairs Committee agreed to the Lieberman amendment, as a substitute to the “National Homeland Security and Combating Terrorism Act of 2002” (**S. 2452**). S. 2452, as agreed to by the Committee, would transfer all of INS to a newly created homeland security department under a directorate of immigration affairs. (Earlier, on June 24, 2002, the Senate Governmental Affairs Committee reported another version of S. 2452.)

Prior to the President’s announcement of the proposal to place INS in a new homeland security department, the Administration and Congress were each moving forward with plans to restructure INS by separating the agency’s service and enforcement responsibilities within DOJ. On April 17, 2002, Attorney General John Ashcroft announced action on his first steps to reorganize INS along these lines. On April 25, 2002, the House passed H.R. 3231. This bill would create separate bureaus within DOJ to carry out INS’s immigration service and enforcement functions, which would report to a new associate attorney general. (See CRS Report RL31388, *Immigration and Naturalization Service: Restructuring Proposals in the 107th Congress*; and CRS Report RL31513, *Homeland Security: Side-by-Side Comparison of H.R. 5005 and S. 2452, 107th Congress*.)

Admissions Policy

The INA spells out a strict set of admissions criteria and exclusion (inadmissibility) rules for all foreign nationals, whether coming permanently as immigrants (i.e., LPRs) or temporarily as nonimmigrants. Aliens are inadmissible to the United States based on the following criteria: security and terrorist concerns; health-related grounds; criminal history; public charge (e.g., indigence); seeking to work without proper labor certification; illegal entry and immigration law violations; lack of proper documents; ineligibility for citizenship; and previous removal.

The USA PATRIOT Act (**P.L. 107-56**) amends the INA’s inadmissibility provisions to broaden somewhat the terrorism grounds for excluding aliens. The INA already barred the admission of any alien who has engaged in or incited terrorist activity, is reasonably believed to be carrying out a terrorist activity, or is a representative or member of a designated foreign terrorist organization. To this list of inadmissible aliens, the PATRIOT Act adds representatives of groups that endorse terrorism, prominent individuals who endorse terrorism, and spouses and children of aliens who are deportable on terrorism grounds on the basis of activities occurring within the previous 5 years. **S. 864**, as reported

by the Senate Judiciary Committee, would further broaden the security and terrorism grounds of inadmissibility to exclude aliens who have participated in the commission of acts of torture or extrajudicial killings abroad. S. 864 also would make aliens in the United States removable on these same grounds. **H.R. 5013** would expand and recodify the grounds for inadmissibility in the INA as part of its significant revision of immigration policy. (See CRS Report RL31381, *U.S. Policy on Temporary Admissions*.)

Visa Issuance

With the notable exception of foreign visitors entering through the Visa Waiver Program (discussed below), immigrants and nonimmigrants must obtain visas from Department of State (DOS) consular officers abroad in order to legally enter the United States. Aliens applying for visas must satisfy the consular officers that they are not ineligible for visas under the above grounds of inadmissibility. (Similarly, aliens must satisfy INS inspectors upon entry to the United States that they are not ineligible for admission under any of these grounds.) Consular officers must interview all aliens seeking visas to become legal permanent residents, but have discretion in whether they interview aliens seeking most nonimmigrant visas. H.R. 5013 would require that consular officers conduct a personal interview of all aliens seeking visas to the United States.

Provisions in the PATRIOT Act seek to improve the visa issuance process by providing access to relevant electronic information. These provisions authorize the Attorney General to share data from domestic criminal record databases with the Secretary of State for the purpose of adjudicating visa applications. Title III of the Enhanced Border Security and Visa Entry Reform Act (**P.L. 107-173**) likewise aims to increase access to electronic information in the context of visa issuances, while also requiring additional training for consular officers who issue visas.

There is considerable congressional interest in proposals to transfer visa issuance functions to a new homeland security department. As introduced, the Administration's legislation to establish a homeland security department (H.R. 5005) would bifurcate visa issuances so that the new department would set the policies and DOS would retain responsibility for implementation. The details of the division of responsibilities between the new department and DOS, however, were unclear in H.R. 5005, as introduced. Both H.R. 5005, as passed by the House, and the substitute to S. 2452, as agreed to by the Senate Governmental Affairs Committee, contain clarifying language. Both would give the homeland security department the authority to issue regulations on visa policy, while continuing to allow DOS consular officers to issue visas. During consideration of H.R. 5005 in the House, an amendment was offered to move the consular affairs visa function to the homeland security department, but it failed. (See CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*.)

Visa Waiver Program (VWP)

The VWP allows nationals from certain countries to enter the United States for 90 days as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consulate abroad. By eliminating the visa requirement, this program facilitates international travel and commerce and eases consular office workloads abroad, but it also bypasses the first step by which foreign visitors are screened for admissibility when seeking to enter the

United States. The Visa Waiver Pilot Program was established as a temporary program by the Immigration Reform and Control Act of 1986 (P.L. 99-603), and was made permanent on October 30, 2000, through the enactment of the Visa Waiver Permanent Program Act (P.L. 106-396). The program includes 28 countries. Due to the recent economic collapse in Argentina and the increase in the number of Argentine nationals attempting to use the VWP to enter the United States and remain illegally past the 90-day period of admission, that country was removed from the VWP in February 2002. Additionally, the PATRIOT Act directs the Secretary of State each year until 2007 to ascertain that VWP countries have established programs to develop tamper-resistant passports.

To reduce the likelihood that terrorists will be able to enter the United States under the VWP, P.L. 107-173 places new requirements on the program. It requires that all VWP countries implement systems for the timely reporting of stolen passports, especially stolen blank passports, that all aliens who enter under the VWP are checked against a lookout system prior to admission to the United States, and that the Attorney General review the countries in the VWP every 2 years. Several other bills pending in the 107th Congress would further tighten VWP-related requirements. (See CRS Report RS21205, *Immigration: Visa Waiver Program*.)

Noncitizen Eligibility for Public Benefits

Prior to 1996, LPRs were eligible for federal public assistance under terms comparable to citizens, and states were not permitted to restrict access to federal programs on the basis of immigration status. The 1996 welfare reform law (P.L. 104-193) instituted a 5-year bar for most newly entering LPRs and generally allowed the states to bar noncitizens from Medicaid and Temporary Assistance for Needy Families (TANF), with exceptions for LPRs with 10 years of work history and for certain humanitarian cases, such as refugees and asylees. As the result of perceived abuses and budgetary concerns, it also barred most legal aliens (again excepting LPRs with 10 years of work history and certain humanitarian cases) from Supplemental Security Income (SSI) and food stamps.

As the 107th Congress considers legislation to reauthorize federal public benefit programs, the crux of the noncitizen eligibility issue is what classes of LPRs should be eligible for assistance and what types of assistance should be available to them. Several significant legislative proposals expanding noncitizen eligibility for TANF, SSI, and Medicaid/State Children's Health Insurance Program (SCHIP) are before Congress. Noncitizen eligibility also was a key issue in the comprehensive legislation reauthorizing Agriculture Department programs (**H.R. 2646**, known as the "farm bill"), because the bill includes changes to the Food Stamp program. (See CRS Electronic Briefing Book, *Welfare Reform*, page on "Noncitizens," available at [<http://www.congress.gov/brbk/html/ebwlf60.html>]; and CRS Report RL31114, *Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation*.)

Food Stamps

On May 13, 2002, President Bush signed H.R. 2646 into law (**P.L. 107-171**). P.L. 107-171 contains substantial changes to food stamp eligibility rules for noncitizens, expanding

food stamp eligibility to include: all LPR children, regardless of date of entry (it also ends requirements to deem sponsors' income and resources to these children); LPRs receiving government disability payments, as long as they pass any noncitizen eligibility test established by the disability program (e.g., SSI recipients have to meet SSI noncitizen requirements in order to get food stamps); and all individuals who have resided in the United States for 5 or more years as "qualified aliens" — i.e., LPRs, refugees/asylees, and other non-temporary legal residents (such as Cuban/Haitian entrants).

Temporary Assistance for Needy Families

On May 14, 2002, the House Ways and Means Committee reported a TANF reauthorization measure, **H.R. 4090**. In doing so, the Committee rejected proposals to expand noncitizen eligibility for TANF and change sponsor deeming/repayment requirements. Provisions of the reported version of H.R. 4090 were subsequently incorporated into a larger bill, **H.R. 4737**, which was passed by the House on May 16. When the Senate Finance Committee marked up its substitute version of H.R. 4737 on June 26, 2002, it included provisions that would give states the option to use TANF funds to assist all LPRs. The Committee reported H.R. 4737 on July 25, 2002.

Medicaid/SCHIP

Several bills have been introduced (**H.R. 1143, H.R. 1528, S. 582, S. 940/H.R. 1990, and S. 2052**) that address Medicaid/SCHIP coverage for noncitizens. These bills generally would give states the option of extending Medicaid and SCHIP coverage to lower-income LPRs (to the extent that they are not already covered) and LPR pregnant and postpartum women and their children. H.R. 4737, as reported by the Senate Finance Committee, would give states the option to cover pregnant and postpartum LPRs and their children under Medicaid/SCHIP.

Higher Education Benefits

Section 505 of IIRIRA made unauthorized aliens ineligible for postsecondary education benefits based on state residence unless equal benefits were made available to all U.S. citizens regardless of state of residence. Bills before the 107th Congress (**H.R. 1563, H.R. 1582, H.R. 1918, and S. 1291**) would repeal IIRIRA §505 and, as discussed below, would enable certain unauthorized alien students to become LPRs. On June 20, 2002, the Senate Judiciary Committee reported a revised version of S. 1291. Some of the bills (but not S. 1291, as reported) also would make alien students who apply for relief under their terms eligible for federal postsecondary education benefits, such as student financial aid. (See CRS Report RL31365, *Unauthorized Alien Students: Issues and Legislation*.)

Legal Permanent Residence for Unauthorized Aliens

According to recent estimates, the unauthorized (illegally present) alien population in the United States in 2000 totaled about 8.5 million. About half of these illegal residents were believed to be Mexican nationals. Media reports in the summer of 2001 indicated that the Bush Administration, which had begun migration talks with Mexico earlier that year, was

considering a legalization program for some unauthorized Mexicans in the United States who could meet unspecified work and other requirements. Programs of this type, which require prospective legalization beneficiaries to “earn” legal status through work and other contributions, have been termed “earned adjustment” programs. Adjustment refers to the process under immigration law by which an individual present in the United States is granted LPR status. The Administration has not issued a legalization proposal. If it opts to do so in the future, it may link such an adjustment program to a temporary guest worker program. Some observers believe that the adjustment provisions in pending foreign agricultural worker bills (discussed in the next section) offer the Administration a prototype for a broader adjustment program. House and Senate Democrats expressed their support for an earned adjustment program in an August 2001 letter to President Bush and Mexican President Fox outlining their immigration priorities. They would make the program available to aliens from all countries who are “long-time, hard-working residents of good moral character.” **H.R. 4999** would provide for the adjustment to LPR status of certain unauthorized aliens who entered the United States before January 1, 2000.

Foreign Agricultural Worker Adjustment

Some pending bills to reform the H-2A temporary agricultural worker program (see below) would enable certain unauthorized agricultural workers in the United States to become LPRs through a two-stage process. Under these bills (**S. 1161** and **S. 1313/H.R. 2736**), aliens who had worked in seasonal agriculture for a threshold number of days during a specified time period would be eligible for temporary resident status. After meeting additional work requirements in subsequent years, they could apply to adjust to LPR status outside the existing numerical limits. Although the general adjustment framework in the three bills is the same, S. 1161 contains more stringent work requirements for temporary and permanent status than S. 1313/H.R. 2736. Also, S. 1313 and H.R. 2736 provide for the adjustment to LPR status of the spouses and minor children of the temporary residents. (See CRS Report RL30852, *Immigration of Agricultural Guest Workers: Policy, Trends, and Legislative Issues*.)

Adjustment of Alien Students

Multiple bills before Congress (H.R. 1563, H.R. 1582, H.R. 1918, and S. 1291) would enable certain unauthorized alien students in the United States to become LPRs. A revised version of S. 1291, representing a compromise between S. 1291 as introduced and **S. 1265**, was reported by the Senate Judiciary Committee on June 20, 2002. To be eligible for LPR status under this bill, an alien must be at least age 12 on the date of enactment, have resided continuously in the United States for at least 5 years on the date of enactment, and have a high school diploma or equivalent credential, among other requirements. (Provisions of the bills related to eligibility for higher education benefits are discussed separately above.) (See CRS Report RL31365, *Unauthorized Alien Students: Issues and Legislation*.)

Section 245(i)

Section §245(i) of the INA allows unauthorized aliens who are eligible for an immigrant visa based on close family ties or work skills to adjust to LPR status in the United States, provided they pay an additional fee. Prior to the enactment of this provision, they were

required to return to their country of origin to obtain a visa. In its current form, §245(i) applies only to unauthorized aliens whose sponsoring family members or employers filed visa petitions or labor certification applications on their behalf by April 30, 2001.

Multiple bills have been introduced in the 107th Congress to extend the filing deadline. Among them is **H.R. 1885**, which passed the Senate in amended form in September 2001. On March 12, 2002, the House passed **H.Res. 365**, in which it concurred in the Senate amendment to H.R. 1885 with additional amendments. In H.Res. 365, the House amended the Senate-passed §245(i) extension language; it also added to H.R. 1885 border security legislation that it had previously passed. The §245(i) provisions passed by the Senate and by the House in H.Res. 365 are similar. The Senate version would extend the filing deadline until the earlier of April 30, 2002, or the date that is 120 days after the issuance of final regulations. The House version would change “April 30, 2002” to “November 30, 2002.” In addition, both versions would require beneficiaries of petitions filed after April 30, 2001, to demonstrate that the underlying family relationship existed before August 15, 2001, or that the labor certification application was filed before August 15, 2001. Another §245(i) extension bill (**S. 2493**) would extend the filing deadline until April 30, 2003. It would not establish any earlier deadlines for the existence of the underlying family relationship or for the filing of the labor certification application. (See CRS Report RL31373, *Immigration: Adjustment to Permanent Resident Status Under Section 245(i)*.)

Temporary Guest Worker Programs

The major nonimmigrant category for temporary alien workers in U.S. immigration law is the “H” visa, which includes several programs. Unskilled workers may be admitted into the country through the H-2A program for agricultural workers or the H-2B program for nonagricultural workers. Skilled workers may be admitted through the H-1B program for specialty workers or the H-1C program for nurses.

Possible U.S.-Mexico Guest Worker Program

The United States and Mexico reportedly have been exploring a new temporary guest worker program. These discussions lost momentum after September 11, 2001, but have continued. No details about the type of program under consideration have yet been made public. Senator Phil Gramm has outlined a preliminary proposal for a U.S.-Mexico guest worker program that would be open to workers in agriculture, service industries, and other sectors of the economy. Unauthorized aliens in the United States would be able to participate in the program, but participation would not lead to LPR status. (The Gramm proposal is available at [<http://www.senate.gov/~gramm/press/guestprogram.html>].)

H-2A Agricultural Workers

The H-2A program provides for the temporary admission of foreign agricultural workers into the United States to perform temporary or seasonal work. Pending bills propose significant changes to the H-2A labor certification process and other aspects of the program. Currently, an employer wanting to import H-2A workers must first apply to the Labor Department for certification that U.S. workers are not available and that hiring foreign

workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. S. 1161 and S. 1313/H.R. 2736 would replace this labor certification process with a labor attestation process, which would be greatly streamlined for jobs covered by collective bargaining agreements. S. 1161 also would change existing wage requirements. S. 1313/H.R. 2736 would amend the Migrant and Seasonal Agricultural Worker Protection Act to include H-2A workers and to give all agricultural workers the right to collective bargaining. In addition, as discussed above, S. 1161 and S. 1313/H.R. 2736 contain provisions to enable foreign agricultural workers in the United States to become legal permanent residents. (See CRS Report RL30852, *Immigration of Agricultural Guest Workers: Policy, Trends, and Legislative Issues*.)

H-1C Nurses

The H-1C category was established by a 1999 law (P.L. 106-95) as a short-term solution for nursing shortages in a limited number of medically underserved areas. P.L. 106-95 allowed for the issuance of 500 nonimmigrant visas to nurses each year for 4 years, with the proviso that the number of visas issued annually for employment in smaller states could not exceed 25 and the number issued for employment in larger states could not exceed 50. The law limited an H-1C nurse's stay to 3 years.

Pending bills propose to reform the H-1C program in response to concerns that it has not provided adequate relief from nursing shortages. **H.R. 2809** would amend the H-1C admission requirements to increase the total number of visas available annually to 1,000 and to increase the visa limit for larger states to 150. **H.R. 2705** and **S. 1259** would make more extensive changes to the H-1C program. H.R. 2705 would increase the number of visas available annually to 195,000. S. 1259 would not place any limit on the number of visas available. Both bills would eliminate the state caps, extend the maximum stay to 6 years, and make the program permanent. Among other significant changes, both bills would eliminate the requirement that the employer facility be located in a medically underserved area.

Border Security

Providing adequate border security has long been a challenge for policy makers, since doing so must be balanced against other interests, such as facilitating legitimate cross-border travel and commerce and protecting civil liberties. Congress and the Bush Administration are reevaluating the level of border security maintained by the United States in light of the recent attacks on the World Trade Center and the Pentagon.

The principal federal agencies responsible for providing border security through the administration and enforcement of immigration law are INS, the DOS Bureau of Consular Affairs, and the Department of the Treasury's U.S. Customs Service. At DOS consular posts overseas, consular officers adjudicate visa applications for foreign nationals wishing to come to the United States. At international ports of entry, travelers are screened for admission into the United States by INS and Customs inspectors. These agencies maintain "lookout" systems for the purpose of excluding suspected terrorists.

Historically, the U.S.-Mexico border has received more resources than the U.S.-Canada border. The U.S.-Mexico border has a long-standing history of illegal immigrants attempting to gain entry into the United States as well as of smuggling drugs and human beings. By one account, this border and its coastal areas account for 80% of all illegal traffic into the United States. The U.S.-Canada border, however, the larger of the two borders by some 2,000 miles, has recently begun to receive attention because of the increase in illegal activities (e.g., smuggling) occurring there. Moreover, in light of the events of September 11, 2001, and concerns about possible terrorist operatives in Canada, the 107th Congress has directed its attention to the U.S.-Canada border. The PATRIOT Act includes provisions to enhance border security. It authorizes the Attorney General to triple the number of INS border patrol personnel and INS inspectors at the northern border, and authorizes \$50 million for INS to make technological improvements and acquire additional equipment for the northern border.

P.L. 107-173 also contains major border security provisions. It increases the number of INS inspectors and support staff and the number of INS investigators and support staff by 200 per group for each fiscal year from FY2003 through FY2006. It authorizes appropriations for personnel training, for increased resources for INS and Consular Affairs, and for technology and infrastructure improvements. It also addresses the need for increased interagency data sharing pertaining to the admissibility and removability of aliens through the development of an “interoperable electronic data system.”

Other key provisions of P.L. 107-173 aim to increase entry/exit control mechanisms at international ports of entry and make travel documents more difficult to alter or counterfeit. (DOJ’s proposal for an entry/exit registration system is discussed in a separate section below.) IIRIRA included such provisions, but they were later amended. P.L. 107-173 requires: implementation of an integrated entry and exit database; machine-readable, tamper-resistant travel documents that use biometric identifiers, such as fingerprints; biometric data readers and scanners at all ports of entry; and greater tracking of stolen passports. It also extends until September 30, 2002, the deadline for border crossing identification cards to contain a biometric identifier that matches the biometric characteristic of the card holder. Other bills before the 107th Congress that include immigration-related border security provisions are **H.R. 3205/S. 1618**, **H.R. 3129**, and H.R. 5013. (See CRS Electronic Briefing Book, *Terrorism*, page on “Border Security Issues and Options,” available at [<http://www.congress.gov/brbk/html/ebter124.html>]; and CRS Report RL31019, *Terrorism: Automated Lookout Systems and Border Security Options and Issues*. For information on counter-terrorism and immigration law, see CRS Electronic Briefing Book, *Terrorism*, page on “Immigration Law: Legal Frameworks,” available at [<http://www.congress.gov/brbk/html/ebter133.html>].)

Nonimmigrant Registration and Tracking

The INA provides for the registration of aliens. Among the relevant provisions, INA §262 requires that aliens in the United States for 30 days be registered and fingerprinted, and INA §263 authorizes the Attorney General to prescribe special regulations for the registration and fingerprinting of any class of aliens, other than LPRs. INA §265 further states that aliens required to be registered must notify the Attorney General of each change of address within 10 days and furnish such additional information as the Attorney General may require. H.R.

5013 would amend the INA registration provisions to establish additional registration requirements.

Citing the INA's registration provisions and other authority, DOJ outlined a proposal for a "National Security Entry-Exit Registration System" on June 5, 2002. On August 12, INS published a final rule to implement this system; the rule takes effect on September 11, 2002. Under the rule, special registration requirements will apply to nonimmigrant aliens from countries designated by the Attorney General (at the outset, Iran, Iraq, Libya, Sudan, and Syria), as well as to nonimmigrants from any country who meet criteria indicating that their presence in the United States warrants monitoring in the interests of national security or law enforcement. Upon arrival in the United States, aliens subject to special registration will be fingerprinted, photographed, and checked against databases of known criminals and terrorists. They also will be required to provide "routine and readily available information," such as personal information and information about their plans in the country. If these aliens remain in the United States for 30 days or longer, they will be required to report to an INS office between the 30th and 40th day to complete their registration. Those aliens remaining for more than a year will have to reaffirm their registration information annually. Upon departure from the United States, aliens subject to special registration will be required to report their exit to INS. (The final rule is available in *Federal Register*, v. 67, no. 155, August 12, 2002, p. 52583-52593.)

On July 26, 2002, INS published a proposed rule intended, according to DOJ, to promote compliance with existing address reporting requirements. The proposed rule would require that aliens applying for immigration benefits acknowledge having received notice that they must provide INS with a valid current address and that if they move and do not provide a new address, they will be held responsible for any communications, including those involving removal proceedings, sent to their prior address. The comment period on this rule ended on August 26, 2002. (The proposed rule is available in *Federal Register*, v. 67, no. 144, July 26, 2002, p. 48818-48821.)

Monitoring of Foreign Students

The September 11, 2001 terrorist attacks by foreign nationals — including several terrorists on student visas — have prompted a series of questions about foreign students in the United States and the extent to which the U.S. government monitors their admission and presence in this country. The arrival of letters on March 11, 2002, in which the INS notified a Florida flight school that two of the September 11 terrorists had been approved for foreign student visas, further heightened concerns.

The three visa categories used by foreign students are: F visas for academic study, M visas for vocational study, and J visas for cultural exchange. The number of student visas issued has more than doubled over the past 2 decades. In FY1979, the total number of foreign student and cultural exchange visas issued by DOS consular officers was 224,030 and comprised 4% of all nonimmigrant visas issued. In FY1999, DOS issued 537,755 visas to F, J, and M nonimmigrants, making up 9% of all nonimmigrant visas issued.

In 1996, Congress enacted a provision that established a foreign student monitoring system and required educational institutions to participate as a condition of continued

approval to enroll foreign students. The PATRIOT Act includes provisions to expand the foreign student tracking system and authorizes appropriations for the system, which had been funded through \$95 fees paid by the foreign students.

P.L. 107-173 has provisions intended to close perceived loopholes in the admission of foreign students. Specifically, Title V establishes electronic means to monitor and verify: documentation of acceptance of a student by an approved school or designated exchange program; transmittal of documentation to DOS; issuance of a nonimmigrant visa to the student or exchange visitor; admission of the student or exchange visitor to the United States; notice to the school or exchange program that the nonimmigrant has been admitted to the United States; registration and enrollment of the nonimmigrant in the school or exchange program; and any other relevant act by the nonimmigrant, including changing schools or programs. The law also creates (within 120 days of enactment) a transitional program (until the monitoring system is fully implemented) that would restrict issuance of an F, J, or M visa unless DOS has received electronic evidence from the approved institution that the alien is accepted and the consular officer has adequately reviewed the applicant's record. (See CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*.)

Other Legislation and Issues

Refugees

Typically, the annual number of refugee admissions and their allocation among refugee groups are determined at the start of each fiscal year by the President after consultation with Congress. Due to the events of September 11, 2001, however, President Bush did not sign the Presidential Determination setting the FY2002 refugee numbers until November 21, 2001. Presidential Determination No. 02-04 authorizes a FY2002 refugee ceiling of 70,000, a decrease from the FY2001 ceiling of 80,000. Some Members of Congress and others have expressed concern that the United States may fall short of the FY2002 ceiling. To investigate that issue and others related to refugee admissions, the Senate Immigration Subcommittee held an oversight hearing in February 2002.

P.L. 107-116, the FY2002 Labor, Health and Human Services (HHS), and Education Appropriations Act, extends the "Lautenberg amendment" through FY2002. That provision requires the Attorney General to designate categories of former Soviet and Indochinese nationals for whom less evidence is needed to prove refugee status, and provides adjustment to LPR status for certain Soviet and Indochinese nationals denied refugee status. **S. 2766**, as reported by the Senate Appropriations Committee, would extend the Lautenberg amendment through FY2003.

P.L. 107-185 revises and re-enacts for FY2002 and FY2003 a provision commonly referred to as the "McCain amendment." The McCain amendment made the adult children of certain Vietnamese refugees eligible for U.S. refugee resettlement. Among its provisions, P.L. 107-185 enables adult children previously denied resettlement to have their cases reconsidered. **H.R. 2833**, which has been passed by the House, would further expand eligibility for refugee resettlement to Vietnamese nationals who were eligible for any U.S.

refugee program but who were deemed ineligible due to administrative error or who were unable to meet application deadlines.

Resettlement Funding. P.L. 106-104 reauthorized HHS's Office of Refugee Resettlement program through FY2002. P.L. 107-116 provides \$460.2 million for this program. (See CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.)

Legal Immigration and Sponsorship

Subtitle C of the PATRIOT Act contains provisions that preserve the immigration benefits of the noncitizen victims of September 11 and their families. Among these provisions are those that ensure that aliens whose pending family-based or employment-based immigrant petitions were revoked, voided, or nullified due to the terrorist attacks (e.g., the family member petitioning for them died) continue to have valid petitions, and that waive the public charge ground of inadmissibility for them.

More broadly, the Family Sponsor Immigration Act of 2001 (**P.L. 107-150**) provides that in cases where a citizen or LPR has petitioned for permanent resident status for an alien resident and the petitioner has died before the alien has been granted this status, and where the Attorney General determines for humanitarian reasons that revocation of the petition would be inappropriate, a close family member other than the original petitioner can sign the necessary affidavit of support. (See CRS Report RL31114, *Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation*.)

Child-Related Legislation

P.L. 107-208 amends the INA to address the issue of children "aging out" of the definition of "child" while their petitions or applications are pending. (Under the INA, a "child" is an unmarried person under age 21.) P.L. 107-208 sets new rules for determining whether an alien is a child where the alien is the unmarried son or daughter of a U.S. citizen, LPR, asylee, or refugee.

Criminal Aliens

Two 1996 laws, IIRIRA and the Antiterrorism and Effective Death Penalty Act (AEDPA; P.L. 104-132), significantly affected how criminal aliens — aliens who have engaged in criminal activity — are treated in the removal process. Among other changes, these laws made it much harder for criminal aliens to obtain relief from removal. **H.R. 1452**, as approved by the House Judiciary Committee on July 23, 2002, would enable the Attorney General to grant discretionary relief from removal to some currently ineligible criminal alien LPRs. The bill, however, would not fully restore the pre-1996 relief standards and would be temporary.

Other Legislation Receiving Action

S Visa for Criminal and Terrorist Informants. **P.L. 107-45** amends the INA to make permanent §101(a)(15)(S), the provision that allows aliens with critical information on criminal or terrorist organizations to come into the United States in order to provide that

information to law enforcement officials. Under this law, aliens who provide critical information may adjust to LPR status. The numerical limits on this category are 200 per year for criminal informants and 50 per year for terrorist informants. (See CRS Report RS21043, *Immigration: S Visas for Criminal and Terrorist Informants.*)

Work Authorization for Certain Nonimmigrant Spouses. P.L. 107-124 amends the INA to provide work authorization for the nonimmigrant spouses of treaty traders or treaty investors on E visas. P.L. 107-125 similarly amends the INA to provide work authorization for the nonimmigrant spouses of intracompany transferees on L visas. P.L. 107-125 further amends the INA to reduce from 1 year to 6 months the period of time that certain intracompany transferees have to be continuously employed overseas by a petitioning employer before applying for admission to the United States.

Employment Eligibility Verification Pilot Programs. P.L. 107-128 amends a section of IIRIRA that directed the Attorney General to conduct three pilot programs for employment eligibility confirmation (i.e., to confirm that new hires are legally eligible to work). Each of the programs was to be in effect for 4 years. The first program to be implemented, known as the “basic pilot program,” expired in November 2001. P.L. 107-128 extends the life of each program from 4 years to 6 years.

Waivers for Nonimmigrant Physicians. Foreign physicians in the United States on J-1 visas must return to their home country after completing their education or training unless they are granted a waiver. H.R. 4858 would amend the INA to increase the number of J-1 visa waivers that states could request (under the so-called “Conrad 20” program) from 20 to 30 per fiscal year. The “Conrad 20” provisions of the INA expired on June 1, 2002. H.R. 4858 would extend the program until June 1, 2004. The bill was passed by the House on June 25, 2002. Like H.R. 4858, S. 2674 would increase the number of Conrad waivers to 30 per state. The Senate measure also would make the Conrad program permanent. (See CRS Report RL31460, *Immigration: Foreign Physicians and the J-1 Visa Waiver Program.*)

State Criminal Alien Assistance Program (SCAAP). Originally established in 1994, SCAAP provides reimbursement to state and local governments for the direct costs associated with incarcerating unauthorized aliens. On July 18, 2002, the Senate Judiciary Committee reported a bill (S. 862) to authorize appropriations for SCAAP. S. 862 would authorize annual appropriations of \$750 million for fiscal years 2002 through 2006.

Driver’s Licenses Issued to Nonimmigrants. H.R. 4043 would prohibit federal agencies from accepting driver’s licenses or comparable documents for identification purposes unless the issuing state requires that licenses or documents given to nonimmigrants expire no later than the expiration date of their nonimmigrant visas. H.R. 4043 has been approved by the House Immigration Subcommittee.

Other Pending Bills. H.R. 4597, which has been approved by the House Immigration Subcommittee, would make inadmissible to the United States any nonimmigrant owing more than \$2,500 in child support. H.R. 4558, as passed by the House and reported by the Senate Foreign Relations Committee, would extend until the end of FY2006 a visa program that enables young adults from Ireland to work temporarily in the United States.

LEGISLATION

P.L. 107-45 (S. 1424)

Amends INA to provide permanent authority for the “S” nonimmigrant category. Passed Senate on September 13, 2001. Passed House on September 15, 2001. Signed on October 1, 2001.

P.L. 107-56 (H.R. 3162)

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. Passed House on October 24, 2001. Passed Senate on October 25, 2001. Signed on October 26, 2001.

P.L. 107-116 (H.R. 3061)

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002. Reported by Appropriations Committee (H.Rept. 107-229) on October 9, 2001. Passed House, as amended, on October 11, 2001. Passed Senate, as amended, on November 6, 2001. House agreed to conference report (H.Rept. 107-342) on December 19, 2001; Senate agreed on December 20, 2001. Signed on January 10, 2002.

P.L. 107-124 (H.R. 2277)

Amends INA to provide work authorization for nonimmigrant spouses of treaty traders and treaty investors. Reported by Judiciary Committee (H.Rept. 107-187) on August 2, 2001. Passed House on September 5, 2001. Reported by Senate Judiciary Committee (without written report) on December 13, 2001. Passed Senate on December 20, 2001. Signed January 16, 2002.

P.L. 107-125 (H.R. 2278)

Amends INA to provide work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of time that certain intracompany transferees have to be continuously employed overseas before applying for admission to the United States. Reported by Judiciary Committee (H.Rept. 107-188) on August 2, 2001. Passed House on September 5, 2001. Reported by Senate Judiciary Committee (without written report) on December 13, 2001. Passed Senate on December 20, 2001. Signed January 16, 2002.

P.L. 107-128 (H.R. 3030)

Basic Pilot Extension Act of 2001. Reported by Judiciary Committee (H.Rept. 107-310, Part I) on November 30, 2001. Passed House, as amended, on December 11, 2001. Passed Senate on December 20, 2001. Signed on January 16, 2002.

P.L. 107-150 (H.R. 1892)

Family Sponsor Immigration Act of 2001. Reported by Judiciary Committee (H.Rept. 107-127) on July 10, 2001. Passed House, as amended, on July 23, 2001. Reported by Senate Judiciary Committee (without written report) on December 13, 2001. Passed Senate, as amended, on December 20, 2001. House agreed to Senate amendment on February 26, 2002. Signed on March 13, 2002.

P.L. 107-171 (H.R. 2646)

Farm Security and Rural Investment Act of 2002. Reported by Agriculture Committee (H.Rept. 107-191, Part I) on August 2, 2001; supplemental report filed by Agriculture Committee (H.Rept. 107-191, Part II) on August 31, 2001. Reported by International Relations Committee (H.Rept. 107-191, Part III) on September 10, 2001. Passed House, as amended, on October 5, 2001. Passed Senate, as amended, on February 13, 2002. House agreed to conference report (H.Rept. 107-424) on May 2, 2002; Senate agreed on May 8, 2002. Signed on May 13, 2002.

P.L. 107-173 (H.R. 3525)

Enhanced Border Security and Visa Entry Reform Act of 2002. Passed House, as amended, on December 19, 2001. Passed Senate, as amended, on April 18, 2002; Senate passed related enrolling resolution (**S.Con.Res. 106**) on May 7, 2002. House agreed to Senate amendments and to resolution on May 8, 2002. Signed on May 14, 2002.

P.L. 107-185 (H.R. 1840)

Extends eligibility for refugee status for the unmarried sons and daughters of certain Vietnamese refugees. Reported by Judiciary Committee (H.Rept. 107-254) on October 29, 2001. Passed House, as amended, on October 30, 2001. Reported by Senate Judiciary Committee (without written report) on December 13, 2001. Passed Senate on May 10, 2002. Signed on May 30, 2002.

P.L. 107-208 (H.R. 1209)

Child Status Protection Act. Reported by Judiciary Committee (H.Rept. 107-45) on April 20, 2001. Passed House, as amended, on June 6, 2001. Reported by Senate Judiciary Committee (without written report) on May 16, 2002. Passed Senate, as amended, on June 13, 2002. House agreed to Senate amendment on July 22, 2002. Signed on August 6, 2002.

H.R. 1452 (Frank)

Family Reunification Act of 2002. Ordered reported by Judiciary Committee on July 23, 2002.

H.R. 1885 (Gekas)

Section 245(i) Extension Act of 2001. Passed House on May 21, 2001. Passed Senate, as amended, on September 6, 2001. House agreed to Senate amendment with amendments pursuant to **H.Res. 365** on March 12, 2002.

H.R. 2833 (C. Smith)

Viet Nam Human Rights Act. Passed House on September 6, 2001.

H.R. 3231 (Sensenbrenner)

Immigration Reform and Accountability Act of 2001. Reported by Judiciary Committee (H.Rept. 107-413) on April 19, 2002. Passed House, as amended, on April 25, 2002.

H.R. 4090 (Herger)

Personal Responsibility, Work, and Family Promotion Act of 2002. Reported by Ways and Means Committee (H.Rept. 107-460, Part I) on May 14, 2002. Provisions incorporated into **H.R. 4737**.

H.R. 4558 (Walsh)

Extends the Irish Peace Process Cultural and Training Program. Reported by Judiciary Committee (H.Rept. 107-596, Part I) on July 22, 2002. Passed House on July 22, 2002. Reported by Senate Foreign Relations Committee (without written report) on August 1, 2002.

H.R. 4737 (Pryce)

Personal Responsibility, Work, and Family Promotion Act of 2002. Passed House on May 16, 2002. Reported by Senate Finance Committee (S.Rept. 107-221) on July 25, 2002.

H.R. 4858 (Jerry Moran)

Amends and extends the authority under INA for states to request foreign residency requirement waivers for J visa physicians. Reported by Judiciary Committee (H.Rept. 107-528) on June 24, 2002. Passed House on June 25, 2002.

H.R. 5005 (Armey)

Homeland Security Act of 2002. Reported by Homeland Security Committee (H.Rept. 107-609, Part I) on July 24, 2002. Passed House, as amended, on July 26, 2002.

S. 862 (Feinstein)

State Criminal Alien Assistance Program Reauthorization Act of 2001. Reported by Judiciary Committee (without written report) on July 18, 2002.

S. 864 (Leahy)

Anti-Atrocity Alien Deportation Act of 2001. Reported by Judiciary Committee (S.Rept. 107-144) on April 25, 2002.

S. 1291 (Hatch)

Development, Relief, and Education for Alien Minors (DREAM) Act. Reported by Judiciary Committee (without written report) on June 20, 2002.

S. 2452 (Lieberman)

National Homeland Security and Combating Terrorism Act of 2002. Reported by Governmental Affairs Committee (S.Rept. 107-175) on June 24, 2002.

S. 2766 (Harkin)

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003. Reported by Appropriations Committee (S.Rept. 107-216) on July 22, 2002.