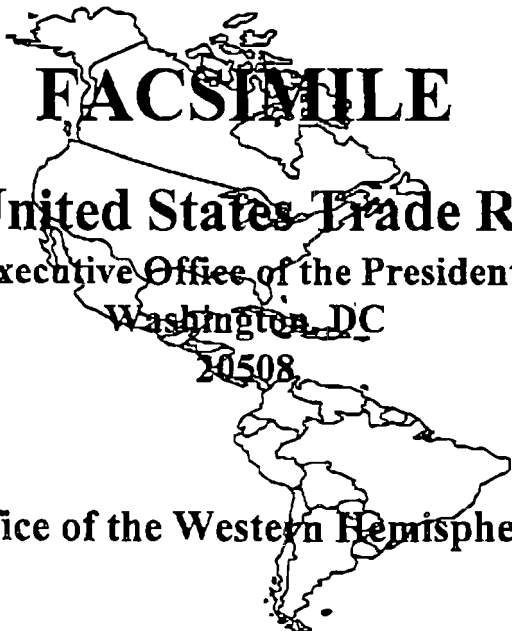


**FACSIMILE****Office of the United States Trade Representative****Executive Office of the President****Washington, DC****20508****Office of the Western Hemisphere**

TO:	<u>Name</u>	<u>Organization</u>	<u>Telephone</u>	<u>Fax</u>
	LeAnn Shimabukuro	DPC	456-5574	456-7028

FROM: Michael Koplovsky, Director, Mexican Affairs**PHONE:** (202) 395-3412**FAX:** (202) 395-9675 (Western Hemisphere); 395-3911 (backup)**SUBJECT:** Certification of Health Care Workers and NAFTA

Attached are the relevant section of the legislation and the conference report.....

05M16

THIS SEARCH
Next Hit
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Hit List

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Back
Best Sections
Doc Contents

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ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996
SEC. 343. CERTIFICATION REQUIREMENTS FOR FOREIGN HEALTH-CARE WORKERS.

Section 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended--

- (1) by redesignating subparagraph (C) as subparagraph (D), and
- (2) by inserting after subparagraph (B) the following new subparagraph:

(C) UNCERTIFIED FOREIGN HEALTH-CARE WORKERS- Any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is excludable unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that--

(i) the alien's education, training, license, and experience--

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

SEC. 344. REMOVAL OF ALIENS FALSELY CLAIMING UNITED STATES

Taken from H. Report 104-828**H.R. 2202****The Illegal Immigration Reform and Immigrant Responsibility Act of 1996.****Relevant Report Language on Uncertified Foreign Health-Care Workers:**

Section 343--House section 811 recedes to Senate amendment section 155. This section amends section 212(a)(5) to make inadmissible to the United States any alien seeking admission for employment as a health-care worker unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools or an equivalent independent credentialing organization (approved by the Attorney General in consultation with the Secretary of Health and Human Services) verifying the alien's training, licensing, and experience, as well as a level of competency in English appropriate to the position in which the alien will be employed.

Notwithstanding any international trade agreements or treaties, a "health care worker" subject to prescreening under this section should include any alien seeking an immigrant or nonimmigrant visa as a nurse, physical therapist, occupational therapist, speech-language pathologist, medical technologist and technician, physician assistant, or other occupations designated in regulations. The Attorney General should not approve a credentialing organization unless the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa. The organization also should demonstrate an ability to evaluate both the foreign credentials appropriate for the profession and the results of examinations for proficiency in English appropriate for the health care of the kind in which the alien will be engaged, and maintain comprehensive and current information on foreign educational institutions, ministries of health and foreign health care licensing jurisdictions. In addition, because this provision contemplates that alien health-care workers be screened before they arrive in the United States, such organizations should demonstrate an ability to conduct examinations outside the United States.

Certification of Foreign Health Care Workers
Illegal Immigration Reform and Immigrant Responsibility Act, §343

ISSUE: Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) created a new ground of inadmissibility at §212(a)(5)(C) of the Immigration and Nationality Act for "any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician" unless the alien has a certificate from the Commission on Foreign Nursing Schools (CGFNS) or a certificate from an equivalent credentialing organization. The certificate shall verify the alien's training, licensing, experience and competency in the English language. This ground of inadmissibility applies both to immigrants (aliens coming permanently) and nonimmigrants (aliens coming temporarily) to the United States and is effective as of September 30, 1996, the date of enactment of IIRIRA. The Service and the Department of State agree to exercise statutory discretion to waive this requirement for nonimmigrant health care workers until the necessary certification mechanisms are in place. However, no waiver authority exists for immigrants. Consequently, DOS has no authority to grant visas and INS has no authority to adjust the status of immigrant alien health care workers until the certification process is established.

COMPLEXITIES: Implementation of section 343 requires considerable interagency coordination. The Attorney General shall consult with the Secretary of Health and Human Services to determine which health care occupations are covered and which independent entities may qualify to certify foreign health care workers. The Attorney General shall consult with the Secretary of Education to determine the appropriate level of English language proficiency required of foreign health care workers. Inasmuch as the provision applies to nonimmigrant health care workers without regard to existing trade obligations, the Office of the United States Trade Representative is interested in the Administration's implementation approach. The provision amends existing immigration statutes governing which aliens are inadmissible on labor certification grounds which is historically the jurisdiction of the Secretary of Labor. The Secretary of State solely is authorized to issue visas to immigrants and nonimmigrant aliens and to recommend waivers for nonimmigrants.

In addition to the necessary synthesis of these six agencies' views and exigencies caused by effectiveness of the provision upon enactment, the Service is confronted with proposals from CGFNS seeking authorization to begin issuing interim certifications in advance of rulemaking. The CGFNS raises the specter of critical shortages in certain health care occupations in the United States caused by the inability to import immigrant health care workers while the agencies consider implementation. No evidence of such shortages has been presented.

The Service also has received representations from other entities expressing interest in obtaining approval as an "equivalent credentialing entity" to CGFNS for purposes of section 343.

AGENCY ACTIONS: Since enactment, the Service convened two interagency meetings at which CGFNS made presentations recommending an implementation approach. The agencies have considered a common set of threshold issues for implementation and provided preliminary agency positions for each issue. At present, there is no consensus on these issues.

MISCELLANEOUS: Clearly, CGFNS was instrumental in seeking this statutory provision and successfully sought post-enactment clarification of statutory intent jointly from the chairs of the Senate and House Subcommittees on Immigration. The Service understands that Senator Specter (R-PA) sponsored this provision.

RECOMMENDATION: The Service recommends that decisions associated with implementation of section 343 be coordinated by the Domestic Policy Council to ensure proper consideration is given to all Administration objectives regarding health care, immigration, and labor market.

Certification of Foreign Health Care Workers
Illegal Immigration Reform and Immigrant Responsibility Act, §343

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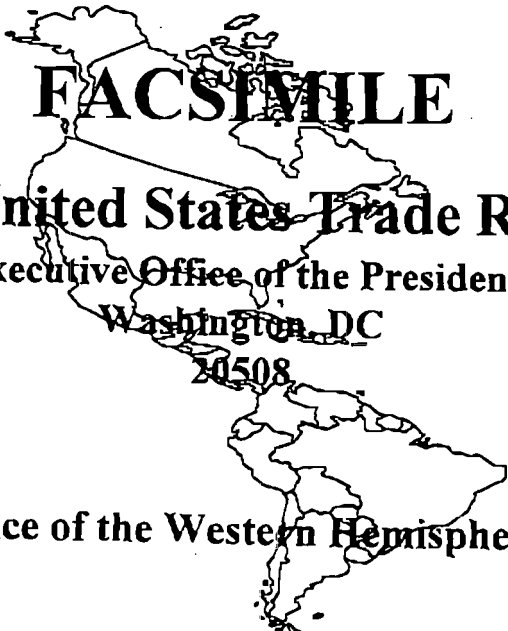
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FACSIMILE

Office of the United States Trade Representative

Executive Office of the President

Washington, DC

20508

Office of the Western Hemisphere

TO: Name Organization Telephone Fax

LeeAnn Shimabukuro DPC 456-5574 456-7028

FROM: Michael Koplovsky, Director, Mexican Affairs

PHONE: (202) 395-3412

FAX: (202) 395-9675 (Western Hemisphere); 395-3911 (backup)

SUBJECT: IIRIRA Section 343 (Temporary Entry of Health Care Workers) and the NAFTA
Below is a list of suggested invitees:

<u>Name</u>	<u>Organization</u>	<u>Telephone</u>	<u>Fax</u>
✓ Lael Brainerd	NEC	395-5104	395-6853
✓ Michael Koplovsky	USTR-Mexico/NAFTA	395-3412	395-9675
Bernard Ascher	USTR-Services	395-9581	395-3891
Bill Kane	USTR-GC's Office	395-6800	395-3639
✓ Nancy Schwartz	OMB	395-3720	395-5770
Bill Schall	Treasury	622-0208	622-1731
David Brown	State-EUR/CAN	647-2256	647-4088
Rich O'Brien	State-EB Economic	647-1987	647-6540
Steve Fischel	State-CA/VO Consular	663-1184	663-3898
→ Geri Word	USDOC/ITA/NAFTA	482-1545	482-5865
Carol Goodloe	USDA/FAS/NAFTA	720-1289	690-1093
Marcia Eugenio	Labor-Int'l	219-9098	219-5071

John Frasier

Jose
Steve Mertens
Leanne
Steve Wamath
Sarah Bianchi

INS - Paul Vane?
DOJ - John Morton
WHC?
NSC - Carl Hoffman?

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TALKING POINTS NAFTA CHAPTER 16

Certification of Foreign Health Care Workers

- ◆ **ISSUE:** Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) created a new ground of inadmissibility at §212(a)(5)(C) of the Immigration and Nationality Act for "any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician" unless the alien has a certificate from the Commission on Foreign Nursing Schools (CGFNS) or a certificate from an equivalent credentialing organization. The certificate shall verify the alien's training, licensing, experience and competency in the English language. This ground of inadmissibility applies both to immigrants (aliens coming permanently) and nonimmigrants (aliens coming temporarily) to the United States and is effective as of September 30, 1996, the date of enactment of IIRIRA.
- ◆ **EFFECT ON TRADE AGREEMENTS:** The Conference Report includes a statement clarifying that the provision applies to immigrant or nonimmigrant healthcare workers "...notwithstanding any international trade agreements or treaties..."
- ◆ **NAFTA IMPLICATIONS:** Under the NAFTA, Chapter 16, Temporary Entry of Business Persons, Annex 1603 Sections B and C, no Party may, as a condition for temporary entry, require labor certification tests or other procedures of similar effect. Under Annex 1603, Section D, applicable to NAFTA professionals, no Party may, as a condition for temporary entry, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect. GOC and GOM may assert that the new immigration provision is not consistent with Annex 1603.
- ◆ In November 1996 at the Chapter 16 Temporary Entry Working Group meeting in Ottawa, the U.S. delegation advised formally GOC and GOM of the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 summarizing key provisions including section 343.
- ◆ Post-enactment legislative history was sent to the Commissioner of INS in a letter dated November 5, 1996, signed jointly by the Chairman of the House Subcommittee on Immigration and Claims and the Chairman of the Senate Committee on Immigration and Refugee Affairs. The letter states that section 343 applies to both immigrants and nonimmigrants (temporary entrants) seeking entry to engage in healthcare occupations. [copy attached]
- ◆ **GATS IMPLICATIONS:** Aliens seeking temporary entry to provide health care services under GATS may be subject to the new immigration provision.
- ◆ **COMPLEXITIES:** Implementation of section 343 requires considerable interagency coordination. The Attorney General shall consult with the Secretary of Health and Human Services to determine which health care occupations are covered and which independent entities may qualify to certify foreign health care workers. The Attorney General shall consult with the Secretary of Education to determine the appropriate level of English language proficiency required of foreign health care workers. Inasmuch as the provision applies to nonimmigrant health care workers without regard to existing trade obligations, the Office of the United States Trade Representative is interested in the Administration's implementation approach. The new provision amends the labor certification provisions of the Immigration and Nationality Act, provisions administered by the Secretary of Labor.

- **IMPLEMENTATION:** The INS, in consultation with HHS, is drafting a proposed rule to regulate this provision. The INS held two interagency meetings (DOS, DOL, USTR, HHS, DoE) prior to the drafting of the proposed regulation.
- The Service and the Department of State agree to exercise statutory discretion to waive this requirement for nonimmigrant health care workers (including those seeking temporary entry under NAFTA) until the necessary certification mechanisms are in place. However, no waiver authority exists for immigrants. Consequently, DOS has no authority to grant visas and INS has no authority to adjust the status of immigrant alien health care workers until the certification process is established.
- The INS has received inquiries from three senators about the implementation of section 343. Each inquiry urges that the Commissioner of INS work with Congress and the affected parties to address the many issues which have arisen since enactment of section 343.

Congress of the United States**House of Representatives****Washington, D.C. 20515**

November 6, 1996

Honorable Doris M. Meissner
Commissioner, Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Dear Madam Commissioner:

We are concerned about a report that the Immigration and Naturalization Service may not correctly interpret section 343 of H.R. 3610, the Department of Defense Appropriations Act, 1997. We understand that some within INS may apply this provision only to immigrants and not to nonimmigrant healthcare workers. This provision requires certification of the qualifications of all aliens, both immigrants and non-immigrants, seeking to enter the United States for the purpose of performing labor as a health-care worker, other than a physician.

This requirement was drafted to protect consumers from the possibility of admitting unqualified health care practitioners. There are no exceptions to this requirement, by statute, treaty, administrative practice or otherwise.

It has been reported to us that some uncertainty was caused by the fact that section 343 amends section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. § 1182(a)(5)) ("Labor certification and qualifications for certain immigrants"). We understand that some persons may have suggested that the placement of the new prescreening requirement in section 212(a)(5) would somehow limit prescreening to applicants for immigrant visas only. This suggestion, if it was made, would be incorrect, with respect to both the language of the amended statute and congressional intent.

The placement of the prescreening requirement in section 212(a)(5) was not intended to limit the broad language of the statute. As you will see from the enclosed amended statutory language, the limitation to immigrants in section 212(a)(5)(D) refers only to the existing subparagraphs (A) and (B), not the prescreening requirement, which is new subparagraph (C). (See, for example, page 2, line 19 of the enclosure.) Given the absence of any limitation in its language, subparagraph (C) applies to both immigrants and non-immigrants.

In addition, our conference report language on this section was clear that new section 212(a)(5)(C) would apply to both immigrants and non-immigrants. (See pages 226-227 of

Letter to Commissioner Meisner
November 6, 1996

Report 104-828). This conference report language applies to the identical language in H.R. 3610, as was made clear by statements in the Congressional Record by both the House and Senate floor managers. (H12104-5 of the Congressional Record for September 28, 1996 and S11839 of the Congressional Record for September 30, 1996)

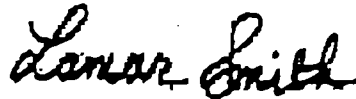
We intend that this new prescreening requirement be effective immediately. We do not want patients put at risk any longer than necessary. The use of sweeping and all-inclusive terms in section 343 was deliberate. The section was not intended to be limited by any administrative procedures, interpretations, or terms of art.

Thank you for your prompt attention to this matter.

Sincerely,



Alan K. Simpson
Chairman
Subcommittee on Immigration
And Refugee Affairs
Senate Committee on the Judiciary



Lamar Smith
Chairman
Subcommittee on Immigration
and Claims
House Committee on the Judiciary

TEMPORARY ENTRY CERTIFICATION OF FOREIGN HEALTH CARE WORKERS

Issue:

U.S. immigration law in force since September 30, 1996 requires certification for non-physician health workers "...notwithstanding any international trade agreements or treaties..." This requirement may be inconsistent with our commitments under Annex 1603 of the NAFTA.

Talking Points:

- The United States takes its commitments seriously. We will do everything possible to ensure the United States is in compliance with all the provisions of the NAFTA.
- The legislation is as yet not fully implemented. The Immigration and Naturalization Service and the Department of State have agreed to exercise statutory discretion to waive the requirement for non-immigrant health care workers, including those seeking temporary entry under the NAFTA, until the necessary certification mechanisms are in place.
- The Immigration and Naturalization Service, in coordination with the Department of Health and Human Services is drafting the implementation regulations required by the law. During this process, INS consults frequently with other government agencies, including this office.

Background:

Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act created a new ground of inadmissibility (Section 212(a)(5)(C) of the Immigration and Nationality Act). It applies to "any alien who seeks to enter the United States for the purposes of performing labor as a health care worker other than a physician" unless the alien has a certificate from the Commission on Foreign Nursing Schools or from an equivalent credential-providing organization. The Conference Report includes a statement clarifying that the provision applies "...notwithstanding any international trade agreements or treaties..." The Act came into effect on September 30, 1996

Under Annex 1603, Sections B and C of the NAFTA, no Party may, as a condition of temporary entry, require labor certification tests or other procedures of similar effect. Under Annex 1603 Section D of the NAFTA (applicable to professionals), no Party may, as a condition for temporary entry, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect. Minister Marchi may assert the new immigration provision is not consistent with Annex 1603.

TALKING POINTS NAFTA CHAPTER 16

Certification of Foreign Health Care Workers

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- **IMPLEMENTATION:** The INS, in consultation with HHS, is drafting a proposed rule to regulate this provision. The INS held two interagency meetings (DOS, DOL, USTR, HHS, DoE) prior to the drafting of the proposed regulation.
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Total Pages: _____

LRM ID: IMS188

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Tuesday, November 4, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference
OMB CONTACT: Ingrid M. Schroeder
PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: HHS Testimony on HR2759 Health Professional Shortage Area Nursing Relief Act of 1997

DEADLINE: 3:30pm Tuesday, November 4, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Labor will submit a statement for the record. Bill text for H.R. 2759 can be found on the Internet in THOMAS.

DISTRIBUTION LIST**AGENCIES:**

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61-JUSTICE - Andrew Fois - (202) 514-2141
114-STATE - Paul Rademacher - (202) 847-4463
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WARNATH_S
Peter Jacoby
Nancy Schwartz

LRM ID: IMS188 SUBJECT: HHS Testimony on HR2759 Health Professional Shortage Area Nursing Relief Act of 1997

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)
_____ (Name)
_____ (Agency)
_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ **Concur**

_____ **No Objection**

_____ **No Comment**

_____ **See proposed edits on pages _____**

_____ **Other: _____**

_____ **FAX RETURN of _____ pages, attached to this response sheet**

Draft

Testimony Statement

NEIL H. SAMPSON

ACTING ASSOCIATE ADMINISTRATOR FOR HEALTH PROFESSIONS

HEALTH RESOURCES AND SERVICES ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Before the

Subcommittee on Immigration and Claims

Committee on the Judiciary

House of Representatives

November 5, 1997

Draft

Mr. Chairman:

I am Neil H. Sampson, Acting Associate Administrator for Health Professions in the Health Resources and Services Administration (HRSA). HRSA is the access agency that administers the safety net programs providing health care services to the uninsured and vulnerable individuals in our nation. Within HRSA, the Bureau of Health Professions provides national leadership to assure a health professions workforce that meets the health care needs of the public.

I am accompanied today by Denise Geolot, Acting Director of the Division of Nursing.

Thank you for the opportunity to discuss the issue of nursing supply in this country, and how to deal with selected areas and institutions which may have some difficulty recruiting nurses. We have recently completed the Sixth National Sample Survey of Registered Nurses, and are beginning to analyze the data from that survey. Among major findings:

- In March 1996, the registered nurse population in the United States totaled almost 2.6 million, an increase of more than 300,000 individuals since March 1992. The RN population grew at an average annual rate of 3.4 percent between those dates, the highest growth rate shown since the November 1980 National Sample Survey of Registered Nurses.**
- Since the nurse shortage of 1988-89, admissions to basic nurse programs increased from 103,025 to 129,897 in 1993-94. In 1994-95, the trend changed somewhat and the number of admissions has declined slightly to about 127,000.**

- Graduations from nursing schools have increased annually from their lowest point in 1988-89 at 61,660 to their highest point in 1994-95 of 97,052 graduates, the latest available data.
- The changing employment picture is evident from the survey data. The total number of employed RNs increased 14 percent between 1992 and 1996. However, the number in hospitals increased only 3 percent. About 60 percent of the 2.1 million employed RNs, or 1.27 million, were working in hospitals in 1996 compared to almost 67 percent, or 1.23 million in 1992.
- Even within the hospital setting, the changing employment picture is evident. Despite the 3 percent increase in the number of hospital-employed nurses between 1992 and 1996, there was a 6 percent decrease in the number of those who were providing care in-patient units.
- The average salary for a staff nurse working in a hospital in 1992 was \$36,618 and in 1996 was \$40,097, which if adjusted for inflation is \$35,874 in 1992 dollars.
- In 1996 there were 1516 basic RN programs of nursing in the U.S. Illinois ranked fifth in the number of nursing programs at 73. New York had the most at 100, followed by California with 96 programs, Pennsylvania with 84 and Texas with 77.

- In 1996, 110,000 RNs were employed or residing in the United States who received their basic nursing education in a foreign country. In 1988, prior to the passage of legislation providing for the H-1A visas, there were an estimated 73,000 such RNs. This is a 51 percent increase in the number of foreign-trained nurses compared to a 26 percent increases in all RNs during that period.
- Almost three-quarters, 72 percent, of the 110,000 foreign-educated RNs in 1996 came from four countries. The largest single group, about 43 percent, or 47,400, came from the Philippines. Nineteen percent, or 21,400 came from Canada; 10 percent, or 11,500, from the United Kingdom, and 9 percent, or almost 10,000, from India.

The overall conclusion is that there is not a national shortage of registered nurses. There are a few areas in which specialty and locality shortages persist. Factors such as increased numbers of graduating nurses and changing demand for registered nurses associated with the movement to managed care have remedied any overall shortage.

Back in 1989, the Immigration Nursing Relief Act (INRA) created the H-1A visa classification for nonimmigrant registered nurses. The H-1A program was a five-year pilot program that expired September 1, 1995. When the program expired, we did not see any justification for extending this special visa category.

The written testimony submitted by the Department of Labor will outline what we believe to be alternative approaches to allow foreign nurses to enter and work in the U.S.

Under the proposed bill, the "Health Professional Shortage Area Nursing Relief Act of 1997," a new nonimmigrant classification for nonimmigrant nurses, an H-1C, would be established.

Applicant facilities would be limited to hospitals with at least 190 acute care beds, the facility must be located in a Health Professional Shortage Area (HPSA), the facility must have at least 35 percent of its hospital acute care inpatient days reimbursed under the Medicare program, and have at least 28 percent of its inpatient care days reimbursed under Medicaid. There is a cap of 500 on the total number of nurses that may enter in a given year. There are also limits on individual States, based on their total population.

The Department of Health and Human Services will continue to monitor nursing supply and demand, as well as nursing admissions under the other available immigration programs. Thank you for the opportunity to address this issue with you today.

FILE h2759.ih

HR 2759 IH
105th CONGRESS
1st Session

To amend the Immigration and Nationality Act with respect to the requirements for the admission of nonimmigrant nurses who will practice in health professional shortage areas.

IN THE HOUSE OF REPRESENTATIVES

October 29, 1997

Mr. RUSH introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act with respect to the requirements for the admission of nonimmigrant nurses who will practice in health professional shortage areas.

[Italic->] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [<-Italic]

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Health Professional Shortage Area Nursing Relief Act of 1997'.

SEC. 2. REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES IN HEALTH PROFESSIONAL SHORTAGE AREAS DURING 5-YEAR PERIOD.

(a) ESTABLISHMENT OF A NEW NONIMMIGRANT CLASSIFICATION FOR NONIMMIGRANT NURSES IN HEALTH PROFESSIONAL SHORTAGE AREAS- Section 101(a)(15)(H)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)) is amended by adding at the end the following: ', or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1) and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility described in section 212(m)(1)(5) for which the alien will perform the services, or'.

(b) REQUIREMENTS- Subsection (m) of section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended to read as follows:

'(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(c), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien--

'(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States;

'(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services), has obtained a certificate from the Commission on Graduates of Foreign Nursing Schools (in this subsection referred to as 'CGFNS') certifying that the alien has fulfilled the necessary requirements for the CGFNS Qualifying Examination and has passed both the Nursing and English Language Proficiency sections of the CGFNS Qualifying Examination, or has graduated from a nursing school in the United States and has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

'(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

The qualification described under subparagraph (B) concerning the CGFNS Qualifying Examination shall only apply prior to the date of

promulgation of regulations under section 212(a)(5)(C).

(2)(A) The attestation referred to in section 101(a)(15)(H)(i)(c), is an attestation as to the following:

(i) The facility meets all the requirements of paragraph (4).

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(iv) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly and as reasonably possible the dependence of the facility on nonimmigrant registered nurses.

(v) There is not a strike or lockout in the course of a labor dispute, nor has the facility laid off registered nurses within the previous year other than terminations for cause, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(c), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses employed at the facility through posting in conspicuous locations.

Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before the date of the enactment of this subsection. A copy of the attestation shall be provided, within 30 days of the date of filing, to registered nurses employed at the facility on the date of filing.

(B) For purposes of subparagraph (A)(iv), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

(iv) Providing adequate support services to free registered nurses from administrative and other non-nursing duties.

(v) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv). Nothing in this subparagraph shall require a facility to take more than 1 step if the facility can demonstrate that taking a second step is not reasonable.

(C) Subject to subparagraph (E), an attestation under subparagraph (A) shall--

(i) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor; and

(ii) apply to petitions filed during such 1-year period if the facility states in each such petition that it continues to comply with the conditions in the attestation.

(D) A facility may meet the requirements under this paragraph with respect to more than 1 registered nurse in a single petition.

(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a

list identifying facilities which have filed petitions for nonimmigrants under section 101(a)(15)(H)(i)(C) and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

(ii) The Secretary of Labor shall establish a process, including reasonable time limits, for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to.

(iii) Under such process, the Secretary shall provide, within 180 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per nurse per violation, with the total penalty not to exceed \$10,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least 1 year for nurses to be employed by the facility.

(v) In addition to the sanctions provided for under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

(3) The period of admission of an alien under section 101(a)(15)(H)(i)(c) shall be for an initial period of not to exceed 3 years, subject to an extension for a period or periods, not to exceed a total period of admission of 5 years.

(4) For purposes of this subsection and section 101(a)(15)(H)(i)(c), the term 'facility' means an employer who--

(A) is located in a health professional shortage area (as such term is defined in section 332 of the Public Health Service Act (42 U.S.C. 254e) as of March 31, 1997;

(B) is a subsection (d) hospital as described in section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) with at least 190 licensed acute care beds as reported by the Health Care Financing Administration in its PPS XI data report;

(C) has at least 35 percent of its hospital acute care inpatient days reimbursed under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et. seq.) as reported by the Health Care Financing Administration in its PPS XI data report; and

(D) has at least 28 percent of its hospital acute care inpatient days reimbursed under the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et. seq.)

as reported by the Health Care Financing Administration in its RPS XI data report.'.

(c) IMPLEMENTATION- Not later than 90 days after the date of enactment of this Act, the Secretary of Labor (in consultation, to the extent required, with the Secretary of Health and Human Services) and the Immigration and the Naturalization Service shall publish final or interim final regulations to carry out section 212(m)(1) of the Immigration and Nationality Act (as added by subsection (b)), except that in the event any such regulations are not published within 90 days after the date of enactment of this Act, the regulations published to carry out and implement the Immigration Nursing Relief Act of 1989, in effect on September 30, 1995 (specifically including part 504 of title 29, Code of Federal Regulations and parts 621 and 655 of title 20, Code of Federal Regulations) shall continue to apply.

(d) LIMITING APPLICATION OF NONIMMIGRANT CHANGES TO 5-YEAR PERIOD- The amendments made by this section shall apply to classification petitions filed for nonimmigrant status only during the 5-year period beginning on the date of enactment of this Act.

(e) ANNUAL LIMITATION ON PETITIONS GRANTED- The total number of nonimmigrant visas issued pursuant to petitions granted under section 101(a)(15)(H)(i)(c) of the Immigration and Nationality Act in each fiscal year shall not exceed 500, not including extensions of nonimmigrant status under that section. The number of petitions granted under such section 101(a)(15)(H)(i)(c) for each State in each fiscal year shall not exceed the following:

(1) For States with populations of less than 10,000,000 based upon the 1992 Census, 25 petitions, not including extensions of nonimmigrant status under that section.

(2) For States with populations of 10,000,000 or more based upon the 1992 census, 50 petitions, not including extensions of nonimmigrant status under that section.

(f) FULL PRIOR DISCLOSURE TO NONIMMIGRANT NURSES- Prior to contracting with a nonimmigrant under section 101(a)(15)(H)(i)(c) of the Immigration and Nationality Act, an employer sponsoring such a nonimmigrant must provide the potential nonimmigrant nurse with detailed information on the neighborhood, hospital, and working conditions under which the nonimmigrant will be working.

(g) WORKING CONDITIONS- An employer sponsoring a nonimmigrant under section 101(a)(15)(H)(i)(c) of the Immigration and Nationality Act shall--

(1) provide a wage rate and working conditions commensurate with those of nurses similarly employed by the hospital; and

(2) require the nonimmigrant to work hours commensurate with those of nurses similarly employed by the hospital; and

(3) not interfere with the right of the nonimmigrant to join or organize a union.

(h) TECHNICAL AMENDMENT- Section 212(a)(5)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(C)) is amended in the matter preceding clause (i) by striking 'physician,' and inserting 'physician, and, until such time as final regulations are published concerning this section, other than nonimmigrant health care workers pursuant to section 101(a)(15)(H)(i)(C), '.

Total Pages: _____

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**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Tuesday, November 4, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference *J. Jukes*

OMB CONTACT: Ingrid M. Schroeder *I. Schroeder*
PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: **LABOR** Statement for the Record on HR2759 Health Professional Shortage Area Nursing Relief Act of 1997

DEADLINE: 3:30pm Tuesday, November 4, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: HHS is testifying at the hearing on HR 2759. Please note that the Labor testimony opposes the creation of a new temporary foreign nurses program.

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Draft #4
11/3/97

STATEMENT FOR THE RECORD OF JOHN R. FRASER
ACTING WAGE AND HOUR ADMINISTRATOR
EMPLOYMENT STANDARDS ADMINISTRATION
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
OF THE HOUSE JUDICIARY COMMITTEE

November 5, 1997

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to submit for today's hearing record the views of the Department of Labor on the need for and advisability of a new temporary foreign nurses program under the Immigration and Nationality Act (INA), as would be established by the proposed "Health Professional Shortage Area Nursing Relief Act of 1997" (H.R. 2759).

* | The information and views presented in our statement supplement the testimony of the representative of the Department of Health and Human Services (HHS) that you heard today. Based in part on the Department of Labor's experience administering the now-expired H-1A temporary foreign nurses program, our statement sets forth reasons why -- in the Department's considered view -- a new temporary foreign nurses program is neither necessary nor advisable.

Mr. Chairman, there are several reasons why we believe legislation to establish a new temporary foreign nurses program should not be enacted. I will briefly summarize each of these reasons.

No National Shortage of Nurses Exists

The testimony of the Department of Health and Human Services offers the best information currently available indicating that there is no national shortage of registered nurses (RNs). This has been the case for some time, as I will explain.

→ The Immigration Nursing Relief Act (INRA) of 1989 created the H-1A visa category for nonimmigrant (temporary foreign) RNs. The H-1A program was a five-year pilot program that expired on September 1, 1995. The INRA program was enacted to address a perceived nationwide nursing shortage in the

mid-1980s. However, by the time INRA was enacted, the national shortage of the mid-1980s had begun to abate. And there is no evidence that a nationwide shortage of nurses is developing. On the contrary, as the HHS data reveal, there is no nationwide shortage of nurses and any recruitment problems that do exist are confined to certain localities or in certain nursing specialty areas -- a very narrow problem that can be addressed without expanding current immigration law.

The INRA mandated the establishment of an Immigration Nursing Relief Advisory Committee which -- in its 1995 report -- unanimously agreed that there was no national nursing shortage and that the H-1A program should not be continued or extended in its current form. While the Committee recommended (with dissent) that a modified H-1A program should be extended as a hedge against possible future shortages, the Committee believed it could not consider the availability of certain other alternative admissions programs to meet any such future need.

Employers Already Have Access to Foreign Nurses

To meet specialty or locality shortages, current law already allows foreign nurses to enter and work in the U.S. under four separate existing programs. These include:

- as permanent employment-based immigrants. Prospective employers of immigrant nurses do not need to file a labor certification application with the DOL but do so directly with the INS so the admission process can be more expeditious than would otherwise be the case.
- as temporary workers under the temporary entry provisions of the North American Free Trade Agreement (NAFTA).
- as temporary workers under the H-1B provisions of the INA if the job requires a bachelor's degree (or equivalent).

- as temporary workers under the H-2B provisions of the INA if the job itself is "temporary" (less than one year) in duration.

IL is significant to note that an unlimited number of Canadian nurses may enter the U.S. under the NAFTA temporary entry provisions. Visas, petitions, and attestations are not required for entry of Canadian nurses, and there is no maximum length of stay. The same will eventually be true for nurses from Mexico under the NAFTA.

The availability of these existing immigration programs begs the question of why yet another special program would be needed.

Commission on Immigration Reform Recommendation

In its just-published final report, the Commission on Immigration Reform (CIR) made recommendations for the reorganization and consolidation of the plethora of non-immigrant categories and for standardization of non-immigrant admission criteria to make these programs more coherent and streamlined. Creating a special new foreign nurses program runs counter to the CIR's laudable recommendations for much-needed reform of the non-immigrant categories in current law.

Special Legislation Not Appropriate

In this context, a narrowly drawn new program to address a "perceived" local shortage in the nursing profession is inconsistent with the thrust of the CIR non-immigrant program recommendations. Such "single issue" legislation is a major factor in making immigration law so complex and confusing already.

Need for Special Nurses Program Already Rejected

Finally, it should be pointed out that the House of Representatives has recently considered extending the H-1A program and rejected the notion. In the full House Judiciary Committee mark-up of H.R. 2202 on October 24, 1995, Congressman Bryant (R., TN) offered an amendment to

reinstate the H-1A program for an additional six months; the Committee rejected even this short-term extension as unnecessary. A similar amendment was offered on the floor of the House on March 21, 1996, and it was overwhelmingly defeated again. Nothing has occurred since those votes that would warrant a reversal of those actions.

CONCLUSION

In summary, as the Health and Human Services Department's data demonstrate, there is no overall shortage of nurses in this country. The data show that the shortages that exist are confined to certain localities or in certain nursing specialty areas. In our view, the way to overcome these shortages is not through creation of a new foreign nurses program, which some may see as an avenue to obtain nursing staff at lower cost than if domestic nurses were hired. We believe the first step that needs to be taken to address any current local shortage of nurses is to make the unfilled job opportunities more attractive for domestic workers, such as through increased salaries and benefits, improved work schedule flexibility, and enhanced training and educational opportunities. And where these steps fail, the other mechanisms which I have already described as available in existing law can be used to meet staffing needs. There is simply no justification for yet another immigration program for foreign nurses.

TRANSMISSION RECORD

IMMIGRATION AND NATURALIZATION SERVICE
OFFICE OF CONGRESSIONAL RELATIONS
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NUMBER OF PAGES (including cover sheet): <i>2</i>

COMMENT/MESSAGE:

"(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to applications for immigrant visas or for adjustment of status filed after September 30, 1996.

SEC. 343. INCITEMENT OF TERRORIST ACTIVITY AND PROVISION OF FALSE DOCUMENTATION TO TERRORISTS AS A BASIS FOR EXCLUSION FROM THE UNITED STATES.

(a) **IN GENERAL.**—Section 212(a)(3)(B) (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) by redesignating subparagraphs (III) and (IV) of clause (i) as subparagraphs (IV) and (V), respectively;

(2) by inserting after subparagraph (II) of clause (i) the following new subparagraph:

"(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;" and

(3) in clause (iii)(III), by inserting "documentation or" before "identification";

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to incitement regardless of when it occurs.

SEC. 344. CERTIFICATION REQUIREMENTS FOR FOREIGN HEALTH-CARE WORKERS.

Section 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D), and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) **UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.**—Any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is excludable unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

"(i) the alien's education, training, license, and experience—

"(i) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

"(ii) are comparable with that required for an American health-care worker of the same type; and

"(iii) are authentic and, in the case of a license, unencumbered;

"(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

"(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review."

SEC. 344. REMOVAL OF ALIENS FALSELY CLAIMING UNITED STATES CITIZENSHIP.

(a) **EXCLUSION OF ALIENS WHO HAVE FALSELY CLAIMED UNITED STATES CITIZENSHIP.**—Section

212(a)(8)(C) (8 U.S.C. 1182(a)(8)(C)) is amended—

(1) by redesignating clause (ii) as clause (iii), and

(2) by inserting after clause (i) the following new clause:

"(ii) **FALSELY CLAIMING CITIZENSHIP.**—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is excludable."

(b) **DEPORTATION OF ALIENS WHO HAVE FALSELY CLAIMED UNITED STATES CITIZENSHIP.**—Section 241(a)(2) (8 U.S.C. 1251(a)(2)) is amended by adding at the end the following new subparagraph:

"(D) **FALSELY CLAIMING CITIZENSHIP.**—Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any Federal or State law is deportable."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to representations made on or after the date of the enactment of this Act.

SEC. 345. WAIVER OF EXCLUSION AND DEPORTATION GROUND FOR CERTAIN SECTION 274C VIOLATORS.

(a) **EXCLUSION GROUNDS.**—Section 212 (8 U.S.C. 1182) is amended—

(1) by amending subparagraph (F) of subsection (a)(6) to read as follows:

"(F) **SUBJECT OF CIVIL PENALTY.**—

"(i) **IN GENERAL.**—An alien who is the subject of a final order for violation of section 274C is inadmissible.

"(ii) **WAIVER AUTHORIZED.**—For provision authorizing waiver of clause (i), see subsection (d)(12), and

(2) by adding at the end of subsection (d) the following new paragraph:

"(12) The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F)—

"(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 211(b), and

"(B) in the case of an alien seeking admission or adjustment of status under section 201(b)(2)(A) or under section 203(a),

if no previous civil money penalty was imposed against the alien under section 274C and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph."

(b) **GROUND OF DEPORTATION.**—Subparagraph (C) of section 241(a)(2) (8 U.S.C. 1251(a)(2)), before redesignation by section 305(a)(2) of this division, is amended to read as follows:

"(C) **DOCUMENT FRAUD.**—

"(i) **IN GENERAL.**—An alien who is the subject of a final order for violation of section 274C is deportable.

"(ii) **WAIVER AUTHORIZED.**—The Attorney General may waive clause (i) in the case of an alien lawfully admitted for permanent residence if no previous civil money penalty was imposed against the alien under section 274C and the offense was incurred solely to assist, aid, or support the alien's spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause."

SEC. 346. INADMISSIBILITY OF CERTAIN STUDENT VISA ABUSERS.

(a) **IN GENERAL.**—Section 212(a)(6) (8 U.S.C. 1182(a)(6)) is amended by adding at the end the following new subparagraph:

"(G) **STUDENT VISA ABUSERS.**—An alien who obtains the status of a nonimmigrant under sec-

tion 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(f) is excludable until the alien has been outside the United States for a continuous period of 5 years after the date of the violation."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to aliens who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act after the end of the 60-day period beginning on the date of the enactment of this Act, including aliens whose status as such a nonimmigrant is extended after the end of such period.

SEC. 347. REMOVAL OF ALIENS WHO HAVE UNLAWFULLY VOTED.

(a) **EXCLUSION OF ALIENS WHO HAVE UNLAWFULLY VOTED.**—Section 212(a)(10) (8 U.S.C. 1182(a)(10)), as redesignated by section 301(b) of this division, is amended by adding at the end the following new subparagraph:

"(D) **UNLAWFUL VOTERS.**—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is excludable."

(b) **DEPORTATION OF ALIENS WHO HAVE UNLAWFULLY VOTED.**—Section 241(a) (8 U.S.C. 1251(a)), before redesignation by section 305(a)(2) of this division, is amended by adding at the end the following new paragraph:

"(6) **UNLAWFUL VOTERS.**—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to voting occurring before, on, or after the date of the enactment of this Act.

SEC. 348. WAIVERS FOR IMMIGRANTS CONVICTED OF CRIMES.

(a) **IN GENERAL.**—Section 212(h) (8 U.S.C. 1182(h)) is amended by adding at the end the following: "No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective on the date of the enactment of this Act and shall apply in the case of any alien who is in exclusion or deportation proceedings as of such date unless a final administrative order in such proceedings has been entered as of such date.

SEC. 349. WAIVER OF MISREPRESENTATION GROUND OF INADMISSIBILITY FOR CERTAIN ALIENS.

Subsection (i) of section 212 (8 U.S.C. 1182) is amended to read as follows:

"(i)(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

"(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1)."

SEC. 350. OFFENSES OF DOMESTIC VIOLENCE AND STALKING AS GROUND FOR DEPORTATION.

(a) **IN GENERAL.**—Section 241(a)(2) (8 U.S.C. 1251(a)(2)) is amended by adding at the end the following:

LENDER LIABILITY

This continuing resolution also incorporates lender liability provisions which I strongly support and have advocated for 7 years. I introduced the first lender liability bill in 1989 in response to a small business in my district whose efforts to develop property were held up, not because of lack of interest or need, but by bank concerns about environmental liability.

In 1980, the Superfund law was passed after the well-known problems at Love Canal, located in my district, came to light. As part of that law, we recognized that not everyone with a tie to polluted property should be held liable. Lenders, who hold a mortgage or security interest in property, could potentially be construed as "owners or operators," so the 1980 statute carved them out from liability if they didn't take part in the management of the vessel or facility.

However, court cases in 1985, culminating in the well-known Fleet Factors decision of 1990, eroded the certainty of the Superfund exemption. As a result, we witnessed a serious contraction in lending to certain types of borrowers and to certain parts of communities because of bank concerns about potential environmental liability.

After hearings in the House and co-sponsorship by some 280 members of a bill I introduced to clarify secured party and fiduciary liability, the Environmental Protection Agency promulgated a rule for lenders. That rule was overturned on procedural grounds and the clarity provided by the rule was lost.

Today, this bill provides the certainty sought for so long. The legislation effectively codifies elements of the 1992 EPA rule into statutory language to provide clarity and certainty regarding the liability of secured parties and fiduciaries for contaminated properties. These provisions will spur lending to borrowers and encourage the clean-up and redevelopment of hundreds of unused properties across the country. This is done without any expenditure of taxpayer dollars and without any weakening of current EPA liability standards.

The bill does not alter a lender's potential liability, in cases where liability is warranted; it does provide clarity and certainty on how to avoid liability. The bill restores elements of the EPA rule to protect Government agencies, notably the Federal Deposit Insurance Corporation, in the role of receiver or conservator of property. It provides certainty for fiduciaries, such as trustees, executors of estates, universities, pension fund managers and those involved in a trust role for securities. Finally, the bill provides reinforcement for the EPA rule on lender liability under the Solid Waste Disposal Act, a rule that is limited to petroleum underground storage tanks.

The beneficiaries of this bill will be banks, insurers, guarantors, and others in the business of extending or supporting credit and those to whom they will now be able to lend without artificial constraint. But the ultimate beneficiary should be our environment. With lenders and fiduciaries free to undertake their responsibilities, they may be better able to support environmental cleanup of damaged properties. All lenders, at large or small institutions, will have a clear blueprint on how to be involved with properties with environmental damage and to help restore those properties to use. Fiduciaries, who frequently acquire properties in trust after they assume their du-

ties, will be able to make decisions on properties without fear that simply taking real property could trigger personal liability.

I am pleased that this measure, after so many years of effort, has finally been adopted. I must note that it was a pleasure to work with Congressman DOUG BERENUTER and Congresswoman MARGE ROUEMA in the House Banking Committee to produce a version of this legislation not unlike the package that is before us today.

I also want to acknowledge the many industry groups and individual firms who have worked for years to see this resolution attained. I would note in particular the work of the Environmental Lender Liability Coalition with some 100 companies, trade groups, State officials and others in remaining a constant source of support, information and expertise on this important subject.

This small provision will have major ramifications for secured parties, fiduciaries, communities and the environment across the country and, I believe, all for the good.

Ms. MOLINARI. Mr. Speaker, I rise to support and explain an amendment in the Continuing Resolution which clarifies the effective date provision for Rules 413 through 415 of the Federal Rules of Evidence. The immediate enactment of this amendment is necessary to prevent the reversal of the convictions of rapists and child molesters, and the supervision of relevant evidence in pending sex offense prosecutions.

Congress enacted Rules 413 through 415 in the 1994 Crime Act. These rules broaden the admissibility of evidence that the defendant, in a sexual offense case, has committed offenses of the same type on the other occasions. At that time, Congress agreed to a deferred effective date provision when the rules were enacted, to accommodate procedural objections raised by opponents of the reform. Everyone understood that this would defer the application of the rules for at most 3000 days, and that they would be fully in effect after the end of that period. Under this effective date provision, the rules went into effect on July 10, 1995.

Recently, a problem has arisen in the cases where the indictment was filed before July 10, 1995, but the trial in the case has occurred, or will occur, after the date. Some judges have properly interpreted the effective date provision to make the rule apply in all cases in which the relevant proceeding—the trial—commenced on or after the effective date of July 10, 1995, even though the case would be tried after that date. In *United States v. Hollis Earl Roberts*, 88 F.3d 872 (10th Cir. 1996), the Tenth Circuit Court of Appeals recently adopted this erroneously restrictive interpretation of the effective date language for the new rules.

This decision may result in the suppression of relevant similar crimes evidence in pending cases, like *Roberts*, in contravention of our judgment that evidence of this type should be admissible. It may also result in the reversal of convictions of rapists and child molesters that have already occurred in cases indicted before July 10, 1995, where the trial court admitted evidence under Rule 413 or 414.

The following are just a few of the cases that will be affected:

In the *Roberts* case, the defendant is charged with sexually abusive crimes against three women. Several other women are prepared to testify that he raped or at-

tempted to rape them as well. The trial court has already made a preliminary ruling that evidence of the defendant's other crimes will not be admitted independently of the new rules.

In *United States versus David Koe Mann*, a case in New Mexico, the defendant was convicted of molesting an 11-year-old girl, following a trial in which evidence was admitted under the new rules. There was testimony at the trial concerning similar crimes by another 11-year-old victim, and by a woman whom the defendant had sexually abused throughout her childhood and adolescence.

In *United States versus Calvin Dean Paters*, another New Mexico case, the defendant was convicted of a rape offense. He had previously been convicted of two other rapes, and evidence of these earlier crimes was admitted under the new rules.

When Congress enacted the new evidence rules, these were precisely the kinds of cases in which we wanted to be sure that the jury would have the basis for an informed decision, including information about the defendant's history of similar crimes. However, unless Congress acts immediately, it is predictable that important evidence will be suppressed, and the convictions of sexual predators will be overturned. This is an unnecessary injustice because Congress has already made the decision that evidence of this type should be admissible by enacting rules 413 and 414.

While some might argue this amendment presents a constitutional problem, this is not true. The Constitution's rule against ex post facto laws only prohibits criminalizing or increasing the penalty for conduct after it occurs. It does not limit the application of changes in evidence rules in pending cases. The Supreme Court has so held, most recently in *Collins v. Youngblood*, 497 U.S. 37, 43 n.3 (1990).

As a general proposition, changes in evidence rules apply to pending cases, as well as to those indicated after their enactment. The amendment I am proposing is necessary to correct the harmful effects of the Tenth Circuit's misunderstanding of our intent on this point in relation to rules 413 through 415.

It is essential that Congress enact this legislation immediately—before the end of this session—because of the effect of the *Roberts* decision on pending cases. The amendment will ensure that relevant probative evidence will not be suppressed, and that convictions will not be pointlessly reversed. In the cases I have described and others like them, if we do not act, we will have to explain to the present and future victims of these sexual predators why we have handed the keys to the jailhouse door to their victimizers. I do not believe that any member of this chamber wants to be in that position. I strongly urge the enactment of this measure.

Mr. SMITH of Texas. Mr. Speaker, division C shall be considered as the enactment of the conference report (Rept. 104-828) on H.R. 2202, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, with certain modifications to title V of the conference report.

The legislative history of division C shall be considered to include the joint explanatory statement of the committee of conference in Report 104-828, as well as the reports of the Committee on the Judiciary, Agriculture, and Economic and Educational Opportunities of the House of Representatives on H.R. 2202

September 28, 1996

CONGRESSIONAL RECORD—HOUSE

H12105

(Rept. 104-469, parts I, II, and III), and the report of the Committee on the Judiciary of the Senate on S. 1664 (Rept. 104-249).

The following records the disposition in division C of the provisions in title V of the conference report. (The remaining titles of the conference report have not been modified.) Technical and conforming amendments are not noted.

Section 500. Strike.

Section 501. Modify to amend section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) to insert the provisions in section 501(c)(2) of the conference report relating to an exception to ineligibility for benefits for certain battered aliens. Strike all other provisions of section 501.

Section 502. Modify to authorize States to establish pilot programs, pursuant to regulations promulgated by the Attorney General. Under the pilot programs, States may deny drivers' licenses to illegal aliens and otherwise determine the viability, advisability, and cost effectiveness of denying driver's licenses to aliens unlawfully in the United States.

Section 503. Strike.

Section 504. Redesignate as section 503 and modify to include only amendments to section 202 of the Social Security Act, and new effective date. Strike all other provisions.

Section 505. Redesignate as section 504 and modify to amend section 432(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide that the Attorney General shall establish a procedure for persons applying for public benefits to provide proof of citizenship. Strike all other provisions.

Section 506. Strike.

Section 507. Redesignate as section 505.

Section 508. Redesignate as section 506 and modify. Strike subsection (a) and modify requirements in subsection (b) regarding report of the Comptroller General.

Section 509. Redesignate as section 507.

Section 510. Redesignate as section 508. Modify subsection (a) and redesignate as an amendment to section 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Strike subsection (b).

Section 511. Redesignate as section 509. Modify to change references to "eligible aliens" to "qualified aliens" and make other changes in terminology.

Section 531. No change.

Section 532. Strike.

Section 551. Modify to reduce sponsor income requirement to 125 percent of poverty level. Strike subsection (e) of Immigration and Nationality Act (INA) section 213A as added by this section. Make other changes to conform INA section 213A as added by this section to similar provision enacted in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Strike subsection (c).

Section 552. Modify to amend section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to include the provisions in section 552(d)(1) and 552(f). Strike all other provisions.

Section 553. Strike.

Section 554. Redesignate as section 553.

Section 551. No change.

Section 562. Strike.

Section 563. Redesignate as section 562.

Section 564. Redesignate as section 563.

Section 565. Redesignate as section 564.

Section 586. Redesignate as section 585 and modify to strike (4).

Section 571 through 576. Strike and insert sections 221 through 227 of the Senate amendment to H.R. 2202, as modified.

Section 591. No change.

Section 592. Strike.

Section 593. Redesignate as section 592.

Section 594. Redesignate as section 593.

Section 595. Redesignate as section 594.

Ms. MILLENDER-MCDONALD. Mr. Speaker, I'd like to thank the gentleman for yielding. Mr. Speaker, I want to commend the Members of both Houses for the yeoman's job of putting together this omnibus bill and meeting the numerous funding priorities in this tough fiscal environment.

Many of us take for granted and do not recognize the arduous task this body faces each time they are asked to balance fiscal responsibility with our obligation to provide and our duty to govern effectively.

I would also like to thank the Chairman and the members of the committees on Transportation and Infrastructure, Appropriations, and the Subcommittee on Transportation Appropriations for having the vision to provide the funding for the Alameda corridor, to support the \$400 million in direct loans, as requested by the President through the Federal Highway Administration.

While I was disappointed that unforeseen circumstances caused the Alameda corridor project to be removed from a previous funding bill, I am pleased to see that the conflict was resolved and that this most important infrastructure project will be funded this year.

The Alameda Corridor will provide this country with a fast and efficient gateway to Pacific rim trade and will bolster our ability to compete in the burgeoning economic area.

Once completed the Alameda Corridor will generate more than 70,000 local jobs and close to 200,000 new jobs nationwide. The expanded trade, created by the construction of the corridor, through the ports, will create new jobs related to manufacturing, production, and the shipping and trucking of goods.

Today's funding environment requires a strong public-private partnership to finance projects of this nature. With over 75 percent of the cost of the project funded by State and local sources, the Alameda Corridor truly exemplifies the kind of public-private partnership that this Congress has long urged States and localities to pursue for important infrastructure projects.

I would like to thank the members of the California delegation for working together in a bipartisan manner to effectively move the project through this body and to bring to fruition plans and blueprints that were conceived long before many of us were sworn into office.

Let history reflect that the success of the Alameda Corridor is rooted in the bipartisanship that has helped to bring us to this point. I look forward to continuing to work with my colleagues from both parties and with President Clinton to see the Alameda Corridor through to its completion.

I yield back the balance of my time.

Mr. McHUGH. Mr. Speaker, I rise in support of H.R. 3610, the Omnibus Appropriation bill for fiscal year 1997. There are many good provisions in this measure and I am pleased that the Congress and the administration could

work together in producing this necessary spending measure while avoiding a shutdown of government services.

Contained in this measure are specific provisions affecting the structure of the United States Postal Service. Specifically, section 862 of title I provides for the creation of an independent Office of Inspector General, a long needed and important postal reform. This provision is similar in scope to provisions contained in my legislation H.R. 3717, the Postal Reform Act of 1996. H.R. 3717 has been the subject of four legislative hearings this term and a proposal for creating an independent Office of Inspector General received House support during the 103d Congress. Through this omnibus package, this important measure will be seen through to fruition.

The need for an independent Office of Inspector General was highlighted by the General Accounting Office in its recent report to my Subcommittee on the Postal Service. Specifically, the GAO found that the current structure compromised the ability of the Postal Service Inspector General with respect to investigations and audits of the Postal Inspection Service. Current law provides that the Postal Service Inspector General and the Chief Postal Inspector are one and the same. This system is the product of the 1988 amendments to the inspector-general statutes when the Postal Service first fell under the purview of the Inspector General Act.

The General Accounting Office found that

The Inspector General Act of 1978, as amended (IG Act), requires that IGs conduct audits in accordance with generally accepted government auditing standards. These standards require IGs to be organizationally independent of the operations they audit. Because the Postal IG is the Chief Postal Inspector and therefore not organizationally independent of law enforcement operations, the Postal IG can not audit these operations in accordance with the required standards.

Section 662 of title I of H.R. 3610 corrects this systemically flawed structure by mandating an independent Office of Inspector General. The Postal Service currently enjoys revenue fast approaching the \$60 billion mark. It touches each and every one of us 6 days a week and provides universal mail service in order to bind together our geographically diverse country. The Postal Service is far too important for Congress and our constituents to leave the important role of agency watchdog to be compromised by a flawed management structure.

Pursuant to these provisions, the Inspector General will be appointed by the Governors of the Postal Service and may only be removed, for cause, upon the written concurrence of seven of the Governors. Following appointment by the Governors, the bill directs the IG to submit a 5 year strategic plan outlining the goals and staffing requirements for this new office. The transfer of authorities from the Postal Inspection Service to the IG will include all specific IG authorities as contained in the Inspector General Act of 1978. Importantly, the position of Chief Postal Inspector will remain a statutory position within section 204 of title 39. The amendment directs that the Chief Postal Inspector will report to, and be under the supervision of, the Postmaster General. The PMG will be required to notify the Governors and both Houses of Congress should he remove or transfer the Chief Postal Inspector to another position within the Postal Service. Further, these provisions will not require

H10990

Controlled Substance Import and Export Act (21 U.S.C. 889).

Section 234—Senate recedes to House section 234. House recedes to Senate amendment section 156(b). This section instructs the Sentencing Commission to promptly promulgate amendments to the sentencing guidelines to reflect the amendments made in section 10001 and 10002 of the Violent Crime Control and Law Enforcement Act of 1994.

SUBTITLE C—REVIEW OF RECORDS FOR EXCLUSION AND DEPORTATION

Section 241—Senate recedes to House section 241(A). This subsection amends INA section 212(a)(1)(A) by adding a new clause (ii), making inadmissible any alien who seeks admission as an immigrant who does not present evidence of vaccination against mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices. This subsection also provides that this new ground of inadmissibility may be waived if the alien receives the required vaccination, if a civil surgeon or similar official designated in 42 CFR 24.2 certifies that the vaccination would not be medically appropriate, or, if the vaccination would be contrary to the alien's religious or moral beliefs. It is anticipated that this waiver authority would be exercised in appropriate cases to permit admission of aliens where, for example, an alien has been unable to receive a safe dosage or vaccine in the alien's country of nationality, the alien is a child who is required to complete a series of vaccinations over a course of time and has not had a reasonable opportunity to complete that course, or the alien is an active member of a religious faith that prohibits the Attorney General that such vaccinations would contradict the fundamental tenets of such religion.

Section 242—House recedes to Senate section 158. This section amends the terrorist exclusion ground, section 212(a)(3)(B), to make inadmissible an alien who, with the intent to cause death or serious bodily harm, has incited terrorist activity.

Section 243—House section 243 recedes to Senate amendment section 155. This section amends section 212(a)(3) to make inadmissible to the United States any alien seeking admission for employment as a health-care worker unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools or an equivalent independent credentialing organization (approved by the Attorney General in consultation with the Secretary of Health and Human Services) verifying the alien's training, licensing, and experience, as well as a level of competency in English appropriate to the position in which the alien will be employed.

Notwithstanding any international trade agreements or treaties, a "health care worker" subject to pre-screening under this section should include any alien seeking an immigrant or nonimmigrant visa as a nurse, physical therapist, occupational therapist, speech-language pathologist, medical technologist and technician, physician assistant, or other occupations designated in regulations. The Attorney General should not approve a credentialing organization unless the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa. The organization also should demonstrate an ability to evaluate both the foreign credentials appropriate for the profession and the results of examinations for proficiency in English appropriate for the health care of the kind in which the alien will be engaged, and maintain comprehensive and current information

on foreign educational institutions, laboratories of health and foreign health care licensing jurisdictions. In addition, because this provision contemplates that alien health-care workers be screened before they arrive in the United States, such organizations should demonstrate an ability to conduct examinations outside the United States.

Section 244—House recedes to Senate amendment section 216. This section amends INA section 212(a)(9)(C) and 212(a)(9)(D) to create new grounds of inadmissibility and deportability in the case of an alien who falsely represents himself to be a citizen of the United States.

Section 245—Senate recedes to House section 251 with modifications. Subsection (a) of this section amends subparagraph 212(a)(9)(F) and adds a new paragraph 212(a)(12), to provide that an alien who is inadmissible for having been subject to a final order for a violation of section 214C (civil document fraud) may have the ground of inadmissibility waived if the alien is a lawful permanent resident or an alien seeking admission as a family-sponsored or employment-based immigrant, and, if no civil money penalty had been imposed, the final order resulted from an offense that was committed solely to assist an individual who at the time of the document fraud offense was the alien's spouse or child (and not another individual). This statutory language makes clear that the family relationship must exist at the time of the civil document fraud offense, not merely at the time the application for the waiver is filed.

Subsection (b) amends subparagraph 212(a)(9)(C) (prior to redesignation as section 237(a)(5)(C)) to provide a similar waiver for an alien who is deportable due to a section 214C violation. The same limitations on family relationship are to apply. No court shall have jurisdiction to review a decision whether or not to grant a waiver under either of these subsections.

Section 246—House recedes to Senate amendment section 214(b), with modifications. This section amends INA section 212(a)(8) to add a new subparagraph (G), making inadmissible for 5 years any alien who obtains a visa as a nonimmigrant student under section 101(a)(15)(F)(i) and who violates a term or condition of the nonimmigrant status.

Section 247—House recedes to Senate amendment sections 217(b) and 217(c). This section adds new sections 212(a)(10)(F) and 212(a)(11) creating, respectively, new grounds of inadmissibility and deportability in the case of an alien who has voted in an election in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation.

Section 248—Senate recedes to House section 201(A), with modifications. This section amends INA section 212(b) to limit waivers granted under that provision in the case of an immigrant previously admitted to the United States. An alien is ineligible for such a waiver if since admission as a lawful permanent resident, the alien has been convicted of an aggravated felony, or if the alien has not lawfully resided in the United States for a continuous period of 7 years prior to notification to the alien of proceedings to remove the alien from the United States. The managers intend that the provisions governing continuous residence set forth in INA section 101A as enacted by this legislation shall be applied as well for purposes of waivers under INA section 212(b).

Section 249—Senate recedes to House section 201(D), with modifications. This subsection revises INA section 212(i) to provide that the ground of inadmissibility under section 212(a)(6)(C) (fraud and misrepresentation)

may be waived in the case of a spouse, son, or daughter of a United States citizen or a lawful permanent resident, if the refusal of admission would result in extreme hardship to the citizen or lawful resident spouse or parent. No court shall have jurisdiction to review a decision regarding waiver.

Section 250—House recedes to amendment section 218 with modifications. This section amends INA section 212(a)(12) (prior to redesignation as section 237(a)(12)) to provide that an alien convicted of crimes domestic violence, stalking, or child abuse is deportable. The crimes of rape and abuse of a minor are elsewhere classified aggravated felonies under INA 212(a)(9)(C), thus making aliens convicted those crimes deportable and inadmissible. Most forms of immigration benefits or waivers from deportation.

Section 251—This section amends INA sections 212(a)(21) and 212(a)(1)(C)(ii), regarding waivers, respectively, of grounds of deportability in the case of an alien who is engaged in alien smuggling if the alien is engaged in alien smuggling solely to aid a family member. The amendment clarifies that the family relationship must exist at the time of the act of smuggling. Thus, an alien does not qualify for the waiver if the alien's spouse or parent-child relationship is established after the offense, but only if the alien is engaged in the act of smuggling at the time of application for the waiver. The amendment specifically disapproves of and is intended to override the recent contrary holding of the 1st Circuit in *Immigration Appeal*, 100 F.3d 1000, 1001 (1st Cir. 1997).

Section 252—Senate recedes to House section 201(e), with modifications to ground of inadmissibility applicable to an alien who renounces citizenship after enactment.

Section 253—This section identifies sections of this Act that make grounds of inadmissibility or deportability

SUBTITLE D—REMOVAL OF A

Section 254—Senate recedes to House section 201, with modifications. This section amends INA section 694, as enacted by section 401 of AEDPA (Public Law 104-132), to provide, among other things, that the deportation procedures employed by the Attorney General in the case of an alien terrorist may be used against the alien if the alien is found to be a terrorist without disclosing information. In such circumstances, an attorney shall be appointed for the alien in addition to the attorney who has been appointed to represent the alien in the proceedings. The special attorney is entitled to review the classified information that is not disclosed or summarized to the alien, but may not disclose that to any other person, including to the alien.

Section 255—Senate recedes to House section 201, with modifications. This section amends INA section 212(a)(9)(C)(iv) inserted by section 411(i)(C) of AEDPA to provide that when a member of an organization which engages in or actively supports terrorism is removed from the United States.

Section 256—Senate recedes to House section 201, with modifications. This section amends section 212(b), as added by 302(a) of AEDPA, to clarify that the judicial review of a designation of an alien as a terrorist organization.

Section 257—Senate recedes to House section 202. This section clarifies that under INA section 244(e)(3) (voluntary departure) is not available to an alien in inadmissible under Title V of the INA, as AEDPA.

Section 258—This section provides effective date for the provisions in title shall be effective as if

"(3) subsection (a)(1)(A)(ii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to applications for immigrant visas or for adjustment of status filed after September 30, 1996.

SEC. 342. INCITEMENT OF TERRORIST ACTIVITY AND PROVISION OF FALSE DOCUMENTATION TO TERRORISTS AS A BASIS FOR EXCLUSION FROM THE UNITED STATES.

(a) **IN GENERAL.**—Section 212(a)(3)(B) (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) by redesignating subclauses (III) and (IV) of clause (I) as subclauses (IV) and (V), respectively;

(2) by inserting after subclause (II) of clause (I) the following new subclause:

"(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;" and

(3) in clause (III)(III), by inserting "documentation or" before "identification";

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to incitement regardless of when it occurs.

SEC. 343. CERTIFICATION REQUIREMENTS FOR FOREIGN HEALTH-CARE WORKERS.

Section 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D), and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) **UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.**—Any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is excludable unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

"(i) the alien's education, training, license, and experience—

"(i) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

"(ii) are comparable with that required for an American health-care worker of the same type; and

"(iii) are authentic and, in the case of a license, unencumbered;

"(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

"(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review."

SEC. 344. REMOVAL OF ALIENS FALSELY CLAIMING UNITED STATES CITIZENSHIP.

(a) **EXCLUSION OF ALIENS WHO HAVE FALSELY CLAIMED UNITED STATES CITIZENSHIP.**—Section

212(d)(6)(C) (8 U.S.C. 1182(a)(6)(C)) is amended—

(1) by redesignating clause (ii) as clause (iii), and

(2) by inserting after clause (i) the following new clause:

"(ii) **FALSELY CLAIMING CITIZENSHIP.**—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is excludable."

(b) **DEPORTATION OF ALIENS WHO HAVE FALSELY CLAIMED UNITED STATES CITIZENSHIP.**—Section 241(a)(3) (8 U.S.C. 1251(a)(3)) is amended by adding at the end the following new subparagraph:

"(D) **FALSELY CLAIMING CITIZENSHIP.**—Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any Federal or State law is deportable."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to representations made on or after the date of the enactment of this Act.

SEC. 345. WAIVER OF EXCLUSION AND DEPORTATION GROUND FOR CERTAIN SECTION 274C VIOLATORS.

(a) **EXCLUSION GROUNDS.**—Section 212 (8 U.S.C. 1182) is amended—

(1) by amending subparagraph (F) of subsection (a)(6) to read as follows:

"(F) **SUBJECT OF CIVIL PENALTY.**—

"(i) **IN GENERAL.**—An alien who is the subject of a final order for violation of section 274C is inadmissible.

"(ii) **WAIVER AUTHORIZED.**—For provision authorizing waiver of clause (i), see subsection (d)(12)."

(2) by adding at the end of subsection (d) the following new paragraph:

"(12) The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F)—

"(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 211(b), and

"(B) in the case of an alien seeking admission or adjustment of status under section 201(b)(2)(A) or under section 203(a),

if no previous civil money penalty was imposed against the alien under section 274C and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph."

(b) **GROUND OF DEPORTATION.**—Subparagraph (C) of section 241(a)(3) (8 U.S.C. 1251(a)(3)), before redesignation by section 305(a)(2) of this division, is amended to read as follows:

"(C) **DOCUMENT FRAUD.**—

"(i) **IN GENERAL.**—An alien who is the subject of a final order for violation of section 274C is deportable.

"(ii) **WAIVER AUTHORIZED.**—The Attorney General may waive clause (i) in the case of an alien lawfully admitted for permanent residence if no previous civil money penalty was imposed against the alien under section 274C and the offense was incurred solely to assist, aid, or support the alien's spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause."

SEC. 346. INADMISSIBILITY OF CERTAIN STUDENT VISA ABUSERS.

(a) **IN GENERAL.**—Section 212(a)(6) (8 U.S.C. 1182(a)(6)) is amended by adding at the end the following new subparagraph:

"(G) **STUDENT VISA ABUSERS.**—An alien who obtains the status of a nonimmigrant under sec-

tion 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(i) is excludable until the alien has been outside the United States for a continuous period of 5 years after the date of the violation."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to aliens who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act after the end of the 60-day period beginning on the date of the enactment of this Act, including aliens whose status as such a nonimmigrant is extended after the end of such period.

SEC. 347. REMOVAL OF ALIENS WHO HAVE UNLAWFULLY VOTED.

(a) **EXCLUSION OF ALIENS WHO HAVE UNLAWFULLY VOTED.**—Section 212(a)(10) (8 U.S.C. 1182(a)(10)), as redesignated by section 301(b) of this division, is amended by adding at the end the following new subparagraph:

"(D) **UNLAWFUL VOTERS.**—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is excludable."

(b) **DEPORTATION OF ALIENS WHO HAVE UNLAWFULLY VOTED.**—Section 241(a) (8 U.S.C. 1251(a)), before redesignation by section 305(a)(2) of this division, is amended by adding at the end the following new paragraph:

"(6) **UNLAWFUL VOTERS.**—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to voting occurring before, on, or after the date of the enactment of this Act.

SEC. 348. WAIVERS FOR IMMIGRANTS CONVICTED OF CRIMES.

(a) **IN GENERAL.**—Section 212(h) (8 U.S.C. 1182(h)) is amended by adding at the end the following: "No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective on the date of the enactment of this Act and shall apply in the case of any alien who is in exclusion or deportation proceedings as of such date unless a final administrative order in such proceedings has been entered as of such date.

SEC. 349. WAIVER OF MISREPRESENTATION GROUND OF INADMISSIBILITY FOR CERTAIN ALIENS.

Subsection (i) of section 212 (8 U.S.C. 1182) is amended to read as follows:

"(i)(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

"(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1)."

SEC. 350. OFFENSES OF DOMESTIC VIOLENCE AND STALKING AS GROUND FOR DEPORTATION.

(a) **IN GENERAL.**—Section 241(a)(2) (8 U.S.C. 1251(a)(2)) is amended by adding at the end the following:

LENDER LIABILITY

This continuing resolution also incorporates lender liability provisions which I strongly support and have advocated for 7 years. I introduced the first lender liability bill in 1989 in response to a small business in my district whose efforts to develop property were held up; not because of lack of interest or need, but by bank concerns about environmental liability.

In 1980, the Superfund law was passed after the well-known problems at Love Canal, located in my district, came to light. As part of that law, we recognized that not everyone with a tie to polluted property should be held liable. Lenders, who hold a mortgage or security interest in property, could potentially be construed as "owners or operators," so the 1980 statute carved them out from liability if they didn't take part in the management of the vessel or facility.

However, court cases in 1985, culminating in the well-known *Fleet Factors* decision of 1980, eroded the certainty of the Superfund exemption. As a result, we witnessed a serious contraction in lending to certain types of borrowers and to certain parts of communities because of bank concerns about potential environmental liability.

After hearings in the House and co-sponsorship by some 290 members of a bill I introduced to clarify secured party and fiduciary liability, the Environmental Protection Agency promulgated a rule for lenders. That rule was overturned on procedural grounds and the clarity provided by the rule was lost.

Today, this bill provides the certainty sought for so long. The legislation effectively codifies elements of the 1992 EPA rule into statutory language to provide clarity and certainty regarding the liability of secured parties and fiduciaries for contaminated properties. These provisions will spur lending to borrowers and encourage the clean-up and redevelopment of hundreds of unused properties across the country. This is done without any expenditure of taxpayer dollars and without any weakening of current EPA liability standards.

The bill does not alter a lender's potential liability, in cases where liability is warranted; it does provide clarity and certainty on how to avoid liability. The bill restores elements of the EPA rule to protect Government agencies, notably the Federal Deposit Insurance Corporation, in the role of receiver or conservator of property. It provides certainty for fiduciaries, such as trustees, executors of estates, universities, pension fund managers and those involved in a trust role for securities. Finally, the bill provides reinforcement for the EPA rule on lender liability under the Solid Waste Disposal Act, a rule that is limited to petroleum underground storage tanks.

The beneficiaries of this bill will be banks, insurers, guarantors, and others in the business of extending or supporting credit and those to whom they will now be able to lend without artificial constraint. But the ultimate beneficiary should be our environment. With lenders and fiduciaries free to undertake their responsibilities, they may be better able to support environmental cleanup of damaged properties. All lenders, at large or small institutions, will have a clear blueprint on how to be involved with properties with environmental damage and to help restore these properties to use. Fiduciaries, who frequently acquire properties in trust after they assume their du-

ties, will be able to make decisions on properties without fear that simply taking real property could trigger personal liability.

I am pleased that this measure, after so many years of effort, has finally been adopted. I must note that it was a pleasure to work with Congressman DOUG BERENUTER and Congresswoman MARGE ROUKEMA in the House Banking Committee to produce a version of this legislation not unlike the package that is before us today.

I also want to acknowledge the many industry groups and individual firms who have worked for years to see this resolution attained. I would note in particular the work of the Environmental Lender Liability Coalition with some 100 companies, trade groups, State officials and others in remaining a constant source of support, information and expertise on this important subject.

This small provision will have major ramifications for secured parties, fiduciaries, communities and the environment across the country and, I believe, all for the good.

Ms. MOLINARI. Mr. Speaker, I rise to support and explain an amendment in the Continuing Resolution which clarifies the effective date provision for Rules 413 through 415 of the Federal Rules of Evidence. The immediate enactment of this amendment is necessary to prevent the reversal of the convictions of rapists and child molesters, and the supervision of relevant evidence in pending sex offense prosecutions.

Congress enacted Rules 413 through 415 in the 1994 Crime Act. These rules broaden the admissibility of evidence that the defendant, in a sexual offense case, has committed offenses of the same type on the other occasions. At that time, Congress agreed to a deferred effective date provision when the rules were enacted, to accommodate procedural objections raised by opponents of the reform. Everyone understood that this would defer the application of the rules for at most 3000 days, and that they would be fully in effect after the end of that period. Under this effective date provision, the rules went into effect on July 10, 1995.

Recently, a problem has arisen in the cases where the indictment was filed before July 10, 1995, but the trial in the case has occurred, or will occur, after the date. Some judges have properly interpreted the effective date provision to make the rule apply in all cases in which the relevant proceeding—the trial—commenced on or after the effective date of July 10, 1995, even though the case would be tried after that date. In *United States v. Hollis Earl Roberts*, 88 F.3d 872 (10th Cir. 1996), the Tenth Circuit Court of Appeals recently adopted this erroneously restrictive interpretation of the effective date language for the new rules.

This decision may result in the suppression of relevant similar crimes evidence in pending cases, like *Roberts*. In contravention of our judgment that evidence of this type should be admissible. It may also result in the reversal of convictions of rapists and child molesters that have already occurred in cases indicted before July 10, 1995, where the trial court admitted evidence under Rule 413 or 414.

The following are just a few of the cases that will be affected:

In the *Roberts* case, the defendant is charged with sexually abusive crimes against three women. Several other women are prepared to testify that he raped or at-

tempted to rape them as well. The trial court has already made a preliminary ruling that evidence of the defendant's other crimes will not be admitted independently of the new rules.

In *United States versus David Kee Mann*, a case in New Mexico, the defendant was convicted of molesting an 11-year-old girl, following a trial in which evidence was admitted under the new rules. There was testimony at the trial concerning similar crimes by another 11-year-old victim, and by a woman whom the defendant had sexually abused throughout her childhood and adolescence.

In *United States versus Calvin Dean Peters*, another New Mexico case, the defendant was convicted of a rape offense. He had previously been convicted of two other rapes, and evidence of these earlier crimes was admitted under the new rules.

When Congress enacted the new evidence rules, these were precisely the kinds of cases in which we wanted to be sure that the jury would have the basis for an informed decision. Including information about the defendant's history of similar crimes. However, unless Congress acts immediately, it is predictable that important evidence will be suppressed, and the convictions of sexual predators will be overturned. This is an unnecessary injustice because Congress has already made the decision that evidence of this type should be admissible by enacting rules 413 and 414.

While some might argue this amendment presents a constitutional problem, this is not true. The Constitution's rule against *ex post facto* laws only prohibits criminalizing or increasing the penalty for conduct after it occurs. It does not limit the application of changes in evidence rules in pending cases. The Supreme Court has so held, most recently in *Collins v. Youngblood*, 497 U.S. 37, 43 n.3 (1990).

As a general proposition, changes in evidence rules apply to pending cases, as well as to those indicated after their enactment. The amendment I am proposing is necessary to correct the harmful effects of the Tenth Circuit's misunderstanding of our intent on this point in relation to rules 413 through 415.

It is essential that Congress enact this legislation immediately—before the end of this session—because of the effect of the *Roberts* decision on pending cases. The amendment will ensure that relevant, probative evidence will not be suppressed, and that convictions will not be pointlessly reversed. In the cases I have described and others like them. If we do not act, we will have to explain to the present and future victims of these sexual predators why we have handed the keys to the jailhouse door to their victimizers. I do not believe that any member of this chamber wants to be in that position. I strongly urge the enactment of this measure.

Mr. SMITH of Texas. Mr. Speaker, division C shall be considered as the enactment of the conference report (Rept. 104-828) on H.R. 2202, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, with certain modifications to title V of the conference report.

The legislative history of division C shall be considered to include the joint explanatory statement of the committee of conference in Report 104-828, as well as the reports of the Committee on the Judiciary, Agriculture, and Economic and Educational Opportunities of the House of Representatives on H.R. 2202.

September 28, 1996

CONGRESSIONAL RECORD — HOUSE

H12105

(Rept. 104-469, parts I, II, and III), and the report of the Committee on the Judiciary of the Senate on S. 1664 (Rept. 104-249).

The following records the disposition in division C of the provisions in title V of the conference report. (The remaining titles of the conference report have not been modified.) Technical and conforming amendments are not noted.

Section 500: Strike.

Section 501: Modify to amend section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) to insert the provisions in section 501(c)(2) of the conference report relating to an exception to ineligibility for benefits for certain battered aliens. Strike all other provisions of section 601.

Section 502: Modify to authorize States to establish pilot programs, pursuant to regulations promulgated by the Attorney General. Under the pilot programs, States may deny drivers' licenses to illegal aliens and otherwise determine the viability, advisability, and cost effectiveness of denying driver's licenses to aliens unlawfully in the United States.

Section 503: Strike.

Section 504: Redesignate as section 503 and modify to include only amendments to section 202 of the Social Security Act, and new effective date. Strike all other provisions.

Section 505: Redesignate as section 504 and modify to amend section 432(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide that the Attorney General shall establish a procedure for persons applying for public benefits to provide proof of citizenship. Strike all other provisions.

Section 506: Strike.

Section 507: Redesignate as section 506.

Section 508: Redesignate as section 506 and modify. Strike subsection (a) and modify requirements in subsection (b) regarding report of the Comptroller General.

Section 509: Redesignate as section 507.

Section 510: Redesignate as section 508. Modify subsection (a) and redesignate as an amendment to section 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Strike subsection (b).

Section 511: Redesignate as section 509. Modify to change references to "eligible aliens" to "qualified aliens" and make other changes in terminology.

Section 531: No change.

Section 532: Strike.

Section 551: Modify to reduce sponsor income requirement to 125 percent of poverty level. Strike subsection (e) of Immigration and Nationality Act (INA) section 213A as added by this section. Make other changes to conform INA section 213A as added by this section to similar provision enacted in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Strike subsection (c).

Section 552: Modify to amend section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to include the provisions in section 552(d)(1) and 552(f). Strike all other provisions.

Section 553: Strike.

Section 554: Redesignate as section 553.

Section 551: No change.

Section 552: Strike.

Section 553: Redesignate as section 552.

Section 554: Redesignate as section 553.

Section 565: Redesignate as section 564.

Section 586: Redesignate as section 585 and modify to strike (4).

Section 571 through 576: Strike and Insert sections 221 through 227 of the Senate amendment to H.R. 2202, as modified.

Section 591: No change.

Section 592: Strike.

Section 593: Redesignate as section 592.

Section 594: Redesignate as section 593.

Section 596: Redesignate as section 594.

Ms. MILLENDER-MCDONALD. Mr. Speaker, I'd like to thank the gentleman for yielding. Mr. Speaker, I want to commend the Members of both Houses for the yeoman's job of putting together this omnibus bill and meeting the numerous funding priorities in this tough fiscal environment.

Many of us take for granted and do not recognize the arduous task this body faces each time they are asked to balance fiscal responsibility with our obligation to provide and our duty to govern effectively.

I would also like to thank the Chairman and the members of the committees on Transportation and Infrastructure, Appropriations, and the Subcommittee on Transportation Appropriations for having the vision to provide the funding for the Alameda corridor, to support the \$400 million in direct loans, as requested by the President through the Federal Highway Administration.

While I was disappointed that unforeseen circumstances caused the Alameda corridor project to be removed from a previous funding bill, I am pleased to see that the conflict was resolved and that this most important infrastructure project will be funded this year.

The Alameda Corridor will provide this country with a fast and efficient gateway to Pacific rim trade and will bolster our ability to compete in the burgeoning economic area.

Once completed the Alameda Corridor will generate more than 70,000 local jobs and close to 200,000 new jobs nationwide. The expanded trade, created by the construction of the corridor, through the ports, will create new jobs related to manufacturing, production, and the shipping and trucking of goods.

Today's funding environment requires a strong public-private partnership to finance projects of this nature. With over 75 percent of the cost of the project funded by State and local sources, the Alameda Corridor truly exemplifies the kind of public-private partnership that this Congress has long urged States and localities to pursue for important infrastructure projects.

I would like to thank the members of the California delegation for working together in a bipartisan manner to effectively move the project through this body and to bring to fruition plans and blueprints that were conceived long before many of us were sworn into office.

Let history reflect that the success of the Alameda Corridor is rooted in the bipartisanship that has helped to bring us to this point. I look forward to continuing to work with my colleagues from both parties and with President Clinton to see the Alameda Corridor through to its completion.

I yield back the balance of my time.

Mr. McHUGH. Mr. Speaker, I rise in support of H.R. 3610, the Omnibus Appropriation bill for fiscal year 1997. There are many good provisions in this measure and I am pleased that the Congress and the administration could

work together in producing this necessary spending measure while avoiding a shutdown of government services.

Contained in this measure are specific provisions affecting the structure of the United States Postal Service. Specifically, section 662 of title I provides for the creation of an independent Office of Inspector General, a long needed and important postal reform. This provision is similar in scope to provisions contained in my legislation H.R. 3717, the Postal Reform Act of 1996. H.R. 3717 has been the subject of four legislative hearings this term and a proposal for creating an independent Office of Inspector General received House support during the 103d Congress. Through this omnibus package, this important measure will be seen through to fruition.

The need for an independent Office of Inspector General was highlighted by the General Accounting Office in its recent report to my Subcommittee on the Postal Service. Specifically, the GAO found that the current structure compromised the ability of the Postal Service Inspector General with respect to investigations and audits of the Postal Inspection Service. Current law provides that the Postal Service Inspector General and the Chief Postal Inspector are one and the same. This system is the product of the 1988 amendments to the inspector general statutes when the Postal Service first fell under the purview of the Inspector General Act.

The General Accounting Office found that:

The Inspector General Act of 1978, as amended (IG Act), requires that IGs conduct audits in accordance with generally accepted government auditing standards. These standards require IGs to be organizationally independent of the operations they audit. Because the Postal IG is the Chief Postal Inspector and therefore not organizationally independent of law enforcement operations, the Postal IG can not audit these operations in accordance with the required standards.

Section 662 of title I of H.R. 3610 corrects this systemically flawed structure by mandating an independent Office of Inspector General. The Postal Service currently enjoys revenue fast approaching the \$60 billion mark. It touches each and every one of us 6 days a week and provides universal mail service in order to bind together our geographically diverse country. The Postal Service is far too important for Congress and our constituents to leave the important role of agency watchdog to be compromised by a flawed management structure.

Pursuant to these provisions, the Inspector General will be appointed by the Governors of the Postal Service and may only be removed, for cause, upon the written concurrence of seven of the Governors. Following appointment by the Governors, the bill directs the IG to submit a 5 year strategic plan outlining the goals and staffing requirements for this new office. The transfer of authorities from the Postal Inspection Service to the IG will include all specific IG authorities as contained in the Inspector General Act of 1978. Importantly, the position of Chief Postal Inspector will remain a statutory position within section 204 of title 39. The amendment directs that the Chief Postal Inspector will report to, and be under the supervision of, the Postmaster General. The PMG will be required to notify the Governors and both Houses of Congress should he remove or transfer the Chief Postal Inspector to another position within the Postal Service. Further, these provisions will not require

H10890

CONGRESSIONAL RECORD—HOUSE

September 24, 1999

Controlled Substance Import and Export Act of 1994 (H.R. 399).

Section 334—Senate recedes to House section 331. House recedes to Senate amendment section 156(b). This section instructs the Sentencing Commission to promulgate amendments to the sentencing guidelines to reflect the amendments made in section 1801 and 1802 of the Violent Crime Control and Law Enforcement Act of 1994.

SUBTITLE C—REVIEW OF RECORDS FOR EXCLUSION AND DEPORTATION

Section 341—Senate recedes to House section 341(f). This subsection amends INA section 212(a)(1)(A) by adding a new clause (ii), making inadmissible any alien who seeks admission as an immigrant who does not present evidence of vaccination against mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices. This subsection also provides that this new ground of inadmissibility may be waived if the alien receives the required vaccination, if a civil surgeon or similar official designated in 42 CFR 24.2 certifies that the vaccination would not be medically appropriate, or, if the vaccination would be contrary to the alien's religious or moral beliefs. It is anticipated that this waiver authority would be exercised in appropriate cases to permit admission of aliens where, for example, an alien has been unable to receive a safe dosage or vaccine in the alien's country of nationality, the alien is a child who is required to complete a series of vaccinations over a course of time and has not had a reasonable opportunity to complete that course, or the alien is an active member of a religious faith that prohibits the Attorney General that such vaccinations would contradict the fundamental tenets of such religion.

Section 342—House recedes to Senate section 158. This section amends the terrorist exclusion ground, section 212(a)(3)(B), to make inadmissible as an alien who, with the intent to cause death or serious bodily harm, has incited terrorist activity.

Section 343—House section 341 recedes to Senate amendment section 156. This section amends section 212(a)(3) to make inadmissible to the United States any alien seeking admission for employment as a health-care worker unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools or an equivalent independent credentialing organization (approved by the Attorney General in consultation with the Secretary of Health and Human Services) verifying the alien's training, licensing, and experience, as well as a level of competency in English appropriate to the position in which the alien will be employed.

Notwithstanding any international trade agreements or treaties, a "health care worker" subject to processing under this section should include any alien seeking an immigrant or nonimmigrant visa as a nurse, physical therapist, occupational therapist, speech-language pathologist, medical technologist and technician, physician assistant, or other occupations designated in regulations. The Attorney General should not approve a credentialing organization unless the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa. The organization also should demonstrate an ability to evaluate both the foreign credentials appropriate for the profession and the results of examinations for proficiency in English appropriate for the health care of the kind in which the alien will be engaged, and maintain comprehensive and current information

on foreign educational institutions, institutions of health and foreign health care licensing jurisdictions. In addition, because this provision contemplates that alien health-care workers be screened before they arrive in the United States, such organizations should demonstrate an ability to conduct examinations outside the United States.

Section 344—House recedes to Senate amendment section 216. This section amends INA section 212(a)(5)(C) and 212(a)(5) to create new grounds of inadmissibility and deportability in the case of an alien who falsely represents himself to be a citizen of the United States.

Section 345—Senate recedes to House section 343, with modifications. Subsection (a) of this section amends subparagraph 212(a)(5)(F) and adds a new paragraph 212(a)(5)(G), to provide that an alien who is inadmissible for having been subject to a final order for a violation of section 214C (civil document fraud) may have the ground of inadmissibility waived if the alien is a lawful permanent resident or an alien seeking admission as a family-sponsored or employment-based immigrant, and, if no civil money penalty had been imposed, the final order resulted from an offense that was committed solely to assist an individual who at the time of the document fraud offense was the alien's spouse or child (and not another individual). This statutory language makes clear that the family relationship must exist at the time of the civil document fraud offense, not merely at the time the application for the waiver is filed.

Subsection (b) amends subparagraph 212(a)(5)(C) (prior to redesignation as section 212(a)(5)(C)) to provide a similar waiver for an alien who is deportable due to a section 214C violation. The same limitations on family relationship are to apply. No court shall have jurisdiction to review a decision whether or not to grant a waiver under either of these subsections.

Section 346—House recedes to Senate amendment section 216(b), with modifications. This section amends INA section 212(a)(5) to add a new subparagraph (G), making inadmissible for 5 years any alien who obtains a visa as a nonimmigrant student under section 101(a)(15)(F)(i) and who violates a term or condition of the nonimmigrant status.

Section 347—House recedes to Senate amendment sections 217(b) and 217(a). This section adds new sections 212(a)(10)(F) and 212(a)(7) creating, respectively, new grounds of inadmissibility and deportability in the case of an alien who has voted in an election in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation.

Section 348—Senate recedes to House section 341(h), with modifications. This section amends INA section 212(h) to limit waivers granted under that provision in the case of an immigrant previously admitted to the United States. An alien is ineligible for such a waiver if since admission as a lawful permanent resident, the alien has been convicted of an aggravated felony, or if the alien has not lawfully resided in the United States for a continuous period of 7 years prior to notification to the alien of proceedings to remove the alien from the United States. The managers intend that the provisions governing continuous residence set forth in INA section 210A as enacted by this legislation shall be applied as well for purposes of waivers under INA section 212(h).

Section 349—Senate recedes to House section 341(d), with modifications. This subsection revises INA section 212(i) to provide that the ground of inadmissibility under section 212(a)(6)(C) (fraud and misrepresenta-

tion) may be waived in the case of a spouse, or daughter of a United States citizen, or of a lawful permanent resident, if the refusal of admission would result in loss of citizenship or lawful residence to the citizen or parent. No court shall have jurisdiction to review a decision regarding such waiver.

Section 350—House recedes to amendment section 218 with modification. This section amends INA section 218 (prior to redesignation as section 217(a)(10)) to provide that an alien convicted of crimes involving domestic violence, stalking, or child abuse is deportable. The crimes of rape and abuse of a minor are elsewhere classified aggravated felonies under INA section 212(a)(5), thus making aliens convicted of those crimes deportable and ineligible for most forms of immigration benefits or waivers from deportation.

Section 351—This section amends INA sections 212(a)(1) and 212(a)(1)(C)(ii), regarding waivers, respectively, of ground of inadmissibility deportability in the case of an alien who engaged in alien smuggling if the alien engaged in alien smuggling to aid certain family members. The amendment clarifies that the family relationship exists at the time of the act of smuggling. Thus, an alien does not qualify for the waiver if the alien's spouse or child relationship is established after the offense, but is eligible for application for the waiver. The amendment specifically disapproves of and overrides the recent contrary holding of the 1st Circuit in *Immigration Appeals*, 150 F.3d 1001, 1002 (1st Cir. 1999).

Section 352—Senate recedes to House section 341(e), with modification to ground of inadmissibility applicable to who renounces citizenship after enactment.

Section 353—This section identifies sections of this Act that make grounds of inadmissibility or deportability.

Section 354—Senate recedes to House section 341, with modifications. This section amends INA section 504, as enacted by section 401 of AEDPA (Public Law 104-132), to provide, among other things, that the deportation procedures employed in the case of an alien terrorist may proceed even if no summary of classified evidence is being used against the alien is presented to the alien without disclosure of information. In such circumstances, an attorney shall be appointed for the alien in addition to the attorney who has been appointed to represent the alien in the proceedings. The special attorney is entitled to review the classified information that is not disclosed or summarized to the alien, but may not disclose that information to any other person, including to the alien.

Section 355—Senate recedes to House section 341, with modifications. This section amends INA section 212(a)(5)(1)(IV) inserted by section 411(d)(C) of AEDPA to provide that when a member of an organization which engages in or actively supports terrorism is inadmissible to the U.S.

Section 356—Senate recedes to House section 341, with modifications. This section amends section 118(b), as added by section 402(a) of AEDPA, to clarify that judicial review of a designation of an organization as a terrorist organization.

Section 357—Senate recedes to House section 341. This section clarifies that under INA section 212(a)(5) (voluntarily) is not available to an alien in proceedings under Title V of the INA, as amended by AEDPA.

Section 358—This section provides effective date for the provisions in title shall be effective as if



Ingrid M. Schroeder
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Regulation, Law & Economics

Health Care

Administration Officials Disagree With Bill To Allow More Temporary Foreign Nurses

Clinton administration officials testified Nov. 5 that there is no need to establish a temporary foreign nurses program under the Immigration and Nationality Act to address shortages of nurses in particular communities.

While acknowledging that there are a "few areas" in which nursing shortages persist, Neil Sampson of the Department of Health and Human Services told the House Judiciary Subcommittee on Immigration and Claims that efforts are under way to address "distribution problems" associated with the nursing profession. Sampson, the Health Resources and Services Administration's acting associate administrator for health professions, said incentives such as student loan programs and training preferences in

underserved areas are more likely to improve shortages than a new foreign worker program.

John Fraser, acting administrator of the Labor Department's Wage and Hour Division, told the panel that existing immigration law offers four avenues for foreign nurses to work in the United States. These programs, he said, "raise very substantial questions" about any need for a new program to address nursing shortages.

Help for Underserved Communities

The focus of the hearing was the Health Professional Shortage Area Nursing Relief Act (HR 2759) recently introduced by Rep. Bobby L. Rush (D-Ill). Rush conceded that the issue of immigrant nurses is a "touchy one" that he would prefer to avoid, but told the panel there is a need to help the "pockets of areas" that are experiencing a scarcity of health professionals.

Confessing that the goal of his legislation is not "totally altruistic," Rush related the experience of St. Bernard Hospital in Englewood, Ill., a facility in his district that had relied on the now-expired H1-A visa program to hire temporary foreign nurses to address labor shortages. Since the program effectively expired Sept. 30, Rush said, there is nothing in place to help hospitals such as St. Bernard retain qualified nurses.

Rush said his bill simply aims to close the gap created by the expiration of the H1-A program, setting specific criteria that hospitals must meet in order to hire nurses under the new program. Hospitals must be located in a health professional shortage area, have at least 190 acute care beds, have a Medicare population of 35 percent, and have a Medicaid population of at least 28 percent, he explained.

To ensure that the bill does not harm American nurses, Rush said he is proposing language that would cap at 500 the number of new visas that could be issued annually; require employers to attest that hiring foreign nurses will not adversely affect wages and working conditions of registered nurses; authorize the secretary of labor to oversee specific processing requirements; and provide for penalties in cases of noncompliance. The program would sunset in five years.

No Justification for New Program

While the Clinton administration has not taken an official position on Rush's bill, Sampson said its view is that there is no justification for extending the special visa category established under the five-year, H-1A pilot program. He cited the most recent national survey of registered nurses showing that the total number of employed RNs increased 14 percent between 1992 and 1996, while the number of hospitals increased only 3 percent.

The survey also showed that there were 110,000 RNs employed or residing in the United States in 1996 who received their basic nursing education in a foreign country, up from an estimated 73,000 before the H-1A program was put in place, Sampson said. This is a 51 percent increase in the number of foreign-trained nurses compared with a 26 percent increase in all RNs during the same period.

Fraser told the subcommittee that the specialty or locality shortages of nurses can be addressed by the following four programs currently in place: the permanent employment-based immigration program, the North American Free Trade Agreement's temporary entry provisions covering nurses from Mexico or Canada, the H-1B program allowing temporary foreign workers to fill jobs requiring a bachelor's degree or the equivalent, and the H-2B program allowing temporary foreign workers to fill jobs less than one year in duration.

These existing immigration programs raise the question of why another special program would be necessary, Fraser said, warning that nonimmigrant programs "tend to be feeders" for permanent immigrants. The way to overcome shortages is to make unfilled jobs more attractive through such steps as increased salaries and benefits, improved work schedule flexibility, and enhanced training and

educational opportunities, he advised.

Rep. Lamar Smith, chairman of the subcommittee and author of the House version of last year's bill restricting illegal immigration, observed that HR 2759 has been "drafted very narrowly" to help hospitals with special difficulties, such as serving mostly poor patients in crime-ridden neighborhoods. While appearing supportive of the proposal, Smith suggested some changes would be necessary to, for instance, ensure that those obtaining visas under the program do not end up remaining in the United States permanently.

An official with the American Nurses Association said her group has decided not to oppose the legislation as long as it does not broaden use of its visas or weaken labor protections. The proposal currently contains prescreening requirements to ensure a basic level of competency, is narrowly constructed to apply only to hospital facilities that are most likely to have difficulty recruiting registered nurses, and contains protections for both domestic and foreign registered nurses, said Cheryl Peterson, a registered nurse and ANA's associate director for federal government relations.

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By Deborah Billings

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