

107TH CONGRESS
1ST SESSION

H. R. 1562

A bill to replace the Immigration and Naturalization Service with the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Immigration Services, and the Bureau of Immigration Enforcement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2001

Ms. JACKSON-LEE of Texas introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

A bill to replace the Immigration and Naturalization Service with the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Immigration Services, and the Bureau of Immigration Enforcement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Immigration Restruc-
5 turing and Accountability Act of 2001”.

1 **SEC. 2. ESTABLISHMENT OF OFFICE OF THE ASSOCIATE AT-**
2 **TORNEY GENERAL FOR IMMIGRATION AF-**
3 **FAIRS.**

4 (a) OFFICE OF ASSOCIATE ATTORNEY GENERAL FOR
5 IMMIGRATION AFFAIRS.—

6 (1) IN GENERAL.—There is established in the
7 Department of Justice an office to be known as the
8 Office of the Associate Attorney General for Immi-
9 gration Affairs.

10 (2) ASSOCIATE ATTORNEY GENERAL FOR IMMI-
11 GRATION AFFAIRS.—The head of the Office of the
12 Associate Attorney General for Immigration Affairs
13 shall be the Associate Attorney General for Immi-
14 gration Affairs who—

15 (A) shall be appointed by the President, by
16 and with the advice and consent of the Senate;

17 (B) shall conduct inspections at ports of
18 entry into the United States; and

19 (C) shall report directly to the Attorney
20 General or the Attorney General's designate.

21 (3) COMPENSATION.—The Associate Attorney
22 General for Immigration Affairs shall be paid at the
23 rate of basic pay payable for level IV of the Execu-
24 tive Schedule (as listed in section 5315 of title 5,
25 United States Code).

1 (4) FUNCTIONS.—The Associate Attorney Gen-
2 eral for Immigration Affairs—

3 (A) shall supervise and coordinate the
4 functions performed by the Director of the Bu-
5 reau of Immigration Services established under
6 section 3 and the Director of the Bureau of Im-
7 migration Enforcement established under sec-
8 tion 4;

9 (B) shall be charged with any additional
10 responsibilities and authority in the administra-
11 tion of the Office of the Associate Attorney
12 General for Immigration Affairs and of the Im-
13 migration and Nationality Act which are con-
14 ferred upon the Attorney General as may be
15 delegated to the Associate Attorney General for
16 Immigration Affairs by the Attorney General or
17 which may be prescribed by the Attorney Gen-
18 eral; and

19 (C) shall perform such other functions as
20 are otherwise vested in the Associate Attorney
21 General for Immigration Affairs by law.

22 (b) COUNSEL.—There shall be a position of Counsel
23 to the Associate Attorney General for Immigration Affairs
24 and this position shall be a career reserved position within
25 the Senior Executive Service. The Counsel shall have such

1 authorities and functions as may be delegated to the
2 Counsel by the Associate Attorney General for Immigra-
3 tion Affairs or which may be prescribed by the Associate
4 Attorney General for Immigration Affairs.

5 (c) CHIEF FINANCIAL OFFICER.—There shall be a
6 position of Chief Financial Officer for the Office of the
7 Associate Attorney General for Immigration Affairs and
8 this position shall be a career reserved position within the
9 Senior Executive Service and shall have the authorities
10 and functions described in section 902 of title 31, United
11 States Code, in relation to financial activities of such of-
12 fice. The provisions of section 903 of such title (relating
13 to Deputy Chief Financial Officers) shall also apply to
14 such office in the same manner as the previous sentence
15 applies to such office.

16 (d) OFFICE OF SHARED SERVICES.—There is estab-
17 lished in the Office of the Associate Attorney General for
18 Immigration Affairs an office to be known as the Office
19 of Shared Services. The head of the Office of Shared Serv-
20 ices shall be the Chief of the Office of Shared Services.
21 This position shall be a career-reserved position within the
22 Senior Executive Service. The Chief of the Office of
23 Shared Services shall be responsible for the appropriate
24 allocation and coordination of resources involved in sup-
25 porting shared support functions for the Office of the As-

1 sociate Attorney General, the Bureau of Immigration
2 Services, and the Bureau of Immigration Enforcement.

3 (e) OFFICE OF IMMIGRATION QUALITY ASSURANCE,
4 PROFESSIONAL RESPONSIBILITY, AND CUSTOMER SERV-
5 ICE.—

6 (1) IN GENERAL.—There is established in the
7 Office of the Associate Attorney General for Immi-
8 gration Affairs an office to be known as the Office
9 of Immigration Quality Assurance, Professional Re-
10 sponsibility, and Customer Service (in this sub-
11 section referred to as the “Office”).

12 (2) DIRECTOR.—

13 (A) APPOINTMENT.—The Office shall be
14 headed by a Director, who shall be appointed by
15 the Associate Attorney General for Immigration
16 Affairs and without regard to the provisions of
17 title 5, United States Code, relating to appoint-
18 ments in the competitive service of the Senior
19 Executive Service. The Director shall report di-
20 rectly to the Associate Attorney General for Im-
21 migration Affairs.

22 (B) COMPENSATION.—The Director shall
23 be paid at the rate of basic pay payable for level
24 IV of the Executive Schedule (as listed in sec-
25 tion 5315 of title 5, United States Code).

1 (3) FUNCTIONS OF OFFICE.—The functions of
2 the Office of Immigration Quality Assurance, Pro-
3 fessional Responsibility, and Customer Service shall
4 include the following:

5 (A) QUALITY ASSURANCE.—

6 (i) To ensure that national policies
7 are correctly implemented.

8 (ii) To determine whether policies or
9 practices result in poor file management,
10 inefficient utilization of computer and
11 other technological resources, or poor or
12 inaccurate service.

13 (iii) To report findings recommending
14 corrective action to the Associate Attorney
15 General for Immigration Affairs.

16 (B) PROFESSIONAL RESPONSIBILITY.—

17 (i) To train all enforcement personnel
18 on civil rights.

19 (ii) To receive charges of misconduct
20 or ill treatment made by the public, to in-
21 vestigate such charges, and to provide an
22 appropriate remedy or disposition of them.

23 (C) CUSTOMER SERVICE.—

24 (i) To assist individuals in resolving
25 service or case problems with the Bureau

1 of Immigration services established under
2 section 3 or the Bureau of Immigration
3 Enforcement established under section 4.

4 (ii) To identify areas in which individ-
5 uals have problems in dealings with the
6 Bureau of Immigration Services or the Bu-
7 reau of Immigration Enforcement.

8 (iii) To the extent possible, to propose
9 changes in the administrative practices of
10 the two bureaus to mitigate problems iden-
11 tified under clause (ii).

12 (iv) To monitor the coverage and geo-
13 graphic allocation of local offices of the 2
14 bureaus.

15 (v) To ensure that the local telephone
16 number for each local office of each bureau
17 is published and available to individuals
18 served by the office.

19 (D) COORDINATION.—To coordinate the
20 functions performed by, and resolve any dispute
21 between, the Office of Children’s Affairs of the
22 Bureau of Immigration Services and the Office
23 of Children’s Affairs of the Bureau of Immigra-
24 tion Enforcement.

1 (4) PERSONNEL ACTIONS.—The Director shall
2 have the responsibility and authority to appoint local
3 or regional representatives of the Office as in the
4 Director’s judgment may be necessary to address
5 and rectify serious service and training problems.

6 (5) RESPONSIBILITIES OF THE ASSOCIATE AT-
7 TORNEY GENERAL FOR IMMIGRATION AFFAIRS.—
8 The Associate Attorney General for Immigration Af-
9 fairs shall establish procedures requiring a formal
10 response to all recommendations submitted by the
11 Director within three months after submission of the
12 Director’s reports or recommendations. The Asso-
13 ciate Attorney General shall meet regularly with the
14 Director to identify and correct serious service and
15 training problems.

16 (6) ANNUAL REPORTS.—

17 (A) OBJECTIVES.—Not later than June 30
18 of each calendar year, the Director shall report
19 to the Committee on the Judiciary of the House
20 of Representatives and the Committee on the
21 Judiciary of the Senate on the objectives of the
22 Office for the fiscal year beginning in such cal-
23 endar year. Any such report shall contain full
24 and substantive analysis, in addition to statis-
25 tical information.

1 (B) ACTIVITIES.—Not later than Decem-
2 ber 31 of each calendar year, the Director shall
3 submit a report to the Committee on the Judi-
4 ciary of the House of Representatives and the
5 Committee on the Judiciary of the Senate on
6 the activities of the Office during the fiscal year
7 ending in that calendar year. Any such report
8 shall contain a full and substantive analysis, in
9 addition to statistical information, and shall—

10 (i) identify the initiatives the Office
11 has taken on improving services and the
12 responsiveness of the Bureau of Immigra-
13 tion Services and the Bureau of Immigra-
14 tion Enforcement;

15 (ii) contain a summary of the most se-
16 rious service problems encountered by indi-
17 viduals, including a description of the na-
18 ture of such problems;

19 (iii) contain an inventory of the items
20 described in clauses (i) and (ii), the status
21 of any actions taken or not taken regard-
22 ing them, the result of such actions, and
23 the reasons why no actions were taken,
24 where applicable;

1 (iv) contain recommendations as may
2 be appropriate to resolve problems encoun-
3 tered by individuals; and

4 (v) include such other information as
5 the Director may deem advisable.

6 (f) REFERENCES.—With respect to any function
7 transferred from the Commissioner of the Immigration
8 and Naturalization Service by this section or Act to, and
9 exercised on or after the effective date of this section by,
10 the Office of the Associate Attorney General for Immigra-
11 tion Affairs, reference in any other Federal law, Executive
12 order, rule, regulation, or delegation of authority, or any
13 document of or pertaining to an office from which a func-
14 tion is so transferred—

15 (1) to the head of such office is deemed to refer
16 to the Associate Attorney General for Immigration
17 Affairs; or

18 (2) to such office is deemed to refer to the Of-
19 fice of the Associate Attorney General for Immigra-
20 tion Affairs.

21 **SEC. 3. ESTABLISHMENT OF BUREAU OF IMMIGRATION**
22 **SERVICES.**

23 (a) ESTABLISHMENT OF BUREAU.—

24 (1) IN GENERAL.—There is established in the
25 Department of Justice a bureau to be known as the

1 Bureau of Immigration Services (in this section re-
2 ferred to as the “Service Bureau”).

3 (2) DIRECTOR.—The head of the Service Bu-
4 reau shall be the Director of the Bureau of Immi-
5 gration Services who—

6 (A) shall be appointed by the Attorney
7 General; and

8 (B) shall report directly to the Associate
9 Attorney General for Immigration Affairs or
10 such person’s delegate.

11 (3) COMPENSATION.—Such Director shall be
12 paid at the rate of basic pay payable for level IV of
13 the Executive Schedule (as listed in section 5315 of
14 title 5, United States Code).

15 (4) FUNCTIONS.—

16 (A) IN GENERAL.—Such Director shall
17 perform such functions as are transferred to
18 the Director by this section or this Act or oth-
19 erwise vested in the Director by law.

20 (B) PROTECTION AGAINST PROCESSING
21 DELAYS.—

22 (i) IN GENERAL.—It is the sense of
23 the Congress that such Director should de-
24 velop, implement, and maintain procedures
25 to ensure, to the extent practicable, that

1 all complete applications for a benefit
2 under the Immigration and Nationality Act
3 are granted or denied within a reasonable
4 period of time after their submission, such
5 as the following periods:

6 (I) In the case of a petition to
7 accord status under section
8 201(b)(2)(A)(i), or subsection (a), (b),
9 or (c) of section 203, of the Immigra-
10 tion and Nationality Act, 60 days.

11 (II) In the case of an application
12 for adjustment of status under section
13 245 of the Immigration and Nation-
14 ality Act, 180 days.

15 (III) In the case of a petition to
16 accord or extend status under section
17 101(a)(15) of the Immigration and
18 Nationality Act, 30 days.

19 (IV) In the case of an application
20 to accord benefits under section 301
21 of the Immigration and Nationality
22 Act, 90 days.

23 (V) In the case of an application
24 to accord status under section
25 207(c)(2) of the Immigration and Na-

1 tionality Act to the spouse or child of
2 a refugee admitted under section
3 207(c)(1) of such Act, or to accord
4 status under section 208(b)(3) of such
5 Act to the spouse or child of an alien
6 granted asylum under section
7 208(b)(1) of such Act, 60 days.

8 (VI) In the case of an application
9 for issuance of documents evidencing
10 employment authorization, 30 days.

11 (VII) In the case of a petition
12 under section 216 of the Immigration
13 and Nationality Act to remove the
14 conditions on permanent resident sta-
15 tus for certain alien spouses, sons,
16 and daughters, 90 days.

17 (VIII) In the case of a petition
18 under section 216A of the Immigra-
19 tion and Nationality Act to remove
20 the conditions on permanent resident
21 status for certain alien entrepreneurs,
22 spouses, sons, and daughters, 90
23 days.

24 (IX) In the case of an application
25 for registration for temporary pro-

1 tected status under section 244 of the
2 Immigration and Nationality Act, 60
3 days.

4 (ii) AUTHORIZATION OF APPROPRIA-
5 TIONS.—There are authorized to be appro-
6 priated such sums as may be necessary
7 for fiscal years 2002 through 2004 to re-
8 duce any backlog in processing and adjudi-
9 cating pending—

10 (I) applications for naturalization
11 under section 308 under the Immigra-
12 tion and Nationality Act;

13 (II) applications for adjustments
14 of status under sections 245 and 209
15 of such Act;

16 (III) petitions for nonimmigrant
17 visas under section 214 of such Act;

18 (IV) applications for immigrant
19 visas under section 222 of such Act;

20 (V) applications for asylum under
21 section 208 of such Act; and

22 (VI) petitions for temporary pro-
23 tected status under section 244 of
24 such Act.

1 (b) TRANSFER OF FUNCTIONS.—There are trans-
2 ferred from the Commissioner of the Immigration and
3 Naturalization Service to the Director of the Bureau of
4 Immigration Services all functions performed under the
5 following programs, and all personnel, infrastructure, and
6 funding provided to the Commissioner in support of such
7 programs immediately before the effective date of this sec-
8 tion:

9 (1) Adjudications of nonimmigrant and immi-
10 grant visa petitions.

11 (2) Adjudications of naturalization petitions.

12 (3) Adjudications of asylum and refugee appli-
13 cations.

14 (4) Adjudications performed at Service centers.

15 (5) All other adjudications under the Immigra-
16 tion and Nationality Act performed by the Immigra-
17 tion and Naturalization Service as of the date of the
18 enactment of this Act.

19 (c) OFFICE OF CHILDREN’S AFFAIRS.—Within the
20 Service Bureau, there shall be an Office of Children’s Af-
21 fairs. The head of such office shall be the Deputy Director
22 for Children’s Affairs, who shall be charged with any and
23 all responsibilities and authority relating to the special
24 needs of children which are conferred upon the Director
25 of the Service Bureau as may be delegated to the Deputy

1 Director by the Director, or which may be prescribed by
 2 the Associate Attorney General for Immigration Affairs.

3 (d) REFERENCES.—With respect to any function
 4 transferred from the Commissioner of the Immigration
 5 and Naturalization Service by this section or Act to, and
 6 exercised on or after the effective date of this section by,
 7 the Services Bureau, reference in any other Federal law,
 8 Executive order, rule, regulation, or delegation of author-
 9 ity, or any document of or pertaining to an office from
 10 which a function is so transferred—

11 (1) to the head of such office is deemed to refer
 12 to the Director of the Bureau of Immigration Serv-
 13 ices; or

14 (2) to such office is deemed to refer to the
 15 Services Bureau.

16 **SEC. 4. ESTABLISHMENT OF BUREAU OF IMMIGRATION EN-**
 17 **FORCEMENT.**

18 (a) ESTABLISHMENT OF BUREAU.—

19 (1) IN GENERAL.—There is established in the
 20 Department of Justice a bureau to be known as the
 21 Bureau of Immigration Enforcement (in this section
 22 referred to as the “Enforcement Bureau”).

23 (2) DIRECTOR.—The head of the Enforcement
 24 Bureau shall be the Director of the Bureau of Immi-
 25 gration Enforcement who—

1 (A) shall be appointed by the Attorney
2 General; and

3 (B) shall report directly to the Associate
4 Attorney General for Immigration Affairs or
5 such person's delegate.

6 (3) COMPENSATION.—Such Director shall be
7 paid at the rate of basic pay payable for level IV of
8 the Executive Schedule (as listed in section 5315 of
9 title 5, United States Code).

10 (4) FUNCTIONS.—Such Director shall perform
11 such functions as are transferred to the Director by
12 this section or Act or otherwise vested in the Direc-
13 tor by law.

14 (b) TRANSFER OF FUNCTIONS.—There are trans-
15 ferred from the Commissioner of the Immigration and
16 Naturalization Service to the Director of the Bureau of
17 Immigration Enforcement all functions performed under
18 the following programs, and all personnel, infrastructure,
19 and funding provided to the Commissioner in support of
20 such programs immediately before the effective date of
21 this section:

22 (1) The Border Patrol program.

23 (2) The detention and deportation program.

24 (3) The intelligence program.

25 (4) The investigations program.

1 (c) OFFICE OF CHILDREN’S AFFAIRS.—Within the
2 Enforcement Bureau, there shall be an Office of Chil-
3 dren’s Affairs. The head of such office shall be the Deputy
4 Director for Children’s Affairs, who shall be charged with
5 any and all responsibilities and authority relating to the
6 special needs of children which are conferred upon the Di-
7 rector of the Enforcement Bureau as may be delegated
8 to the Deputy Director by the Director, or which may be
9 prescribed by the Associate Attorney General for Immigra-
10 tion Affairs.

11 (d) REFERENCES.—With respect to any function
12 transferred from the Commissioner of the Immigration
13 and Naturalization Service by this section or Act to, and
14 exercised on or after the effective date of this section by,
15 the Director of the Bureau of Immigration Enforcement,
16 any reference in any other Federal law, Executive order,
17 rule, regulation, or delegation of authority, or any docu-
18 ment of or pertaining to an office from which a function
19 is so transferred—

20 (1) to the head of such office is deemed to refer
21 to the Director of the Bureau of Immigration En-
22 forcement; or

23 (2) to such office is deemed to refer to the En-
24 forcement Bureau.

1 **SEC. 5. APPLICATION OF INTERNET BASED TECH-**
2 **NOLOGIES.**

3 (a) ESTABLISHMENT OF A TRACKING SYSTEM.—The
4 Attorney General and the Secretary of Labor, not later
5 than 1 year after the date of the enactment of this Act,
6 in consultation with the Technology Advisory Committee
7 established under subsection (c), shall establish an Inter-
8 net web-based system, that will permit a person, employer,
9 immigrant, or nonimmigrant who has filings with the At-
10 torney General or such Secretary for any benefit under
11 the Immigration and Nationality Act, access to online in-
12 formation about the processing status of the filing in-
13 volved.

14 (b) FEASIBILITY STUDY FOR ON-LINE FILING AND
15 IMPROVED PROCESSING.—

16 (1) ON-LINE FILING.—The Attorney General,
17 in consultation with the Secretary of Labor, the Sec-
18 retary of Commerce, and the Technology Advisory
19 Committee under subsection (c), shall conduct a fea-
20 sibility study on the on-line filing of the filings de-
21 scribed in subsection (a). The study shall include an
22 estimate of the timeframe and cost and shall con-
23 sider other factors in implementing such a filing sys-
24 tem, including the feasibility of fee payment on-line.

25 (2) EXAMINATION OF IMPROVED PROC-
26 ESSING.—The study shall also include a review of

1 computerization and technology of the Department
2 of Labor and the Immigration and Naturalization
3 Service relating to the immigration services and
4 processing of filings related to immigrant services.
5 The study shall examine how to meet the goal of
6 achieving processing of 98 percent of filings for law-
7 ful permanent resident status within 3 months of
8 the date on which they are filed and 98 percent of
9 filings for nonimmigrant status within 1 month of
10 the date on which they are filed.

11 (3) REPORT.—A report on the study under this
12 subsection shall be submitted to the Committees on
13 the Judiciary of the House of Representatives and
14 the Senate not later than January 1, 2002.

15 (c) TECHNOLOGY ADVISORY COMMITTEE.—

16 (1) ESTABLISHMENT.—The Attorney General,
17 the Secretary of Labor, and the Secretary of Com-
18 merce shall jointly establish, not later than 30 days
19 after the date of the enactment of this Act an advi-
20 sory committee (in this section referred to as the
21 “Technology Advisory Committee”) to assist them
22 in—

23 (A) establishing the tracking system under
24 subsection (a);

1 (B) conducting the study under subsection
2 (b); and
3 (C) establishing a system to verify Internet
4 recruitment.

5 The Technology Advisory Committee shall be estab-
6 lished after consultation with the Committees on the
7 Judiciary of the House of Representatives and the
8 Senate.

9 (2) COMPOSITION.—The Technology Advisory
10 Committee shall be composed of representatives
11 from high technology companies capable of estab-
12 lishing and implementing the system in an expedi-
13 tious manner, and representatives of persons who
14 may use the tracking system described in subsection
15 (a) and the on-line filing system described in sub-
16 section (b)(1).

17 **SEC. 6. EXERCISE OF AUTHORITIES.**

18 Except as otherwise provided by law, a Federal offi-
19 cial to whom a function is transferred by this Act may,
20 for purposes of performing the function, exercise all au-
21 thorities under any other provision of law that were avail-
22 able with respect to the performance of that function to
23 the official responsible for the performance of the function
24 immediately before the effective date of the transfer of the
25 function under this Act.

1 **SEC. 7. SAVINGS PROVISIONS.**

2 (a) **LEGAL DOCUMENTS.**—All orders, determinations,
3 rules, regulations, permits, grants, loans, contracts, agree-
4 ments, certificates, licenses, and privileges—

5 (1) that have been issued, made, granted, or al-
6 lowed to become effective by the President, the At-
7 torney General, the Commissioner of the Immigra-
8 tion and Naturalization Service, their delegates, or
9 any other Government official, or by a court of com-
10 petent jurisdiction, in the performance of any func-
11 tion that is transferred by this Act; and

12 (2) that are in effect on the effective date of
13 such transfer (or become effective after such date
14 pursuant to their terms as in effect on such effective
15 date);

16 shall continue in effect according to their terms until
17 modified, terminated, superseded, set aside, or revoked in
18 accordance with law by the President, any other author-
19 ized official, a court of competent jurisdiction, or operation
20 of law.

21 (b) **PROCEEDINGS.**—This Act shall not affect any
22 proceedings or any application for any benefits, service,
23 license, permit, certificate, or financial assistance pending
24 on the effective date in section 14 before an office whose
25 functions are transferred by this Act, but such proceedings
26 and applications shall be continued. Orders shall be issued

1 in such proceedings, appeals shall be taken therefrom, and
2 payments shall be made pursuant to such orders, as if this
3 Act had not been enacted, and orders issued in any such
4 proceeding shall continue in effect until modified, termi-
5 nated, superseded, or revoked by a duly authorized official,
6 by a court of competent jurisdiction, or by operation of
7 law. Nothing in this section shall be considered to prohibit
8 the discontinuance or modification of any such proceeding
9 under the same terms and conditions and to the same ex-
10 tent that such proceeding could have been discontinued
11 or modified if this section had not been enacted.

12 (c) SUITS.—This Act shall not affect suits com-
13 menced before the effective date in section 14, and in all
14 such suits, proceedings shall be had, appeals taken, and
15 judgments rendered in the same manner and with the
16 same effect as if this Act had not been enacted.

17 (d) NONABATEMENT OF ACTIONS.—No suit, action,
18 or other proceeding commenced by or against the Depart-
19 ment of Justice or the Immigration and Naturalization
20 Service, or by or against any individual in the official ca-
21 pacity of such individual as an officer or employee in con-
22 nection with a function transferred by this Act, shall abate
23 by reason of the enactment of this Act.

24 (e) CONTINUANCE OF SUITS.—If any Government of-
25 ficer, in the official capacity of such officer is party to

1 a suit with respect to a function of the officer, and under
2 this Act such function is transferred to any other officer
3 or office, then such suit shall be continued with the other
4 officer or the head of such other office, as applicable, sub-
5 stituted or added as a party.

6 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-
7 VIEW.—Except as otherwise provided by this Act, any
8 statutory requirements relating to notice, hearings, action
9 upon the record, or administrative or judicial review that
10 apply to any function transferred by this Act shall apply
11 to the exercise of such function by the head of the office,
12 and other officers of the office, to which such function is
13 transferred by such section.

14 **SEC. 8. TRANSFER AND ALLOCATION OF APPROPRIATIONS**
15 **AND PERSONNEL.**

16 (a) IN GENERAL.—The personnel of the Department
17 of Justice employed in connection with the functions
18 transferred by this section (and functions that the Attor-
19 ney General determines are properly related to the func-
20 tions of the Office of the Associate Attorney General for
21 Immigration Affairs, the Bureau of Immigration Services,
22 or the Bureau of Immigration Enforcement and would, if
23 so transferred, further the purposes of the respective office
24 or bureau), and the assets, liabilities, contracts, property,
25 records, and unexpended balance of appropriations, au-

1 thorizations, allocations, and other funds employed, held,
2 used, arising from, available to, or to be made available
3 to the Immigration and Naturalization Service in connec-
4 tion with the functions transferred by this Act, subject to
5 section 202 of the Budget and Accounting Procedures Act
6 of 1950, shall be transferred to the Office of the Associate
7 Attorney General for Immigration Affairs for appropriate
8 allocation by the Associate Attorney General for Immigra-
9 tion Affairs. Unexpended funds transferred pursuant to
10 this subsection shall be used only for the purposes for
11 which the funds were originally authorized and appro-
12 priated. The Attorney General shall retain the right to ad-
13 just or realign transfers of funds and personnel effected
14 pursuant to this Act.

15 (b) EFFECT ON PERSONNEL.—

16 (1) EFFECT ON INDIVIDUAL EMPLOYEES.—The
17 transfer under this Act of full-time personnel (except
18 special Government employees) and part-time per-
19 sonnel holding permanent positions shall not cause
20 any such employee to be separated or reduced in
21 grade or compensation for 1 year after the date of
22 transfer.

23 (2) COMPENSATION LEVELS.—All transfers of
24 personnel under this Act shall be consistent with em-
25 ployee pay and grade retention entitlement under

1 subchapter VI of chapter 53 of title 5, United States
2 Code, and shall not be reduced for any individual in
3 a career position in the civil service, as of the date
4 of the enactment of this Act.

5 (3) ADOPTION OF EXISTING LABOR AGREE-
6 MENTS.—The Office of the Associate Attorney Gen-
7 eral for Immigration Affairs, the Bureau of Immi-
8 gration Services, and the Bureau of Immigration
9 Enforcement shall adopt all labor agreements which
10 are in effect, as of the day before the effective date
11 in section 14, with respect to the Immigration and
12 Naturalization Service. Each such agreement shall
13 remain in effect for the 2-year period commencing
14 on such date, unless the agreement provides for a
15 shorter duration or the parties agree otherwise be-
16 fore such period ends.

17 (c) NUMBER OF AUTHORIZED PERSONNEL.—Noth-
18 ing in this Act shall be interpreted to decrease the number
19 of authorized positions within each program as it exists
20 on the date of the enactment of this Act in the Immigra-
21 tion and Naturalization Service.

22 (d) DELEGATION AND ASSIGNMENT.—Except as oth-
23 erwise expressly prohibited by law or otherwise provided
24 in this Act, the Associate Attorney General for Immigra-
25 tion Affairs, the Director of the Bureau of Immigration

1 Services, and the Director of the Bureau of Immigration
2 Enforcement to whom functions are transferred under this
3 Act may delegate any of the functions so transferred to
4 such officers and employees of the Office of the Associate
5 Attorney General for Immigration Affairs, the Bureau of
6 Immigration Services and the Bureau of Immigration En-
7 forcement, respectively, as such official may designate,
8 and may authorize successive redelegations of such func-
9 tions as may be necessary or appropriate. No delegation
10 of functions under this subsection or under any other pro-
11 vision of this Act shall relieve the official to whom a func-
12 tion is transferred under this Act of responsibility for the
13 administration of the function.

14 (e) AUTHORITIES OF ATTORNEY GENERAL.—The At-
15 torney General (or a delegate of the Attorney General),
16 at such time or times as the Attorney General (or the dele-
17 gate) shall provide, may make such determinations as may
18 be necessary with regard to the functions transferred by
19 this Act, and make such additional incidental dispositions
20 of personnel, assets, liabilities, grants, contracts, property,
21 records, and unexpended balances of appropriations, au-
22 thorizations, allocations, and other funds held, used, aris-
23 ing from, available to, or to be made available in connec-
24 tion with such functions, as may be necessary to carry out
25 the provisions of this Act. The Attorney General shall pro-

1 vide for such further measures and dispositions as may
 2 be necessary to effectuate the purposes of this Act.

3 **SEC. 9. STATUTORY CONSTRUCTION.**

4 Nothing in this Act may be construed to preclude or
 5 limit in any way the powers, authorities, or duties of the
 6 Secretary of State and special agents of the Department
 7 of State and the Foreign Service under the State Depart-
 8 ment Basic Authorities Act of 1956, the Immigration and
 9 Nationality Act, or any other Act to investigate illegal
 10 passport or visa issuance or use.

11 **SEC. 10. PERSONNEL FLEXIBILITIES.**

12 (a) GENERAL IMPROVEMENTS IN PERSONNEL
 13 FLEXIBILITIES.—Subpart I of part III of title 5, United
 14 States Code, is amended by adding at the end the fol-
 15 lowing chapter:

16 **“CHAPTER 96—PERSONNEL FLEXIBILI-**
 17 **TIES RELATING TO THE OFFICE OF**
 18 **THE ASSOCIATE ATTORNEY GENERAL**
 19 **FOR IMMIGRATION AFFAIRS, THE BU-**
 20 **REAU OF IMMIGRATION SERVICES,**
 21 **AND THE BUREAU OF IMMIGRATION**
 22 **ENFORCEMENT**

“Sec.

“9601. Office of the Associate Attorney General for Immigration Affairs, Bu-
 reau of Immigration Services, and Bureau of Enforcement per-
 sonnel flexibilities.

“9602. Pay authority for critical positions.

“9603. Streamline critical pay authority.

“9604. Recruitment, retention, relocation incentives, and relocation expenses.

1 **“§ 9601. Office of the Associate Attorney General for**
2 **Immigration Affairs, Bureau of Immigra-**
3 **tion Services, and Bureau of Enforcement**
4 **personnel flexibilities**

5 “(a) Any flexibilities provided by sections 9602
6 through 9604 shall be exercised in a manner consistent
7 with—

8 “(1) chapter 23 (relating to merit system prin-
9 ciples and prohibited personnel practices);

10 “(2) provisions relating to preference eligibles;

11 “(3) except as otherwise specifically provided,
12 section 5307 (relating to the aggregate limitation on
13 pay);

14 “(4) except as otherwise specifically provided,
15 chapter 71 (relating to labor-management relations);
16 and

17 “(5) subject to subsections (b) and (c) of sec-
18 tion 1104, as though such authorities were delegated
19 to the Attorney General under section 1104(a)(2).

20 “(b) The Attorney General shall provide the Office
21 of Personnel Management with any information that Of-
22 fice requires in carrying out its responsibilities under this
23 section.

24 “(c) Employees within a unit to which a labor organi-
25 zation is accorded exclusive recognition under chapter 71

1 shall not be subject to any flexibility provided by sections
2 9602 through 9604.

3 **“§ 9602. Pay authority for critical positions**

4 “(a) When the Attorney General seeks a grant of au-
5 thority under section 5377 for critical pay for 1 or more
6 positions at the Office of the Associate Attorney General
7 for Immigration Affairs, the Bureau of Immigration Serv-
8 ices, or the Bureau of Immigration Enforcement, the Of-
9 fice of Management and Budget may fix the rate of basic
10 pay, notwithstanding sections 5377(d)(2) and 5307, at
11 any rate up to the salary set in accordance with section
12 104 of title 3.

13 “(b) No allowance, differential, bonus, award, or
14 similar cash payment may be paid to any employee receiv-
15 ing critical pay at a rate fixed under subsection (a), in
16 any calendar year if, or to the extent that, the employee’s
17 total annual compensation will exceed the maximum
18 amount of total annual compensation payable at the salary
19 set in accordance with section 104 of title 3.

20 **“§ 9603. Streamlined critical pay authority**

21 “(a) Notwithstanding section 9602, and without re-
22 gard to the provisions of this title governing appointments
23 in the competitive service or the Senior Executive Service
24 and chapters 51 and 53 (relating to classification and pay
25 rates), the Attorney General may, for a period of 10 years

1 after the date of the enactment of this section, establish,
2 fix the compensation of, and appoint individuals to, des-
3 ignated critical administrative, technical, and professional
4 positions needed to carry out the functions of the Office
5 of the Associate Attorney General for Immigration Affairs,
6 the Bureau of Immigration Services, or the Bureau of Im-
7 migration Enforcement, if—

8 “(1) the positions—

9 “(A) require expertise of an extremely high
10 level in an administrative, technical, or profes-
11 sional field; and

12 “(B) are critical to the successful accom-
13 plishment of an important mission by the Office
14 of the Associate Attorney General for Immigra-
15 tion Affairs, the Bureau of Immigration Serv-
16 ices, or the Bureau of Immigration Enforce-
17 ment;

18 “(2) exercise of the authority is necessary to re-
19 cruit or retain an individual exceptionally well quali-
20 fied for the position;

21 “(3) the number of such positions in each of
22 the Office of the Associate Attorney General for Im-
23 migration Affairs, the Bureau of Immigration Serv-
24 ices, and the Bureau of Immigration Enforcement
25 does not exceed 10 at any one time;

1 “(4) designation of such positions is approved
2 by the Attorney General;

3 “(5) the terms of such appointments are limited
4 to no more than 4 years;

5 “(6) appointees to such positions were not Im-
6 migration and Naturalization Service employees
7 prior to the date of the enactment of this section;

8 “(7) total annual compensation for any ap-
9 pointee to such positions does not exceed the highest
10 total annual compensation payable at the rate deter-
11 mined under section 104 of title 3; and

12 “(8) all such positions are excluded from the
13 collective bargaining unit.

14 “(b) Individuals appointed under this section shall
15 not be considered to be employees for purposes of sub-
16 chapter II of chapter 75 of title 5, United States Code.

17 **“§ 9604. Recruitment, retention, relocation incen-**
18 **tives, and relocation expenses**

19 “(a) For a period of 10 years after the date of the
20 enactment of this section and subject to approval by the
21 Office of Personnel Management, the Attorney General
22 may provide for variations from sections 5753 and 5754
23 governing payment of recruitment, relocation, and reten-
24 tion incentives.

1 “(b) For a period of 10 years after the date of the
 2 enactment of this section, the Attorney General may pay
 3 from appropriations made to the Office of the Associate
 4 Attorney General for Immigration Affairs, the Bureau of
 5 Immigration Services, or to the Bureau of Immigration
 6 Enforcement allowable relocation expenses under section
 7 5724a for employees transferred or reemployed and allow-
 8 able travel and transportation expenses under section
 9 5723 for new appointees, for any new appointee appointed
 10 to a position for which pay is fixed under section 9602
 11 or 9603 after the date of the enactment of this section.”.

12 (b) CLERICAL AMENDMENT.—The table of chapters
 13 for part III of title 5, United States Code, is amended
 14 by adding after the item relating to chapter 95 the fol-
 15 lowing:

“96. Personnel flexibilities relating to Office of the Associate Attor-
 ney General for Immigration Affairs, the Bureau of Immigration
 Services, and Bureau of Immigration Enforcement 9601”.

16 (c) VOLUNTARY SEPARATION INCENTIVE PAY-
 17 MENTS.—

18 (1) DEFINITION.—In this subsection, the term
 19 “employee” means an employee (as defined by sec-
 20 tion 2105 of title 5, United States Code) who is em-
 21 ployed by the Office of the Associate Attorney Gen-
 22 eral for Immigration Affairs, the Bureau of Immi-
 23 gration Services, or the Bureau of Immigration En-
 24 forcement under an appointment without time limi-

1 tation, and has been currently employed for a con-
2 tinuous period of at least 3 years, but does not
3 include—

4 (A) a reemployed annuitant under sub-
5 chapter III of chapter 83 or chapter 84 of title
6 5, United States Code, or another retirement
7 system;

8 (B) an employee having a disability on the
9 basis of which such employee is or would be eli-
10 gible for disability retirement under the applica-
11 ble retirement system referred to in subpara-
12 graph (A);

13 (C) an employee who is in receipt of a spe-
14 cific notice of involuntary separation for mis-
15 conduct or unacceptable performance;

16 (D) an employee who, upon completing an
17 additional period of service as referred to in
18 section 3(b)(2)(B)(ii) of the Federal Workforce
19 Restructuring Act of 1994 (5 U.S.C. 5597
20 note), would qualify for a voluntary separation
21 incentive payment under section 3 of such Act;

22 (E) an employee who has previously re-
23 ceived any voluntary separation incentive pay-
24 ment by the Federal Government under this

1 section or any other authority and has not re-
2 paid such payment;

3 (F) an employee covered by statutory re-
4 employment rights who is on transfer to an-
5 other organization;

6 (G) any employee who, during the 24-
7 month period preceding the date of separation,
8 has received a recruitment or relocation bonus
9 under section 5753 of title 5, United States
10 Code, or who, within the 12-month period pre-
11 ceding the date of separation, received a reten-
12 tion allowance under section 5754 of title 5,
13 United States Code; or

14 (H) any employee within a unit to which a
15 labor organization is accorded exclusive recogni-
16 tion under chapter 71.

17 (2) AUTHORITY TO PROVIDE VOLUNTARY SEPA-
18 RATION INCENTIVE PAYMENTS.—

19 (A) IN GENERAL.—The Associate Attorney
20 General for Immigration Affairs may pay vol-
21 untary separation incentive payments under
22 this section to any employee to the extent nec-
23 essary to carry out the plan to restructure the
24 Immigration and Naturalization Service into
25 the Office of the Associate Attorney General for

1 Immigration Affairs, the Bureau of Immigra-
2 tion Services, and Bureau of Immigration En-
3 forcement under this Act.

4 (B) AMOUNT AND TREATMENT OF PAY-
5 MENTS.—A voluntary separation incentive
6 payment—

7 (i) shall be paid in a lump sum after
8 the employee's separation;

9 (ii) shall be paid from appropriations
10 or funds available for the payment of the
11 basic pay of the employee;

12 (iii) shall be equal to the lesser of—

13 (I) an amount equal to the
14 amount the employee would be enti-
15 tled to receive under section 5595(c)
16 of title 5, United States Code; or

17 (II) an amount determined by
18 the Associate Attorney General for
19 Immigration Affairs not to exceed
20 \$25,000;

21 (iv) may not be made except in the
22 case of any qualifying employee who volun-
23 tarily separates (whether by retirement or
24 resignation) before January 1, 2003;

(v) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(vi) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(3) ADDITIONAL CONTRIBUTIONS TO RETIREMENT FUND.—

(A) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Immigration Services, and the Bureau of Immigration Enforcement shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee who is covered under subchapter III of chapter 83 or

1 chapter 84 of title 5, United States Code, to
2 whom a voluntary separation incentive has been
3 paid under this subsection.

4 (B) DEFINITION.—In subparagraph (A),
5 the term “final basic pay”, with respect to an
6 employee, means the total amount of basic pay
7 which would be payable for a year of service by
8 such employee, computed using the employee’s
9 final rate of basic pay, and, if last serving on
10 other than a full-time basis, with appropriate
11 adjustment therefor.

12 (4) EFFECT OF SUBSEQUENT EMPLOYMENT
13 WITH THE GOVERNMENT.—An individual who has
14 received a voluntary separation incentive payment
15 under this subsection and accepts any employment
16 for compensation with the Government of the United
17 States, or who works for any agency of the United
18 States Government through a personal services con-
19 tract, within 5 years after the date of the separation
20 on which the payment is based, shall be required to
21 pay, prior to the individual’s first day of employ-
22 ment, the entire amount of the incentive payment to
23 the Office of Associate Attorney General for Immi-
24 gration Affairs, the Bureau of Immigration Services,

or the Bureau of Immigration Enforcement, as the case may be.

(5) EFFECT ON EMPLOYMENT LEVELS.—

(A) INTENDED EFFECT.—Voluntary separations under this subsection are not intended to necessarily reduce the total number of full-time equivalent positions in the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Immigration Services, or the Bureau of Immigration Enforcement.

(B) USE OF VOLUNTARY SEPARATIONS.—

The Office of the Associate Attorney General for Immigration Affairs, the Bureau of Immigration Services, and the Bureau of Immigration Enforcement may redeploy or use the full-time equivalent positions vacated by voluntary separations under this subsection to make other positions available to more critical locations or more critical occupations.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS; DISPOSITION OF FEES; SENSE OF CONGRESS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for fiscal years 2002 through 2004

1 such sums as may be necessary to carry out this
2 Act.

3 (2) AVAILABILITY OF FUNDS.—Amounts appro-
4 priated under paragraph (1) shall remain available
5 until expended.

6 (b) FUNDING.—

7 (1) IN GENERAL.—There shall be established
8 separate accounts in the Treasury of the United
9 States for appropriated funds and other deposits
10 available for the Office of the Associate Attorney
11 General for Immigration Affairs, the Bureau of Im-
12 migration Services, and the Bureau of Immigration
13 Enforcement.

14 (2) FEES.—Notwithstanding section 286 of the
15 Immigration and Nationality Act (8 U.S.C. 1356) or
16 any other provision of law, fees imposed for a par-
17 ticular service, application, or benefit shall be depos-
18 ited into the account established under paragraph
19 (1) that is for the bureau with jurisdiction over the
20 function to which the fee relates.

21 (c) SENSE OF CONGRESS.—It is the sense of the Con-
22 gress that—

23 (1) the missions of both the Bureau of Immi-
24 gration Services and the Bureau of Immigration En-

1 enforcement are equally important and, accordingly,
2 both Bureaus should be adequately funded; and

3 (2) neither the immigration adjudication and
4 service functions referred to in section 3 nor the im-
5 migration enforcement functions referred to in sec-
6 tion 4 should operate at levels below that in exist-
7 ence prior to enactment of this Act.

8 **SEC. 12. IMPLEMENTATION PLAN.**

9 (a) IN GENERAL.—The Attorney General, not later
10 than one year after the date of the enactment of this Act,
11 shall submit to the Committees on the Judiciary of the
12 House of Representatives and of the Senate an implemen-
13 tation plan that details, consistent with this Act, an orga-
14 nizational structure for the Office of the Associate Attor-
15 ney General for Immigration Affairs, the Bureau of Immi-
16 gration Services, and the Bureau of Immigration Enforce-
17 ment, at the national and local levels. Such structure shall
18 ensure accountability by, and coordination among, the
19 subdivisions and offices comprising the Office of the Asso-
20 ciate Attorney General for Immigration Affairs, the Bu-
21 reau of Immigration Services, and the Bureau of Immigra-
22 tion Enforcement. The plan shall address any manage-
23 ment problems (such as unclear lines of accountability,
24 poor intra-agency communication and coordination, and
25 weaknesses in financial accountability, resource allocation,

1 and budget planning and execution) within the Immigra-
2 tion and Naturalization Service on the date of the enact-
3 ment of this Act by including provisions that will prevent
4 these problems from being perpetuated within the Office
5 of the Associate Attorney General for Immigration Affairs.
6 The plan shall also address the issues of chain of com-
7 mand, shared services, file and data management and
8 oversight, financial management systems, fraud detection
9 and investigation, and establishment of a transition team.

10 (b) CONSULTANT.—The Attorney General shall enter
11 into a contract with a private entity specializing in man-
12 agement consulting requiring the entity to conduct a study
13 of any management problems (such as unclear lines of ac-
14 countability, poor intra-agency communication and coordi-
15 nation, and weaknesses in financial accountability, re-
16 source allocation, and budget planning and execution)
17 within the Immigration and Naturalization Service on the
18 date of the enactment of this Act and to issue a report
19 containing recommendations that will prevent these prob-
20 lems from being perpetuated within the Office of the Asso-
21 ciate Attorney General for Immigration Affairs, the Bu-
22 reau of Immigration Services, or the Bureau of Immigra-
23 tion Enforcement.

24 **SEC. 13. DEFINITIONS.**

25 For purposes of this Act:

1 (1) The term “function” includes any duty, ob-
2 ligation, power, authority, responsibility, right, privi-
3 lege, activity, or program.

4 (2) The term “office” includes any office, ad-
5 ministration, agency, bureau, institute, council, unit,
6 organizational entity, or component thereof.

7 **SEC. 14. EFFECTIVE DATES.**

8 The transfer of functions under this Act shall take
9 effect on the date that is 2 years after the date of the
10 enactment of this Act. The Office of the Associate Attor-
11 ney General for Immigration Affairs, the Bureau of Immi-
12 gration Services, and the Bureau of Immigration Enforce-
13 ment shall be established, and the Associate Attorney Gen-
14 eral for Immigration Affairs, the Director of the Bureau
15 of Immigration Services, and the Director of the Bureau
16 of Immigration Enforcement shall be appointed, not later
17 than such effective date.

○