INTERNAL EXILE

Collateral Consequences of Conviction in Federal Laws and Regulations

Defending Liberty
Pursuing Justice

A collaboration of
the American Bar Association Commission on Effective Criminal Sanctions
and the Public Defender Service for the District of Columbia

The Public Defender Service
for the District of Columbia
Champions of Liberty

Internal Exile

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January 2009

American Bar Association Commission on Effective Criminal Sanctions
The Public Defender Service for the District of Columbia

Disclaimer

The research for this compilation was completed in January 2009. Laws and regulations in this area are revised frequently, and readers seeking fully reliable information are cautioned to consult current statutory compilations or the appropriate administrative agency.

We emphasize that this study is for informational purposes only and is not intended to be legal advice. People with specific issues and questions are strongly encouraged to seek advice from an attorney. Due to the vast amount of material covered, this study can provide no more than an overview of the many consequences of criminal convictions, current as of January 2009. Many of the areas, such as immigration law, are highly complex and merit their own lengthy analysis. It is our hope that this study will provide sufficient information for people to know that an issue exists, and methods to find other resources through various links provided in the footnotes throughout this study.

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Introduction

This study collects and describes the collateral consequences of a criminal conviction that arise under federal statutes and regulations. A joint project of the ABA Commission on Effective Criminal Sanctions (Commission) and the Public Defender Service for the District of Columbia (PDS), it is an outgrowth of both entities' work on the effect of a criminal record on the availability of a wide range of benefits and opportunities, which in turn determines a person's likely ability to rebuild his or her life after a criminal conviction. While the study is first and foremost a compilation, and its presentation primarily descriptive rather than analytical, we hope that it will serve as a useful tool for criminal justice practitioners (including defenders, judges, and prosecutors); for persons seeking information about the legal rights and responsibilities of people who have a conviction record; and for advocates, legislators, and policymakers in determining which collateral consequences are reasonable and appropriate responses to public safety concerns, and which are not and what can or should be done to avoid or mitigate them.

Background

The origins of this project can be traced to the ABA's promulgation in 2003 of a new chapter of its Criminal Justice Standards that called on each U.S. jurisdiction to collect and analyze the collateral consequences in its laws and regulations. See Standard 19-2.1 of the ABA Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons (2003). The ABA Standards identified two types of collateral consequences: "collateral sanctions," defined as penalties imposed automatically upon conviction, and "discretionary disqualifications," defined as penalties that are authorized but not required to be imposed. This distinction between automatic and discretionary collateral consequences was carried forward into a uniform law presently under consideration by the National Conference of Commissioners on Uniform State Laws, and more recently into Section 510 of the Court Security Act, both of which also call for a comprehensive inventory and study of collateral consequences.

In recent years, a number of state-specific studies of collateral consequences have been prepared, including an exemplary analysis of the collateral consequences affecting people with convictions in the District of Columbia published in 2004 by PDS. However, these studies vary widely in format and methodology, and no single approach to the enterprise has emerged as preferable to others. It therefore seemed appropriate for the ABA and PDS together to attempt, through a comprehensive survey of federal laws and regulations, to provide technical guidance for state jurisdictions undertaking studies of their own laws and rules, while at the same time illuminating an important area of the law affecting people with criminal convictions nationwide, which has not been addressed for some time.[1] That the National Institute of Justice has been directed by the Court Security Act

[1] The Office of the Pardon Attorney in the U.S. Department of Justice published a partial inventory of federal collateral consequences in 2000, but the OPA study has not been updated since that time and therefore does not contain any of the significant body of collateral consequences that followed 9/11.

to produce a survey of collateral consequences for each U.S. jurisdiction made this project seem particularly timely.

Work on this federal study has been supported by a generous grant from the Open Society Institute. We were fortunate that Kelly Salzmann, the author of the PDS study of collateral consequences affecting people with convictions in the District of Columbia, was willing to take the laboring oar in preparing it. Through her experience as PDS' Community Reentry Program Coordinator, Kelly understood the importance of such a study for defenders in advising clients. She also understood the importance of making the study user-friendly for all criminal law practitioners, for judges and legislators, and for policy-makers studying the impact on recidivism rates of what has been described as a web of invisible punishment. Working for only a few hours a week in spare time from her day job, Kelly completed an extraordinary amount of work in a relatively brief period of time. She worked essentially alone, with advice from an IT expert and in occasional consultation with me.

Limitations of the Study

The study describes the collateral consequences of a felony conviction arising under federal statutes and regulations. These consequences apply to felony convictions (or their equivalent) obtained in state, federal, and territorial courts, and in courts martial. Except where otherwise noted, they generally do not apply to misdemeanors, juvenile adjudications, or convictions in foreign jurisdictions or tribal courts. The issue of effective dates of particular disabilities, including retroactivity, is not addressed in any detail. While pains have been taken to identify all collateral consequences, there are certainly a few that have been missed.

The study also does not give a complete picture of the provisions for relief from federal collateral consequences. While federal consequences apply generally to all criminal convictions, state or federal, the provisions for avoiding or mitigating these consequences may differ depending upon the jurisdiction of conviction or the location of the convicted person's residence. In some cases, federal law incorporates state law relief mechanisms,[2] or gives states the option of opting out of federal regulatory requirements.[3] In others, people convicted of state offenses have no recourse. People convicted under federal law generally cannot take advantage of state relief mechanisms, and thus may have no remedy short of a presidential pardon.[4]

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[2] For a review of loss of rights and relief provisions in each state's law see Brief for amici curiae National Association of Criminal Defense Lawyers and Families Against Mandatory Minimums in *Logan v. United States*, U.S. Sup. Ct. No. 06-6911, Appendix detailing state law provisions for loss and restoration of civil rights and firearms privileges, electronic version available at http://www.fd.org/odstb_ConstructFIREARM.htm.

[3] See, e.g. the federal restrictions on state welfare benefits and drivers licenses

[4] An example is the prohibition against possessing firearms in 18 U.S.C. §§ 921(a)(3) and 922 (g)(1). State offenders may obtain relief through state law relief mechanisms such as pardon, expungement, set-aside, or restoration of civil rights. See 18 U.S. § 921(a)(20). Federal offenders may obtain relief only through a federal restoration mechanism. *See Beecham v. United States*, 511 U.S. 368 (1994). Because the

In addition, the study can only suggest how the laws and regulations catalogued are administered and enforced. Our experience is that in practice most federal collateral consequences are administered more strictly than the text at issue requires. This is particularly true for federal consequences that are enforced by state and local jurisdictions, such as licensing requirements for those working with vulnerable populations, and requirements for admission to public housing. At the same time, there are some federal statutes and regulations that are reportedly administered with exemplary fairness and efficiency, notably those areas of the law affecting the front lines of national security, such as access to secure areas of ports and other transportation hubs, defense contracting, and membership in the armed forces.

Finally, the study necessarily gives an incomplete picture of the whole range of consequences that stem from adverse contact with the criminal justice system. As a collection of federal laws and regulations, it does not include the many collateral consequences contained in state laws and regulations, or in state-controlled federal benefit programs such as welfare, food stamps, and public housing. Moreover, it does not include court-imposed conditions of probation and parole that may have a collateral effect on travel, employment, and other family matters, or civil forfeiture provisions that are often triggered by an arrest. Less tangible consequences of conviction not discussed in this study are the public humiliation and ostracism that may result from the fact of the conviction alone, particularly where sex offender and other violent offender registration requirements apply. People with criminal convictions who served time in prison may have significant difficulty due to gaps in work experience on a resume in a job application. More and more frequently potential employers and landlords are requesting and using background check information, including arrest and conviction records in their decisions regarding jobs and leases independent of statutory requirements. None of these consequences are described in this study, but all must be accounted for in considering the public safety implications of a failed reentry experience.

Margaret Colgate Love
Director, ABA Commission on Effective Criminal Sanctions

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statutory process for administrative restoration has not been funded since 1991, *Bean v. United States*, 537 U.S. 71 (2002), only a presidential pardon restores firearms rights for federal offenders. For additional information about relief provisions under federal law, readers are referred to Margaret Colgate Love, Relief from the Collateral Consequences of a Criminal Conviction, A State by State Resource Guide (Hein 2006), updates at http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=486.

A Note from the Public Defender Service for the District of Columbia

The Public Defender Service for the District of Columbia is pleased to partner with the American Bar Association's Commission on Effective Criminal Sanctions on this important study, "Internal Exile: Collateral Consequences of a Criminal Conviction in Federal Laws and Regulations." As public defenders, we witness firsthand the complicated and often lasting impacts of such collateral consequences upon the lives of our clients. Each year, literally hundreds of individuals come through our doors seeking legal advice concerning their eligibility for expungement because their criminal records continue to serve as a barrier to employment, housing, and other services that are essential to their stability in the community. Almost without regard to a person's attempts to rebuild his or her life after a conviction, the residual impact of a criminal record continues to limit future opportunities in far too many cases. We hope that the study educates the criminal justice community and other interested parties about the burdensome effect of federal collateral consequences upon the lives of fellow citizens across the nation and that it encourages a new dialogue among policy makers regarding viable ways in which to eliminate barriers to reentry.

Avis Buchanan, Director
Public Defender Service for the District of Columbia

James D. Berry, Jr., Chief
Community Defender Division
Public Defender Service for the District of Columbia

A Note from the Principal Author

This study was done working a few hours per week over a six-month period. Much of the research was done using electronic legal research and the internet. I also benefited greatly from the ability to talk with practitioners, in particular Laura Moskowitz of the National Employment Law Project, who generously shared research she had collected, as well as April Frazier, the current Community Reentry Program Coordinator for the Public Defender Service for the District of Columbia (PDS). I am an experienced attorney with a background in civil legal services and public defense. Despite my experience, education, resources, and the assistance given to me, I felt extremely overwhelmed by this project. The consequences outlined are spread throughout a massive amount of statutory and regulatory language that is often confusing. I have made every attempt to catalogue each consequence yet despite my best efforts, I have no doubt that there are consequences that I missed.

There are hyperlinks throughout the text that allow the reader to navigate back to the descriptions in the first section. The table of contents that precedes this introduction also contains active links allowing the reader to immediately navigate to any section or statute of interest.

The study is organized into four sections. The first outlines the varying consequences that relate to civic participation and community service, employment and licensing, family matters, and other federal benefit programs. Where enumerated in the statutory or regulatory language, it includes the definition of a conviction, appeal or waiver processes, and factors to be considered. Statutory and regulatory references are hyperlinks that allow the reader to navigate to the language referenced. Within the footnotes are active links to other studies, websites, or policy statements that provide additional information regarding the particular subject.

The second section is an Appendix with an inventory of the collateral consequences that affect people with a felony drug conviction, including some that are offense-specific. The third section, Appendix 2, consists of a chart sorting the inventoried collateral consequences into collateral sanctions and discretionary disqualifications. The fourth section, Appendix 3, contains the relevant statutory language, which can be accessed through hyperlinks in the first section.

Throughout my work on this project I was constantly reminded that as daunting as the task was for me, the sense of confusion must be exponentially increased for a person who has come through the often dehumanizing criminal justice system and who may be facing unemployment, homelessness, hunger, addiction, family estrangement, and/or dealing with physical and mental health impairments, including those resulting from a period of incarceration.

When I became too overwhelmed by the vast amount of information and the thought of the burden this places on people who are already far too often on the margins of our society, I relied on Margaret Colgate Love, practicing attorney, and James D. Berry, Jr. of

PDS for support. It is my hope that in some small way this study allows people with criminal convictions to feel the same sense of support through access to this information and gives advocates resources to aid these individuals and policy makers a fuller picture of the impact of the decisions they make.

Kelly Poff Salzmann
January 2009

I. Civic Participation[5]

Voting

The qualifications of voters, with a few exceptions, are determined by individual states.

> The United States Constitution, aside from prohibiting disenfranchisement on grounds such as age, gender, and race, U.S. Const. amend XV, XIX, XXVI, provides that qualifications for voting in federal elections are determined by state law. U.S. Const. art. I, § 2, cl. 1; art. I, § 4; art. II, § 1, cl. 2; amend. XVII. (For the District of Columbia, see U.S. Const. amend. XXIII; D.C. Code Ann. § 1-1301.) …[6]

The power of the states to deny the right to vote because of conviction of a crime is expressly recognized in the Fourteenth Amendment. U.S. Const. amend. XIV, § 2. *See generally Richardson v. Ramirez*, 418 U.S. 24 (1974); *Johnson v. Governor of Florida*, 405 F. 3d 1214 (11th Cir., 2005).[7]

Federal Jury Service

Any person who has been convicted of a felony (crime punishable by imprisonment for more than one year) is unable to serve on a federal grand or petit jury. The right to serve on a federal jury is restored if the individual's "civil rights have . . . been restored." 28 U.S.C. 1865(b)(5).

> This provision has generally been interpreted by federal courts and the Administrative Office of the United States Courts to require an affirmative act (such as a pardon) by the state (or by the President for a federal conviction) before the right to serve on a federal jury will be reinstated. Thus, the automatic restoration of civil rights that occurs in many states upon completion of the imposed sentence will not operate to restore the right to serve on a federal jury. *See, e.g., United States v. Hefner*, 842 F.2d 731,732 (4th Cir. 1988) (relying on the legislative history of 28 U.S.C. 1865 to hold that "some affirmative act recognized in law must first take place to restore one's civil rights to meet the eligibility requirements of section 1865(b)(5)").[8]

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[5] Federal law on civic participation may incorporate state law on loss and restoration of rights. For a review of loss of rights and relief provisions in each state's law see Brief for amici curiae National Association of Criminal Defense Lawyers and Families Against Mandatory Minimums in *Logan v. United States*, U.S. Sup. Ct. No. 06-6911, Appendix detailing state law provisions for loss and restoration of civil rights and firearms privileges, electronic version available at http://www.fd.org/odstb_ConstructFIREARM.htm.

[6] Federal Statutes Imposing Collateral Consequences Upon Conviction, http://www.usdoj.gov/pardon/collateral_consequences.pdf.

[7] For a recent review of felony disenfranchisement and a study of state statutes, *see* Felony Disenfranchisement Laws in the United States by the Sentencing Project, September 2008, http://www.sentencingproject.org/Admin/Documents/publications/fd_bs_fdlawsinus.pdf.

[8] Federal Statutes Imposing Collateral Consequences Upon Conviction, http://www.usdoj.gov/pardon/collateral_consequences.pdf.

Federal Government Office (District of Columbia Where Noted)

The United States Constitution does not prohibit people with convictions from holding elected federal office. *See* U.S. Const. art. I, §§ 2, 3; art. II, §1; art. VI.[9]. Various federal statutes, as listed below, provide that a conviction may result in the loss of or ineligibility for appointed office. Aside from such specific statutory disqualifications, however, a felony conviction does not disqualify a person from federal employment, but is a factor in determining suitability for it.[10]

Permanent Bar:

A person who has been convicted of treason is incapable of holding any office under the United States. 18 U.S.C. 2381. An officer of the United States working in the collection or disbursement of the revenues United States who is convicted of carrying on any trade or business in the funds or debts of the United States is incapable of holding any office under the United States. 18 U.S.C. 1901. A custodian of United States court records, proceedings, maps, books, documents, papers, or other things who is convicted of the concealment, removal, mutilation, obliteration, falsification, or destruction of the United States Court property will be removed from his or her office and is disqualified from holding any office under the United States. 18 U.S.C. 2071(b). An officer or member of the armed services who is convicted of using troops to interfere with a general or special election or otherwise interfering with voter registration or qualifications is disqualified from holding any office of honor, profit or trust under the United States. 18 U.S.C. 592 and 18 U.S.C. 593.

Five Year Bar:

A person who has been convicted of felony inciting, organizing, promoting, encouraging, or participating in a riot or civil disorder is ineligible to accept or hold any position in the Government of the United States or in the government of the District of Columbia for the five years immediately following the date upon which his conviction becomes final. 5 U.S.C. 7313. A person who has been convicted of advocating the overthrow of the United States or the government of any state, territory, district or possession by force or violence or of conspiracy related to this crime is ineligible for employment by the United States or any federal department or agency, for the five years following his or her conviction. 18. U.S.C. 2385. A person who advises, counsels, urges, otherwise attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States is ineligible for employment by the United

[9] The Constitution, however, provides that the "President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors," U.S. Const. art. II, § 4, and further provides that a judgment in a case of impeachment may include removal from office and "disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States." U.S. Const. art. I, § 3.

[10] Federal Statutes Imposing Collateral Consequences Upon Conviction, http://www.usdoj.gov/pardon/collateral_consequences.pdf.

States or any federal department or agency, for the five years following his or her conviction. 18 U.S.C. 2387.

Permissive Bar:

A person who has been convicted of bribery of a public official or witness as defined in 18 U.S.C. 201, may be disqualified by the sentencing court from holding any office of honor, trust, or profit under the United States. 18 U.S.C. 201.

Other organization/agency-specific bars:

A board member of the United States Institute of Peace may be removed by the United States President, in consultation with other board members, for conviction of a felony. 22 U.S.C. 4605.

A person who has been convicted of a felony or misdemeanor gaming offense is ineligible to be appointed to or continue service on the National Indian Gaming Commission. 25 U.S.C. 2704.

An officer or employee of the United States who, unauthorized, discloses an income tax return or return information, allows someone to inspect a return or return information or discloses operations information of a manufacturer or producer will be dismissed from office or discharged from employment. 26 U.S.C. 7213 and 26 U.S.C. 7213A. An officer or employee of the United States acting in connection with revenue law who is convicted of extortion, demands unlawful fees, sums, compensation or rewards, or commits fraud will be dismissed from office or discharged from employment. 26 U.S.C. 7214.

An officer or employee of the United States who is convicted of disclosure, without authorization, of confidential information obtained in the course of official duties will be removed from said office or employment. 18 U.S.C. 1905.

II. Community and Military Service

Civilian Marksmanship Program

A person who has been convicted of a felony or a firearms offense may not participate in any activity sponsored or supported by the Civilian Marksmanship Program. 36 U.S.C. 40723. Any firearms sold by the Civilian Marksmanship Program may not be sold to a gun club member with a felony conviction or a firearms offense. 36 U.S.C. 40732.[11]

[11] The congressionally created Civilian Marksmanship Program (CMP) promotes firearms safety training and rifle practice for all qualified U.S. citizens with special emphasis on youth. The CMP operates through a network of affiliated shooting clubs and associations that covers every state in the U.S. The clubs and

Enlistment in the Military

No person who has a felony conviction may enlist in any branch of the military. 10 U.S.C. 504. The Secretary of Defense may authorize exceptions in meritorious cases.[12] Department of Defense internal policy also bars people with misdemeanor convictions, including misdemeanor domestic violence, from enlisting unless a waiver is granted. This bar, however, is not statutory.[13]

Court Appointed Special Advocate Program

A person with a conviction of a felony or misdemeanor involving a sex offense, violent act, child abuse or neglect, or related acts that would pose risks to children or to the court-appointed special advocate program's credibility is barred from serving as a volunteer. 42 U.S.C. 13013. A review of the national CASA website reveals no guidance as to how background checks are to be performed.[14]

Mentoring Children of Prisoners

Federal grants for programs for the mentoring of children of prisoners require that prospective programs perform background checks of potential mentors. A program must prohibit a person from being a mentor only if a conviction would prevent him or her from being a foster or adoptive parent under 42 U.S.C. 671. 42 U.S.C. 629i.[15] No guidance is given as to how other criminal history information is to be considered.

Sponsor Programs for Foreign Exchange Programs

Any person working for a Department of State-sponsored foreign exchange student sponsor program and who has direct personal contact with exchange students must be vetted through a criminal background check. 22 C.F.R. 62.25. No guidance is given for how information gleaned through the background check is to be considered.

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associations offer firearms safety training and marksmanship courses as well as the opportunity for continued practice and competition. The original purpose of the organization was to provide civilians an opportunity to learn and practice marksmanship skills so they would be skilled marksmen if later called on to serve the U.S. military. Over the years the emphasis of the program shifted to focus on youth development through marksmanship. *See* http://www.odcmp.com/.

[12] Records show that with the increase in need for men and women in military service, that the number of waivers has increased. *See* http://www.nytimes.com/2008/04/22/washington/22waiver.html. For information from the Army regarding the impact of a felony conviction, *see* http://www.army.com/resources/item/2149.

[13] *See* Military Service and Misdemeanor Convictions, OLR Research Report, Veronica Rose, July 7, 2005. http://www.cga.ct.gov/2005/rpt/2005-R-0556.htm.

[14] *See* http://www.nationalcasa.org/partners/partner_choicepoint.html and http://www.nationalcasa.org/volunteer/commitment.html.

[15] *See* http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/mcpfactsheet.htm.

Programs Funded by the Corporation for National and Community Service

Any person who is applying for, or serving in, a position for which an individual receives a Corporation grant-funded living allowance, stipend, education award, salary, or other remuneration, and which involves recurring access to children, persons age 60 and older, or individuals with disabilities, must undergo a "suitable" criminal history check. 45 C.F.R. 2522.205 and 45 C.F.R. 2540.200. Persons who are required to register as a sex offender are barred from participation. 45 C.F.R. 2522.206 and 45 C.F.R. 2540.201. The person is entitled to a reasonable opportunity to review and challenge the factual accuracy of a result before the Corporation takes action to exclude the individual from the position. 45 C.F.R. 2540.204. Covered programs include those through the Senior Corps, AmeriCorps, AmeriCorps State and National (including grants for Indian tribes and U.S. territories, AmeriCorps VISTA, AmeriCorps National Civilian Community Corps, Learn and Serve America and other special initiatives.[16] The Corporation website provides that in criminal background checks, violent crimes and sexual offenses will affect a person's application while minor offenses will not.[17]

A current participant in an AmeriCorps program will be released for cause if he or she is convicted of a felony or the sale or distribution of a controlled substance during the term of service. 45 C.F.R. 2522.230. A person's term of service will be suspended if that person faces an official charge of a violent felony (e.g., rape, homicide) or sale or distribution of a controlled substance or is convicted of possession of a controlled substance. 45 C.F.R. 2522.230. A program may reinstate the person whose service was suspended if the individual is found not guilty or if the charge is dismissed. A program may also reinstate an individual whose service was suspended due to a conviction related to the possession of a controlled substance only if the person demonstrates that he or she has enrolled in a drug rehabilitation program if it was the first offense or successful completion of a drug rehabilitation program if there were multiple offenses. 45 C.F.R. 2522.230.

III. Federal Employment

Although only a few statutes impose specific consequences (in federal law enforcement and child care for federal workers, outlined below), each agency within the federal government also requires a background check for potential employees.[18] Moreover, contract workers who work in federal buildings performing janitorial or culinary jobs, among others, are subject to a background check by the Federal Protective Service.[19] No government-wide guidance is provided regarding consideration of a criminal record in government employment, with the exceptions below.

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[16] For more information about these programs, see http://www.nationalservice.org/about/programs/index.asp.
[17] *See* http://www.americorps.org/about/programs/vista_background.asp.
[18] Executive Order 10450—Security requirements for Government employment, April 27, 1953. http://www.archives.gov/federal-register/codification/executive-order/10450.html.
[19] *See* http://www.ice.gov/pi/fps/org_hfs.htm.

Federal Law Enforcement Officers

Federal law enforcement officers[20] convicted of felonies must be removed from service without exception. 5 U.S.C. 7371 and 5 U.S.C. 8331(20). The only appeal is for whether the person is, in fact, a law enforcement officer, whether the conviction was a felony, and whether the conviction was overturned. The statutes do not specify whether a past conviction may be grounds for refusal to hire or reinstate.

Child Care for Federal Workers

"Each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision to children under the age of 18 of child care services shall assure that all existing and newly-hired employees undergo a criminal history background check." 40 U.S.C. 590 and 42 U.S.C. 13041.

Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be ground for denying employment or for dismissal of certain employees. Convictions for crimes other than sex crimes may be considered if they bear on the individual's fitness to have responsibility for the safety and well-being of children. 42 U.S.C. 13041.

See also 32 C.F.R. Part 86 and appendices regarding components of the Department of Defense including the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the Department of Defense Field Activities. In particular, mandatory and discretionary disqualifying criteria are outlined. 32 C.F.R. Pt. 86, App. B. Suitability considerations are outlined.

IV. Federal Licensure and Procurement

Security Regulation of the Transportation Industry

Since 9/11, the nation's transportation industry has adopted a new regime of criminal background checks intended to identify workers who may pose a terrorism security risk.

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[20] "Law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. 5 U.S.C. 8331(20). "Law enforcement officer" also means (A) an employee, the duties of whose position (i) are primarily (I) the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or (II) the protection of officials of the United States against threats to personal safety; and (ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency. 5 U.S.C. 8401(17). For a list of agencies with federal law enforcement positions, s*ee* http://federaljobs.net/law.htm#LAW_ENFORCEMENT.

Starting with the USA Patriot Act, 49 U.S.C. § 5103a, a succession of federal laws and regulations have been enacted to screen workers employed in the air, sea and ground transportation industries. Although the laws themselves vary in specificity, by regulation and policy the Transportation Security Administration (TSA) has attempted to harmonize the different screening policies, though the Aviation and Transportation Security Act of 2001 imposes more stringent limits on airport employment than those applicable to maritime employees and commercial drivers. A criminal conviction may disqualify a person from employment or from receiving an identifying credential, as set forth below.[21]

Airport, Air Travel, and Air Commerce

A background check is required of any person who would work as a security screener or otherwise have unescorted access to secure areas of an airport. 49 U.S.C. 44935, 44936. *See also* 49 U.S.C. 114. There is a long list of crimes for which a conviction in the previous10 years would bar employment, and there is no provision for waiver. *See* 49 U.S.C. 44936(b)(B) and 49 C.F.R 1542.209(d). The person has the ability to dispute the information in the background check and correct any errors.

An airman certificate issued under 49 U.S.C. 44703 may be amended, modified, suspended or revoked for a conviction of airborne hunting (49 U.S.C. 44709) and shall be revoked if the person is convicted in a state or federal court of a felony related to a controlled substance if an aircraft or service as an airman was related to the commission of the offense or the person knowingly engaged in such an activity. 49 U.S.C. 44710. The decision to revoke or otherwise modify a certificate can be appealed to the National Transportation Safety Board and an acquittal bars revocation. Any conviction for the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of drugs is grounds for a denial of an application for any certificate, rating, or authorization for 1 year after the date of the conviction or suspension or revocation of any certificate, rating, or authorization. 14 C.F.R. 61.15. Two convictions for the operation of a motor vehicle while intoxicated, impaired or under the influence of alcohol or drugs within three years of each other are grounds for denial of an application for up to one year after the conviction or suspension or revocation of a certificate, rating, or authorization.

[21] For a review of the effect of criminal convictions on airport and air carrier workers, as interpreted by the Transportation Security Administration, including what constitutes a conviction and the effect of expungement and pardon, *see* Legal Guidance on Criminal History Checks, Transportation Security Administration, http://www.deferredadjudication.org/79th/legal_help/TSA_CHRC_Legal_Guidance.doc. The TSA takes the position that a "conviction" does not include expunged and pardoned offenses, and convictions that have been set aside after successful completion of probation. To qualify under this provision, an expungement must "nullify" the conviction, which means "the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions." 49 C.F.R. §1570.3

Transportation Worker Identification Credential – Port Security

All port workers must have a Transportation Worker Identification Credential (TWIC). Affected workers are those requiring unescorted access to secure areas of maritime facilities and vessels regulated by the Maritime Transportation Security Act of 2002 (Public Law 107-295) including merchant mariners, port truck drivers, longshoremen, administrators, contractors, and rail workers. Felony and misdemeanor convictions will bar potential TWIC recipients if they fall into one of two categories – "permanent disqualifying criminal offenses" and "interim disqualifying criminal offenses." 46 U.S.C. 70105, 49 C.F.R. 1515.7, and 49 C.F.R. 1572.103.[22] Permanent disqualifying criminal offenses are very serious offenses including the commission of or conspiracy to commit espionage, sedition, treason, terrorism, murder, crimes involving explosive devices. 46 U.S.C. 70105(c)(1)(A). There is a long list of interim disqualifying offenses which bar a person for either seven years from the date of conviction or for five years from release from incarceration. 46 U.S.C. 70105(c)(1)(B). All potentially disqualifying offenses are eligible for a waiver, except espionage, sedition, treason, or terrorism. 49 C.F.R. 1515.7. A person may also appeal to correct misinformation which was included in the background check.

A "conviction" is defined as

> any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this subchapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this subchapter. 49 C.F.R. 1570.3.[23]

Commercial Motor Vehicle Operator License

Certain crimes related to the operation of a commercial motor vehicle, as well as the operation of a non-commercial motor vehicle, cause a mandatory license suspension. Generally, first-time offenses cause a one year bar and second and multiple charge offenses will lead to a lifetime bar. There is a lifetime bar for a felony conviction of the use of a commercial motor vehicle during the manufacture, dispensing or distributing of controlled substances or possession with the intent to manufacture, dispense, or distribute

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[22] *See* A Worker's Guide to the Transportation Worker Identification Credential (TWIC) Application, Appeal and Waiver Process, National Employment Law Project, December 2007. http://nelp.3cdn.net/a3b29a121e0fa74495_jfzm68o8p.pdf. *See also* http://www.aapa-ports.org/Issues/USGovRelDetail.cfm?itemnumber=1047 and http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm.

[23] *See also* http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm#disqualification

a controlled substance. (49 U.S.C. 31310).[24] A one-time reinstatement is available for some offenses after 10 years. Subsequent offenses are not eligible for reinstatement. 29 C.F.R. 383.51.

Hazardous Material Endorsement

In order to be eligible for a hazardous materials endorsement to a commercial motor vehicle operator license, a person must first undergo a background check in accordance with the requirements of the TWIC. 49 U.S.C. 5103a, 49 C.F.R. 1515.7, and 49 C.F.R. 1572.5. Drivers requiring hazardous materials endorsements range from municipal trash collectors carrying items like bleach and batteries, to interstate truckers carrying nuclear and biological waste.

Locomotive Operator License

A conviction within the past five years for operating under the influence of alcohol or another substance or a conviction arising out of a fatal vehicle accident, reckless driving, or racing, must be considered in the application for a license for any operator of a locomotive. The prohibition may be waived if the individual successfully completes a rehabilitation program. A person who has been denied a license is entitled to a hearing. 49 U.S.C. 20135.

Under 49 C.F.R. 240.115, a current licensee who, within the previous 36 months has had a conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance; or a conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance, must undergo an Employee Assistance Program evaluation for a determination whether an active substance abuse problem exists. If so, the person's certificate will be suspended and not be eligible for reinstatement of the certificate unless and until the person has successfully completed any program of counseling or treatment determined to be necessary by the EAP Counselor prior to return to service, and provided a clean urine sample. Follow-up may be required for up to 60 months. 49 C.F.R. 240.119.

Merchant Mariners

In accordance with regulations, criminal convictions are considered in applications for Merchant Mariner Documents. Moreover, a merchant mariner's license, certificate or document may be suspended or revoked for certain convictions. 46 U.S.C. 7703. In particular, a merchant mariner's document may be denied if, within the 10-year period before applying for the license, certificate, or document, the person has been convicted of

[24] *See* http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.asp?rule_toc=752&section=383.51&section_toc=1322.

violating a state or federal dangerous drug law. 46 U.S.C. 7503. Various assessment periods within a range of years are set out for certain types of convictions based on a set of tables set out in the regulations. 46 CFR 12.02-4. Prior to the minimum number of years in the assessment period, an application will be denied unless a person proves suitability. Within the assessment period, the conviction will be considered and application will be granted unless there are offsetting factors. "Offsetting factors include such factors as multiple convictions, failure to comply with court orders (e.g., child support orders), previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel." After the assessment period the application will be granted unless the Officer in Charge, Marine Inspection considers the applicant unsuitable.

Registration of Commodity Dealers and Associated Persons

The Commodity Futures Trading Commission oversees the registration of futures commission merchants and associated persons, introducing brokers and associated persons, commodity trading advisors and associated persons, commodity pool operators and associated persons, floor brokers, and floor traders. The Commission may, with notice but without a hearing, refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of or, with a hearing, revoke the registration of any person who has been convicted of certain felonies within ten years prior to the filing of the application or any time thereafter. 7 U.S.C. 12a(2). Enumerated felonies include those related a contract of sale of a commodity for future deliver, the conduct of business of the registered party, or crimes related to theft and fraud. A person may appeal from a decision to refuse registration, condition registration, suspend, revoke or place restrictions upon registration.

The Commission may also refuse to register or to register conditionally, after opportunity for a hearing, any person who has pleaded guilty or nolo contendere to or been convicted of any other felony (including any offense that would be a felony under federal law); pleaded guilty to or been convicted of a misdemeanor including those related to a contract of sale of a commodity for future delivery, the conduct of business of the registered party, or theft and fraud. A person may appeal from a decision to refuse registration, condition registration, suspend, revoke or place restrictions upon registration. 7 U.S.C. 12a(3).

Broadcast Licensing

In the evaluation of an applicant or licensee's "character" for purposes of the Federal Communications Commission (FCC), the FCC will consider any conviction for a felony or serious misdemeanor conviction in appropriate or compelling cases, particularly where there is a pattern of such convictions. The FCC has a policy of recognizing that "there are mitigating factors that must be taken into consideration." 47 C.F.R. 73.4280. The FCC provides an opportunity for a hearing on character issues.

Farm Labor Contractors

The Migrant and Seasonal Worker Protection Act requires any person (or business) who recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers ("farm labor contracting activities") to obtain a certificate of registration before engaging in farm labor contracting activities. Persons who are employed by farm labor contractors to engage in farm labor contracting activities are required to register as well. The certificate of registration may be denied if within five years the person has certain convictions, including those related to gambling or the sale of alcohol in relation to farm labor contracting activities, and certain additional specified serious felony convictions. 29 U.S.C. 1813. A person who is refused a new or renewed certificate can request a hearing before an administrative law judge and, ultimately, judicial review in the United States District Court where the applicant is located.[25]

United States Grain Standards Act

A license under the United States Grain Standards Act for a warehouseman sampler, technician, sampler, weigher, contract sampler, or inspector may be denied, suspended, or summarily revoked due to a conviction of any offense with respect the performance of functions of the licensed person. A hearing can be requested following suspension. 7 U.S.C. 85.

Arms Export Control

Any person (other than a government employee) who wishes to engage in the business of manufacturing, exporting or importing any defense article or service must register with the United States government. 22 U.S.C. 2778. In order to engage in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service must have a license. No export license will be issued to a person who is under indictment for or has been convicted of certain enumerated crimes. 22 U.S.C. 2778(g). The President and Secretary of the Treasury may make an exception on a case-by-case basis after a "thorough review of the circumstances surrounding the conviction."

Atomic Energy – Nuclear Regulatory Commission

Any person who requires unescorted access to a utilization facility or access to radioactive material or other property subject to regulation by the Commission or who has access to safeguards information must be fingerprinted. 42 U.S.C. 2169(a). No final determination may be made solely on the basis of an arrest more than 1 year old for which there is no information of the disposition of the case or an arrest that resulted in dismissal of the charge or an acquittal. 42 U.S.C. 2169(c). For all personnel, the Commission will consider "past actions which are indicative of an individual's future

[25] *See* Instructions for Form WH-530: Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration, U.S. Department of Labor Wage and Hour Division, http://www.dol.gov/esa/whd/forms/fts_wh530.htm.

reliability within a protected or vital area of a nuclear power reactor." 10 C.F.R. 73.56(b). In addition, security personnel must "have no felony convictions involving the use of a weapon and no felony convictions that reflect on the individual's reliability." 10 C.F.R. Pt. 73, App. B. The Commission may waive the requirements upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public. 42 U.S.C. 2169.

Customs Broker License

In an application for a custom broker's license, a person may be required to show good moral character. A current license may be suspended or revoked if the person has been convicted of certain felonies and misdemeanors at any time after the filing of the application for a license. A felony or misdemeanor conviction will be considered if it involved the importation or exportation of merchandise, arose out of the conduct of customs business, or involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds. 19 U.S.C. 1641. Moreover, a license may be revoked or suspended if a licensee has knowingly employed, or continues to employ, a person who has been convicted of a felony without prior approval. Any revocation or suspension action must be commenced within five years of the alleged violation and a hearing and subsequent court appeal is an available remedy.

Registration of Brokers and Dealers with the Securities and Exchange Commission (SEC)

The SEC shall censure, place limitations on the activities, functions or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if the SEC makes certain findings, following notice and opportunity for a hearing. 15 U.S.C. 78o. The required findings are that the action be in the public interest and that the broker, dealer or any associated person has been convicted of a felony or misdemeanor within the ten years preceding the filing of the application or any time thereafter of a crime involving the sale of a security, honesty, arising out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, government securities broker, government securities dealer, fiduciary, transfer agent, or involving a crime of fraud or theft. Judicial review is available of the agency's determination.

Registration of Investment Advisers

The SEC shall censure, place limitations on the activities, functions or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if the SEC makes certain findings, following notice and opportunity for a hearing. The required findings are that the action be in the public interest (as defined in 15 U.S.C. 80b-3(h)(3)) and that the investment adviser or any associated person has been convicted within the ten years preceding the filing of the application or

any time thereafter of a crime involving the sale of a security; honesty; arising out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, government securities broker, government securities dealer, fiduciary, transfer agent; involving fraud or theft; or any other felony. 15 U.S.C. 80b-3. Judicial review is available of the agency's determination.

No person may serve in any capacity with a registered investment company or as a principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company if that person, within the past 10 years, has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act. 15 U.S.C. 80a-9. An ineligible person may apply for an exemption. The Commission shall by order grant such application, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

Under 21 U.S.C. 823, a criminal conviction record relating to the manufacture, distribution, or dispensing of controlled substances must be considered as a factor in an application for registration with the Drug Enforcement Administration. This also includes practitioners who wish to conduct research with controlled substances.

V. Federal Regulation of State and Private Employment and Licensure

Prisoner Transportation

Any person who has a felony conviction or misdemeanor domestic violence conviction is prohibited from working for a private prisoner transport company. 42 U.S.C. 13726 and 28 C.F.R. 97.11. There is no provision for exception or waiver.

Employees of state departments of motor vehicles – REAL ID

As a part of the REAL ID program, participating states must ensure that covered employees (involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card, or current employees who will be assigned to such positions) are subjected to a background check that identifies permanent and

"interim" disqualifying offenses. 6 C.F.R. 37.45 and 49 C.F.R. 1572.103. If designated as "interim, "the offense is disqualifying if committed within the last seven years or if the individual was released from incarceration within the last five years. The states have the authority to establish procedures for waivers for arrests, but no final disposition has been reached. REAL ID went into effect May 11, 2008; however, states have been offered extensions for compliance.[26] Five states have rejected REAL ID - Maine, South Carolina, Montana, Oklahoma, and New Hampshire.[27]

Leadership in Labor Organizations, Consultant or Adviser to an Employee Benefit Program

A person who has been convicted of certain specified serious offenses, as well as conspiracy to commit such offenses, including offenses relating to a labor organization or employee benefit plan, is disqualified from serving in a wide range of capacities relating to a labor organization or an employee benefits plan, including leadership, consulting, advising, or any role that requires decisionmaking or has the potential for a share in profits. The bar lasts for 13 years after the conviction, or until the end of a period of imprisonment, unless the sentencing court on motion of the convicted person sets a lesser period of at least three years after such conviction or after the end of such imprisonment. 29 U.S.C. 504, 29 U.S.C. 1111.

The bar may also be removed if the person's civil rights, "having been revoked as a result of such conviction, have been fully restored." In addition, for offenses committed on or after November 1, 1987, the period of disqualification may be shortened by action of the sentencing court if a federal offense, or the federal district court where the offense was committed if a state offense, in accordance with policy statements of the U.S. Sentencing Commission.[28] The court must determine that the person's service in a prohibited capacity would not be contrary to the purposes of the law under which the disqualification is imposed. *See* U.S.S.G. 5J1.1 (policy statement implementing §§ 504, 1111).

Banking Institutions

Section 19 of the Federal Deposit Insurance Act prohibits, for a minimum period of ten years, any person who has been convicted (felony or misdemeanor) of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense from owning, controlling or working in an insured depository institution, or

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[26] *See* http://www.dhs.gov/xprevprot/programs/gc_1200062053842.shtm.
[27] *See* http://news.cnet.com/FAQ-How-will-Real-ID-affect-you/2009-1028_3-6229517.html.
[28] For offenses committed before November 1, 1987, the person must apply to the United States Parole Commission for a Certificate of Exemption from the prohibition. The applicant must submit forms, a full application, supportive affidavits and character endorsements. The applicant has a right to a hearing before an administrative law judge. *See* 28 C.F.R. Part 4.

bank, absent court approval. 12 U.S.C. 1829.[29] After the 10-year period has elapsed, a person previously barred may be employed with prior written consent of the FDIC. The application for approval must be filed by an institution, not an individual seeking employment, unless the FDIC waives that requirement. There must be "substantial good cause" for granting an individual waiver.[30]

In considering the application for approval and in determining the "degree of risk" the FDIC will consider:

> (1) The conviction or program entry and the specific nature and circumstances of the covered offense;
> (2) Evidence of rehabilitation including the person's reputation since the conviction or program entry, the person's age at the time of conviction or program entry, and the time that has elapsed since the conviction or program entry;
> (3) The position to be held or the level of participation by the person at an insured institution;
> (4) The amount of influence and control the person will be able to exercise over the management or affairs of an insured institution;
> (5) The ability of management of the insured institution to supervise and control the person's activities;
> (6) The degree of ownership the person will have of the insured institution
> (7) The applicability of the insured institution's fidelity bond coverage to the person;
> (8) The opinion or position of the primary Federal and/or state regulator; and
> (9) Any additional factors in the specific case that appear relevant.

FDIC policy guidance also notes that "some applications can be approved without an extensive review because the person will not be in a position to constitute any substantial risk to the safety and soundness of the insured institution. Persons who will occupy clerical, maintenance, service or purely administrative positions, generally fall into this category."[31]

The FDIC policy guidance identifies certain *de minimus* offenses for which automatic approval is given:

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[29] The sentencing court may grant an exception, upon motion by the Corporation, during the 10-year period if the exception is in the "interest of justice." 12 U.S.C.A. 1829.

[30] *See* FDIC Statement of Policy for Section 19 of the FDI Act (FDIC Statement), 12-31-98, p. 5155. http://www.fdic.gov/regulations/laws/rules/5000-1300.html. *See also* People With Criminal Convictions Working in Financial Institutions: The Rules on FDIC Waivers, National H.I.R.E. Network, http://www.hirenetwork.org/FDIC.html.

[31] FDIC Statement, *supra* note 23.

Approval is automatically granted and an application will not be required where the covered offense is considered *de minimis*, because it meets all of the following criteria:

- There is only one conviction or program entry of record for a covered offense;

- The offense was punishable by imprisonment for a term of less than one year and/or a fine of less than $1000, and the individual did not serve time in jail;

- The conviction or program was entered at least five years prior to the date an application would otherwise be required; and

- The offense did not involve an insured depository institution or insured credit union.

Any person who meets the foregoing criteria shall be covered by a fidelity bond to the same extent as others in similar positions, and shall disclose the presence of the conviction or program entry to all insured institutions in the affairs of which he or she intends to participate.[32]

Business of Insurance

A person who has been convicted of a crime involving dishonesty or breach of trust may not engage in the business of insurance, defined as the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons. 18 U.S.C. 1033. A person who is otherwise barred may receive written consent from the relevant insurance regulatory official in order to again engage in the business of insurance.[33]

Mortgage Loan Originator License

In order to qualify for licensing and registration as a State-licensed loan originator, a person may not have been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court in the 7-year period preceding the date of the application for licensing and registration; or at any time preceding such date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. 12 U.S.C. 5104.

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[32] FDIC Statement, *supra* note 23.

[33] *See* http://www.ins.state.ny.us/ogco2000/rg000102.htm, an informal opinion published by the New York State Insurance Department Office of General Counsel on January 12, 2000, regarding the bar and consent request process.

Elementary and Secondary School Employees

The Safe and Drug-Free Schools and Communities Act, Title IV, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Public Law 107-110) authorizes funding for a nationwide background check for all current and potential local educational agency employees. The purpose of the background check is to determine whether the employee or prospective employee has been convicted of a crime that bears upon the employee's fitness to be responsible for the safety or well-being of children; to serve in the particular capacity in which the employee or prospective employee is or will be employed; or to otherwise be employed by the local educational agency. 20 U.S.C. 7115. *See* also the Schools Safe Act, 42 U.S.C. 16962, which authorizes states to conduct fingerprint-based checks of the national crime information databases.

Care Providers for Vulnerable Populations (Children, the Elderly and Individuals With Disabilities)

Child care workers other than those operating under contract with the Federal Government may be required to undergo a background check by individual states. Congress has authorized state agencies access to a nationwide background check for the purposes of determining whether a provider has been convicted of a crime (felony or misdemeanor) that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. 42 U.S.C. 5119a. The person has the ability to contest the accuracy of the background check. *See also* note to 28 U.S.C. 534 which gives nursing care facilities and home health care agencies access to background checks on prospective employees as well.

A pilot program was created in April 2003 allowing the Boys and Girls Clubs of America, the MENTOR/National Mentoring Partnership, the National Council of Youth Sports; and any nonprofit organization that provides care, to perform fingerprint background checks through the FBI on potential volunteers. 42 U.S.C. 5119a (note). If the organizations determine, based on the information in the check, that the person is not fit for volunteer work, the person has the right to contest the accuracy of the information.

Care for Native American Children

The Secretary of the Interior and the Secretary of Health and Human Services must compile a list of all positions within their respective departments involving regular contact with, or control over, Indian children; conduct an investigation of the character of each individual who is employed, or is being considered for employment, in such a position; and prescribe by regulation minimum standards of character that each of such individuals must meet to be appointed to such positions. Minimum standards set by law are that no person may work for a state agency with regular contact with, or control over, Native American children if that person has been "found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any two or more misdemeanor offenses, under Federal, State, or tribal law involving crimes of violence; sexual assault,

molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children." 25 U.S.C. 3207(b).

Community Supported Living Arrangement Services

A provider of community supported living arrangement services under grants to states for medical assistance programs may not hire individuals who have been convicted of child or client abuse, neglect, or mistreatment or of a felony involving physical harm to an individual. 42 U.S.C. 1396u and 42 CFR 441.404.

> The term "community supported living arrangements services" means one or more of the following services meeting the requirements of subsection (h) provided in a State eligible to provide services under this section (as defined in subsection (d)) to assist a developmentally disabled individual (as defined in subsection (b)) in activities of daily living necessary to permit such individual to live in the individual's own home, apartment, family home, or rental unit furnished in a community supported living arrangement setting:
>
> (1) Personal assistance.
>
> (2) Training and habilitation services (necessary to assist the individual in achieving increased integration, independence and productivity).
>
> (3) 24-hour emergency assistance (as defined by the Secretary).
>
> (4) Assistive technology.
>
> (5) Adaptive equipment.
>
> (6) Other services (as approved by the Secretary, except those services described in subsection (g)).
>
> (7) Support services necessary to aid an individual to participate in community activities.[34]

Hospice Care

All hospices must obtain a criminal background check on all hospice employees who have direct patient contact or access to patient records. Hospice contracts must require that all contracted entities obtain criminal background checks on contracted employees who have direct patient contact or access to patient records. The federal regulation provides that criminal background checks must be obtained in accordance with the

[34] *See* http://www.socialsecurity.gov/OP_Home/ssact/title19/1930.htm.

requirements. In the absence of state requirements, criminal background checks must be obtained within three months of the date of employment for all states that the individual has lived or worked in the past three years. 42 C.F.R. 418.144. No guidance is given as to how criminal history information is to be considered.

Private Security

The note to 28 U.S.C. 534 allows authorized private security employers to have access to FBI criminal background information. The information provided is guided by state standards. If no standards are available then the report will include any conviction of a felony, a "lesser offense" involving dishonesty or false statement if occurring within the previous ten years, a conviction of a "lesser offense" involving the use or attempted use of physical force against the person of another if occurring within the previous ten years, or a felony charge during the previous 365 days for which there has been no resolution. 28 C.F.R. 105.23. The person has the right to contest the information in the report. 28 C.F.R. 105.24.

Court-imposed Occupational Restrictions

In addition to collateral sanctions and disqualifications, federal courts are authorized to impose certain occupational restrictions as a condition of probation or supervised release by 18 U.S.C. 3563(b)(5), 3583(d) and the United States Sentencing Guidelines. Specifically, the court may require a defendant to refrain from engaging in the occupation, or to engage in it only to a stated degree or under stated circumstances. Restrictions are authorized when a "reasonably direct relationship" exists between the defendant's occupation and the offense conduct, 18 U.S.C. 3563(b)(5), U.S.S.G. 5F1.5(a)(1); and the conditions are "reasonably necessary to protect the public because there is reason to believe that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted." U.S.S.G. 5F1.5(a)(2). If such an occupational restriction is imposed, it must be imposed "for the minimum time and to the minimum extent necessary to protect the public." U.S.S.G. 5F1.5(b).

VI. Debarment from Participation in Federal Programs

Health Care Providers Participating in Federal Health Care Programs Such as Medicare and Medicaid

Mandatory and permissive exclusions from participation in any federal health care program and designated state health care programs, based upon conviction of certain types of crimes, are set forth in 42 U.S.C. 1320a-7. The Secretary of the Department of Health and Human Services must exclude health care providers with a conviction of a program-related crime, a crime relating to patient abuse, a crime related to health care fraud, or a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. A permissive exclusion exists for a conviction relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial

misconduct relating to health care service; a conviction related to obstruction of an investigation of the commission of a crime related to health care services; or a misdemeanor relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. The mandatory and permissive exclusions also include those with ownership or management roles in healthcare who have been convicted of the above-referenced crimes or who know or should have known of the action constituting the basis for the conviction or exclusion.

For a conviction of a crime[35] that is a mandatory exclusion, the minimum period of exclusion is five years unless it is determined that the exclusion would impose a hardship on those entitled to benefits (patients). The exclusion may be waived if the individual or entity is the sole community physician or sole source of essential specialized services in the community. The decision regarding a waiver is not reviewable. A second conviction will result in at least a 10-year bar and any subsequent offense will result in a permanent bar. Where exclusion is permissive, it is for three years unless mitigating circumstances warrant a shorter period or aggravating circumstances demand a longer period. 42 U.S.C. 1320a-7. The statue requires notice and opportunity for a hearing before an administrative law judge prior to the application of an exclusion unless the health or safety of individuals receiving services warrants giving the exclusion earlier effect. Reinstatement may be granted to the excluded individual or entity if there is no basis for the continuation of the exclusion and there are reasonable assurances that the types of actions that formed the basis for the original exclusion have not recurred and will not recur. *See also* 42 C.F.R. Part 1001, in particular sections 1001.102, 1001.201, 1001.301, 1001.401, 1001.501, 1001.601, 1001.1801, 1001.1901, 1001.2007, and 1001.3002 regarding aggravating factors that may lengthen the period of exclusion, waivers, and applications for reinstatement.

Federal Procurement

Under a series of executive orders, conviction of a designated crime may result in suspension or debarment from participating in federal procurement. 5 C.F.R. 919.605, 5 C.F.R. 919.800, 48 C.F.R. 9.406-2 and 48 C.F.R. 9.407-2. In addition, all federal agencies must participate in a system of debarment and suspension for non-procurement programs and debarment or suspension of a participant in a program by one agency shall have government-wide effect. The period of debarment is generally no more than three years. The person has the right to a hearing prior to debarment. The Office of Personnel Management has issued guidelines to implement the executive orders' provisions concerning non-procurement programs, 5 C.F.R. Part 919, and regulations pertaining to procurement programs are set forth in 48 C.F.R. Subpart 9.4.

[35] A conviction for this purpose is a judgment of conviction regardless of any appeals or expungement; a finding of guilt; a plea of guilty or nolo contendere; and any participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. 42 U.S.C. 1320a-7(i).

Defense Contractors

A person who has been convicted of fraud or any other felony arising out of a contract with the Department of Defense is, for a period of not less than five years, prohibited from working on a defense contract or first tier subcontract in a management or supervisory capacity, as a member of the contractor's board of directors or as a consultant on the contract, or from being involved in any other capacity "with the authority to influence, advise, or control the decisions of the contractor with regard to this contract," unless a waiver is granted by the Secretary "in the interest of national security." 10 U.S.C. 2408 and 48 C.F.R. 252.203-7001. The waiver request must identify the person involved; the nature of the conviction and resultant sentence or punishment imposed; the reasons for the requested waiver; and an explanation of why a waiver is in the interest of national security. 48 C.F.R. 252.203-7001.[36]

Explosive Materials License

A license or permit to import, manufacture, or deal in explosive materials will not be issued to a person who is under indictment for or has been convicted of a crime punishable for a term exceeding one year or to a person who has an employee described above who will possess the explosive materials. 18 U.S.C. 843. A current license or permit may be revoked for the same reason. The applicant who is denied may request a hearing and may appeal a hearing denial to the United States court of appeals of appropriate venue.

Food and Drug Administration Debarment, Suspension, or Denial of Approval

Mandatory and permissive periods of debarment from participation in aspects of the drug industry depending upon the type of crime are set forth in 21 U.S.C. 335a. An individual who has been convicted of a federal felony for conduct relating to the development or approval of a drug product, including the process for development or approval of any drug product or otherwise related to the regulation of any drug product is subject to mandatory debarment from providing services in any capacity to a person (corporation, partnership, or association) that has an approved or pending drug application. 21 U.S.C. 335a(a)(2).

There is a permissive debarment for an individual providing services in any capacity to a person who has an approved or pending drug application if that individual has been convicted of a state felony or federal misdemeanor for conduct (including conspiracy to commit or aiding or abetting) relating to the development or approval, including the process for development or approval of any abbreviated drug application, if a

[36] Restrictions on eligibility for a Defense Department security clearance applicable to persons convicted of a felony and actually incarcerated for a period of not less than one year (the so-called "Smith Act") were repealed effective January 1, 2008 by Pub. L. 110-181, 122 Stat. 3, 110th Cong., 2d Sess. *See* 10 U.S.C. § 986 (c)(1)(2007 ed.).

determination is made that the type of conduct that served as the basis for such conviction undermines the process for the regulation of drugs. 21 U.S.C. 335a(b)(2).

There is a permissive debarment for an individual who has been convicted (including conspiracy to commit or aiding or abetting) a felony that involves bribery, payment of illegal gratuities, fraud, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records, or interference with, obstruction of an investigation into, or prosecution of, any criminal offense if the individual "has demonstrated a pattern of conduct sufficient to find that there is reason to believe that such individual may violate the requirements relating to drug products." 21 U.S.C. 335a(b)(2).

Regarding food importation, there is a permissive debarment for those convicted of a felony for conduct relating to the importation into the United States of any food. 21 U.S.C. 335a(b)(3).

A conviction includes a judgment of conviction regardless of whether an appeal is pending, a plea of guilty or nolo contendere, or participation in a first offender, deferred adjudication, or other similar arrangement or program where judgment of conviction has been withheld. 21 U.S.C. 335a(l)(1).

A mandatory debarment for an individual is permanent. A permissive debarment may not be for more than five years and periods of debarment for multiple offenses may run concurrently or consecutively. Several factors will be considered in determining the period of debarment, including the nature and serious of the offense, management participation in the offense, efforts to mitigate the impact of the offense, and other factors. *See* 21 U.S.C. 335a(c)(3). If the conviction on which the debarment was based is reversed, the order of debarment will be withdrawn. A non-permanent period of debarment may be terminated upon application if "such termination serves the interests of justice and adequately protects the integrity of the drug approval process or the food importation process." 21 U.S.C. 335a(c)(3). A permanent period of debarment may be specially terminated if, after an informal hearing, a determination is made that the individual has provided "substantial assistance in the investigations or prosecution" of other offenses. A termination or special termination may not reduce the debarment to a period less than one year.

Criminal activity, including that for which a person is under investigation, may be considered in the refusal to approve any abbreviated drug application or the suspension of the distribution of all drugs the development or approval of which is related to such conduct.

Loss of Federal Grants, Contracts and Licenses Due to a Conviction of Distribution of Controlled Substances

Any person convicted of distribution of controlled substances may, at the discretion of the sentencing court, lose their right to federal benefits in the form of grants, contracts, loans, professional license or commercial license. For the first conviction the ineligibility

period may be up to 5 years, for the second conviction the ineligibility period may be up to 10 years. For a third or subsequent conviction ineligibility is mandatory and permanent. 21 U.S.C. 862(a). Any person convicted of possession of a controlled substance may, at the discretion of the sentencing court, be ineligible for federal benefits for up to one year. For second and subsequent convictions the ineligibility period may be up to 5 years. 21 U.S.C. 862(b). The period of ineligibility under either of these sections shall be waived if the person declares him or herself an addict and submits to long-term treatment for addiction or is otherwise deemed to be rehabilitated. The period of ineligibility may be suspended for the same reasons or also if the person has tried to get treatment, however it proves to be inaccessible or unavailable. A federal benefit is the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by funds appropriated by the United States. It does not include retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit.

VII. Family Related Matters

Adoption and Safe Families Act

The Adoption and Safe Families Act (ASFA) of 1997 (Public Law 105-89) deals with federal grants given to states for foster care and adoption assistance. In order for a State to be eligible for the grants under this Act, the State must have a plan in place that meets the ASFA requirements.[37] 42 U.S.C. 671(20)(a). The Adam Walsh Child Protection and Safety Act (Public Law 109-248), further required a fingerprint-based background check of prospective foster and adoptive parents.[38] Under the provisions of the ASFA, a person is barred from being a foster or adoptive parent if that person has a felony conviction of child abuse or neglect, spousal abuse, a crime against a child (including child pornography), and certain violent crimes including rape, sexual assault and homicide. There is a five year bar for a felony conviction of physical assault, battery, or a drug related offense.

The ASFA requires that a state file a petition for the termination of parental rights in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law), unless the child is being cared for by a relative, or "if a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition

[37] *See* http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/pi9802.htm. The Child Welfare Information Gateway produced a state law summary in April 2008. You can download this information at http://www.childwelfare.gov/systemwide/laws_policies/statutes/background.cfm.

[38] *See* http://www.whitehouse.gov/news/releases/2006/07/20060727-7.html. States are allowed to conduct fingerprint-based checks of the national crime information databases through the Schools Safe Act at 42 U.S.C. 16962.

would not be in the best interests of the child." This means that a custodial parent sentenced to more than 22 months in prison may lose parental rights.

The ASFA also requires that states file a petition for the termination of parental rights in any case where a parent is convicted of the murder of a child sibling or another child; voluntary manslaughter of a child sibling or another child; aiding or abetting, attempting, conspiring, or solicitation to commit such a murder or such a voluntary manslaughter; or felony assault that has resulted in serious bodily injury to the child who is the subject of the petition, a child sibling, or another child. 42 U.S.C. 675(5).

Foreign Exchange Student and Au Pair Host Families

Federal law requires that any member of a potential host family for a Department of State sponsored foreign exchange student or au pair undergo a background check. There is no guidance provided for consideration of information provided in the background check. 22 C.F.R. 62.25 and 22 C.F.R. 62.31.

VIII. Federal Benefits, Passport and Drivers' Licensing

Social Security Benefits

In an application for benefits on the basis of disability from the Social Security Administration (SSA), the SSA will not consider any physical or mental impairment, or any increase in severity (aggravation) of a preexisting impairment, which arises in connection with the commission of a felony after October 19, 1980, if the person was convicted of the crime. 20 C.F.R. 404.1506. For instance, a person shot during a bank robbery may not receive benefits for a disability arising out of the gunshot wound.

A person who has been convicted of a felony is barred from serving as a representative payee for a beneficiary entitled to benefits under Titles II and XVI of the Act. 42. U.S.C. 1383 (a)(2)(B)(ii)(IV). The Commissioner may make an exception by determining that the certification as a representative payee would be appropriate notwithstanding the conviction. 42. U.S.C. 1383 (a)(2)(B)(iii)(IV).

Temporary Assistance to Needy Families and Food Stamps

There is a federal lifetime ban from Temporary Assistance to Needy Families and food stamps due to a felony drug conviction. 21 U.S.C. 862a(a). Under the federal statute individual states have been given the authority to opt out of or otherwise modify the ban, including limiting the length of time of the ban or linking the ban to addiction treatment. The District of Columbia opted out of the drug conviction ban. The Commonwealth of

Virginia did not opt out. The State of Maryland made the ability to obtain benefits dependent on drug treatment.[39]

Federal Student Assistance

In order to receive federal grant, loan or work assistance a person may not have been convicted of a drug offense while that person was receiving federal student aid. 20 U.S.C. 1091(r). This includes Federal Pell Grants, Academic Competitiveness Grants, Federal Stafford Loans, Federal PLUS Loans, Federal Work Study, and Perkins Loans. A student can regain eligibility by completing a drug rehabilitation program.[40] States have no authority to opt out of this requirement.

A person may not claim the tax benefits of the Hope Scholarship Credit for an academic period if he or she "has been convicted of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within" which the academic period ends. 20 U.S.C. 25A(b)(2)(D).

Public Housing

A conviction of certain types of offenses can have significant consequences not only for the person convicted of the crime, but also for members of that person's family, or the "household" for public housing purposes. Federal regulations outline both permissive and mandatory exclusions from public housing. 24 C.F.R. 982.553.

A person who is subject to a lifetime sex offender registration requirement is subject to a mandatory exclusion. 42 U.S.C. 13663. Prior to any adverse action, the public housing agency, must provide the tenant or applicant with a copy of the registration information and an opportunity to dispute the accuracy and relevance of that information. A person who has been convicted of manufacture or production of methamphetamine on the premises of federally assisted housing is subject to a mandatory exclusion. 42 U.S.C. 1437n.

Permissive exclusions by public housing agencies are allowed in other cases involving drug-related criminal activity and violent criminal activity. With the use of the word "activity" a person can be denied admittance for illegal activity whether or not a conviction resulted. If a public housing agency proposes to deny admission for criminal activity as shown by a criminal record, that agency must provide the subject of the record and the applicant with a copy of the criminal record and give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with 24 C.F.R. 982.554. If a public housing agency proposes to terminate

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[39] *See* Life Sentences: Denying Welfare Benefits To Women Convicted of Drug Offenses, Patricia Allard, The Sentencing Project (February 2002). The most recent update to the state-by-state information was done in April 2006. *See* http://www.sentencingproject.org/Admin/Documents/publications/women_smy_lifesentences.pdf.

[40] *See* www.fafsa.ed.gov/faq003.htm and http://www.odos.uiuc.edu/sls/brochureAds/downloads/DrugsFinancialAid.pdf.

assistance for criminal activity as shown by a criminal record, the agency must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record. The agency must also give the family an opportunity to dispute the accuracy and relevance of that record in accordance with 24 C.F.R. 982.555.

It has been shown that although the federal regulations require few mandatory prohibitions, local housing authority policies are much more restrictive. In a report on roadblocks to re-entry in federal housing laws, the Legal Action Center noted:

> Many of the policies that housing authorities or private landlords use to exclude people with conviction records are overly restrictive, effectively denying housing to people who pose no threat to the public, tenants or property. Oftentimes the policies are based on a misunderstanding of federal law, or on the landlord placing a premium on ease of administration, believing that it's easier to "just say no" to all people with conviction records than to perform individualized analyses of their applications. These policies should be changed. With greater education and targeted advocacy, these policies can be changed.[41]

Veteran's Benefits

A person who has been found guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States, as well as other enumerated federal crimes, forfeits all veteran's benefits, including pension, disability, hospitalization, loan guarantees, and burial in a national cemetery. 38 U.S.C. 6104 and 38 U.S.C. 6105. This includes National Service Life Insurance (38 U.S.C. 1911) and Servicemembers' Group Life Insurance and Veterans' Group Life Insurance (38 U.S.C. 1973). These benefits may be restored by a presidential pardon. 38 C.F.R. 3.903(c), 3.904(c).

Certain veteran's benefits are also forfeited if false claims for them are submitted. 38 U.S.C. § 6103.

Despite qualifying service, a person with a state or federal felony conviction is ineligible to be a resident in the Armed Forces Retirement Home. There is no exception, time limitation, or other waiver. 24 U.S.C. 412.[42]

Government Employee Benefits

A government employee who has been convicted of violating certain national security laws will lose annuity or retired pay on the basis of that employee's government service that is creditable to that annuity or retired pay. 5 U.S.C. 8312.

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[41] *See* www.lac.org/toolkits/housing/housing.htm. *See also* http://lac.org/doc_library/lac/publications/How_to_Get_Section_8_or_Public_Housing.pdf and *No Second Chance, People With Criminal Records Denied Access to Public Housing*, Human Rights Watch, November 17, 2004, http://www.hrw.org/en/reports/2004/11/17/no-second-chance.
[42] *See* http://www.afrh.gov/afrh/newres/elig/elig.htm.

A government employee who has been convicted of a crime related to fraud in the application for or receipt of any benefits for a work injury, shall forfeit (as of the date of such conviction) any entitlement to any benefit that employee would otherwise be entitled for any injury occurring on or before the date of such conviction. 5 U.S.C. 8148.

Obtaining a Passport

A person convicted of a felony drug offense (criminal offense punishable by death or imprisonment for more than one year) and some misdemeanor drug offenses (not including first offenses and offenses involving only possession) will have his or her passport revoked if the person used a passport or otherwise crossed an international border in committing the offense. The ineligibility period continues while the person is incarcerated or is on parole or other supervised release. 22 U.S.C. 2714. The disqualification may also be applied on a case-by-case basis to misdemeanor drug offenses. There exists an exception for emergency circumstances or humanitarian reasons.

Drivers' Licensing

Since 1992, federal law has required states, on penalty of loss of 10% of highway funds, to revoke or suspend for at least six months after conviction the drivers' license of a person who has been convicted of any drug offense, broadly defined to include any possession of a controlled substance, or of operating a motor vehicle under the influence of a controlled substance. 23 U.S.C. 159. States were given the opportunity to opt out of or otherwise modify this requirement. Some states opted out entirely, some states limited the suspension or revocation to driving-related offenses, and some states fully adopted the federal bar or even, in some circumstances, extended it.[43]

IX. Registration and Notification Requirements

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the Wetterling Act), enacted in 1994, establishes federal guidelines for state sex offender registration programs. 42 U.S.C. 14071. In 1996, Congress passed the Pam Lychner Sexual Offender Tracking and Identification Act, which amended the Wetterling Act to provide for release of registration information in accordance with state laws. 42 U.S.C. 14072. "Federal authorities must notify state law enforcement and registration authorities when a federal prisoner who is a sex offender is released to their areas or when a federal sex offender is sentenced to probation." 18 U.S.C. 4142(c).[44]

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[43] In 2004, the Legal Action Center reported that 27 states automatically suspend or revoke licenses for some or all drug offenses, while the other half of the states either suspend or revoke licenses only for driving-related offenses or have opted out of the federal law entirely. Thirty-two states make restrictive licenses available so individuals whose licenses would otherwise be suspended can go to work, attend drug treatment, or obtain an education. See http://www.lac.org/roadblocks-to-reentry/main.php?view=law&subaction=3.

[44] Federal Statutes Imposing Collateral Consequences Upon Conviction, pp. 12,13 http://www.usdoj.gov/pardon/collateral_consequences.pdf.

In July of 2006, President Bush signed the Adam Walsh Act.[45] This Act enhanced interstate coordination through the National Sex Offender Registry and allowed for greater access of information to law enforcement agencies across the United States. *See* 42 U.S.C. 16919. It also includes specific guidelines for information that must be included on internet-based sex offender registries. 42 U.S.C. 16914 and 42 U.S.C. 16918.

Those required to register are separated into three tiers with different requirements for each tier, including lifetime registration requirements for those with third tier convictions. 42 U.S.C. 16911 and 42 U.S.C. 16915. Persons with specified convictions must maintain current registrations where they reside, work, and/or are in school. 42 U.S.C. 16913 and 42 U.S.C. 16916. There are also requirements about disclosure of information regarding internet identifiers and the sharing of this information with social networking websites. 42 U.S.C. 16915a and 42 U.S.C. 16915b.

X. Federal Firearms Privileges

Firearms and Ammunition

A person convicted of a "crime of punishable by imprisonment for a term exceeding one year" may not ship or transport a firearm (including both long guns and hand guns) or ammunition in interstate or foreign commerce, possess a firearm or ammunition in or affecting commerce, or receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. 18 U.S.C. 921 (a)(3) and 922(g)(1). Moreover, a person who has been convicted of a "misdemeanor crime of domestic violence" is also prohibited from possessing firearms or ammunition. 18 U.S.C. 922(g)(9).

The prohibition is inapplicable to certain federal and state offenses related to business practices ("antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices"). 18 U.S.C. 921(a)(20)(A). It also does not apply to certain state offenses classified as misdemeanors ("any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less"). 18 U.S.C. 921(a)(20)(B). Finally, the prohibition does not apply to a person who has had his or her conviction "expunged, or set aside" or for a person who "has been pardoned or had has civil rights restored . . . unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." 18 U.S.C. 921(a)(20). The law of the court with jurisdiction over the crime is determinative of what constitutes a conviction of that crime, with the result that the federal firearms prohibition varies widely in application from state to state.[46]

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[45] See http://www.whitehouse.gov/news/releases/2006/07/20060727-7.html.

[46] This area of the law is highly complex, in particular the definition of what it means to have civil rights restored following a conviction, which varies in practical effect from state to state. The loss of civil rights

Body Armor

It is a criminal offense for a person who has been convicted of a crime of violence under state or federal law to purchase, own, or possess body armor. There exists an affirmative defense if the defendant obtained prior written certification from his or her employer that the defendant's purchase, use, or possession of body armor was necessary for the safe performance of lawful business activity; and the use and possession by the defendant were limited to the course of such performance. 18 U.S.C. 931.

Explosives

A person cannot knowingly distribute explosive materials to any individual who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; is under indictment for a crime punishable by imprisonment for a term exceeding one year; or is a fugitive from justice. 18 U.S.C. 842(d). Moreover, any person who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year is prohibited from shipping or transporting any explosive in or affecting interstate or foreign commerce or receiving or possessing any explosive that has been shipped or transported in or affecting interstate or foreign commerce. 18 U.S.C. 842(i).

XI. Immigration Consequences

A person who is lawfully admitted to but not a citizen of the United States will be subject to removal proceedings if convicted of an aggravated felony, a crime of domestic violence, a firearms offense, and a drug offense. Crimes of moral turpitude (generally crimes of fraud or evil intent) may also be the basis for removal, depending on how recent and how frequent, and on how long the person has been in the U.S. 8 U.S.C. 1227(a)(2). The list of aggravated felonies is long, but includes murder, rape, illicit trafficking in any controlled substance as well as in firearms or destructive devices, theft, burglary, money laundering, a fraud offense if the amount of the funds exceeded $10,000,

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generally refers to the basic rights of citizenship (the right to vote, serve on a jury, and hold public office). Restoration by operation of law, as opposed to some affirmative act, is sufficient to satisfy this standard. *Caron v. United States*, 524 U.S. 308, 313 (1998). Convictions that do not result in the loss of any civil rights under state law, such as some misdemeanor convictions, do not satisfy the "restoration" standard. United States v. Logan, 522 U.S. ___(2007). While some courts have held that those rights must only be "substantially restored" under state law in order to meet the statutory exclusion, *see, e.g., United States v. Metzger*, 3 F.3d 756, 758 (4th Cir. 1993); *United States v. Gomez*, 911 F.2d 219, 220-21 (9th Cir. 1990), the federal prohibition remains in effect if firearms privileges remain restricted under state law. *Caron v. United States, supra*. Persons with federal convictions remain subject to the federal firearms disability until their civil rights are restored through a federal, not a state, procedure. *See Beecham v. United States*, 511 U.S. 368 (1994). Because the statutory process for administrative restoration has not been funded since 1991, *Bean v. United States*, 537 U.S. 71 (2002), only a presidential pardon restores firearms rights for federal offenders. For a catalogue of state firearms laws and relief provisions that interact with federal law *see* Brief for amici curiae National Association of Criminal Defense Lawyers and Families Against Mandatory Minimums in *Logan v. United States*, U.S. Sup. Ct. No. 06-6911, Appendix detailing state law provisions for loss and restoration of civil rights and firearms privileges, electronic version available at http://www.fd.org/odstb_ConstructFIREARM.htm.

and crimes of violence. 8 U.S.C. 1101(a)(43)(A). Any charge that is a crime of violence, theft, burglary, or commercial bribery, counterfeiting, forgery, or trafficking in vehicles with altered vehicle identification numbers is an aggravated felony if a sentence of one year or more is imposed, regardless of the amount of time actually served, and even if the prison portion of the sentence is suspended or if the sentence is not actually imposed (deferred adjudication).

A single crime of moral turpitude is deportable if committed within five years of admission to the United States and carries a potential sentence of one year or more, regardless of whether a prison sentence was actually imposed. 8 U.S.C. 1227(a)(2)(A). Multiple crimes of moral turpitude are deportable at any time if they do not arise "out of a single scheme."

Certain non-citizens who are not lawfully admitted, or those who are lawfully admitted but travel outside the U.S., are ineligible for admission to the United States, including those convicted of a drug offense or crime of moral turpitude, as well as those who were convicted of multiple offenses, regardless of whether they involved moral turpitude or arose out of a single scheme, for which the aggregate sentence of imprisonment totals more than five years. 8 U.S.C. 1182(a). Therefore, if these people must leave the country for any reason and then try to return, they may face significant difficulties depending on how recent and how many crimes committed

In immigration law, a conviction is defined as a "formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part."

A lawful permanent resident who is otherwise eligible may seek cancellation of removal and adjustment of status unless that person has been convicted of an aggravated felony. 8 U.S.C. 1229b(a). [47] Although not eligible for cancellation of removal, the person who has been convicted of an aggravated felony may still be eligible for withholding of removal if he or she can meet the persecution risk standards so long as the aggregate term of imprisonment for a conviction of aggravated felony (or felonies) is not at least five

[47] This area of the law is highly complex. There are certain things that can be done in negotiated plea agreements in criminal proceedings to avoid mandatory deportation, for example a sentence to 364 days instead of a year to avoid aggravated felony ineligibility for cancellation of removal. Otherwise the person may seek to have the conviction vacated or seek an unconditional pardon. For practitioners and advocacy groups who are committed to justice in this area of the law *see* Immigrant Legal Resource Center, http://www.ilrc.org/criminal.php, a member of the Defending Immigrants Partnership along with the National Immigration Project of the National Lawyers Guild, the National Legal Aid and Defender Association, and the New York State Defender Association.

years. 8 U.S.C. 1231(b). A nonpermanent resident may seek cancellation of removal and adjustment of status unless than person has been convicted of any of the crimes enumerated in 8 U.S.C. 1182(a)(2) and 8 U.S.C. 1227(a)(2). 8 U.S.C. 1229b(b).

A full and unconditional presidential pardon precludes the exercise of authority to remove a convicted alien and removes barriers to naturalization based on conviction. *Effects of a Presidential Pardon***,** 19 U.S. Op. Off. Legal Counsel 160, 1995 WL 861618 (O.L.C.) State pardons may have the effect of waiving deportation based on conviction for certain crimes, and may also remove barriers to naturalization. 8 U.S.C. 1227(a)(2)(A)(vi). A state pardon does not waive deportation for drug and firearms offenses, sex offenses, and certain other serious offenses.

XII. Federal Relief and Restoration Provisions

For people convicted of federal offenses, a presidential pardon restores all rights lost under state or federal law, including the rights to vote, to serve on a jury, and to hold public office, and generally relieves other disabilities that attach solely by reason of the commission or conviction of the pardoned offense. *See Ex parte Garland*, 71 U.S. 333 (1866); **"**Effects of a Presidential Pardon**,"** 19 U.S. Op. Off. Legal Counsel 160, 1995 WL 861618 (O.L.C.) *See also In Re Elliott Abrams, 689 A. 2d 6 (D.C. 1997).* Because the loss of civil rights generally occurs as a matter of state law and thus those rights may be restored by state action as well as by a presidential pardon. State offenses are ineligible for a presidential pardon

For people convicted of state offenses, federal law in some cases incorporates by reference state law relief mechanisms,[48] or gives states the option of opting out of federal regulatory requirements.[49] In other cases, people convicted of state offenses have no way of avoiding or mitigating penalties under federal law. People convicted under federal law generally cannot take advantage of state law relief mechanisms, and thus may have no remedy short of a presidential pardon.[50]

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[48] *See, e.g.* 18 U.S.C. 921(a)(20)(firearms); 28 U.S.C. 1865(b)(5)(federal jury service); 8 U.S.C. 1227(a)(2)(A)(vi)(immigration). .

[49] *See, e.g.,* federal restrictions on state welfare benefits and drivers licenses in 21 U.S.C. 862a(a) and 23 U.S.C. 159.

[50] An example is the prohibition against possessing firearms in 18 U.S.C. §§ 921(a)(3) and 922 (g)(1). State offenders may obtain relief through state law relief mechanisms such as pardon, expungement, set-aside, or restoration of civil rights. See 18 U.S. § 921(a)(20). Federal offenders may obtain relief only through a federal restoration mechanism. *See Beecham v. United States*, 511 U.S. 368 (1994). Because the statutory process for administrative restoration has not been funded since 1991, *Bean v. United States*, 537 U.S. 71 (2002), only a presidential pardon restores firearms rights for federal offenders. For additional information about relief provisions under state and federal law, readers are referred to Margaret Colgate Love, Relief from the Collateral Consequences of a Criminal Conviction, A State by State Resource Guide (Hein 2006), updates at http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=486. *See also* Brief for amici curiae National Association of Criminal Defense Lawyers and Families Against

Certain federal statutes specifically provide that a presidential pardon will remove a particular disqualification. *See, e.g.*, 8 U.S.C. § 1227(a)(2)(A)(v)(removal of an alien from the United States);. 42 U.S.C. § 402(u)(3)(court-imposed penalties relating to the receipt or calculation of old-age or disability insurance benefits); 38 U.S.C. § 6105(a); 38 C.F.R. §§ 3.903(c), 3.904(c)(veterans' benefits).

There is no general federal statutory procedure whereby civil rights may be restored after conviction or judicial records of an adult federal criminal conviction expunged. *See, e.g.*, *United States v. Crowell*, 374 F.3d 790, 792 (9th Cir. 2004). [51] However, some courts have held that federal courts have inherent ancillary authority to expunge criminal records where an arrest or conviction is found to be invalid or a clerical error is made. *United States v. Sumner*, 226 F.3d 1005, 1009 (9th Cir.2000).

Mandatory Minimums in *Logan v. United States*, U.S. Sup. Ct. No. 06-6911, Appendix detailing state law provisions for loss and restoration of civil rights and firearms privileges, electronic version available at http://www.fd.org/odstb_ConstructFIREARM.htm.

[51] Under 18 U.S.C. § 3607, a person found guilty of a misdemeanor offense of simple possession of marijuana under 21 U.S.C. § 844 who has no prior federal or state drug conviction may agree to complete up to a year of probation before a judgment of conviction is entered. If the defendant successfully completes the probationary period, the case is dismissed without the entry of a judgment of conviction and only a non-public record of the disposition is maintained. The defendant in such a case is not considered to have been convicted for any purpose. If the defendant was less than 21 years old at the time the offense was committed, the records of any arrest or initiation of criminal proceedings in the case may be expunged as well. This procedure is available to a defendant only once. The effect of expungement under § 3607 is explained as follows:

> "The expungement order shall direct that there be expunged from all official records, except the nonpublic records referred to in subsection (b), all references to his arrest for the offense, the institution of criminal proceedings against him, and the results thereof. The effect of the order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or institution of criminal proceedings. A person concerning whom such an order has been entered shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge such arrests or institution of criminal proceedings, or the results thereof, in response to an inquiry made of him for any purpose."

18 U.S.C. § 3607(c).

Appendix 1

Federal Consequences Affecting a Person with a Felony Drug Conviction[52]

Below is a list of the consequences that affect a person who has been convicted of a felony involving controlled substances. Many of these consequences would affect a person with any type of conviction; however, there are several, including the felony drug ban for welfare, which affect only those with a drug conviction (those specific to a drug conviction are in bold). This purpose of this list is to show the vast number of limitations arising from federal law that a person faces due to a criminal conviction, particularly one involving drugs.

- The person's right to vote may be lost depending on individual state laws.
- The person is unable to serve on a federal grand or petit jury unless his or her civil rights are restored.
- The person's passport will be revoked while he or she is only parole of supervised release if he used his passport or otherwise crossed an international border in the commission of the offense, unless an exception is granted for humanitarian reasons.
- If a member, the person may be removed as a board member of the United States Institute of Peace.
- The person may not be appointed to or continue service on the National Indian Gaming Commission.
- The person may not participate in any activity sponsored or supported by the Civilian Marksmanship Program and may not purchase any firearms sold by the Civilian Marksmanship Program.
- The person may not enlist in any branch of the military unless the Secretary of Defense authorizes an exception.
- The person may not serve as a court appointed special advocate if it is determined that the act committed would pose a risk to children or to the court-appointed special advocate program's credibility.
- The person may not serve as a mentor for children of prisoners for five years following the commission of the offense.
- The person may not work as a child care worker for the Department of Defense.

[52] *See also Drug Offenders: Various Factors May Limit the Impacts of Federal Laws That Provide for Denial of Selected Benefits*, United States Government Accountability Office, September 2005 http://www.gao.gov/new.items/d05238.pdf.

- The person may not work as a security screener or otherwise have unescorted access to secure areas of an airport if the conviction was in the 10 years prior to the date of investigation and would bar employment.
- If the person holds an airman certificate, it will be revoked if the offense was related to an aircraft or service as an airman, or the person knowingly engaged in such an activity and an appeal is unsuccessful. Even in the absence of the above-referenced finding, the conviction may be grounds for a denial of an application for any certificate, rating, or authorization for one year after the date of the conviction or may be grounds for suspension or revocation of any certificate, rating, or authorization.
- The person may not work in a capacity requiring a Transportation Worker Identification Credential allowing unescorted access to secure areas of maritime facilities and vessels including as a merchant mariner, port truck driver, longshoreman, administrator, contractor, and rail worker if his or her conviction was within the seven years prior to his application for the TWIC or his release from incarceration was within five years prior to his application. He or she may apply for a waiver.
- The person may be denied a merchant mariner's document if the conviction was in the past ten years.
- The person is barred for life from holding a commercial motor vehicle operator license if a commercial motor vehicle was used in the commission of the offense.
- The person may not receive a hazardous material endorsement to a commercial motor vehicle operator license if his or her conviction was within the seven years of his application, or if his release from incarceration was within five years of his application. He or she may apply for a waiver.
- The person may not work for a private prisoner transport company.
- The person may not serve in certain leadership roles for a labor organization including leadership, consulting, advising, or any role that requires decisionmaking or has the potential for a share in profits for 13 years after the conviction or end of imprisonment unless the sentencing judge shortens the period or the person's civil rights have been fully restored.
- The person may not to serve as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan or as a consultant or adviser to an employee benefit plan for 13 years after the conviction or end of imprisonment unless the sentencing judge shortens the period or the person's civil rights have been fully restored.
- The person may not work as a federal law enforcement officer.
- The person may not possess or sell firearms or explosives unless the conviction has been expunged, set aside or pardoned, or civil rights restored.
- The person may be disqualified from registering as a commodities dealer or work with a commodities dealer. Decision may be appealed.

- The person may not work for a local educational agency if it is determined that the crime bears upon his or her fitness to be responsible for the safety or well-being of children; to serve in the particular capacity in which the employee or prospective employee is or will be employed; or to otherwise be employed by the local educational agency.
- The person may not work for a foreign exchange student sponsor program sponsored by the Department of State if he or she has direct personal contact with exchange students.
- The person may be disqualified from providing child care services for an agency of the Federal Government or in a facility operated by the Federal Government (or operated under contract with the Federal Government).
- The person may not work as a care provider for children, the elderly, or individuals with disabilities if it is determined that the crime bears upon his or her fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.
- If a health care provider, the person may not participate in federal health care programs for five years unless it is determined that the exclusion would impose a hardship to his or her patients. If it is a second offense, the bar is for ten years. Any additional offense results in a permanent bar. Right to a hearing and to request reinstatement.
- The person may not work for a hospice if he or she would have direct patient contact or access to patient records if the conviction was within the past three years.
- The person may be disqualified from receiving a broadcast license.
- The person may not recruit, solicit, hire, employ, furnish, or transport migrant or seasonal agricultural workers or be employed by such a person if the conviction was within the past five years. This decision may be appealed to an administrative law judge.
- The person may not obtain license or permit to import, manufacture or deal in explosive materials or work for such a person if denied following appeal.
- The person may not own, control or work in an FDIC insured depository institution or bank for ten years following conviction unless prior approval is given.
- The person may not work for a customs broker.
- The person may be disqualified, after hearing, from registering as a securities dealer or broker or work for a securities dealer or broker.
- The person may be disqualified, after hearing, from registering as an investment adviser or working for an investment adviser.
- The person may not apply for registration as a manufacturer, distributor, dispenser of, or to conduct research with controlled substances.

- The person may not hold a mortgage loan originator license for seven years.
- The person may be disqualified by the sentencing court from federal benefits, including the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by funds appropriated by the United States. If it is the first conviction the ineligibility period may be up to five years. If it is the second conviction the ineligibility period may be up to 10 years. If it is a third or subsequent conviction the ineligibility period may be permanent. If the person declares him or herself an addict and submits to long-term treatment for addiction or is otherwise deemed to be rehabilitated, the ineligibility period may be waived. The period of ineligibility may be suspended for the same reasons or also if the person has tried to get treatment, however it proves to be inaccessible or unavailable.
- The person may not be a foster or adoptive parent for five years following the conviction.
- The person may not be a part of a potential host family for a foreign exchange student or au pair sponsored by the Department of State.
- The person is ineligible for disability benefits from the Social Security Administration for any injury, or exacerbation of an injury, which occurred during the commission of the crime.
- The person may not serve as a representative payee for a beneficiary entitled to benefits from the Social Security Administration unless an exception is made after a determination is made that his or her certification as a representative payee would be appropriate notwithstanding the conviction.
- The person may be ineligible for Temporary Assistance to Needy Families and food stamps depending on the state in which he or she lives.
- The person may have his or her drivers' license suspended or revoked depending on the state in which he or she lives.
- The person may be ineligible for federal grant, loan or work assistance as a student if the conviction was for an offense that occurred while that person was receiving federal student aid. This includes Federal Pell Grants, Academic Competitiveness Grants, Federal Stafford Loans, Federal PLUS Loans, Federal Work Study, and Perkins Loans. He or she would be able to regain eligibility by completing a drug rehabilitation program.
- The person is ineligible for the Hope Scholarship Credit if the conviction was before the end of the taxable year with or within which the academic period ends.
- The person and his or her family may be denied admission to or evicted from public housing, after opportunity to dispute the accuracy and relevancy of the conviction.
- The person is ineligible to be a resident in the Armed Forces Retirement Home without exception, time limitation, or other waiver.

- If not a citizen of the United States, the person will be subject to removal proceedings (deportation).
- If not a citizen of the United States, the person is ineligible for naturalization.

Appendix 2

Table Separating Collateral Sanctions and Discretionary Disqualifications.

Collateral Sanctions	***Waiver, appeal or other provision for restoration of rights?***
Federal Jury Service	Yes, through restoration of civil rights
Federal Government Office Prohibition (permanent and five year bars for certain convictions)	None specified
National Indian Gaming Commission	None specified
Civilian Marksmanship Program	None specified
Enlistment in the Military	Yes, waiver available
Court Appointed Special Advocate Program	None specified
Mentoring Children of Prisoners	None specified
Programs Funded by the Corporation for National and Community Service	Yes, for those convicted of possession of controlled substances who have gone through treatment
Federal Law Enforcement	None specified
Child Care for Federal Workers (DoD)	None specified
Airport, Air Travel, and Air Commerce	No waiver, may dispute information and correct errors
Transportation Worker Identification Credential – Port Security	Yes, waiver available
Commercial Motor Vehicle Operator License	For certain offenses, reinstatement is available after 10 years
Hazardous Materials Endorsement	Yes, waiver
Locomotive Operator License	Yes
Atomic Energy (Security Personnel)	Yes, waiver
Arms Export Control	Exception available on a case-by-case basis
Prisoner Transportation	None specified
Employees of State Departments of Motor Vehicles	Waivers for arrest only
Leadership in Labor Organizations, Consultant or Adviser to an Employee Benefit Program	Yes
Banking Institutions	Court relief only for first 10 years; after 10 years, FDIC may consent, upon request by institution or individual
Business of Insurance	Yes, may obtain consent from relevant insurance regulatory official
Mortgage Loan Originator License	Relief after seven years for

	some offenses
Care for Native American Children	None specified
Community Supported Living Arrangement Services	None specified
Health Care Providers Participating in Federal Health Care Programs Such as Medicare and Medicaid (program related crimes and crimes related to patient abuse, health care fraud, or a felony involving controlled substances)	Yes, if bar poses a hardship to potential patients; there is an opportunity for a hearing; the person may also file an application for reinstatement
Defense Contractors	Yes, a waiver may be requested
Explosive Materials License	Yes, appeal rights are available
Food and Drug Administration (mandatory)	Yes, may be terminated if person aids investigations or prosecution
Loss of Federal Grants, Contracts and Licenses Due to a Conviction of Distribution of Controlled Substances (third or subsequent conviction)	Yes, may be shortened if undergoes substance abuse treatment
Adoption and Safe Families Act	None specified
Social Security Benefits (Felony Bar)	None specified
Social Security Benefits (Representative Payee)	Yes, the Commissioner may make an exception
Temporary Assistance to Needy Families and Food Stamps	Although the federal bar is mandatory, many states have opted out or allow for waiver of the bar with drug treatment
Federal Student Assistance	Yes, eligibility can be regained through completion of a drug treatment program
Drivers' Licensing	Although the federal bar is mandatory, many states have opted out or modified the restriction or allow for restrictive licenses for work, drug treatment, and education
Public Housing (certain mandatory bars)	No waiver or exception for sex offenders or methamphetamine producers
Veteran's Benefits	Restoration only through a presidential pardon
Government Employee Benefits	None specified
Obtaining a Passport	Yes, an exception exists for emergency circumstances or for humanitarian reasons
Sex Offender Registration	None specified
Federal Firearms Privileges	Yes, state offenders regain

	rights if conviction expunged, pardoned, set aside, or if civil rights are restored; federal offenders must be pardoned. (Federal administrative relief provisions have not been funded since 1991)
Immigration Consequences	Yes, a full and unconditional state pardon may provide relief from removal for some offenses; a presidential pardon provides relief for all offenses

Discretionary Disqualification	***Waiver, appeal, or other provision for restoration of rights?***
Federal Government Office Prohibition – for a conviction of bribery of a public official or witness	None specified – left to sentencing court
United States Institute of Peace	None specified
Sponsor Programs for Foreign Exchange Programs	None specified – only requirement is a background check with no guidance
Child Care for Federal Workers	None specified
Merchant Mariners Documents	Various factors to be considered during application, revocation or suspension process
Farm Labor Contractors	Appeal rights available
United States Grain Standards Act	Appeal rights available
Atomic Energy (other than Security Personnel)	Waiver available
Registration of Brokers and Dealers with the SEC	Opportunity for hearing
Registration of Investment Advisers	Opportunity for hearing and an exemption can be requested
Registration of Commodity Dealers and Associated Persons	Appeal rights
Broadcast Licensing	Will consider mitigating factors and there is an opportunity for a hearing
Customs Broker License	Appeal rights
Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances	None specified
Elementary and Secondary School Employees	None specified – only requirement is a background check with no guidance

Care Providers for Vulnerable Populations (Children, the Elderly and Individuals With Disabilities)	None specified – only requirement is a background check with no guidance
Hospice Care	None specified – only requirement is a background check with no specific guidance
Private Security	None specified
Court-imposed Occupational Restrictions	None specified, left to sentencing court
Health Care Providers Participating in Federal Health Care Programs Such as Medicare and Medicaid	Mitigating circumstances may lessen bar period, hearing is available; reinstatement is also available.
Federal Procurement	Yes, opportunity for hearing as well as a request for reconsideration. An excluded person may also request an exception from OPM.
Food and Drug Administration (permissive)	Yes, opportunity for hearing
Loss of Federal Grants, Contracts and Licenses Due to a Conviction of Distribution of Controlled Substances (first and second convictions)	Yes, may be shortened if undergoes treatment
Foreign Exchange Student and Au Pair Host Families	None specified – only requirement is a background check with no guidance
Public Housing (permissive prohibitions)	Yes, opportunity for hearing

Appendix 3

Text of Statutes and Regulations

5 U.S.C. 7313 – Riots and civil disorders

(a) An individual convicted by any Federal, State, or local court of competent jurisdiction of—

(1) inciting a riot or civil disorder;

(2) organizing, promoting, encouraging, or participating in a riot or civil disorder;

(3) aiding or abetting any person in committing any offense specified in clause (1) or (2); or

(4) any offense determined by the head of the employing agency to have been committed in furtherance of, or while participating in, a riot or civil disorder;

shall, if the offense for which he is convicted is a felony, be ineligible to accept or hold any position in the Government of the United States or in the government of the District of Columbia for the five years immediately following the date upon which his conviction becomes final. Any such individual holding a position in the Government of the United States or the government of the District of Columbia on the date his conviction becomes final shall be removed from such position.

(b) For the purposes of this section, "felony" means any offense for which imprisonment is authorized for a term exceeding one year.

5 U.S.C. 7371 - Mandatory removal from employment of law enforcement officers convicted of felonies

(a) In this section, the term—

(1) "conviction notice date" means the date on which an agency that employs a law enforcement officer has notice that the officer has been convicted of a felony that is entered by a Federal or State court, regardless of whether that conviction is appealed or is subject to appeal; and

(2) "law enforcement officer" has the meaning given that term under section 8331(20) or 8401(17).

(b) Any law enforcement officer who is convicted of a felony shall be removed from employment as a law enforcement officer on the last day of the first applicable pay period following the conviction notice date.

(c)(1) This section does not prohibit the removal of an individual from employment as a law enforcement officer before a conviction notice date if the removal is properly effected other than under this section.

(2) This section does not prohibit the employment of any individual in any position other than that of a law enforcement officer.

(d) If the conviction is overturned on appeal, the removal shall be set aside retroactively to the date on which the removal occurred, with back pay under section 5596 for the period during which the removal was in effect, unless the removal was properly effected other than under this section.

(e)(1) If removal is required under this section, the agency shall deliver written notice to the employee as soon as practicable, and not later than 5 calendar days after the conviction notice date. The notice shall include a description of the specific reasons for the removal, the date of removal, and the procedures made applicable under paragraph (2).

(2) The procedures under section 7513 (b)(2), (3), and (4), (c), (d), and (e) shall apply to any removal under this section. The employee may use the procedures to contest or appeal a removal, but only with respect to whether—
(A) the employee is a law enforcement officer;
(B) the employee was convicted of a felony; or
(C) the conviction was overturned on appeal.

(3) A removal required under this section shall occur on the date specified in subsection (b) regardless of whether the notice required under paragraph (1) of this subsection and the procedures made applicable under paragraph (2) of this subsection have been provided or completed by that date.

5 U.S.C. 8148 – Forfeiture of benefits by convicted felons

(a) Any individual convicted of a violation of section 1920 of title 18, or any other Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under this subchapter or subchapter III of this chapter, shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter or subchapter III for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129.

(b)(1) Notwithstanding any other provision of this chapter (except as provided under paragraph (3)), no benefits under this subchapter or subchapter III of this chapter shall be paid or provided to any individual during any period during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to that individual's conviction of an offense that constituted a felony under applicable law.

(2) Such individual shall not be entitled to receive the benefits forfeited during the period of incarceration under paragraph (1), after such period of incarceration ends.

(3) If an individual has one or more dependents as defined under section 8110(a), the Secretary of Labor may, during the period of incarceration, pay to such dependents a percentage of the benefits that would have been payable to such individual computed according to the percentages set forth in section 8133(a)(1) through (5).

…

5 U.S.C. 8312 – Conviction of certain offenses

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual—

(1) was convicted, before, on, or after September 1, 1954, of an offense named by subsection (b) of this section, to the extent provided by that subsection; or

(2) was convicted, before, on, or after September 26, 1961, of an offense named by subsection (c) of this section, to the extent provided by that subsection.
The prohibition on payment of annuity or retired pay applies—
(A) with respect to the offenses named by subsection (b) of this section, to the period after the date of the conviction or after September 1, 1954, whichever is later; and
(B) with respect to the offenses named by subsection (c) of this section, to the period after the date of conviction or after September 26, 1961, whichever is later.

(b) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 1, 1954:

(1) An offense within the purview of—
(A) section 792 (harboring or concealing persons), 793 (gathering, transmitting, or losing defense information), 794 (gathering or delivering defense information to aid foreign government), or 798 (disclosure of classified information), of chapter 37 (relating to espionage and censorship) of title 18;
(B) chapter 105 (relating to sabotage) of title 18;
(C) section 2381 (treason), 2382 (misprision of treason), 2383 (rebellion or insurrection), 2384 (seditious conspiracy), 2385 (advocating overthrow of government), 2387 (activities affecting armed forces generally), 2388 (activities affecting armed forces during war), 2389 (recruiting for service against United States), or 2390 (enlistment to serve against United States), of chapter 115 (relating to treason, sedition, and subversive activities) of title 18;
(D) section 10(b)(2), (3), or (4) of the Atomic Energy Act of 1946 (60 Stat. 766, 767), as in effect before August 30, 1954;

(E) section 16(a) or (b) of the Atomic Energy Act of 1946 (60 Stat. 773), as in effect before August 30, 1954, insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation; or
(F) an earlier statute on which a statute named by subparagraph (A), (B), or (C) of this paragraph (1) is based.

(2) An offense within the purview of—
(A) article 104 (aiding the enemy), article 106 (spies), or article 106a (espionage) of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which article 104 or article 106, as the case may be, is based; or
(B) a current article of the Uniform Code of Military Justice (or an earlier article on which the current article is based) not named by subparagraph (A) of this paragraph (2) on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia—
(A) in falsely denying the commission of an act which constitutes an offense within the purview of—
(i) a statute named by paragraph (1) of this subsection; or
(ii) an article or statute named by paragraph (2) of this subsection insofar as the offense is within the purview of an article or statute named by paragraph (1) or (2)(A) of this subsection;
(B) in falsely testifying before a Federal grand jury, court of the United States, or court-martial with respect to his service as an employee in connection with a matter involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States; or
(C) in falsely testifying before a congressional committee in connection with a matter under inquiry before the congressional committee involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States.

(4) Subornation of perjury committed in connection with the false denial or false testimony of another individual as specified by paragraph (3) of this subsection.

(c) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 26, 1961:

(1) An offense within the purview of—
(A) section 2272 (violation of specific sections) or 2273 (violation of sections generally of chapter 23 of title 42) of title 42 insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation;

(B) section 2274 (communication of restricted data), 2275 (receipt of restricted data), or 2276 (tampering with restricted data) of title 42; or
(C) section 783 (conspiracy and communication or receipt of classified information) of title 50 or section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to intelligence identities).

(2) An offense within the purview of a current article of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which the current article is based, as the case may be, on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia in falsely denying the commission of an act which constitutes an offense within the purview of a statute named by paragraph (1) of this subsection.

(4) Subornation of perjury committed in connection with the false denial of another individual as specified by paragraph (3) of this subsection.

(d)(1) For purposes of subsections (b)(1) and (c)(1), an offense within the meaning of such subsections is established if the Attorney General of the United States certifies to the agency administering the annuity or retired pay concerned—
(A) that an individual subject to this chapter has been convicted by an impartial court of appropriate jurisdiction within a foreign country in circumstances in which the conduct violates the provisions of law enumerated in subsections (b)(1) and (c)(1), or would violate such provisions had such conduct taken place within the United States, and that such conviction is not being appealed or that final action has been taken on such appeal;
(B) that such conviction was obtained in accordance with procedures that provided the defendant due process rights comparable to such rights provided by the United States Constitution, and such conviction was based upon evidence which would have been admissible in the courts of the United States; and
(C) that such conviction occurred after the date of enactment of this subsection.

(2) Any certification made pursuant to this subsection shall be subject to review by the United States Court of Claims based upon the application of the individual concerned, or his or her attorney, alleging that any of the conditions set forth in subparagraphs (A), (B), or (C) of paragraph (1), as certified by the Attorney General, have not been satisfied in his or her particular circumstances. Should the court determine that any of these conditions has not been satisfied in such case, the court shall order any annuity or retirement benefit to which the person concerned is entitled to be restored and shall order that any payments which may have been previously denied or withheld to be paid by the department or agency concerned.

5 U.S.C. 8331 - Definitions

…

(20) "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, "detention" includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;
(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;
(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and
(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Office) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation;

6 U.S.C. 1170 – Security background checks of covered individuals

(a) Definitions

In this section, the following definitions apply:

(1) Security background check
The term "security background check" means reviewing, for the purpose of identifying individuals who may pose a threat to transportation security or national security, or of terrorism—

(A) relevant criminal history databases;
(B) in the case of an alien (as defined in the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), the relevant databases to determine the status of the alien under the immigration laws of the United States; and
(C) other relevant information or databases, as determined by the Secretary.

(2) Covered individual
The term "covered individual" means an employee of a railroad carrier or a contractor or subcontractor of a railroad carrier.

(b) Guidance

(1) Any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action items issued by the Secretary to a railroad carrier or a

contractor or subcontractor of a railroad carrier relating to performing a security background check of a covered individual shall contain recommendations on the appropriate scope and application of such a security background check, including the time period covered, the types of disqualifying offenses, and a redress process for adversely impacted covered individuals consistent with subsections (c) and (d) of this section.

(2) Within 60 days after August 3, 2007, any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action item issued by the Secretary prior to August 3, 2007 to a railroad carrier or a contractor or subcontractor of a railroad carrier relating to performing a security background check of a covered individual shall be updated in compliance with paragraph (1).

(3) If a railroad carrier or a contractor or subcontractor of a railroad carrier performs a security background check on a covered individual to fulfill guidance issued by the Secretary under paragraph (1) or (2), the Secretary shall not consider such guidance fulfilled unless an adequate redress process as described in subsection (d) of this section is provided to covered individuals.

(c) Requirements

If the Secretary issues a rule, regulation, or directive requiring a railroad carrier or contractor or subcontractor of a railroad carrier to perform a security background check of a covered individual, then the Secretary shall prohibit the railroad carrier or contractor or subcontractor of a railroad carrier from making an adverse employment decision, including removal or suspension of the covered individual, due to such rule, regulation, or directive with respect to a covered individual unless the railroad carrier or contractor or subcontractor of a railroad carrier determines that the covered individual—

(1) has been convicted of, has been found not guilty by reason of insanity, or is under want, warrant, or indictment for a permanent disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations;

(2) was convicted of or found not guilty by reason of insanity of an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, within 7 years of the date that the railroad carrier or contractor or subcontractor of a railroad carrier performs the security background check; or

(3) was incarcerated for an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, and released from incarceration within 5 years of the date that the railroad carrier or contractor or subcontractor of a railroad carrier performs the security background check.

(d) Redress process

If the Secretary issues a rule, regulation, or directive requiring a railroad carrier or

contractor or subcontractor of a railroad carrier to perform a security background check of a covered individual, the Secretary shall—

(1) provide an adequate redress process for a covered individual subjected to an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, or directive that is consistent with the appeals and waiver process established for applicants for commercial motor vehicle hazardous materials endorsements and transportation employees at ports, as required by section 70105(c) of Title 46; and

(2) have the authority to order an appropriate remedy, including reinstatement of the covered individual, should the Secretary determine that a railroad carrier or contractor or subcontractor of a railroad carrier wrongfully made an adverse employment decision regarding a covered individual pursuant to such rule, regulation, or directive.

(e) False statements

A railroad carrier or a contractor or subcontractor of a railroad carrier may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check. Not later than 1 year after August 3, 2007, the Secretary shall issue a regulation that prohibits a railroad carrier or a contractor or subcontractor of a railroad carrier from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

(f) Rights and responsibilities

Nothing in this section shall be construed to abridge a railroad carrier's or a contractor or subcontractor of a railroad carrier's rights or responsibilities to make adverse employment decisions permitted by other Federal, State, or local laws. Nothing in the section shall be construed to abridge rights and responsibilities of covered individuals, a railroad carrier, or a contractor or subcontractor of a railroad carrier, under any other Federal, State, or local laws or under any collective bargaining agreement.

(g) No preemption of Federal or State law

Nothing in this section shall be construed to preempt a Federal, State, or local law that requires criminal history background checks, immigration status checks, or other background checks, of covered individuals.

(h) Statutory construction

Nothing in this section shall be construed to affect the process for review established under section 70105(c) of Title 46, including regulations issued pursuant to such section.

7 U.S.C. 12a - Registration of commodity dealers and associated persons; regulation of registered entities

The Commission is authorized—

(1) to register futures commission merchants, associated persons of futures commission merchants, introducing brokers, associated persons of introducing brokers, commodity trading advisors, associated persons of commodity trading advisors, commodity pool operators, associated persons of commodity pool operators, floor brokers, and floor traders upon application in accordance with rules and regulations and in the form and manner to be prescribed by the Commission, which may require the applicant, and such persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing, and in connection therewith to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof: Provided, That notwithstanding any provision of this chapter, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt, except that the term of any such temporary license shall not exceed six months from the date of its issuance;

(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person—

…

(D) if such person has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section 6c or 23 of this title, or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (iv) involves the violation of section 152, 1001, 1341, 1342, 1343, 1503, 1623, 1961,

1962, 1963, or 2314, or chapter 25, 47, 95, or 96 of Title 18, or section 7201 or 7206 of Title 26;

…

Provided, That such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in sections 9 and 15 of this title; and Provided, further, That for the purposes of paragraphs (2) and (3) of this section, "principal" shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission;

(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that—

…

(D) such person pleaded guilty to or was convicted of a felony other than a felony of the type specified in paragraph (2)(D) of this section, or was convicted of a felony of the type specified in paragraph (2)(D) of this section more than ten years preceding the filing of the application;

(E) such person pleaded guilty to or was convicted of any misdemeanor which (i) involves any transaction or advice concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under section 6c or 23 of this title or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95, or 96 of Title 18, or section 7203, 7204, 7205, or 7207 of Title 26;

…

(H) such person has pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court, in a United States military court, or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction;

…

Provided, That pending final determination under this paragraph, registration shall not be granted: Provided further, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to this paragraph in the manner provided in sections 9 and 15 of this title;

(4) in accordance with the procedure provided for in sections 9 and 15 of this title, to suspend, revoke, or place restrictions upon the registration of any person registered under this chapter if cause exists under paragraph (3) of this section which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant or introducing broker who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any registered entity from any person if such person has been denied trading privileges on any registered entity by order of the Commission under sections 9 and 15 of this title and the period of denial specified in such order shall not have expired: Provided, That such person may appeal from a decision to suspend, revoke, or place restrictions upon registration made pursuant to this paragraph in the manner provided in sections 9 and 15 of this title;

…

7 U.S.C. 85 – Suspension, revocation, and refusal to renew licenses; hearing; grounds; temporary suspension

The Secretary may refuse to renew, or may suspend or revoke, any license issued under this chapter whenever, after the licensee has been afforded an opportunity for a hearing, the Secretary shall determine that such licensee is incompetent, or has inspected or weighed or supervised the weighing of grain for purposes of this chapter, by any standard or criteria other than as provided for in this chapter, or has issued, or caused the issuance of, any false or incorrect official certificate or other official form, or has knowingly or carelessly inspected or weighed or supervised the weighing of grain improperly under this chapter, or has accepted any money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or has used the license or allowed it to be used for any improper purpose, or has otherwise violated any provision of this chapter or of the regulations prescribed or instructions issued to the licensee by the Secretary under this chapter. The Secretary may, without first affording the licensee an opportunity for a hearing, suspend any license temporarily pending final determination whenever the Secretary deems such action to be in the best interests of the official inspection system under this chapter. The Secretary may summarily revoke any license whenever the licensee has been convicted of any offense prohibited by section 87b of this title or convicted of any offense proscribed by Title 18, with respect to performance of functions under this chapter.

8 U.S.C. 1101 - Definitions

(a) As used in this chapter—

…

(13)(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,

(v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or

(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

…

(43) The term "aggravated felony" means—

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of Title 18) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of Title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

(E) an offense described in—

(i) section 842(h) or (i) of Title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of Title 18 (relating to firearms offenses); or

(iii) section 5861 of Title 26 (relating to firearms offenses);

(F) a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for which the term of imprisonment is at least one year;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least one year;

(H) an offense described in section 875, 876, 877, or 1202 of Title 18 (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of Title 18 (relating to child pornography);

(J) an offense described in section 1962 of Title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or

subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that—

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii) is described in section 2421, 2422, or 2423 of Title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in any of sections 1581-1585 or 1588-1591 of Title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) an offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of Title 18;

(ii) section 421 of Title 50 (relating to protecting the identity of undercover intelligence agents); or

(iii) section 421 of Title 50 (relating to protecting the identity of undercover agents);

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of Title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter

(O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of Title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and
(U) an attempt or conspiracy to commit an offense described in this paragraph.
The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

…

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—
(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.
(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

8 U.S.C. 1182 – Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

…

(2) Criminal and related grounds
(A) Conviction of certain crimes
(i) In general
Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—
(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21),
is inadmissible.
(ii) Exception

Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) Controlled substance traffickers

Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 802 of title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

(D) Prostitution and commercialized vice

Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution

Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 1101(h) of this title),
(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,
(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and
(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,
is inadmissible.
(F) Waiver authorized
For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h) of this section.
…

8 U.S.C. 1227 – Deportable aliens

(a) Classes of deportable aliens

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:
…

(2) Criminal offenses
(A) General crimes
(i) Crimes of moral turpitude
Any alien who—
(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 1255(j) of this title) after the date of admission, and
(II) is convicted of a crime for which a sentence of one year or longer may be imposed,
is deportable.
(ii) Multiple criminal convictions
Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.
(iii) Aggravated felony
Any alien who is convicted of an aggravated felony at any time after admission is deportable.
(iv) High speed flight
Any alien who is convicted of a violation of section 758 of Title 18, (relating to high speed flight from an immigration checkpoint) is deportable.
(v) Failure to register as a sex offender
Any alien who is convicted under section 2250 of Title 18, is deportable.

(vi) Waiver authorized
Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) Controlled substances
(i) Conviction
Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.
(ii) Drug abusers and addicts
Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

(C) Certain firearm offenses
Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of Title 18) in violation of any law is deportable.

(D) Miscellaneous crimes
Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate—
(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of Title 18, for which a term of imprisonment of five or more years may be imposed;
(ii) any offense under section 871 or 960 of Title 18;
(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or
(iv) a violation of section 1185 or 1328 of this title,
is deportable.

(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and
(i) Domestic violence, stalking, and child abuse
Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in section 16 of Title 18) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly

situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

…

8 U.S.C. 1229b - Cancellation of removal; adjustment of status

(a) Cancellation of removal for certain permanent residents

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien--

(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,

(2) has resided in the United States continuously for 7 years after having been admitted in any status, and

(3) has not been convicted of any aggravated felony.

(b) Cancellation of removal and adjustment of status for certain nonpermanent residents

(1) In general

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien--

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title, subject to paragraph (5); and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

10 U.S.C. 504 – Armed Force - Persons not qualified

(a) Insanity, desertion, felons, etc.—No person who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony, may be enlisted in any

armed force. However, the Secretary concerned may authorize exceptions, in meritorious cases, for the enlistment of deserters and persons convicted of felonies.

10 U.S.C. 2408 – Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors

(a) Prohibition.--(1) An individual who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from each of the following:

(A) Working in a management or supervisory capacity on any defense contract or any first tier subcontract of a defense contract.

(B) Serving on the board of directors of any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(C) Serving as a consultant to any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(D) Being involved in any other way, as determined under regulations prescribed by the Secretary of Defense, with a defense contract or first tier subcontract of a defense contract.

(2) Except as provided in paragraph (3), the prohibition in paragraph (1) shall apply for a period, as determined by the Secretary of Defense, of not less than five years after the date of the conviction.

(3) The prohibition in paragraph (1) may apply with respect to an individual for a period of less than five years if the Secretary determines that the five-year period should be waived in the interests of national security.

(4) The prohibition in paragraph (1) does not apply with respect to the following:

(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(B) A contract referred to in such subparagraph that is for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(C) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A) or (B).

…

(c) Single point of contact for information.--(1) The Attorney General shall ensure that a single point of contact is established to enable a defense contractor or subcontractor to promptly obtain information regarding whether a person that the contractor or subcontractor proposes to use for an activity covered by paragraph (1) of subsection (a) is under a prohibition under that subsection.

(2) The procedure for obtaining such information shall be specified in regulations prescribed by the Secretary of Defense under subsection (a).

12 U.S.C. 5104 – State license and registration application and issuance

(a) Background checks

In connection with an application to any State for licensing and registration as a State-licensed loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including--

(1) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(2) personal history and experience, including authorization for the System to obtain--
(A) an independent credit report obtained from a consumer reporting agency described in section 1681a(p) of Title 15; and
(B) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) Issuance of license

The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

(1) The applicant has never had a loan originator license revoked in any governmental jurisdiction.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court--
(A) during the 7-year period preceding the date of the application for licensing and registration; or
(B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this chapter.

(4) The applicant has completed the pre-licensing education requirement described in subsection (c).

(5) The applicant has passed a written test that meets the test requirement described in subsection (d).

(6) The applicant has met either a net worth or surety bond requirement, or paid into a State fund, as required by the State pursuant to section 1507(d)(6) of this title.

…

12 U.S.C. 1829 – Penalty for unauthorized participation by convicted individual

(a) Prohibition

(1) In general

Except with the prior written consent of the Corporation—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

(i) become, or continue as, an institution-affiliated party with respect to any insured depository institution;

(ii) own or control, directly or indirectly, any insured depository institution; or

(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution; and

(B) any insured depository institution may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) Minimum 10-year prohibition period for certain offenses

(A) In general

If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

(i) an offense under—

(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, 1517, 1956, or 1957 of Title 18; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense,

the Corporation may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) Exception by order of sentencing court

(i) In general

On motion of the Corporation, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) Period for filing

A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(b) Penalty

Whoever knowingly violates subsection (a) of this section shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.
…

(d) Bank holding companies

(1) In general
Subsections (a) and (b) of this section shall apply to any company (other than a foreign bank) that is a bank holding company and any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, as if such bank holding company or organization were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting "Board of Governors of the Federal Reserve System" for "Corporation" each place that term appears in such subsections.

(2) Authority of board
The Board of Governors of the Federal Reserve System may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

(e) Savings and loan holding companies

(1) In general
Subsections (a) and (b) of this section shall apply to any savings and loan holding company as if such savings and loan holding company were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting "Director of the Office of Thrift Supervision" for "Corporation" each place that term appears in such subsections.

(2) Authority of director
The Director of the Office of Thrift Supervision may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

15 U.S.C. 78o – Registration and regulation of brokers and dealers

…

(b) Manner of registration of brokers and dealers

(1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

…

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

…

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;
(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;
(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or
(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of Title 18, or a violation of a substantially equivalent foreign statute.

…

(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a broker or dealer, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—
(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection;
(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or
(iii) is enjoined from any action, conduct, or practice specified in subparagraph (c) of such paragraph (4).

…

15 U.S.C. 80a-9 – Ineligibility of certain affiliated persons and underwriters

(a) Persons deemed ineligible for service with investment companies, etc.; investment adviser

It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or

depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company:

(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act, [7 U.S.C.A. § 1 et seq.], or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

…

(c) Application of ineligible person for exemption

Any person who is ineligible, by reason of subsection (a) of this section, to serve or act in the capacities enumerated in such subsection, may file with the Commission an application for an exemption from the provisions of such subsection. The Commission shall by order grant such application, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of such subsection (a) as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

15 U.S.C. 80b-3 – Registration of investment advisers

…

(c) Procedure for registration; filing of application; effective date of registration; amendment of registration

…

(2) Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such registration; or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied and that the applicant is not prohibited from

registering as an investment advisor under section 80b-3a of this title. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e) of this section.

…

(e) Censure, denial, or suspension of registration; notice and hearing

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

…

(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(A) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(B) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, government securities broker, government securities dealer, fiduciary, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C.A. § 1 et seq.] or any substantially equivalent statute or regulation;

(C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(D) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of Title 18, or a violation of substantially equivalent foreign statute.

(3) has been convicted during the 10-year period preceding the date of filing of any application for registration, or at any time thereafter, of—

(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in paragraph (2); or

(B) a substantially equivalent crime by a foreign court of competent jurisdiction.

…

(f) Bar or suspension from association with investment adviser; notice and hearing

The Commission, by order, shall censure or place limitations on the activities of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding twelve months or bar any such person from being associated with an investment adviser, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (5), (6), (8), or (9) of subsection (e) of this section or has been convicted of any offense specified in paragraph (2) or (3) of subsection (e) of this section within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e) of this section. It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

…

(i) Money penalties in administrative proceedings

…

(3) Determination of public interest

In considering under this section whether a penalty is in the public interest, the Commission may consider—

(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(B) the harm to other persons resulting either directly or indirectly from such act or omission;

(C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in subsection (e)(2) of this section;

(E) the need to deter such person and other persons from committing such acts or omissions; and

(F) such other matters as justice may require.

18 U.S.C. 201 – Bribery of public officials and witnesses

(a) For the purpose of this section—

(1) the term "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever—

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—
(A) to influence any official act; or
(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or
(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:
(A) being influenced in the performance of any official act;
(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or
(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-

mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom;
shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

18 U.S.C. 592 – Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

18 U.S.C. 593 – Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties--

Shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

18 U.S.C. 842 – Unlawful acts

(a) It shall be unlawful for any person—

(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

…

(d) It shall be unlawful for any person knowingly to distribute explosive materials to any individual who:

(1) is under twenty-one years of age;

(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

(4) is a fugitive from justice;

(5) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

…

(i) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

…

to ship or transport any explosive in or affecting interstate or foreign commerce or to receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce.

18 U.S.C. 843 – Licenses and user permits

…

(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Attorney General shall issue to such applicant the appropriate license or permit if—

(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in section 842(i);

…

(6) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is any person described in section 842(i); and

…

(d) The Attorney General may revoke any license or permit issued under this section if in the opinion of the Attorney General the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Attorney General stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

(2) If the Attorney General denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Attorney General may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Attorney General shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701-706 of title 5, United States Code.

…

(h)(1) If the Secretary receives, from an employer, the name and other identifying

information of a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary shall determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i). In making the determination, the Secretary may take into account a letter or document issued under paragraph (2).

(2)(A) If the Secretary determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance, which confirms the determination.

(B) If the Secretary determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that—

(i) confirms the determination;
(ii) explains the grounds for the determination;
(iii) provides information on how the disability may be relieved; and
(iv) explains how the determination may be appealed.

18 U.S.C. 921 - Definitions

(a) As used in this chapter--

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.
…

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,
(ii) grenade,
(iii) rocket having a propellant charge of more than four ounces,
(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,
(v) mine, or
(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a

projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.
The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions ofsection 4684(2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

(10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

(11) The term "dealer" means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing

firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term "antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(17)(A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any firearm.

(B) The term "armor piercing ammunition" means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term "armor piercing ammunition" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(18) The term "Attorney General" means the Attorney General of the United States"

(19) The term "published ordinance" means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term "engaged in the business" means—

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement

of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;
(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;
(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and
(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: Provided, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term "terrorism" means activity, directed against United States persons, which—
(A) is committed by an individual who is not a national or permanent resident alien of the United States;
(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and
(C) is intended—
(i) to intimidate or coerce a civilian population;
(ii) to influence the policy of a government by intimidation or coercion; or
(iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

(24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term "school zone" means—
(A) in, or on the grounds of, a public, parochial or private school; or
(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term “school” means a school which provides elementary or secondary education, as determined under State law.

(27) The term “motor vehicle” has the meaning given such term in section 13102 of title 49, United States Code.

(28) The term “semiautomatic rifle” means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term “handgun” means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

…

(32) The term “intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33)(A) Except as provided in subparagraph (C), the term “misdemeanor crime of domestic violence” means an offense that—

(i) is a misdemeanor under Federal, State, or Tribal law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly

provides that the person may not ship, transport, possess, or receive firearms.

(34) The term "secure gun storage or safety device" means--
(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;
(B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or
(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(35) The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

18 U.S.C. 922 – Unlawful acts

…

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien—
(A) is illegally or unlawfully in the United States; or
(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence. This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant tosubsection (c) of section 925 of this chapter.

…

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. 931 – Prohibition on purchase, ownership, or possession of body armor by violent felons

(a) In general.—Except as provided in subsection (b), it shall be unlawful for a person to purchase, own, or possess body armor, if that person has been convicted of a felony that is—

(1) a crime of violence (as defined in section 16); or

(2) an offense under State law that would constitute a crime of violence under paragraph (1) if it occurred within the special maritime and territorial jurisdiction of the United States.

(b) Affirmative defense.—

(1) In general.—It shall be an affirmative defense under this section that—
(A) the defendant obtained prior written certification from his or her employer that the defendant's purchase, use, or possession of body armor was necessary for the safe performance of lawful business activity; and

(B) the use and possession by the defendant were limited to the course of such performance.

(2) Employer.—In this subsection, the term "employer" means any other individual employed by the defendant's business that supervises defendant's activity. If that defendant has no supervisor, prior written certification is acceptable from any other employee of the business.

18 U.S.C. 1033 - Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce

…

(e)(1)(A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

(f) As used in this section—

(1) the term "business of insurance" means—
(A) the writing of insurance, or
(B) the reinsuring of risks,
by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons;

(2) the term "insurer" means any entity the business activity of which is the writing of insurance or the reinsuring of risks, and includes any person who acts as, or is, an officer, director, agent, or employee of that business;

(3) the term "interstate commerce" means—
(A) commerce within the District of Columbia, or any territory or possession of the United States;

(B) all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;
(C) all commerce between points within the same State through any place outside such State; or
(D) all other commerce over which the United States has jurisdiction; and

(4) the term "State" includes any State, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

18 U.S.C. 1901 – Collecting or disbursing officer trading in public property

Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, carries on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be fined under this title or imprisoned not more than one year, or both; and shall be removed from office, and be incapable of holding any office under the United States.

18 U.S.C. 1905 – Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Federal Housing Finance Agency, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

18 U.S.C. 2071 – Concealment, removal, or mutilation generally

…

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not

include the office held by any person as a retired officer of the Armed Forces of the United States.

18 U.S.C. 2381 – Treason

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States.

18 U.S.C. 2385 – Advocating overthrow of Government

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof--

Shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms “organizes” and “organize”, with respect to any society, group, or assembly of persons, include the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

18 U.S.C. 2387 – Activities affecting armed forces generally

(a) Whoever, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States:

(1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) distributes or attempts to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States—
Shall be fined under this title or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

(b) For the purposes of this section, the term "military or naval forces of the United States" includes the Army of the United States, the Navy, Air Force, Marine Corps, Coast Guard, Navy Reserve, Marine Corps Reserve, and Coast Guard Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel.

19 U.S.C. 1641 – Customs brokers

(a) Definitions

As used in this section:

(1) The term "customs broker" means any person granted a customs broker's license by the Secretary under subsection (b) of this section.

(2) The term "customs business" means those activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

(3) The term "Secretary" means the Secretary of the Treasury.

(b) Customs broker's licenses

(1) In general
No person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker's license issued by the Secretary under paragraph (2) or (3).

(2) Licenses for individuals
The Secretary may grant an individual a customs broker's license only if that individual is a citizen of the United States. Before granting the license, the Secretary may require an applicant to show any facts deemed necessary to establish that the applicant is of good moral character and qualified to render valuable service to others in the conduct of customs business. In assessing the qualifications of an applicant, the Secretary may conduct an examination to determine the applicant's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters.

…

(d) Disciplinary proceedings

(1) General rule
The Secretary may impose a monetary penalty in all cases with the exception of the infractions described in clause (iii) of subparagraph (B) of this subsection, or revoke or suspend a license or permit of any customs broker, if it is shown that the broker—
…

(B) has been convicted at any time after the filing of an application for license under subsection (b) of this section of any felony or misdemeanor which the Secretary finds—
(i) involved the importation or exportation of merchandise;
(ii) arose out of the conduct of its customs business; or
(iii) involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;
…

(E) has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of such employment from the Secretary; or

(2) Procedures
(A) Monetary penalty
Unless action has been taken under subparagraph (B), the appropriate customs officer shall serve notice in writing upon any customs broker to show cause why the broker should not be subject to a monetary penalty not to exceed $30,000 in total for a violation or violations of this section. The notice shall advise the customs broker of the allegations or complaints against him and shall explain that the broker has a right to respond to the allegations or complaints in writing within 30 days of the date of the notice. Before imposing a monetary penalty, the customs officer shall consider the

allegations or complaints and any timely response made by the customs broker and issue a written decision. A customs broker against whom a monetary penalty has been issued under this section shall have a reasonable opportunity under section 1618 of this title to make representations seeking remission or mitigation of the monetary penalty. Following the conclusion of any proceeding under section 1618 of this title, the appropriate customs officer shall provide to the customs broker a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(B) Revocation or suspension

The Customs Service may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or the Customs Service determines that the revocation or suspension is still warranted, it shall notify the customs broker in writing of a hearing to be held within 30 days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of Title 5 who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. At the hearing, the customs broker may be represented by counsel, and all proceedings, including the proof of the charges and the response thereto shall be presented with testimony taken under oath and the right of cross-examination accorded to both parties. A transcript of the hearing shall be made and a copy will be provided to the Customs Service and the customs broker; which shall thereafter be provided reasonable opportunity to file a post-hearing brief. Following the conclusion of the hearing, the hearing officer shall transmit promptly the record of the hearing along with the findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based solely on the record, setting forth the findings of fact and the reasons for the decision. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed $30,000, than was contained in the notice to show cause.

(3) Settlement and compromise

The Secretary may settle and compromise any disciplinary proceeding which has been instituted under this subsection according to the terms and conditions agreed to by the parties, including but not limited to the reduction of any proposed suspension or revocation to a monetary penalty.

(4) Limitation of actions

Notwithstanding section 1621 of this title, no proceeding under this subsection or subsection (b)(6) of this section shall be commenced unless such proceeding is instituted by the appropriate service of written notice within 5 years from the date the alleged violation was committed; except that if the alleged violation consists of fraud,

the 5-year period of limitation shall commence running from the time such alleged violation was discovered.

(e) Judicial appeal

(1) In general
A customs broker, applicant, or other person directly affected may appeal any decision of the Secretary denying or revoking a license or permit under subsection (b) or (c) of this section, or revoking or suspending a license or permit or imposing a monetary penalty in lieu thereof under subsection (d)(2)(B) of this section, by filing in the Court of International Trade, within 60 days after the issuance of the decision or order, a written petition requesting that the decision or order be modified or set aside in whole or in part. A copy of the petition shall be transmitted promptly by the clerk of the court to the Secretary or his designee. In cases involving revocation or suspension of a license or permit or imposition of a monetary penalty in lieu thereof under subsection (d)(2)(B) of this section, after receipt of the petition, the Secretary shall file in court the record upon which the decision or order complained of was entered, as provided in section 2635(d) of Title 28.

…

20 U.S.C. 1091 – Student eligibility

…

(r) Suspension of eligibility for drug-related offenses

(1) In general
A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall not be eligible to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of Title 42 from the date of that conviction for the period of time specified in the following table:

If convicted of an offense involving:	
The possession of a controlled substance:	**Ineligibility period is:**
First offense	1 year
Second offense	2 years
Third offense	Indefinite.
The sale of a controlled substance:	**Ineligibility period is:**
First offense	2 years
Second offense	Indefinite.

(2) Rehabilitation
A student whose eligibility has been suspended under paragraph (1) may resume eligibility before the end of the ineligibility period determined under such paragraph if—
(A) the student satisfactorily completes a drug rehabilitation program that—
(i) complies with such criteria as the Secretary shall prescribe in regulations for purposes of this paragraph; and
(ii) includes two unannounced drug tests; or
(B) the conviction is reversed, set aside, or otherwise rendered nugatory.

(3) Definitions
In this subsection, the term "controlled substance" has the meaning given the term in section 802(6) of Title 21.

20 U.S.C. 7115 – Authorized activities

…

(b) Local educational agency activities
…

(2) Authorized activities
Each local educational agency, or consortium of such agencies, that receives a subgrant under this subpart may use such funds to carry out activities that comply with the principles of effectiveness described in subsection (a) of this section, such as the following:
…

(E) Drug and violence prevention activities that may include the following:
…

(xx) Conducting a nationwide background check of each local educational agency employee, regardless of when hired, and prospective employees for the purpose of determining whether the employee or prospective employee has been convicted of a crime that bears upon the employee's fitness—
(I) to be responsible for the safety or well-being of children;
(II) to serve in the particular capacity in which the employee or prospective employee is or will be employed; or
(III) to otherwise be employed by the local educational agency.

21 U.S.C. 335a - Debarment, temporary denial of approval, and suspension

(a) Mandatory debarment; certain drug applications
…
(2) Individuals
If the Secretary finds that an individual has been convicted of a felony under Federal law for conduct—

(A) relating to the development or approval, including the process for development or approval, of any drug product, or
(B) otherwise relating to the regulation of any drug product under this chapter,
the Secretary shall debar such individual from providing services in any capacity to a person that has an approved or pending drug product application.

(b) Permissive debarment; certain drug applications; food imports

(1) In general
The Secretary, on the Secretary's own initiative or in response to a petition, may, in accordance with paragraph (2), debar—
…

(B) an individual from providing services in any capacity to a person that has an approved or pending drug product application, or
…
(2) Persons subject to permissive debarment; certain drug applications
The following persons are subject to debarment under subparagraph (A) or (B) of paragraph (1):

…
(B) Individuals
(i) Any individual whom the Secretary finds has been convicted of—
(I) a misdemeanor under Federal law or a felony under State law for conduct relating to the development or approval, including the process for development or approval, of any drug product or otherwise relating to the regulation of drug products under this chapter, or
(II) a conspiracy to commit, or aiding or abetting, such criminal offense or a felony described in subsection (a)(2) of this section,
if the Secretary finds that the type of conduct which served as the basis for such conviction undermines the process for the regulation of drugs.
(ii) Any individual whom the Secretary finds has been convicted of—
(I) a felony which is not described in subsection (a)(2) of this section or clause (i) of this subparagraph and which involves bribery, payment of illegal gratuities, fraud, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records, or interference with, obstruction of an investigation into, or prosecution of, any criminal offense, or
(II) a conspiracy to commit, or aiding or abetting, such felony,
if the Secretary finds, on the basis of the conviction of such individual and other information, that such individual has demonstrated a pattern of conduct sufficient to find that there is reason to believe that such individual may violate requirements under this chapter relating to drug products.
(iii) Any individual whom the Secretary finds materially participated in acts that were the basis for a conviction for an offense described in subsection (a) of this section or in clause (i) or (ii) for which a conviction was obtained, if the Secretary finds, on the basis of such participation and other information, that such individual

has demonstrated a pattern of conduct sufficient to find that there is reason to believe that such individual may violate requirements under this chapter relating to drug products.

(iv) Any high managerial agent whom the Secretary finds—

(I) worked for, or worked as a consultant for, the same person as another individual during the period in which such other individual took actions for which a felony conviction was obtained and which resulted in the debarment under subsection (a)(2) of this section, or clause (i), of such other individual,

(II) had actual knowledge of the actions described in subclause (I) of such other individual, or took action to avoid such actual knowledge, or failed to take action for the purpose of avoiding such actual knowledge,

(III) knew that the actions described in subclause (I) were violative of law, and

(IV) did not report such actions, or did not cause such actions to be reported, to an officer, employee, or agent of the Department or to an appropriate law enforcement officer, or failed to take other appropriate action that would have ensured that the process for the regulation of drugs was not undermined, within a reasonable time after such agent first knew of such actions, if the Secretary finds that the type of conduct which served as the basis for such other individual's conviction undermines the process for the regulation of drugs.

(3) Persons subject to permissive debarment; food importation

A person is subject to debarment under paragraph (1)(c) if—

(A) the person has been convicted of a felony for conduct relating to the importation into the United States of any food; or

(B) the person has engaged in a pattern of importing or offering for import adulterated food that presents a threat of serious adverse health consequences or death to humans or animals.

(4) Stay of certain orders

An order of the Secretary under clause (iii) or (iv) of paragraph (2)(B) shall not take effect until 30 days after the order has been issued.

(c) Debarment period and considerations

(1) Effect of debarment

The Secretary—

(A) shall not accept or review (other than in connection with an audit under this section) any abbreviated drug application submitted by or with the assistance of a person debarred under subsection (a)(1) or (b)(2)(A) of this section during the period such person is debarred,

(B) shall, during the period of a debarment under subsection (a)(2) or (b)(2)(B) of this section, debar an individual from providing services in any capacity to a person that has an approved or pending drug product application and shall not accept or review (other than in connection with an audit under this section) an abbreviated drug application from such individual, and

(C) shall, if the Secretary makes the finding described in paragraph (6) or (7) of section 335b(a) of this title, assess a civil penalty in accordance with section 335b of this title.

(2) Debarment periods

(A) In general

The Secretary shall debar a person under subsection (a) or (b) of this section for the following periods:

(i) The period of debarment of a person (other than an individual) under subsection (a)(1) of this section shall not be less than 1 year or more than 10 years, but if an act leading to a subsequent debarment under subsection (a) of this section occurs within 10 years after such person has been debarred under subsection (a)(1) of this section, the period of debarment shall be permanent.

(ii) The debarment of an individual under subsection (a)(2) of this section shall be permanent.

(iii) The period of debarment of any person under paragraph (2) or (3) of subsection (b) of this section shall not be more than 5 years.

The Secretary may determine whether debarment periods shall run concurrently or consecutively in the case of a person debarred for multiple offenses.

(B) Notification

Upon a conviction for an offense described in subsection (a) or (b) of this section or upon execution of an agreement with the United States to plead guilty to such an offense, the person involved may notify the Secretary that the person acquiesces to debarment and such person's debarment shall commence upon such notification.

(3) Considerations

In determining the appropriateness and the period of a debarment of a person under subsection (b) of this section and any period of debarment beyond the minimum specified in subparagraph (A)(i) of paragraph (2), the Secretary shall consider where applicable—

(A) the nature and seriousness of any offense involved,

(B) the nature and extent of management participation in any offense involved, whether corporate policies and practices encouraged the offense, including whether inadequate institutional controls contributed to the offense,

(C) the nature and extent of voluntary steps to mitigate the impact on the public of any offense involved, including the recall or the discontinuation of the distribution of suspect drugs, full cooperation with any investigations (including the extent of disclosure to appropriate authorities of all wrongdoing), the relinquishing of profits on drug approvals fraudulently obtained, and any other actions taken to substantially limit potential or actual adverse effects on the public health,

(D) whether the extent to which changes in ownership, management, or operations have corrected the causes of any offense involved and provide reasonable assurances that the offense will not occur in the future,

(E) whether the person to be debarred is able to present adequate evidence that current production of drugs subject to abbreviated drug applications and all pending abbreviated drug applications are free of fraud or material false statements, and

(F) prior convictions under this chapter or under other Acts involving matters within the jurisdiction of the Food and Drug Administration.

(d) Termination of debarment

(1) Application
Any person that is debarred under subsection (a) of this section (other than a person permanently debarred) or any person that is debarred under subsection (b) of this section may apply to the Secretary for termination of the debarment under this subsection. Any information submitted to the Secretary under this paragraph does not constitute an amendment or supplement to pending or approved abbreviated drug applications.

(2) Deadline
The Secretary shall grant or deny any application respecting a debarment which is submitted under paragraph (1) within 180 days of the date the application is submitted.

(3) Action by the Secretary
…

(B) Individuals
(i) Conviction reversal
If the conviction which served as the basis for the debarment of an individual under subsection (a)(2) of this section or clause (i), (ii), (iii), or (iv) of subsection (b)(2)(B) or subsection (b)(3) of this section is reversed, the Secretary shall withdraw the order of debarment.
(ii) Application
Upon application submitted under paragraph (1), the Secretary shall terminate the debarment of an individual who has been debarred under subsection (b)(2)(B) or subsection (b)(3) of this section if such termination serves the interests of justice and adequately protects the integrity of the drug approval process or the food importation process, as the case may be.
(4) Special termination
(A) Application
Any person that is debarred under subsection (a)(1) of this section (other than a person permanently debarred under subsection (c)(2)(A)(i) of this section) or any individual who is debarred under subsection (a)(2) of this section may apply to the Secretary for special termination of debarment under this subsection. Any information submitted to the Secretary under this subparagraph does not constitute an amendment or supplement to pending or approved abbreviated drug applications.
…

(C) Individuals
Upon an application submitted under subparagraph (A), the Secretary may take the action described in subparagraph (D) if the Secretary, after an informal hearing, finds that such individual has provided substantial assistance in the investigations or

prosecutions of offenses which are described in subsection (a) or (b) of this section or which relate to any matter under the jurisdiction of the Food and Drug Administration.

(D) Secretarial action

The action referred to in subparagraphs (B) and (C) is—

(i) in the case of a person other than an individual—

(I) terminating the debarment immediately, or

(II) limiting the period of debarment to less than one year, and

(ii) in the case of an individual, limiting the period of debarment to less than permanent but to no less than 1 year,

whichever best serves the interest of justice and protects the integrity of the drug approval process.

(e) Publication and list of debarred persons

The Secretary shall publish in the Federal Register the name of any person debarred under subsection (a) or (b) of this section, the effective date of the debarment, and the period of the debarment. The Secretary shall also maintain and make available to the public a list, updated no less often than quarterly, of such persons, of the effective dates and minimum periods of such debarments, and of the termination of debarments.

(f) Temporary denial of approval

(1) In general

The Secretary, on the Secretary's own initiative or in response to a petition, may, in accordance with paragraph (3), refuse by order, for the period prescribed by paragraph (2), to approve any abbreviated drug application submitted by any person—

(A) if such person is under an active Federal criminal investigation in connection with an action described in subparagraph (B),

(B) if the Secretary finds that such person—

(i) has bribed or attempted to bribe, has paid or attempted to pay an illegal gratuity, or has induced or attempted to induce another person to bribe or pay an illegal gratuity to any officer, employee, or agent of the Department of Health and Human Services or to any other Federal, State, or local official in connection with any abbreviated drug application, or has conspired to commit, or aided or abetted, such actions, or

(ii) has knowingly made or caused to be made a pattern or practice of false statements or misrepresentations with respect to material facts relating to any abbreviated drug application, or the production of any drug subject to an abbreviated drug application, to any officer, employee, or agent of the Department of Health and Human Services, or has conspired to commit, or aided or abetted, such actions, and

(C) if a significant question has been raised regarding—

(i) the integrity of the approval process with respect to such abbreviated drug application, or

(ii) the reliability of data in or concerning such person's abbreviated drug application.

Such an order may be modified or terminated at any time.

(2) Applicable period

(A) In general

Except as provided in subparagraph (B), a denial of approval of an application of a person under paragraph (1) shall be in effect for a period determined by the Secretary but not to exceed 18 months beginning on the date the Secretary finds that the conditions described in subparagraphs (A), (B), and (C) of paragraph (1) exist. The Secretary shall terminate such denial—

(i) if the investigation with respect to which the finding was made does not result in a criminal charge against such person, if criminal charges have been brought and the charges have been dismissed, or if a judgment of acquittal has been entered, or

(ii) if the Secretary determines that such finding was in error.

(B) Extension

If, at the end of the period described in subparagraph (A), the Secretary determines that a person has been criminally charged for an action described in subparagraph (B) of paragraph (1), the Secretary may extend the period of denial of approval of an application for a period not to exceed 18 months. The Secretary shall terminate such extension if the charges have been dismissed, if a judgment of acquittal has been entered, or if the Secretary determines that the finding described in subparagraph (A) was in error.

(3) Informal hearing

Within 10 days of the date an order is issued under paragraph (1), the Secretary shall provide such person with an opportunity for an informal hearing, to be held within such 10 days, on the decision of the Secretary to refuse approval of an abbreviated drug application. Within 60 days of the date on which such hearing is held, the Secretary shall notify the person given such hearing whether the Secretary's refusal of approval will be continued, terminated, or otherwise modified. Such notification shall be final agency action.

(g) Suspension authority

(1) In general

If—

(A) the Secretary finds—

(i) that a person has engaged in conduct described in subparagraph (B) of subsection (f)(1) of this section in connection with 2 or more drugs under abbreviated drug applications, or

(ii) that a person has engaged in flagrant and repeated, material violations of good manufacturing practice or good laboratory practice in connection with the development, manufacturing, or distribution of one or more drugs approved under an abbreviated drug application during a 2-year period, and—

(I) such violations may undermine the safety and efficacy of such drugs, and

(II) the causes of such violations have not been corrected within a reasonable period of time following notice of such violations by the Secretary, and

(B) such person is under an active investigation by a Federal authority in connection with a civil or criminal action involving conduct described in subparagraph (A),

the Secretary shall issue an order suspending the distribution of all drugs the development or approval of which was related to such conduct described in subparagraph (A) or suspending the distribution of all drugs approved under abbreviated drug applications of such person if the Secretary finds that such conduct may have affected the development or approval of a significant number of drugs which the Secretary is unable to identify. The Secretary shall exclude a drug from such order if the Secretary determines that such conduct was not likely to have influenced the safety or efficacy of such drug.

(2) Public health waiver

The Secretary shall, on the Secretary's own initiative or in response to a petition, waive the suspension under paragraph (1) (involving an action described in paragraph (1)(A)(i)) with respect to any drug if the Secretary finds that such waiver is necessary to protect the public health because sufficient quantities of the drug would not otherwise be available. The Secretary shall act on any petition seeking action under this paragraph within 180 days of the date the petition is submitted to the Secretary.

(h) Termination of suspension

The Secretary shall withdraw an order of suspension of the distribution of a drug under subsection (g) of this section if the person with respect to whom the order was issued demonstrates in a petition to the Secretary—

(1)(A) on the basis of an audit by the Food and Drug Administration or by experts acceptable to the Food and Drug Administration, or on the basis of other information, that the development, approval, manufacturing, and distribution of such drug is in substantial compliance with the applicable requirements of this chapter, and

(B) changes in ownership, management, or operations—

(i) fully remedy the patterns or practices with respect to which the order was issued, and

(ii) provide reasonable assurances that such actions will not occur in the future, or

(2) the initial determination was in error.

The Secretary shall act on a submission of a petition under this subsection within 180 days of the date of its submission and the Secretary may consider the petition concurrently with the suspension proceeding. Any information submitted to the Secretary under this subsection does not constitute an amendment or supplement to a pending or approved abbreviated drug application.

(i) Procedure

The Secretary may not take any action under subsection (a), (b), (c), (d)(3), (g), or (h) of

this section with respect to any person unless the Secretary has issued an order for such action made on the record after opportunity for an agency hearing on disputed issues of material fact. In the course of any investigation or hearing under this subsection, the Secretary may administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation.

(j) Judicial review

(1) In general
Except as provided in paragraph (2), any person that is the subject of an adverse decision under subsection (a), (b), (c), (d), (f), (g), or (h) of this section may obtain a review of such decision by the United States Court of Appeals for the District of Columbia or for the circuit in which the person resides, by filing in such court (within 60 days following the date the person is notified of the Secretary's decision) a petition requesting that the decision be modified or set aside.

(2) Exception
Any person that is the subject of an adverse decision under clause (iii) or (iv) of subsection (b)(2)(B) of this section may obtain a review of such decision by the United States District Court for the District of Columbia or a district court of the United States for the district in which the person resides, by filing in such court (within 30 days following the date the person is notified of the Secretary's decision) a complaint requesting that the decision be modified or set aside. In such an action, the court shall determine the matter de novo.

(k) Certification

Any application for approval of a drug product shall include—

(1) a certification that the applicant did not and will not use in any capacity the services of any person debarred under subsection (a) or (b) of this section, in connection with such application, and

(2) if such application is an abbreviated drug application, a list of all convictions, described in subsections (a) and (b) of this section which occurred within the previous 5 years, of the applicant and affiliated persons responsible for the development or submission of such application.

(l) Applicability

(1) Conviction
For purposes of this section, a person is considered to have been convicted of a criminal offense—
(A) when a judgment of conviction has been entered against the person by a Federal or State court, regardless of whether there is an appeal pending,

(B) when a plea of guilty or nolo contendere by the person has been accepted by a Federal or State court, or
(C) when the person has entered into participation in a first offender, deferred adjudication, or other similar arrangement or program where judgment of conviction has been withheld.

(2) Effective dates
Subsection (a) of this section, subparagraph (A) of subsection (b)(2) of this section, clauses (i) and (ii) of subsection (b)(2)(B) of this section, and subsection (b)(3)(A) of this section shall not apply to a conviction which occurred more than 5 years before the initiation of an agency action proposed to be taken under subsection (a) or (b) of this section. Clauses (iii) and (iv) of subsection (b)(2)(B) of this section, subsection (b)(3)(B) of this section, and subsections (f) and (g) of this section shall not apply to an act or action which occurred more than 5 years before the initiation of an agency action proposed to be taken under subsection (b), (f), or (g) of this section. Clause (iv) of subsection (b)(2)(B) of this section shall not apply to an action which occurred before June 1, 1992. Subsection (k) of this section shall not apply to applications submitted to the Secretary before June 1, 1992.

(m) Devices; mandatory debarment regarding third-party inspections and reviews

(1) In general
If the Secretary finds that a person has been convicted of a felony under section 331(gg) of this title, the Secretary shall debar such person from being accredited under section 360m(b) or 374(g)(2) of this title and from carrying out activities under an agreement described in section 383(b) of this title.

(2) Debarment period
The Secretary shall debar a person under paragraph (1) for the following periods:
(A) The period of debarment of a person (other than an individual) shall not be less than 1 year or more than 10 years, but if an act leading to a subsequent debarment under such paragraph occurs within 10 years after such person has been debarred under such paragraph, the period of debarment shall be permanent.
(B) The debarment of an individual shall be permanent.

(3) Termination of debarment; judicial review; other matters
Subsections (c)(3), (d), (e), (i), (j), and (l)(1) of this section apply with respect to a person (other than an individual) or an individual who is debarred under paragraph (1) to the same extent and in the same manner as such subsections apply with respect to a person who is debarred under subsection (a)(1) of this section, or an individual who is debarred under subsection (a)(2) of this section, respectively.

21 U.S.C. 823 – Registration requirements

(a) Manufacturers of controlled substances in schedule I or II

The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. In determining the public interest, the following factors shall be considered:

…

(4) prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(b) Distributors of controlled substances in schedule I or II

The Attorney General shall register an applicant to distribute a controlled substance in schedule I or II unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

…

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

…

(d) Manufacturers of controlled substances in schedule III, IV, or V

The Attorney General shall register an applicant to manufacture controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

…

(4) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

…

(e) Distributors of controlled substances in schedule III, IV, or V

The Attorney General shall register an applicant to distribute controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

…

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

…

(f) Research by practitioners; pharmacies; research applications; construction of Article 7 of the Convention on Psychotropic Substances

The Attorney General shall register practitioners (including pharmacies, as distinguished from pharmacists) to dispense, or conduct research with, controlled substances in schedule II, III, IV, or V, if the applicant is authorized to dispense, or conduct research with respect to, controlled substances under the laws of the State in which he practices. The Attorney General may deny an application for such registration if he determines that the issuance of such registration would be inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

…

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

…

Separate registration under this part for practitioners engaging in research with controlled substances in schedule II, III, IV, or V, who are already registered under this part in another capacity, shall not be required. Registration applications by practitioners wishing to conduct research with controlled substances in schedule I shall be referred to the Secretary, who shall determine the qualifications and competency of each practitioner requesting registration, as well as the merits of the research protocol. The Secretary, in determining the merits of each research protocol, shall consult with the Attorney General as to effective procedures to adequately safeguard against diversion of such controlled substances from legitimate medical or scientific use. Registration for the purpose of bona fide research with controlled substances in schedule I by a practitioner deemed qualified by the Secretary may be denied by the Attorney General only on a ground specified in section 824(a) of this title. Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the convention which is conducted in conformity with this subsection and other applicable provisions of this subchapter.

…

(h) Applicants for distribution of list I chemicals

The Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the distribution of a drug product that is exempted under clause (iv) or (v) of section 802(39)(A) of this

title. In determining the public interest for the purposes of this subsection, the Attorney General shall consider—

…

(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

21 U.S.C. 862 – Denial of Federal benefits to drug traffickers and possessors

(a) Drug traffickers

(1) Any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances shall—

(A) at the discretion of the court, upon the first conviction for such an offense be ineligible for any or all Federal benefits for up to 5 years after such conviction;

(B) at the discretion of the court, upon a second conviction for such an offense be ineligible for any or all Federal benefits for up to 10 years after such conviction; and

(C) upon a third or subsequent conviction for such an offense be permanently ineligible for all Federal benefits.

(2) The benefits which are denied under this subsection shall not include benefits relating to long-term drug treatment programs for addiction for any person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

(b) Drug possessors

(1) Any individual who is convicted of any Federal or State offense involving the possession of a controlled substance (as such term is defined for purposes of this subchapter) shall—

(A) upon the first conviction for such an offense and at the discretion of the court—

(i) be ineligible for any or all Federal benefits for up to one year;

(ii) be required to successfully complete an approved drug treatment program which includes periodic testing to insure that the individual remains drug free;

(iii) be required to perform appropriate community service; or

(iv) any combination of clause (i), (ii), or (iii); and

(B) upon a second or subsequent conviction for such an offense be ineligible for all Federal benefits for up to 5 years after such conviction as determined by the court. The court shall continue to have the discretion in subparagraph (A) above. In imposing penalties and conditions under subparagraph (A), the court may require that the completion of the conditions imposed by clause (ii) or (iii) be a requirement for the reinstatement of benefits under clause (i).

(2) The penalties and conditions which may be imposed under this subsection shall be waived in the case of a person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

(c) Suspension of period of ineligibility

The period of ineligibility referred to in subsections (a) and (b) of this section shall be suspended if the individual—

(A) completes a supervised drug rehabilitation program after becoming ineligible under this section;

(B) has otherwise been rehabilitated; or

(C) has made a good faith effort to gain admission to a supervised drug rehabilitation program, but is unable to do so because of inaccessibility or unavailability of such a program, or the inability of the individual to pay for such a program.

(d) Definitions

As used in this section—

(1) the term "Federal benefit"—

(A) means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

(2) the term "veterans benefit" means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.

(e) Inapplicability of this section to Government witnesses

The penalties provided by this section shall not apply to any individual who cooperates or testifies with the Government in the prosecution of a Federal or State offense or who is in a Government witness protection program.

…

21 U.S.C. 862a – Denial of assistance and benefits for certain drug-related convictions

(a) In general

An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 802(6) of this title) shall not be eligible for—

(1) assistance under any State program funded under part A of title IV of the Social Security Act, or

(2) benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977.

(b) Effects on assistance and benefits for others

(1) Program of temporary assistance for needy families
The amount of assistance otherwise required to be provided under a State program funded under part A of title IV of the Social Security Act to the family members of an individual to whom subsection (a) of this section applies shall be reduced by the amount which would have otherwise been made available to the individual under such part.

(2) Benefits under the Food Stamp Act of 1977
The amount of benefits otherwise required to be provided to a household under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977), or any State program carried out under the Food Stamp Act of 1977, shall be determined by considering the individual to whom subsection (a) of this section applies not to be a member of such household, except that the income and resources of the individual shall be considered to be income and resources of the household.

(c) Enforcement
A State that has not exercised its authority under subsection (d)(1)(A) of this section shall require each individual applying for assistance or benefits referred to in subsection (a) of this section, during the application process, to state, in writing, whether the individual, or any member of the household of the individual, has been convicted of a crime described in subsection (a) of this section.

(d) Limitations

(1) State elections
(A) Opt out
A State may, by specific reference in a law enacted after August 22, 1996, exempt any or all individuals domiciled in the State from the application of subsection (a) of this section.
(B) Limit period of prohibition
A State may, by law enacted after August 22, 1996, limit the period for which subsection (a) of this section shall apply to any or all individuals domiciled in the State.

(2) Inapplicability to a conviction if the conviction is for conduct occurring on or before August 22, 1996

Subsection (a) of this section shall not apply to a conviction if the conviction is for conduct occurring on or before August 22, 1996.

(e) "State" defined
For purposes of this section, the term "State" has the meaning given it—

(1) in section 419(5) of the Social Security Act, when referring to assistance provided under a State program funded under part A of title IV of the Social Security Act, and

(2) in section 3(m) of the Food Stamp Act of 1977, when referring to the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977.

(f) Rule of interpretation
Nothing in this section shall be construed to deny the following Federal benefits:

(1) Emergency medical services under title XIX of the Social Security Act.

(2) Short-term, noncash, in-kind emergency disaster relief.

(3)(A) Public health assistance for immunizations
(B) Public health assistance for testing and treatment of communicable diseases if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease.

(4) Prenatal care.

(5) Job training programs.

(6) Drug treatment programs.

22 U.S.C. 2778 – Control of arms exports and imports

(a) Presidential control of exports and imports of defense articles and services, guidance of policy, etc.; designation of United States Munitions List; issuance of export licenses; negotiations information

…

(b) Registration and licensing requirements for manufacturers, exporters, or importers of designated defense articles and defense services

(1)(A)(i) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a)(1)

of this section shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State or local law enforcement agency) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this chapter or any other foreign assistance or sales program of the United States, whether or not enhanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(ii)(I) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in official capacity) who engages in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service designated by the President under subsection (a)(1) of this section, or in the business of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense service (as defined in subclause (IV)), shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations.

(II) Such brokering activities shall include the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service.

(III) No person may engage in the business of brokering activities described in subclause (I) without a license, issued in accordance with this chapter, except that no license shall be required for such activities undertaken by or for an agency of the United States Government—

(aa) for use by an agency of the United States Government; or

(bb) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

…

(g) Identification of persons convicted or subject to indictment for violations of certain provisions

(1) The President shall develop appropriate mechanisms to identify, in connection with the export licensing process under this section—

(A) persons who are the subject of an indictment for, or have been convicted of, a violation under—

(i) this section,

(ii) section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410),

(iii) section 793, 794, or 798 of Title 18 (relating to espionage involving defense or classified information) or section 2339A of such title (relating to providing material support to terrorists),

(iv) section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16),

(v) section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. App. 1705) [50 U.S.C.A. § 1705],
(vi) section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd-2),
(vii) chapter 105 of Title 18 (relating to sabotage),
(viii) section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b)),
(ix) section 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276),
(x) section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421),
(xi) section 603(b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113(b) and (c)); or
(xii) section 3, 4, 5, and 6 of the Prevention of Terrorist Access to Destructive Weapons Act of 2004, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal devices (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175b);

(B) persons who are the subject of an indictment or have been convicted under section 371 of Title 18 for conspiracy to violate any of the statutes cited in subparagraph (A); and
(C) persons who are ineligible—
(i) to contract with,
(ii) to receive a license or other form of authorization to export from, or
(iii) to receive a license or other form of authorization to import defense articles or defense services from, any agency of the United States Government.

…

(4) A license to export an item on the United States Munitions List may not be issued to a person—
(A) if that person, or any party to the export, has been convicted of violating a statute cited in paragraph (1), or
(B) if that person, or any party to the export, is at the time of the license review ineligible to receive export licenses (or other forms of authorization to export) from any agency of the United States Government,
except as may be determined on a case-by-case basis by the President, after consultation with the Secretary of the Treasury, after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding by the President that appropriate steps have been taken to mitigate any law enforcement concerns.
…

22 U.S.C. 2714 – Denial of passports to certain convicted drug traffickers

(a) Ineligibility for passport

(1) In general
A passport may not be issued to an individual who is convicted of an offense described in subsection (b) of this section during the period described in subsection (c) of this section if the individual used a passport or otherwise crossed an international border in committing the offense.

(2) Passport revocation
The Secretary of State shall revoke a passport previously issued to an individual who is ineligible to receive a passport under paragraph (1).

(b) Drug law offenses

(1) Felonies
Subsection (a) of this section applies with respect to any individual convicted of a Federal drug offense, or a State drug offense, if the offense is a felony.

(2) Certain misdemeanors
Subsection (a) of this section also applies with respect to an individual convicted of a Federal drug offense, or a State drug offense, if the offense is misdemeanor, but only if the Secretary of State determines that subsection (a) of this section should apply with respect to that individual on account of that offense. This paragraph does not apply to an individual's first conviction for a misdemeanor which involves only possession of a controlled substance.

(c) Period of ineligibility

Subsection (a) of this section applies during the period that the individual—

(1) is imprisoned, or is legally required to be imprisoned, as the result of the conviction for the offense described in subsection (b) of this section; or

(2) is on parole or other supervised release after having been imprisoned as the result of that conviction.

(d) Emergency and humanitarian exceptions

Notwithstanding subsection (a) of this section, the Secretary of State may issue a passport, in emergency circumstances or for humanitarian reasons, to an individual with respect to whom that subsection applies.

22 U.S.C. 4605 – Board of Directors

…

(f) Removal from office

A member of the Board appointed under subsection (b)(4) of this section may be removed by the President—

(1) in consultation with the Board, for conviction of a felony, malfeasance in office, persistent neglect of duties, or inability to discharge duties;

…

23 U.S.C. 159 - Revocation or suspension of drivers' licenses of individuals convicted of drug offenses

(a) Withholding of apportionments for noncompliance.--

(1) Beginning in fiscal year 1994.--For each fiscal year the Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) on the first day of each fiscal year which begins after the second calendar year following the effective date of this section if the State does not meet the requirements of paragraph (3) on such date.

(2) Beginning in fiscal year 1996.--The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) on the first day of each fiscal year which begins after the fourth calendar year following the effective date of this section if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year.

(3) Requirements.--A State meets the requirements of this paragraph if--
(A) the State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception--
(i) the revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of--
(I) any violation of the Controlled Substances Act, or
(II) any drug offense; and
(ii) a delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted; or

(B) the Governor of the State--

(i) submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after the effective date of this section a written certification stating that the Governor is opposed to the enactment or enforcement in the State of a law described in subparagraph (A), relating to the revocation, suspension, issuance, or reinstatement of drivers' licenses to convicted drug offenders; and

(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in clause (i).

(b) Period of availability; effect of compliance and noncompliance.--

(1) Period of availability of withheld funds.--

(A) Funds withheld on or before September 30, 1995.--Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) but for this section, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(5)(B) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(iii) If such funds would have been apportioned under paragraph (1), (3), or (5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) Funds withheld after September 30, 1995.--No funds withheld under this section from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(2) Apportionment of withheld funds after compliance.--If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements of subsection (a)(3), apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

(3) Period of availability of subsequently apportioned funds.--Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure as follows:

(A) Funds which would have been originally apportioned under section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act

for the 21st Century) shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are apportioned under paragraph (2).
(B) Funds which would have been originally apportioned under paragraph (1), (3), or (5)(B) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century), shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

(4) Effect of noncompliance.--If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century), such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

(c) Definitions.--For purposes of this section--

(1) Driver's license.--The term “driver's license” means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

(2) Drug offense.--The term “drug offense” means any criminal offense which proscribes--
(A) the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act; or
(B) the operation of a motor vehicle under the influence of such a substance.

(3) Convicted.--The term “convicted” includes adjudicated under juvenile proceedings.

24 U.S.C. 412 – Residents of Retirement Home

(a) Persons eligible to be residents

Except as provided in subsection (b) of this section, the following persons who served as members of the Armed Forces, at least one-half of whose service was not active commissioned service (other than as a warrant officer or limited-duty officer), are eligible to become residents of the Retirement Home:

(1) Persons who—
(A) are 60 years of age or over; and

(B) were discharged or released from service in the Armed Forces under honorable conditions after 20 or more years of active service.

(2) Persons who are determined under rules prescribed by the Chief Operating Officer to be incapable of earning a livelihood because of a service-connected disability incurred in the line of duty in the Armed Forces.

(3) Persons who—
(A) served in a war theater during a time of war declared by Congress or were eligible for hostile fire special pay under section 310 of Title 37;
(B) were discharged or released from service in the Armed Forces under honorable conditions; and
(C) are determined under rules prescribed by the Chief Operating Officer to be incapable of earning a livelihood because of injuries, disease, or disability.

(4) Persons who—
(A) served in a women's component of the Armed Forces before June 12, 1948; and
(B) are determined under rules prescribed by the Chief Operating Officer to be eligible for admission because of compelling personal circumstances.

(b) Persons ineligible to be residents

A person described in subsection (a) of this section who has been convicted of a felony or is not free of drug, alcohol, or psychiatric problems shall be ineligible to become a resident of the Retirement Home.

25 U.S.C. 2704 – National Indian Gaming Commission

…

(b) Composition; investigation; term of office; removal

…

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who—
(A) has been convicted of a felony or gaming offense;

…

25 U.S.C. 3207 - Character investigations

(a) By Secretary of the Interior and the Secretary of Health and Human Services

The Secretary and the Secretary of Health and Human Services shall--

(1) compile a list of all authorized positions within their respective departments the duties and responsibilities of which involve regular contact with, or control over, Indian

children,

(2) conduct an investigation of the character of each individual who is employed, or is being considered for employment, by the respective Secretary in a position listed pursuant to paragraph (1), and

(3) prescribe by regulations minimum standards of character that each of such individuals must meet to be appointed to such positions.

(b) Criminal records

The minimum standards of character that are to be prescribed under this section shall ensure that none of the individuals appointed to positions described in subsection (a) of this section have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

(c) Investigations by Indian tribes and tribal organizations

Each Indian tribe or tribal organization that receives funds under the Indian Self-Determination and Education Assistance Act [25 U.S.C.A. § 450 et seq.] or the Tribally Controlled Schools Act of 1988 [25 U.S.C.A. § 2501 et seq.] shall--

(1) conduct an investigation of the character of each individual who is employed, or is being considered for employment, by such tribe or tribal organization in a position that involves regular contact with, or control over, Indian children, and

(2) employ individuals in those positions only if the individuals meet standards of character, no less stringent than those prescribed under subsection (a) of this section, as the Indian tribe or tribal organization shall establish.

26 U.S.C. 25A – Hope and Lifetime Learning Credits

…

(b) Hope Scholarship Credit

…

(2) Limitations applicable to Hope Scholarship Credit.—

…

(D) Denial of credit if student convicted of a felony drug offense.—The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for qualified tuition and related expenses for the enrollment or attendance of a student for any academic period if such student has been convicted of a Federal or State felony offense

consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within which such period ends.

26 U.S.C. 7213 – Unauthorized disclosure of information

(a) Returns and return information.—

(1) Federal employees and other persons.—It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

…

(b) Disclosure of operations of manufacturer or producer.—Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) Disclosures by certain delegates of Secretary.—All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

26 U.S.C. 7213A – Unauthorized inspection of returns or return information

(a) Prohibitions.—

(1) Federal employees and other persons.—It shall be unlawful for—
(A) any officer or employee of the United States, or
(B) any person described in subsection (l)(18) or (n) of section 6103 or an officer or employee of any such person,
willfully to inspect, except as authorized in this title, any return or return information.

(2) State and other employees.—It shall be unlawful for any person (not described in paragraph (1)) willfully to inspect, except as authorized in this title, any return or return

information acquired by such person or another person under a provision of section 6103 referred to in section 7213(a)(2) or under section 6104(c).

(b) Penalty.—

(1) In general.—Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding $1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

(2) Federal officers or employees.—An officer or employee of the United States who is convicted of any violation of subsection (a) shall, in addition to any other punishment, be dismissed from office or discharged from employment.

(c) Definitions.—For purposes of this section, the terms "inspect", "return", and "return information" have the respective meanings given such terms by section 6103(b).

26 U.S.C. 7214 – Offenses by officers and employees of the United States

(a) Unlawful acts of revenue officers or agents.—Any officer or employee of the United States acting in connection with any revenue law of the United States—

(1) who is guilty of any extortion or willful oppression under color of law; or

(2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

(3) who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment; or

(4) who conspires or colludes with any other person to defraud the United States; or

(5) who knowingly makes opportunity for any person to defraud the United States; or

(6) who does or omits to do any act with intent to enable any other person to defraud the United States; or

(7) who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or

(8) who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary; or

(9) who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do;

shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

28 U.S.C. 1865 – Qualifications for jury service

(a) The chief judge of the district court, or such other district court judge as the plan may provide, on his initiative or upon recommendation of the clerk or jury commission, or the clerk under supervision of the court if the court's jury selection plan so authorizes, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form and in any alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, or the clerk if the court's jury selection plan so provides, shall deem any person qualified to serve on grand and petit juries in the district court unless he—

(1) is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

29 U.S.C. 504 – Prohibition against certain persons holding office

(a) … ; persons convicted of robbery, bribery, etc.

No person … who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of subchapter III or IV of this chapter any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as a consultant or adviser to any labor organization,

(2) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization,

(3) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization, or in a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce, or

(4) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization, or

(5) in any capacity, other than in his capacity as a member of such labor organization, that involves decisionmaking authority concerning, or decisionmaking authority over, or custody of, or control of the moneys, funds, assets, or property of any labor organization,

during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant

to sentencing guidelines and policy statements under section 994(a) of Title 28, determines that such person's service in any capacity referred to in clauses (1) through (5) would not be contrary to the purposes of this chapter. Prior to making any such determination the court shall hold a hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The court's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection.

(b) Penalty for violations

Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(c) Definitions

For the purpose of this section—

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(2) A period of parole shall not be considered as part of a period of imprisonment.

(d) Salary of person barred from labor organization office during appeal of conviction

Whenever any person—

(1) by operation of this section, has been barred from office or other position in a labor organization as a result of a conviction, and

(2) has filed an appeal of that conviction,

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual employer or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of such person's conviction on appeal, the amounts in escrow shall be returned to the individual employer or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred.

29 U.S.C. 1111 – Persons prohibited from holding certain positions

(a) Conviction or imprisonment

No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 802(6) of Title 21, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 80a-9(a)(1) of Title 15, a violation of any provision of this chapter, a violation of section 186 of this title, a violation of chapter 63 of Title 18, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

(3) in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan,
during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under section 994(a) of Title 28, determines that such person's service in any capacity referred to in paragraphs (1) through (3) would not be contrary to the purposes of this subchapter. Prior to making any such determination the court shall hold a hearing and shall give notice to such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The court's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded

from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such court that such service would be inconsistent with the intention of this section.

(b) Penalty

Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(c) Definitions

For the purpose of this section—

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(2) The term "consultant" means any person who, for compensation, advises, or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole or supervised release shall not be considered as part of a period of imprisonment.

(d) Salary of person barred from employee benefit plan office during appeal of conviction

Whenever any person—

(1) by operation of this section, has been barred from office or other position in an employee benefit plan as a result of a conviction, and

(2) has filed an appeal of that conviction,

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred.

29 U.S.C. 1813 – Registration determinations

(a) Grounds for refusal to issue or renew, suspension, or revocation of certificate

In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder—

(1) has knowingly made any misrepresentation in the application for such certificate;

(2) is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify under this section for a certificate;

(3) has failed to comply with this chapter or any regulation under this chapter;

(4) has failed—
(A) to pay any court judgment obtained by the Secretary or any other person under this chapter or any regulation under this chapter or under the Farm Labor Contractor Registration Act of 1963 [7 U.S.C.A. § 2041 et seq.] or any regulation under such Act, or
(B) to comply with any final order issued by the Secretary as a result of a violation of this chapter or any regulation under this chapter or a violation of the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act;

(5) has been convicted within the preceding five years—
(A) of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities; or
(B) of any felony under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally; or

(6) has been found to have violated paragraph (1) or (2) of section 1324a(a) of Title 8.

(b) Administrative review procedures applicable

(1) The person who is refused the issuance or renewal of a certificate or whose certificate is suspended or revoked under subsection (a) of this section shall be afforded an opportunity for agency hearing, upon request made within thirty days after the date of issuance of the notice of the refusal, suspension, or revocation. In such hearing, all issues shall be determined on the record pursuant to section 554 of Title 5. If no hearing is requested as herein provided, the refusal, suspension, or revocation shall constitute a

final and unappealable order.

(2) If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within thirty days after the decision of the administrative law judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subsection (c) of this section.

(c) Judicial review procedures applicable

Any person against whom an order has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary. The Secretary shall promptly certify and file in such court the record upon which the order was based. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706(2)(E) of Title 5. Any final decision, order, or judgment of such District Court concerning such review shall be subject to appeal as provided in chapter 83 of Title 28.

36 U.S.C. 40723 – Eligibility for participation

(a) Certification.—

(1) An individual shall certify by affidavit, before participating in an activity sponsored or supported by the corporation, that the individual—
(A) has not been convicted of a felony;
(B) has not been convicted of a violation of section 922 of title 18; and
(C) is not a member of an organization that advocates the violent overthrow of the United States Government.

(2) The Director of Civilian Marksmanship may require an individual to provide certification from law enforcement agencies to verify that the individual has not been convicted of a felony or a violation of section 922 of title 18.

(b) Ineligibility.—An individual may not participate in an activity sponsored or supported by the corporation if the individual—

(1) has been convicted of a felony; or

(2) has been convicted of a violation of section 922 of title 18.

(c) Limiting participation.—The Director may limit participation in the program as necessary to ensure—

(1) the safety of participants;

(2) the security of firearms, ammunition, and equipment; and

(3) the quality of instruction in the use of firearms.

36 U.S.C. 40732 – Sale of firearms and supplies

…

(b) Gun club members.--(1) The corporation may sell, at fair market value, caliber .22 rimfire and caliber .30 surplus rifles, ammunition, repair parts and other supplies necessary for target practice to a citizen of the United States who is over 18 years of age and who is a member of a gun club affiliated with the corporation.

(2) Except as provided in section 40733 of this title, sales under this subsection are subject to applicable United States, State, and local law. In addition to any other requirement, the corporation shall establish procedures to obtain a criminal records check of the individual with United States Government and State law enforcement agencies.

(c) Limitation on sales.--(1) The corporation may not sell a repair part designed to convert a firearm to fire in a fully automatic mode.

(2) The corporation may not sell any item to an individual who has been convicted of—
(A) a felony; or
(B) a violation of section 922 of title 18.

38 U.S.C. 1911 – Forfeiture

Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces of the United States or refuses to wear the uniform of such force, shall forfeit all rights to National Service Life Insurance. No insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States; but the cash surrender value, if any, of such insurance on the date of such death shall be paid to the designated beneficiary, if living, or otherwise to the beneficiary or beneficiaries within the permitted class in accordance with the order specified in section 1916(b) of this title.

38 U.S.C. 1973 – Forfeiture

Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces of the United

States or refuses to wear the uniform of such force, shall forfeit all rights to Servicemembers' Group Life Insurance and Veterans' Group Life Insurance under this subchapter. No such insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States.

38 U.S.C. 6104 – Forfeiture for treason

(a) Any person shown by evidence satisfactory to the Secretary to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies shall forfeit all accrued or future gratuitous benefits under laws administered by the Secretary.
…

38 U.S.C. 6105 – Forfeiture for subversive activities

(a) Any individual who is convicted after September 1, 1959, of any offense listed in subsection (b) of this section shall, from and after the date of commission of such offense, have no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Secretary based on periods of military, naval, or air service commencing before the date of the commission of such offense and no other person shall be entitled to such benefits on account of such individual. After receipt of notice of the return of an indictment for such an offense the Secretary shall suspend payment of such gratuitous benefits pending disposition of the criminal proceedings. If any individual whose right to benefits has been terminated pursuant to this section is granted a pardon of the offense by the President of the United States, the right to such benefits shall be restored as of the date of such pardon.

(b) The offenses referred to in subsection (a) of this section are those offenses for which punishment is prescribed in—

(1) sections 894, 904, and 906 of title 10 (articles 94, 104, and 106 of the Uniform Code of Military Justice);

(2) sections 175, 229, 792, 793, 794, 798, 831, 1091, 2332a, 2332b, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and chapter 105 of title 18;

(3) sections 222, 223, 224, 225, and 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2272, 2273, 2274, 2275, and 2276); and

(4) section 4 of the Internal Security Act of 1950 (50 U.S.C. 783).

(c) The Secretary of Defense or the Secretary of Homeland Security, as appropriate, shall notify the Secretary in each case in which an individual is convicted of an offense listed in paragraph (1) of subsection (b). The Attorney General shall notify the Secretary in

each case in which an individual is indicted or convicted of an offense listed in paragraph (2), (3), or (4) of subsection (b).

40 U.S.C. 590 – Child care

(a) Guidance, assistance, and oversight.—Through the General Services Administration's licensing agreements, the Administrator of General Services shall provide guidance, assistance, and oversight to federal agencies for the development of child care centers to provide economical and effective child care for federal workers.

(b) Allotment of space in federal buildings.—

(1) Definitions.—In this subsection, the following definitions apply:
(A) Child care provider.—The term "child care provider" means an individual or entity that provides or proposes to provide child care services for federal employees.

…

(f) Criminal history background checks.—

(1) Definition.—In this subsection, the term "executive facility" means a facility owned or leased by an office or entity within the executive branch of the Government. The term includes a facility owned or leased by the General Services Administration on behalf of an office or entity within the judicial branch of the Government.

(2) In general.—All workers in a child care center located in an executive facility shall undergo a criminal history background check as defined in section 231 of the Crime Control Act of 1990 (42 U.S.C. 13041).

(3) Nonapplication to legislative branch facilities.—This subsection does not apply to a facility owned by or leased on behalf of an office or entity within the legislative branch of the Government.

42 U.S.C. 629i – Grants for programs for mentoring children of prisoners

(a) Findings and purposes

(1) Findings
(A) In the period between 1991 and 1999, the number of children with a parent incarcerated in a Federal or State correctional facility increased by more than 100 percent, from approximately 900,000 to approximately 2,000,000. In 1999, 2.1 percent of all children in the United States had a parent in Federal or State prison.
(B) Prior to incarceration, 64 percent of female prisoners and 44 percent of male prisoners in State facilities lived with their children.

(C) Nearly 90 percent of the children of incarcerated fathers live with their mothers, and 79 percent of the children of incarcerated mothers live with a grandparent or other relative.
(D) Parental arrest and confinement lead to stress, trauma, stigmatization, and separation problems for children. These problems are coupled with existing problems that include poverty, violence, parental substance abuse, high-crime environments, intrafamilial abuse, child abuse and neglect, multiple care givers, and/or prior separations. As a result, these children often exhibit a broad variety of behavioral, emotional, health, and educational problems that are often compounded by the pain of separation.
(E) Empirical research demonstrates that mentoring is a potent force for improving children's behavior across all risk behaviors affecting health. quality, one-on-one relationships that provide young people with caring role models for future success have profound, life-changing potential. done right, mentoring markedly advances youths' life prospects. a widely cited 1995 study by public/private ventures measured the impact of one big brothers big sisters program and found significant effects in the lives of youth—cutting first-time drug use by almost half and first-time alcohol use by about a third, reducing school absenteeism by half, cutting assaultive behavior by a third, improving parental and peer relationships, giving youth greater confidence in their school work, and improving academic performance.

(2) Purposes
The purposes of this section are to authorize the Secretary—
(A) to make competitive grants to applicants in areas with substantial numbers of children of incarcerated parents, to support the establishment or expansion and operation of programs using a network of public and private community entities to provide mentoring services for children of prisoners; and
(B) to enter into on a competitive basis a cooperative agreement to conduct a service delivery demonstration project in accordance with the requirements of subsection (g).

(b) Definitions

In this section:

(1) Children of prisoners
The term "children of prisoners" means children one or both of whose parents are incarcerated in a Federal, State, or local correctional facility. The term is deemed to include children who are in an ongoing mentoring relationship in a program under this section at the time of their parents' release from prison, for purposes of continued participation in the program.

(2) Mentoring
The term "mentoring" means a structured, managed program in which children are appropriately matched with screened and trained adult volunteers for one-on-one relationships, involving meetings and activities on a regular basis, intended to meet, in

part, the child's need for involvement with a caring and supportive adult who provides a positive role model.

(3) Mentoring services
The term "mentoring services" means those services and activities that support a structured, managed program of mentoring, including the management by trained personnel of outreach to, and screening of, eligible children; outreach to, education and training of, and liaison with sponsoring local organizations; screening and training of adult volunteers; matching of children with suitable adult volunteer mentors; support and oversight of the mentoring relationship; and establishment of goals and evaluation of outcomes for mentored children.

…

(d) Application requirements

In order to be eligible for a grant under this section, the chief executive officer of the applicant must submit to the Secretary an application containing the following:

(1) Program design
A description of the proposed program, including—
(A) a list of local public and private organizations and entities that will participate in the mentoring network;
(B) the name, description, and qualifications of the entity that will coordinate and oversee the activities of the mentoring network;
(C) the number of mentor-child matches proposed to be established and maintained annually under the program;
(D) such information as the Secretary may require concerning the methods to be used to recruit, screen support, and oversee individuals participating as mentors, (which methods shall include criminal background checks on the individuals), and to evaluate outcomes for participating children, including information necessary to demonstrate compliance with requirements established by the Secretary for the program; and
(E) such other information as the Secretary may require.

…

(4) Cooperative agreement requirements
A cooperative agreement awarded under this subsection shall require the eligible entity to do the following:
(A) Identify quality standards for providers
To work with the Secretary to identify the quality standards that a provider of mentoring services must meet in order to participate in the demonstration project and which, at a minimum, shall include criminal records checks for individuals who are prospective mentors and shall prohibit approving any individual to be a mentor if the criminal records check of the individual reveals a conviction which would prevent the individual from being approved as a foster or adoptive parent under section 671(a)(20)(A) of this title.

42 U.S.C. 671 – State plan for foster care and adoption assistance

…

(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of Title 28), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part, including procedures requiring that—

(i) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

…

(C) provides that the State shall—

(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

(ii) comply with any request described in clause (i) that is received from another State; and

(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases;

…

42 U.S.C. 675 – Definitions

(5) The term "case review system" means a procedure for assuring that—

…

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 671(a)(15)(B)(ii) of this title are required to be made with respect to the child;

…

42 U.S.C. 1320a-7 – Exclusion of certain individuals and entities from participation in Medicare and State health care programs

(a) Mandatory exclusion

The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a-7b(f) of this title):

(1) Conviction of program-related crimes
Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII of this chapter or under any State health care program.

(2) Conviction relating to patient abuse
Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

(3) Felony conviction relating to health care fraud
Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, in connection with the delivery of a health

care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

(4) Felony conviction relating to controlled substance
Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(b) Permissive exclusion

The Secretary may exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a-7b(f) of this title):

(1) Conviction relating to fraud
Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law—
(A) of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—
(i) in connection with the delivery of a health care item or service, or
(ii) with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1) of this section) operated by or financed in whole or in part by any Federal, State, or local government agency; or
(B) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any Federal, State, or local government agency.

(2) Conviction relating to obstruction of an investigation
Any individual or entity that has been convicted, under Federal or State law, in connection with the interference with or obstruction of any investigation into any criminal offense described in paragraph (1) or in subsection (a) of this section.

(3) Misdemeanor conviction relating to controlled substance
Any individual or entity that has been convicted, under Federal or State law, of a criminal offense consisting of a misdemeanor relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.
…

(8) Entities controlled by a sanctioned individual
Any entity with respect to which the Secretary determines that a person—

(A)(i) who has a direct or indirect ownership or control interest of 5 percent or more in the entity or with an ownership or control interest (as defined in section 1320a-3(a)(3) of this title) in that entity,

(ii) who is an officer, director, agent, or managing employee (as defined in section 1320a-5(b) of this title) of that entity; or

(iii) who was described in clause (i) but is no longer so described because of a transfer of ownership or control interest, in anticipation of (or following) a conviction, assessment, or exclusion described in subparagraph (B) against the person, to an immediate family member (as defined in subsection (j)(1) of this section) or a member of the household of the person (as defined in subsection (j)(2) of this section) who continues to maintain an interest described in such clause—

is a person—

(B)(i) who has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection;

…

(15) Individuals controlling a sanctioned entity

(A) Any individual—

(i) who has a direct or indirect ownership or control interest in a sanctioned entity and who knows or should know (as defined in section 1320a-7a(i)(6) of this title) of the action constituting the basis for the conviction or exclusion described in subparagraph (B); or

(ii) who is an officer or managing employee (as defined in section 1320a-5(b) of this title) of such an entity.

(B) For purposes of subparagraph (A), the term "sanctioned entity" means an entity—

(i) that has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection; or

(ii) that has been excluded from participation under a program under subchapter XVIII of this chapter or under a State health care program.

(c) Notice, effective date, and period of exclusion

(1) An exclusion under this section or under section 1320a-7a of this title shall be effective at such time and upon such reasonable notice to the public and to the individual or entity excluded as may be specified in regulations consistent with paragraph (2).

(2)(A) Except as provided in subparagraph (B), such an exclusion shall be effective with respect to services furnished to an individual on or after the effective date of the exclusion.

(B) Unless the Secretary determines that the health and safety of individuals receiving services warrants the exclusion taking effect earlier, an exclusion shall not apply to payments made under subchapter XVIII of this chapter or under a State health care program for—

(i) inpatient institutional services furnished to an individual who was admitted to such institution before the date of the exclusion, or

(ii) home health services and hospice care furnished to an individual under a plan of care established before the date of the exclusion,
until the passage of 30 days after the effective date of the exclusion.

(3)(A) The Secretary shall specify, in the notice of exclusion under paragraph (1) and the written notice under section 1320a-7a of this title, the minimum period (or, in the case of an exclusion of an individual under subsection (b)(12) of this section or in the case described in subparagraph (G), the period) of the exclusion.

(B) Subject to subparagraph (G), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of the administrator of a Federal health care program (as defined in section 1320-7b(f) of this title) who determines that the exclusion would impose a hardship on individuals entitled to benefits under part A of subchapter XVIII of this chapter or enrolled under part B of subchapter VIII of this chapter, or both, the Secretary may, after consulting with the Inspector General of the Department of Health and Human Services, waive the exclusion under subsection (a)(1), (a)(3), or (a)(4) of this section with respect to that program in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community. The Secretary's decision whether to waive the exclusion shall not be reviewable.

…

(D) Subject to subparagraph (G), in the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b) of this section, the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

…

(G) In the case of an exclusion of an individual under subsection (a) of this section based on a conviction occurring on or after August 5, 1997, if the individual has (before, on, or after August 5, 1997) been convicted—

(i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years, or

(ii) on 2 or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

…

(f) Notice, hearing, and judicial review

(1) Subject to paragraph (2), any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in

section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and section 405(l) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(2) Unless the Secretary determines that the health or safety of individuals receiving services warrants the exclusion taking effect earlier, any individual or entity that is the subject of an adverse determination under subsection (b)(7) of this section shall be entitled to a hearing by an administrative law judge (as provided under section 405(b) of this title) on the determination under subsection (b)(7) of this section before any exclusion based upon the determination takes effect.

(3) The provisions of section 405(h) of this title shall apply with respect to this section and sections 1320a-7a, 1320a-8, and 1320c-5 of this title to the same extent as it is applicable with respect to subchapter II of this chapter, except that, in so applying such section and section 405(l) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary.

(g) Application for termination of exclusion

(1) An individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a-7a of this title may apply to the Secretary, in the manner specified by the Secretary in regulations and at the end of the minimum period of exclusion provided under subsection (c)(3) of this section and at such other times as the Secretary may provide, for termination of the exclusion effected under this section or section 1320a-7a of this title.

(2) The Secretary may terminate the exclusion if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Secretary at the time of the exclusion, that—

(A) there is no basis under subsection (a) or (b) of this section or section 1320a-7a(a) of this title for a continuation of the exclusion, and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of Title 21 may apply, the Attorney General) of the fact and circumstances of each termination of exclusion made under this subsection.

…

(i) "Convicted" defined

For purposes of subsections (a) and (b) of this section, an individual or entity is considered to have been "convicted" of a criminal offense—

(1) when a judgment of conviction has been entered against the individual or entity by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(2) when there has been a finding of guilt against the individual or entity by a Federal, State, or local court;

(3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court; or

(4) when the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

…

42 U.S.C. 1383 – Procedure for payment of benefits

(a) Time, manner, form, and duration of payments; representative payees; promulgation of regulations

…

(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

(I) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Commissioner of Social Security in regulations).

(ii) As part of the investigation referred to in clause (i)(I), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under subchapter II of this chapter, subchapter VIII of this chapter, or this subchapter;

II) verify the social security account number (or employer identification number) of such person;

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title;
(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;
(V) obtain information concerning whether such person is a person described in section 1382(e)(4)(A) of this title; and
(VI) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), whether the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, and whether certification of payment of benefits to such person has been revoked pursuant to section 405(j) of this title, by reason of misuse of funds paid as benefits under subchapter II of this chapter, subchapter VIII of this chapter, or this subchapter.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—
(I) such person has previously been convicted as described in clause (ii)(III);
(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(VI), the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or certification of payment of benefits to such person under section 405(j) of this title has previously been revoked as described in section 405(j)(2)(B)(i)(VI) of this title;
(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration;
(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or
(V) such person is a person described in section 1382(e)(4)(A) of this title.

42 U.S.C. 1396u – Community supported living arrangements services

(h) Minimum protections
…

(B) Minimum protections
Interim and final requirements under subparagraph (A) shall assure, through methods other than reliance on State licensure processes or the State quality assurance programs under subsection (d) of this section, that—
(i) individuals receiving community supported living arrangements services are protected from neglect, physical and sexual abuse, and financial exploitation;
(ii) a provider of community supported living arrangements services may not use individuals who have been convicted of child or client abuse, neglect, or mistreatment or of a felony involving physical harm to an individual and shall take all reasonable steps to determine whether applicants for employment by the

provider have histories indicating involvement in child or client abuse, neglect, or mistreatment or a criminal record involving physical harm to an individual;
(iii) individuals or entities delivering such services are not unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs); and
(iv) individuals or entities delivering such services to clients, or relatives of such individuals, are prohibited from being named beneficiaries of life insurance policies purchased by (or on behalf of) such clients.

42 U.S.C. 1437n – Eligibility for assisted housing

…

(f) Ineligibility of individuals convicted of manufacturing or producing methamphetamine on the premises

Notwithstanding any other provision of law, a public housing agency shall establish standards for occupancy in public housing dwelling units and assistance under section 1437f of this title that—

(1) permanently prohibit occupancy in any public housing dwelling unit by, and assistance under section 1437f of this title for, any person who has been convicted of manufacturing or otherwise producing methamphetamine on the premises in violation of any Federal or State law; and

(2) immediately and permanently terminate the tenancy in any public housing unit of, and the assistance under section 1437f of this title for, any person who is convicted of manufacturing or otherwise producing methamphetamine on the premises in violation of any Federal or State law.

42 U.S.C. 2169 - Fingerprinting for criminal history record checks

(a) Persons subject to fingerprinting; submission of fingerprints to Attorney General; costs; results of check

(1)(A)(i) The Commission shall require each individual or entity described in clause (ii) to fingerprint each individual described in subparagraph (B) before the individual described in subparagraph (B) is permitted access under subparagraph (B).
(ii) The individuals and entities referred to in clause (i) are individuals and entities that, on or before the date on which an individual is permitted access under subparagraph (B)--
(I) are licensed or certified to engage in an activity subject to regulation by the Commission;
(II) have filed an application for a license or certificate to engage in an activity subject to regulation by the Commission; or
(III) have notified the Commission in writing of an intent to file an application for

licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission.

(B) The Commission shall require to be fingerprinted any individual who--

(i) is permitted unescorted access to--

(I) a utilization facility; or

(II) radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks; or

(ii) is permitted access to safeguards information under section 2167 of this title.

(2) All fingerprints obtained by an individual or entity as required in paragraph (1) shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check.

(3) The costs of an identification or records check under paragraph (2) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A).

(4) Notwithstanding any other provision of law--

(A) the Attorney General may provide any result of an identification or records check under paragraph (2) to the Commission; and

(B) the Commission, in accordance with regulations prescribed under this section, may provide the results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).

(b) Waiver

The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.

(c) Regulations

For purposes of administering this section, the Commission shall prescribe requirements--

(1) to implement procedures for the taking of fingerprints;

(2) to establish the conditions for use of information received from the Attorney General, in order--

(A) to limit the redissemination of such information;

(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to a utilization facility, radioactive material, or other property described in subsection (a)(1)(B) of this section or shall be permitted access to safeguards information under section 2167 of this title;

(C) to ensure that no final determination may be made solely on the basis of information provided under this section involving--

(i) an arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) an arrest that resulted in dismissal of the charge or an acquittal; and

(D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and

(3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.

42 U.S.C. 5119a – Background checks

(a) In general

(1) A State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

(2) The authorized agency shall access and review State and Federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to the inquiry within 15 business days.

(3) In the absence of State procedures referred to in paragraph (1), a qualified entity designated under paragraph (1) may contact an authorized agency of the State to request national criminal fingerprint background checks. Qualified entities requesting background checks under this paragraph shall comply with the guidelines set forth in subsection (b) of this section and with procedures for requesting national criminal fingerprint background checks, if any, established by the State.

(b) Guidelines

The procedures established under subsection (a) of this section shall require—

(1) that no qualified entity may request a background check of a provider under subsection (a) of this section unless the provider first provides a set of fingerprints and completes and signs a statement that—

(A) contains the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 of Title 18) of the provider;

(B) the provider has not been convicted of a crime and, if the provider has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) notifies the provider that the entity may request a background check under subsection (a) of this section;
(D) notifies the provider of the provider's rights under paragraph (2); and
(E) notifies the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to a person to whom the qualified entity provides care;

(2) that each provider who is the subject of a background check is entitled—
(A) to obtain a copy of any background check report; and
(B) to challenge the accuracy and completeness of any information contained in any such report and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(3) that an authorized agency, upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and local recordkeeping systems are available in order to obtain complete data;

(4) that the authorized agency shall make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity; and

(5) that any background check under subsection (a) of this section and the results thereof shall be handled in accordance with the requirements of Public Law 92-544, except that this paragraph does not apply to any request by a qualified entity for a national criminal fingerprint background check pursuant to subsection (a)(3) of this section.

42 U.S.C. 5119a (note)

Pilot Program for National Criminal History Background Checks and Feasibility Study Pub.L. 108-21, Title I, § 108, Apr. 30, 2003, 117 Stat. 655, as amended Pub.L. 108-68, § 1, Aug. 1, 2003, 117 Stat. 883; Pub.L. 108-458, Title VI, § 6401, Dec. 17, 2004, 118 Stat. 3755; Pub.L. 109-162, Title XI, § 1197, Jan. 5, 2006, 119 Stat. 3131; Pub.L. 110-296, § 2, July 30, 2008, 122 Stat. 2974; Pub.L. 110-408, § 1, Oct. 13, 2008, 122 Stat. 4301, provided that:

"**(a)** Establishment of pilot program.--

"(1) In general.--Not later than 90 days after the date of the enactment of this Act [Apr. 30, 2003], the Attorney General shall establish a pilot program for volunteer groups to obtain national and State criminal history background checks through a 10-fingerprint check to be conducted utilizing State criminal records and the Integrated Automated Fingerprint Identification system of the Federal Bureau of Investigation.

"(2) State pilot program.--

"(A) In general.--The Attorney General shall designate 3 States as participants in a 30-month State pilot program.

"(B) Volunteer organization requests.--A volunteer organization in one of the 3 States participating in the State pilot program under this paragraph that is part of the Boys and Girls Clubs of America, the National Mentoring Partnerships, or the National Council of Youth Sports may submit a request for a 10-fingerprint check from the participating State.

"(C) State check.--The participating State under this paragraph after receiving a request under subparagraph (B) shall conduct a State background check and submit a request that a Federal check be performed through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation, to the Attorney General, in a manner to be determined by the Attorney General.

"(D) Information provided.--Under procedures established by the Attorney General, any criminal history record information resulting from the State and Federal check under subparagraph (C) shall be provided to the State or National Center for Missing and Exploited Children consistent with the National Child Protection Act [Pub.L. 103-209, Dec. 20, 1993, 107 Stat. 2490; which is principally classified to 42 U.S.C.A. § 5119 et seq.].

"(E) Costs.--A State may collect a fee to perform a criminal background check under this paragraph which may not exceed the actual costs to the State to perform such a check.

"(F) Timing.--For any background check performed under this paragraph, the State shall provide the State criminal record information to the Attorney General within 7 days after receiving the request from the organization, unless the Attorney General determines during the feasibility study that such a check cannot reasonably be performed within that time period. The Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 7 business days after receiving the request from the State.

"(3) Child safety pilot program.--

"(A) In general.--The Attorney General shall establish a 78-month Child Safety Pilot Program that shall provide for the processing of 200,000 10-fingerprint check requests from organizations described in subparagraph (B) conducted through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

"(B) Participating organizations.--

"(i) Eligible organizations.--Eligible organizations include--

"(I) the Boys and Girls Clubs of America;

"(II) the MENTOR/National Mentoring Partnership;

"(III) the National Council of Youth Sports; and

"(IV) any nonprofit organization that provides care, as that term is defined in section 5 of the National Child Protection Act of 1993 (42 U.S.C. 5119c), for children.

"(ii) Pilot program.--The eligibility of an organization described in clause (i)(IV) to participate in the pilot program established under this section [this note] shall be

determined by the National Center for Missing and Exploited Children, with the rejection or concurrence within 30 days of the Attorney General, according to criteria established by such Center, including the potential number of applicants and suitability of the organization to the intent of this section [this note]. If the Attorney General fails to reject or concur within 30 days, the determination of the National Center for Missing and Exploited Children shall be conclusive.

"(C) Applicants from participating organizations.--Participating organizations may request background checks on applicants for positions as volunteers and employees who will be working with children or supervising volunteers.

"(D) Procedures.--The Attorney General shall notify participating organizations of a process by which the organizations may provide fingerprint cards to the Attorney General.

"(E) Volunteer information required.--An organization authorized to request a background check under this paragraph shall--

"(i) forward to the Attorney General the volunteer's fingerprints; and

"(ii) Obtain a statement completed and signed by the volunteer that--

"(I) sets out the provider or volunteer's name, address, date of birth appearing on a valid identification document as defined in section 1028 of title 18, United States Code, and a photocopy of the valid identifying document;

"(II) states whether the volunteer has a criminal record, and, if so, sets out the particulars of such record;

"(III) notifies the volunteer that the Attorney General may perform a criminal history background check and that the volunteer's signature to the statement constitutes an acknowledgment that such a check may be conducted;

"(IV) notifies the volunteer that prior to and after the completion of the background check, the organization may choose to deny the provider access to children; and

"(V) notifies the volunteer of his right to correct an erroneous record held by the Attorney General.

"(F) Timing.--For any background checks performed under this paragraph, the Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 10 business days after receiving the request from the organization.

"(G) Determinations of fitness.--

"(i) In general.--Consistent with the privacy protections delineated in the National Child Protection Act (42 U.S.C. 5119) [Pub.L. 103-209, Dec. 20, 1993, 107 Stat. 2490; which is principally classified to 42 U.S.C.A. § 5119 et seq.], the National Center for Missing and Exploited Children may make a determination whether the criminal history record information received in response to the criminal history background checks conducted under this paragraph indicates that the provider or volunteer has a criminal history record that renders the provider or volunteer unfit to provide care to children based upon criteria established jointly, the National Center for Missing and Exploited Children, the Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports.

"(ii) Child safety pilot program.--The National Center for Missing and Exploited

Children shall convey that determination to the organizations making requests under this paragraph.

"(4) Fees collected by Attorney General.--The Attorney General may collect a fee which may not exceed $18 to cover the cost to the Federal Bureau of Investigation to conduct the background check under paragraph (2) or (3).

"**(b)** Rights of volunteers.--Each volunteer who is the subject of a criminal history background check under this section [this note] is entitled to contact the Attorney General to initiate procedures to--

"(1) obtain a copy of their criminal history record report; and

"(2) challenge the accuracy and completeness of the criminal history record information in the report.

"**(c)** Authorization of appropriations.--

"(1) In general.--There is authorized to be appropriated such sums as may be necessary to the National Center for Missing and Exploited Children for fiscal years 2004 through 2008 to carry out the requirements of this section [this note].

"(2) State program.--There is authorized to be appropriated such sums as may be necessary to the Attorney General for the States designated in subsection (a)(1) for fiscal years 2004 and 2005 to establish and enhance finger print technology infrastructure of the participating State.

"**(d)** Feasibility study for a system of background checks for employees and volunteers.--

"(1) Study required.--The Attorney General shall conduct a feasibility study within 180 days after the date of the enactment of this Act [Apr. 30, 2003]. The study shall examine, to the extent discernible, the following:

"(A) The current state of fingerprint capture and processing at the State and local level, including the current available infrastructure, State system capacities, and the time for each State to process a civil or volunteer print from the time of capture to submission to the Federal Bureau of Investigation (FBI).

"(B) The intent of the States concerning participation in a nationwide system of criminal background checks to provide information to qualified entities.

"(C) The number of volunteers, employees, and other individuals that would require a fingerprint-based criminal background check.

"(D) The impact on the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation in terms of capacity and impact on other users of the system, including the effect on Federal Bureau of Investigation work practices and staffing levels.

"(E) The current fees charged by the Federal Bureau of Investigation, States and local agencies, and private companies to process fingerprints and conduct background checks.

"(F) The existence of 'model' or best practice programs which could easily be expanded and duplicated in other States.
"(G) The extent to which private companies are currently performing background checks and the possibility of using private companies in the future to perform any of the background check process, including, but not limited to, the capture and transmission of fingerprints and fitness determinations.
"(H) The cost of development and operation of the technology and the infrastructure necessary to establish a nationwide fingerprint-based and other criminal background check system.
"(I) The extent of State participation in the procedures for background checks authorized in the National Child Protection Act (Public Law 103-209) [Pub.L. 103-209, Dec. 20, 1993, 107 Stat. 2490; which is principally classified to 42 U.S.C.A. § 5119 et seq.], as amended by the Volunteers for Children Act (sections 221 and 222 of Public Law 105-251) [Pub.L. 105-251, Title II, Subtitle B, §§ 221 and 222, Oct. 9, 1998, 112 Stat. 1885].
"(J) The extent to which States currently provide access to nationwide criminal history background checks to organizations that serve children.
"(K) The extent to which States currently permit volunteers to appeal adverse fitness determinations, and whether similar procedures are required at the Federal level.
"(L) The implementation of the 2 pilot programs created in subsection (a).
"(M) Any privacy concerns that may arise from nationwide criminal background checks.
"(N) Any other information deemed relevant by the Department of Justice.
"(O) The extent of participation by eligible organizations in the state pilot program.

42 U.S.C. 13013 – Strengthening of court appointed special advocate program

...

(2) In general, the grant criteria established pursuant to paragraph (1) shall require that a court-appointed special advocate program provide screening, training, and supervision of court-appointed special advocates in accordance with standards developed by the National Court-Appointed Special Advocate Association. Such criteria may include the requirements that—

…

(D) a court-appointed special advocate program keep written records on the operation of the program in general and on each applicant, volunteer, and case;

(E) a court-appointed special advocate program have written management and personnel policies and procedures, screening requirements, and training curriculum;

(F) a court-appointed special advocate program not accept volunteers who have been convicted of, have charges pending for, or have in the past been charged with, a felony or misdemeanor involving a sex offense, violent act, child abuse or neglect, or related acts that would pose risks to children or to the court-appointed special advocate program's credibility;

…

42 U.S.C. 13041 – Requirement for background checks

(a) In general

(1) Each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision to children under the age of 18 of child care services shall assure that all existing and newly-hired employees undergo a criminal history background check. All existing staff shall receive such checks not later than May 29, 1991. Except as provided in subsection (b)(3) of this section, no additional staff shall be hired without a check having been completed.

(2) For the purposes of this section, the term "child care services" means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

(b) Criminal history check

(1) A background check required by subsection (a) of this section shall be—
(A) based on a set of the employee's fingerprints obtained by a law enforcement officer and on other identifying information;
(B) conducted through the Identification Division of the Federal Bureau of Investigation and through the State criminal history repositories of all States that an employee or prospective employee lists as current and former residences in an employment application; and
(C) initiated through the personnel programs of the applicable Federal agencies.

(2) The results of the background check shall be communicated to the employing agency.

(3) An agency or facility described in subsection (a)(1) of this section may hire a staff person provisionally prior to the completion of a background check if, at all times prior to receipt of the background check during which children are in the care of the person, the person is within the sight and under the supervision of a staff person with respect to whom a background check has been completed.

(c) Applicable criminal histories

Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be ground for denying employment or for dismissal of an employee in any of the positions listed in subsection (a)(2) of this section. In the case of an incident in which an individual has been charged with one of those offenses, when the charge has not yet been disposed of, an employer may suspend an employee from having any contact with children while on the job until the case is resolved. Conviction of a crime other than a sex

crime may be considered if it bears on an individual's fitness to have responsibility for the safety and well-being of children.

(d) Employment applications

(1) Employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in any of the positions listed in subsection (a)(1) of this section, shall contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description of the disposition of the arrest or charge. An application shall state that it is being signed under penalty of perjury, with the applicable Federal punishment for perjury stated on the application.

(2) A Federal agency seeking a criminal history record check shall first obtain the signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer's obligation to require a record check as a condition of employment and the employee's right to obtain a copy of the criminal history report made available to the employing Federal agency and the right to challenge the accuracy and completeness of any information contained in the report.

(e) Encouragement of voluntary criminal history checks for others who may have contact with children

Federal agencies and facilities are encouraged to submit identifying information for criminal history checks on volunteers working in any of the positions listed in subsection (a) of this section and on adult household members in places where child care or foster care services are being provided in a home.

42 U.S.C. 13663 – Ineligibility of dangerous sex offenders for admission to public housing

(a) In general

Notwithstanding any other provision of law, an owner of federally assisted housing shall prohibit admission to such housing for any household that includes any individual who is subject to a lifetime registration requirement under a State sex offender registration program.

(b) Obtaining information

As provided in regulations issued by the Secretary to carry out this section—

(1) a public housing agency shall carry out criminal history background checks on applicants for federally assisted housing and make further inquiry with State and local agencies as necessary to determine whether an applicant for federally assisted housing

is subject to a lifetime registration requirement under a State sex offender registration program; and
(2) State and local agencies responsible for the collection or maintenance of criminal history record information or information on persons required to register as sex offenders shall comply with requests of public housing agencies for information pursuant to this section.

(c) Requests by owners for PHAs to obtain information

A public housing agency may take any action under subsection (b) of this section regarding applicants for, or tenants of, federally assisted housing other than federally assisted housing described in subparagraph (A) or (B) of section 13664(a)(2) of this title, but only if the housing is located within the jurisdiction of the agency and the owner of such housing has requested that the agency take such action on behalf of the owner. Upon such a request by the owner, the agency shall take the action requested under subsection (b) of this section. The agency may not make any information obtained pursuant to the action under subsection (b) of this section available to the owner but shall perform determinations for the owner regarding screening, lease enforcement, and eviction based on criteria supplied by the owner.

(d) Opportunity to dispute

Before an adverse action is taken with respect to an applicant for federally assisted housing on the basis that an individual is subject to a lifetime registration requirement under a State sex offender registration program, the public housing agency obtaining the record shall provide the tenant or applicant with a copy of the registration information and an opportunity to dispute the accuracy and relevance of that information.
…

42 U.S.C. 13726b – Federal regulation of prisoner transport companies

(a) In general

Not later than 180 days after December 21, 2000, the Attorney General, in consultation with the American Correctional Association and the private prisoner transport industry, shall promulgate regulations relating to the transportation of violent prisoners in or affecting interstate commerce.

(b) Standards and requirements

The regulations shall include the following:

(1) Minimum standards for background checks and preemployment drug testing for potential employees, including requiring criminal background checks, to disqualify persons with a felony conviction or domestic violence conviction as defined by section

921 of Title 18 for eligibility for employment. Preemployment drug testing will be in accordance with applicable State laws.

…

42 U.S.C. 14071 - Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program

(a) In general

(1) State guidelines

The Attorney General shall establish guidelines for State programs that require—

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address for the time period specified in subparagraph (A) of subsection (b)(6) of this section; and

(B) a person who is a sexually violent predator to register a current address for the time period specified in subparagraph (B) of subsection (b)(6) of this section.

(2) Determination of sexually violent predator status; waiver; alternative measures

(A) In general

A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.

(B) Waiver

The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

(C) Alternative measures

The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.

(3) Definitions

For purposes of this section:

(A) The term "criminal offense against a victim who is a minor" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

(i) kidnapping of a minor, except by a parent;

(ii) false imprisonment of a minor, except by a parent;

(iii) criminal sexual conduct toward a minor;

(iv) solicitation of a minor to engage in sexual conduct;

(v) use of a minor in a sexual performance;

(vi) solicitation of a minor to practice prostitution;

(vii) any conduct that by its nature is a sexual offense against a minor;

(viii) production or distribution of child pornography, as described in section 2251, 2252, or 2252A of Title 18; or

(ix) an attempt to commit an offense described in any of clauses (i) through (vii), if the State—

(I) makes such an attempt a criminal offense; and

(II) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(B) The term "sexually violent offense" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of Title 18 or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of Title 18 or as described in the State criminal code).

(C) The term "sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(D) The term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(E) The term "predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(F) The term "employed, carries on a vocation" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(G) The term "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

(b) Registration requirement upon release, parole, supervised release, or probation

An approved State registration program established under this section shall contain the following elements:

(1) Duties of responsible officials

(A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, the court, or another responsible officer or official, shall—

(i) inform the person of the duty to register and obtain the information required for such registration;

(ii) inform the person that if the person changes residence address, the person shall report the change of address as provided by State law;
(iii) inform the person that if the person changes residence to another State, the person shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;
(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and
(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1) of this section, the State prison officer, the court, or another responsible officer or official, as the case may be, shall obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

(2) Transfer of information to State and FBI; participation in National Sex Offender Registry

(A) State reporting

State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

(B) National reporting

A State shall participate in the national database established under section 14072(b) of this title in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.

(3) Verification

(A) For a person required to register under subparagraph (A) of subsection (a)(1) of this section, State procedures shall provide for verification of address at least annually.

(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1) of this section, except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

(4) Notification of local law enforcement agencies of changes in address

A change of address by a person required to register under this section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.

(5) Registration for change of address to another State
A person who has been convicted of an offense which requires registration under this section and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration.

(6) Length of registration
A person required to register under subsection (a)(1) of this section shall continue to comply with this section, except during ensuing periods of incarceration, until—
(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or
(B) for the life of that person if that person—
(i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A) of this section; or
(ii) has been convicted of an aggravated offense described in subsection (a)(1)(A) of this section; or
(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2) of this section.

(7) Registration of out-of-State offenders, Federal offenders, persons sentenced by courts martial, and offenders crossing State borders
As provided in guidelines issued by the Attorney General, each State shall include in its registration program residents who were convicted in another State and shall ensure that procedures are in place to accept registration information from—
(A) residents who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and
(B) nonresident offenders who have crossed into another State in order to work or attend school.

(c) Registration of offender crossing State border

Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.

(d) Penalty

A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

(e) Release of information

(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released. The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.

(f) Immunity for good faith conduct

Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and State officials shall be immune from liability for good faith conduct under this section.

(g) Compliance

(1) Compliance date
Each State shall have not more than 3 years from September 13, 1994, in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

(2) Ineligibility for funds
(A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.
(B) Reallocation of funds
Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

(h) Fingerprints

Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person required to register, obtained in accordance with regulations prescribed by the Attorney General under section 14072(h)of this title.
…

(j) Notice of enrollment at or employment by institutions of higher education

(1) Notice by offenders
(A) In general

In addition to any other requirements of this section, any person who is required to register in a State shall provide notice as required under State law—

(i) of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student; and

(ii) of each change in enrollment or employment status of such person at an institution of higher education in that State.

(B) Change in status

A change in status under subparagraph (A)(ii) shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated information is promptly made available to a law enforcement agency having jurisdiction where such institution is located and entered into the appropriate State records or data system.

(2) State reporting

State procedures shall ensure that the registration information collected under paragraph (1)--

(A) is promptly made available to a law enforcement agency having jurisdiction where such institution is located; and

(B) entered into the appropriate State records or data system.

(3) Request

Nothing in this subsection shall require an educational institution to request such information from any State.

42 U.S.C. 14072 – FBI database

(a) Definitions

For purposes of this section—

(1) the term "FBI" means the Federal Bureau of Investigation;

(2) the terms "criminal offense against a victim who is a minor", "sexually violent offense", "sexually violent predator", "mental abnormality", "predatory", "employed, carries on a vocation", and "student" have the same meanings as in section 14071(a)(3) of this title; and

(3) the term "minimally sufficient sexual offender registration program" means any State sexual offender registration program that—

(A) requires the registration of each offender who is convicted of an offense in a range of offenses specified by State law which is comparable to or exceeds that described in subparagraph (A) or (B) of section 14071(a)(1) of this title;

(B) participates in the national database established under subsection (b) of this section in conformity with guidelines issued by the Attorney General;

(C) provides for verification of address at least annually;

(D) requires that each person who is required to register under subparagraph (A) shall do so for a period of not less than 10 years beginning on the date that such person was released from prison or placed on parole, supervised release, or probation.

(b) Establishment

The Attorney General shall establish a national database at the Federal Bureau of Investigation to track the whereabouts and movement of—

(1) each person who has been convicted of a criminal offense against a victim who is a minor;

(2) each person who has been convicted of a sexually violent offense; and

(3) each person who is a sexually violent predator.

(c) Registration requirement

Each person described in subsection (b) of this section who resides in a State that has not established a minimally sufficient sexual offender registration program shall register a current address, fingerprints of that person, and a current photograph of that person with the FBI for inclusion in the database established under subsection (b) of this section for the time period specified under subsection (d) of this section.

(d) Length of registration

A person described in subsection (b) of this section who is required to register under subsection (c) of this section shall, except during ensuing periods of incarceration, continue to comply with this section—

(1) until 10 years after the date on which the person was released from prison or placed on parole, supervised release, or probation; or

(2) for the life of the person, if that person—
(A) has 2 or more convictions for an offense described in subsection (b) of this section;
(B) has been convicted of aggravated sexual abuse, as defined in section 2241 of Title 18 or in a comparable provision of State law; or
(C) has been determined to be a sexually violent predator.

(e) Verification

(1) Persons convicted of an offense against a minor or a sexually violent offense
In the case of a person required to register under subsection (c) of this section, the FBI shall, during the period in which the person is required to register under subsection (d) of this section, verify the person's address in accordance with guidelines that shall be

promulgated by the Attorney General. Such guidelines shall ensure that address verification is accomplished with respect to these individuals and shall require the submission of fingerprints and photographs of the individual.

(2) Sexually violent predators
Paragraph (1) shall apply to a person described in subsection (b)(3) of this section, except that such person must verify the registration once every 90 days after the date of the initial release or commencement of parole of that person.

(f) Community notification

(1) In general
Subject to paragraph (2), the FBI may release relevant information concerning a person required to register under subsection (c) of this section that is necessary to protect the public.

(2) Identity of victim
In no case shall the FBI release the identity of any victim of an offense that requires registration by the offender with the FBI.

(g) Notification of FBI of changes in residence

(1) Establishment of new residence
For purposes of this section, a person shall be deemed to have established a new residence during any period in which that person resides for not less than 10 days.

(2) Persons required to register with the FBI
Each establishment of a new residence, including the initial establishment of a residence immediately following release from prison, or placement on parole, supervised release, or probation, by a person required to register under subsection (c) of this section shall be reported to the FBI not later than 10 days after that person establishes a new residence.

(3) Individual registration requirement
A person required to register under subsection (c) of this section or under a State sexual offender registration program, including a program established under section 14071 of this title, who changes address to a State other than the State in which the person resided at the time of the immediately preceding registration shall, not later than 10 days after that person establishes a new residence, register a current address, fingerprints, and photograph of that person, for inclusion in the appropriate database, with—
(A) the FBI; and
(B) the State in which the new residence is established.

(4) State registration requirement

Any time any State agency in a State with a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, is notified of a change of address by a person required to register under such program within or outside of such State, the State shall notify—

(A) the law enforcement officials of the jurisdiction to which, and the jurisdiction from which, the person has relocated; and

(B) the FBI.

(5) Verification

(A) Notification of local law enforcement officials

The FBI shall ensure that State and local law enforcement officials of the jurisdiction from which, and the State and local law enforcement officials of the jurisdiction to which, a person required to register under subsection (c) of this section relocates are notified of the new residence of such person.

(B) Notification of FBI

A State agency receiving notification under this subsection shall notify the FBI of the new residence of the offender.

(C) Verification

(i) State agencies

If a State agency cannot verify the address of or locate a person required to register with a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, the State shall immediately notify the FBI.

(ii) FBI

If the FBI cannot verify the address of or locate a person required to register under subsection (c) of this section or if the FBI receives notification from a State under clause (i), the FBI shall—

(I) classify the person as being in violation of the registration requirements of the national database; and

(II) add the name of the person to the National Crime Information Center Wanted person file and create a wanted persons record: Provided, That an arrest warrant which meets the requirements for entry into the file is issued in connection with the violation.

(h) Fingerprints

(1) FBI registration

For each person required to register under subsection (c) of this section, fingerprints shall be obtained and verified by the FBI or a local law enforcement official pursuant to regulations issued by the Attorney General.

(2) State registration systems

In a State that has a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, fingerprints required to be registered with the FBI under this section shall be obtained and verified in accordance with State requirements. The State agency responsible for registration shall

ensure that the fingerprints and all other information required to be registered is registered with the FBI.

(i) Penalty

A person who is—

(1) required to register under paragraph (1), (2), or (3) of subsection (g) of this section and knowingly fails to comply with this section;

(2) required to register under a sexual offender registration program in the person's State of residence and knowingly fails to register in any other State in which the person is employed, carries on a vocation, or is a student;

(3) described in section 4042(c)(4) of title 18, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation; or

(4) sentenced by a court martial for conduct in a category specified by the Secretary of Defense under section 115(a)(8)(C) of title I of Public Law 105-119, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation, shall, in the case of a first offense under this subsection, be imprisoned for not more than 1 year and, in the case of a second or subsequent offense under this subsection, be imprisoned for not more than 10 years.

(j) Release of information

The information collected by the FBI under this section shall be disclosed by the FBI—

(1) to Federal, State, and local criminal justice agencies for—
(A) law enforcement purposes; and
(B) community notification in accordance with section 14071(d)(3) of this title; and

(2) to Federal, State, and local governmental agencies responsible for conducting employment-related background checks under section 5119a of this title.

(k) Notification upon release

Any State not having established a program described in subsection (a)(3) of this section must—

(1) upon release from prison, or placement on parole, supervised release, or probation, notify each offender who is convicted of an offense described in subparagraph (A) or (B) of section 14071(a)(1) of this title of their duty to register with the FBI; and

(2) notify the FBI of the release of each offender who is convicted of an offense described in subparagraph (A) or (B) of section 14071(a)(1) of this title.

42 U.S.C. 16911 – Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators

In this subchapter the following definitions apply:

(1) Sex offender
The term "sex offender" means an individual who was convicted of a sex offense.

(2) Tier I sex offender
The term "tier I sex offender" means a sex offender other than a tier II or tier III sex offender.

(3) Tier II sex offender
The term "tier II sex offender" means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and—
(A) is comparable to or more severe than the following offenses, when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor:
(i) sex trafficking (as described in section 1591 of Title 18);
(ii) coercion and enticement (as described in section 2422(b) of Title 18);
(iii) transportation with intent to engage in criminal sexual activity (as described in section 2423(a)) of Title 18;
(iv) abusive sexual contact (as described in section 2244 of Title 18);
(B) involves—
(i) use of a minor in a sexual performance;
(ii) solicitation of a minor to practice prostitution; or
(iii) production or distribution of child pornography; or
(C) occurs after the offender becomes a tier I sex offender.

(4) Tier III sex offender
The term "tier III sex offender" means a sex offender whose offense is punishable by imprisonment for more than 1 year and—
(A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense:
(i) aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of Title 18); or
(ii) abusive sexual contact (as described in section 2244 of Title 18) against a minor who has not attained the age of 13 years;
(B) involves kidnapping of a minor (unless committed by a parent or guardian); or
(C) occurs after the offender becomes a tier II sex offender.

(5) Amie Zyla expansion of sex offense definition
(A) Generally

Except as limited by subparagraph (B) or (C), the term " sex offense" means—

(i) a criminal offense that has an element involving a sexual act or sexual contact with another;

(ii) a criminal offense that is a specified offense against a minor;

(iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of Title 18;

(iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or

(v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

(B) Foreign convictions

A foreign conviction is not a sex offense for the purposes of this subchapter if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established under section 16912 of this title.

(C) Offenses involving consensual sexual conduct

An offense involving consensual sexual conduct is not a sex offense for the purposes of this subchapter if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

(6) Criminal offense

The term "criminal offense" means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note)) or other criminal offense.

(7) Expansion of definition of "specified offense against a minor" to include all offenses by child predators

The term "specified offense against a minor" means an offense against a minor that involves any of the following:

(A) An offense (unless committed by a parent or guardian) involving kidnapping.

(B) An offense (unless committed by a parent or guardian) involving false imprisonment.

(C) Solicitation to engage in sexual conduct.

(D) Use in a sexual performance.

(E) Solicitation to practice prostitution.

(F) Video voyeurism as described in section 1801 of Title 18.

(G) Possession, production, or distribution of child pornography.

(H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.

(I) Any conduct that by its nature is a sex offense against a minor.

(8) Convicted as including certain juvenile adjudications

The term "convicted" or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years

of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of Title 18), or was an attempt or conspiracy to commit such an offense.

(9) Sex offender registry
The term "sex offender registry" means a registry of sex offenders, and a notification program, maintained by a jurisdiction.

(10) Jurisdiction
The term "jurisdiction" means any of the following:
(A) A State.
(B) The District of Columbia.
(C) The Commonwealth of Puerto Rico.
(D) Guam.
(E) American Samoa.
(F) The Northern Mariana Islands.
(G) The United States Virgin Islands.
(H) To the extent provided and subject to the requirements of section 16927 of this title, a federally recognized Indian tribe.

(11) Student
The term "student" means an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.

(12) Employee
The term "employee" includes an individual who is self-employed or works for any other entity, whether compensated or not.

(13) Resides
The term "resides" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives.

(14) Minor
The term "minor" means an individual who has not attained the age of 18 years.

42 U.S.C. 16912 – Registry requirements for jurisdictions

(a) Jurisdiction to maintain a registry

Each jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this subchapter.

(b) Guidelines and regulations

The Attorney General shall issue guidelines and regulations to interpret and implement this subchapter.

42 U.S.C. 16913 – Registry requirements for sex offenders

(a) In general

A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

(b) Initial registration

The sex offender shall initially register—

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(c) Keeping the registration current

A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) of this section and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

(d) Initial registration of sex offenders unable to comply with subsection (b) of this section

The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before July 27, 2006 or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b) of this section.

(e) State penalty for failure to comply

Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter.

42 U.S.C. 16914 – Information required in registration

(a) Provided by the offender

The sex offender shall provide the following information to the appropriate official for inclusion in the sex offender registry:

(1) The name of the sex offender (including any alias used by the individual).

(2) The Social Security number of the sex offender.

(3) The address of each residence at which the sex offender resides or will reside.

(4) The name and address of any place where the sex offender is an employee or will be an employee.

(5) The name and address of any place where the sex offender is a student or will be a student.

(6) The license plate number and a description of any vehicle owned or operated by the sex offender.

(7) Any other information required by the Attorney General.

(b) Provided by the jurisdiction

The jurisdiction in which the sex offender registers shall ensure that the following information is included in the registry for that sex offender:

(1) A physical description of the sex offender.

(2) The text of the provision of law defining the criminal offense for which the sex offender is registered.

(3) The criminal history of the sex offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.

(4) A current photograph of the sex offender.

(5) A set of fingerprints and palm prints of the sex offender.

(6) A DNA sample of the sex offender.

(7) A photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.

(8) Any other information required by the Attorney General.

42 U.S.C. 16915 – Duration of registration requirement

(a) Full registration period

A sex offender shall keep the registration current for the full registration period (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b) of this section. The full registration period is—

(1) 15 years, if the offender is a tier I sex offender;

(2) 25 years, if the offender is a tier II sex offender; and

(3) the life of the offender, if the offender is a tier III sex offender.

(b) Reduced period for clean record

(1) Clean record
The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by—
(A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed;
(B) not being convicted of any sex offense;
(C) successfully completing any periods of supervised release, probation, and parole; and
(D) successfully completing of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

(2) Period
In the case of—
(A) a tier I sex offender, the period during which the clean record shall be maintained is 10 years; and
(B) a tier III sex offender adjudicated delinquent for the offense which required registration in a sex registry under this subchapter, the period during which the clean record shall be maintained is 25 years.

(3) Reduction
In the case of—
(A) a tier I sex offender, the reduction is 5 years;
(B) a tier III sex offender adjudicated delinquent, the reduction is from life to that period for which the clean record under paragraph (2) is maintained.

42 U.S.C. 16915a – Direction to the Attorney General

(a) Requirement that sex offenders provide certain Internet related information to sex offender registries

The Attorney General, using the authority provided in section 16914(a)(7) of this title, shall require that each sex offender provide to the sex offender registry those Internet identifiers the sex offender uses or will use of any type that the Attorney General determines to be appropriate under this subchapter. These records of Internet identifiers shall be subject to the Privacy Act (5 U.S.C. 552a) to the same extent as the other records in the National Sex Offender Registry.

(b) Timeliness of reporting of information

The Attorney General, using the authority provided in section 16912(b) of this title, shall specify the time and manner for keeping current information required to be provided under this section.

(c) Nondisclosure to general public

The Attorney General, using the authority provided in section 16918(b)(4) of this title, shall exempt from disclosure all information provided by a sex offender under subsec.(a).

(d) Notice to sex offenders of new requirements

The Attorney General shall ensure that procedures are in place to notify each sex offender of changes in requirements that apply to that sex offender as a result of the implementation of this section.

(e) Definitions

(1) Of "social networking website"
As used in this Act, the term " social networking website"—
(A) means an Internet website—
(i) that allows users, through the creation of web pages or profiles or by other means, to provide information about themselves that is available to the public or to other users; and
(ii) that offers a mechanism for communication with other users where such users are likely to include a substantial number of minors; and
(iii) whose primary purpose is to facilitate online social interactions; and
(B) includes any contractors or agents used by the website to act on behalf of the website in carrying out the purposes of this Act.

(2) Of "Internet identifiers"

As used in this Act, the term " Internet identifiers" means electronic mail addresses and other designations used for self-identification or routing in Internet communication or posting.

(3) Other terms
A term defined for the purposes of this subchapter has the same meaning in this Act.

42 U.S.C. 16915b – Checking system for social networking websites

(a) In general

(1) Secure system for comparisons
The Attorney General shall establish and maintain a secure system that permits social networking websites to compare the information contained in the National Sex Offender Registry with the Internet identifiers of users of the social networking websites, and view only those Internet identifiers that match. The system—

(A) shall not require or permit any social networking website to transmit Internet identifiers of its users to the operator of the system, and

(B) shall use secure procedures that preserve the secrecy of the information made available by the Attorney General, including protection measures that render the Internet identifiers and other data elements indecipherable.

(2) Provision of information relating to identity
Upon receiving a matched Internet identifier, the social networking website may make a request of the Attorney General for, and the Attorney General shall provide promptly, information related to the identity of the individual that has registered the matched Internet identifier. This information is limited to the name, sex, resident address, photograph, and physical description.

(b) Qualification for use of system

A social networking website seeking to use the system shall submit an application to the Attorney General which provides—

(1) the name and legal status of the website;

(2) the contact information for the website;

(3) a description of the nature and operations of the website;

(4) a statement explaining why the website seeks to use the system;

(5) a description of policies and procedures to ensure that—

(A) any individual who is denied access to that website on the basis of information obtained through the system is promptly notified of the basis for the denial and has the ability to challenge the denial of access; and
(B) if the social networking website finds that information is inaccurate, incomplete, or cannot be verified, the site immediately notifies the appropriate State registry and the Department of Justice, so that they may delete or correct that information in the respective State and national databases;

(6) the identity and address of, and contact information for, any contractor that will be used by the social networking website to use the system; and

(7) such other information or attestations as the Attorney General may require to ensure that the website will use the system—
(A) to protect the safety of the users of such website; and
(B) for the limited purpose of making the automated comparison described in subsection (a).

(c) Searches against the system

(1) Frequency of use of the system
A social networking website approved by the Attorney General to use the system may conduct searches under the system as frequently as the Attorney General may allow.

(2) Authority of Attorney General to suspend use
The Attorney General may deny, suspend, or terminate use of the system by a social networking website that—
(A) provides false information in its application for use of the system;
(B) may be using or seeks to use the system for any unlawful or improper purpose;
(C) fails to comply with the procedures required under subsection (b)(5); or
(D) uses information obtained from the system in any way that is inconsistent with the purposes of this Act.

(3) Limitation on release of Internet identifiers
(A) No public release
Neither the Attorney General nor a social networking website approved to use the system may release to the public any list of the Internet identifiers of sex offenders contained in the system.
(B) Additional limitations
The Attorney General shall limit the release of information obtained through the use of the system established under subsection (a) by social networking websites approved to use such system.
(C) Strict adherence to limitation
The use of the system established under subsection (a) by a social networking website shall be conditioned on the website's agreement to observe the limitations required under this paragraph.
(D) Rule of construction

This subsection shall not be construed to limit the authority of the Attorney General under any other provision of law to conduct or to allow searches or checks against sex offender registration information.

(4) Payment of fee
A social networking website approved to use the system shall pay any fee established by the Attorney General for use of the system.

(5) Limitation on liability
(A) In general
A civil claim against a social networking website, including any director, officer, employee, parent, contractor, or agent of that social networking website, arising from the use by such website of the National Sex Offender Registry, may not be brought in any Federal or State court.
(B) Intentional, reckless, or other misconduct
Subparagraph (A) does not apply to a claim if the social networking website, or a director, officer, employee, parent, contractor, or agent of that social networking website—
(i) engaged in intentional misconduct; or
(ii) acted, or failed to act—
(I) with actual malice;
(II) with reckless disregard to a substantial risk of causing injury without legal justification; or
(III) for a purpose unrelated to the performance of any responsibility or function described in paragraph (3).
(C) Minimizing access
A social networking website shall minimize the number of employees that are provided access to the Internet identifiers for which a match has been found through the system.

(6) Rule of construction
Nothing in this section shall be construed to require any Internet website, including a social networking website, to use the system, and no Federal or State liability, or any other actionable adverse consequence, shall be imposed on such website based on its decision not to do so.

42 U.S.C. 16916 – Periodic in person verification

A sex offender shall appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that offender is required to be registered not less frequently than—

(1) each year, if the offender is a tier I sex offender;

(2) every 6 months, if the offender is a tier II sex offender; and

(3) every 3 months, if the offender is a tier III sex offender.

42 U.S.C. 16918 – Public access to sex offender information through the Internet

(a) In general

Except as provided in this section, each jurisdiction shall make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry. The jurisdiction shall maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user. The jurisdiction shall also include in the design of its Internet site all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General.

(b) Mandatory exemptions

A jurisdiction shall exempt from disclosure—

(1) the identity of any victim of a sex offense;

(2) the Social Security number of the sex offender;

(3) any reference to arrests of the sex offender that did not result in conviction; and

(4) any other information exempted from disclosure by the Attorney General.

(c) Optional exemptions

A jurisdiction may exempt from disclosure—

(1) any information about a tier I sex offender convicted of an offense other than a specified offense against a minor;

(2) the name of an employer of the sex offender;

(3) the name of an educational institution where the sex offender is a student; and

(4) any other information exempted from disclosure by the Attorney General.

(d) Links

The site shall include, to the extent practicable, links to sex offender safety and education resources.

(e) Correction of errors

The site shall include instructions on how to seek correction of information that an individual contends is erroneous.

(f) Warning

The site shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. The warning shall note that any such action could result in civil or criminal penalties.

42 U.S.C. 16919 – National Sex Offender Registry

(a) Internet

The Attorney General shall maintain a national database at the Federal Bureau of Investigation for each sex offender and any other person required to register in a jurisdiction's sex offender registry. The database shall be known as the National Sex Offender Registry.

(b) Electronic forwarding

The Attorney General shall ensure (through the National Sex Offender Registry or otherwise) that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions.

46 U.S.C. 7503 – Dangerous drugs as grounds for denial

…

(b) A license, certificate of registry, or merchant mariner's document authorized to be issued under this part may be denied to an individual who—

(1) within 10 years before applying for the license, certificate, or document, has been convicted of violating a dangerous drug law of the United States or of a State; or

…

46 U.S.C. 7703 – Bases for suspension or revocation

A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder—

(1) when acting under the authority of that license, certificate, or document—
(A) has violated or fails to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters; or

(B) has committed an act of misconduct or negligence;

(2) is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner's document;

(3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is convicted of an offense described in section 30304(a)(3)(A) or (B) of title 49;

(4) has committed an act of incompetence relating to the operation of a vessel; or

(5) is a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.

46 U.S.C. 70105 – Transportation security cards

(a) Prohibition.--(1) The Secretary shall prescribe regulations to prevent an individual from entering an area of a vessel or facility that is designated as a secure area by the Secretary for purposes of a security plan for the vessel or facility that is approved by the Secretary under section 70103 of this title unless the individual—

(A) holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan; or

(B) is accompanied by another individual who holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan.

(2) A person shall not admit an individual into such a secure area unless the entry of the individual into the area is in compliance with paragraph (1).

(b) Issuance of cards.--(1) The Secretary shall issue a biometric transportation security card to an individual specified in paragraph (2), unless the Secretary determines under subsection (c) that the individual poses a security risk warranting denial of the card.

(2) This subsection applies to—

(A) an individual allowed unescorted access to a secure area designated in a vessel or facility security plan approved under section 70103 of this title;

(B) an individual issued a license, certificate of registry, or merchant mariners document under part E of subtitle II of this title;

(C) a vessel pilot;

(D) an individual engaged on a towing vessel that pushes, pulls, or hauls alongside a tank vessel;

(E) an individual with access to security sensitive information as determined by the Secretary;

(F) other individuals engaged in port security activities as determined by the Secretary; and

(G) other individuals as determined appropriate by the Secretary including individuals employed at a port not otherwise covered by this subsection.

(c) Determination of terrorism security risk.—

(1) Disqualifications.—

(A) Permanent disqualifying criminal offenses.—Except as provided under paragraph (2), an individual is permanently disqualified from being issued a biometric transportation security card under subsection (b) if the individual has been convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following felonies:

(i) Espionage or conspiracy to commit espionage.

(ii) Sedition or conspiracy to commit sedition.

(iii) Treason or conspiracy to commit treason.

(iv) A Federal crime of terrorism (as defined in section 2332b(g) of title 18), a crime under a comparable State law, or conspiracy to commit such crime.

(v) A crime involving a transportation security incident.

(vi) Improper transportation of a hazardous material in violation of section 5104(b) of title 49, or a comparable State law.

(vii) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipment, transportation, delivery, import, export, or storage of, or dealing in, an explosive or explosive device. In this clause, an explosive or explosive device includes—

(I) an explosive (as defined in sections 232(5) and 844(j) of title 18);

(II) explosive materials (as defined in subsections (c) through (f) of section 841 of title 18); and

(III) a destructive device (as defined in 921(a)(4) of title 18 or section 5845(f) of the Internal Revenue Code of 1986).

(viii) Murder.

(ix) Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a State or other government facility, a public transportation system, or an infrastructure facility.

(x) A violation of chapter 96 of title 18, popularly known as the Racketeer Influenced and Corrupt Organizations Act, or a comparable State law, if one of the predicate acts found by a jury or admitted by the defendant consists of one of the crimes listed in this subparagraph.

(xi) Attempt to commit any of the crimes listed in clauses (i) through (iv).

(xii) Conspiracy or attempt to commit any of the crimes described in clauses (v) through (x).

(B) Interim disqualifying criminal offenses.—Except as provided under paragraph (2), an individual is disqualified from being issued a biometric transportation security card under subsection (b) if the individual has been convicted, or found not guilty by reason of insanity, during the 7-year period ending on the date on which the individual applies for such card, or was released from incarceration during the 5-year

period ending on the date on which the individual applies for such card, of any of the following felonies:

(i) Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipment, transportation, delivery, import, export, or storage of, or dealing in, a firearm or other weapon. In this clause, a firearm or other weapon includes—

(I) firearms (as defined in section 921(a)(3) of title 18 or section 5845(a) of the Internal Revenue Code of 1986); and

(II) items contained on the U.S. Munitions Import List under section 447.21 of title 27, Code of Federal Regulations.

(ii) Extortion.

(iii) Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering if the money laundering is related to a crime described in this subparagraph or subparagraph (A). In this clause, welfare fraud and passing bad checks do not constitute dishonesty, fraud, or misrepresentation.

(iv) Bribery.

(v) Smuggling.

(vi) Immigration violations.

(vii) Distribution of, possession with intent to distribute, or importation of a controlled substance.

(viii) Arson.

(ix) Kidnaping or hostage taking.

(x) Rape or aggravated sexual abuse.

(xi) Assault with intent to kill.

(xii) Robbery.

(xiii) Conspiracy or attempt to commit any of the crimes listed in this subparagraph.

(xiv) Fraudulent entry into a seaport in violation of section 1036 of title 18, or a comparable State law.

(xv) A violation of the chapter 96 of title 18, popularly known as the Racketeer Influenced and Corrupt Organizations Act or a comparable State law, other than any of the violations listed in subparagraph (A)(x).

(C) Under want, warrant, or indictment.—An applicant who is wanted, or under indictment, in any civilian or military jurisdiction for a felony listed in paragraph (1)(A), is disqualified from being issued a biometric transportation security card under subsection (b) until the want or warrant is released or the indictment is dismissed.

(D) Other potential disqualifications.—Except as provided under subparagraphs (A) through (C), an individual may not be denied a transportation security card under subsection (b) unless the Secretary determines that individual—

(i) has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony—

(I) that the Secretary believes could cause the individual to be a terrorism security risk to the United States; or

(II) for causing a severe transportation security incident;

(ii) has been released from incarceration within the preceding 5-year period for committing a felony described in clause (i);

(iii) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or
(iv) otherwise poses a terrorism security risk to the United States.
(E) Modification of listed offenses.—The Secretary may, by rulemaking, add to or modify the list of disqualifying crimes described in paragraph (1)(B).

(2) The Secretary shall prescribe regulations that establish a waiver process for issuing a transportation security card to an individual found to be otherwise ineligible for such a card under subparagraph (A), (B), or (D) paragraph (1). In deciding to issue a card to such an individual, the Secretary shall—
(A) give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a terrorism risk warranting denial of the card; and
(B) issue a waiver to an individual without regard to whether that individual would otherwise be disqualified if the individual's employer establishes alternate security arrangements acceptable to the Secretary.

(3) Denial of waiver review.—
(A) In general.—The Secretary shall establish a review process before an administrative law judge for individuals denied a waiver under paragraph (2).
(B) Scope of review.—In conducting a review under the process established pursuant to subparagraph (A), the administrative law judge shall be governed by the standards of section 706 of title 5. The substantial evidence standard in section 706(2)(E) of title 5 shall apply whether or not there has been an agency hearing. The judge shall review all facts on the record of the agency.
(C) Classified evidence.—The Secretary, in consultation with the National Intelligence Director, shall issue regulations to establish procedures by which the Secretary, as part of a review conducted under this paragraph, may provide to the individual adversely affected by the determination an unclassified summary of classified evidence upon which the denial of a waiver by the Secretary was based.
(D) Review of classified evidence by administrative law judge.—
(i) Review.—As part of a review conducted under this section, if the decision of the Secretary was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.)), such information may be submitted by the Secretary to the reviewing administrative law judge, pursuant to appropriate security procedures, and shall be reviewed by the administrative law judge ex parte and in camera.
(ii) Security clearances.—Pursuant to existing procedures and requirements, the Secretary, in coordination (as necessary) with the heads of other affected departments or agencies, shall ensure that administrative law judges reviewing negative waiver decisions of the Secretary under this paragraph possess security clearances appropriate for such review.
(iii) Unclassified summaries of classified evidence.—As part of a review conducted under this paragraph and upon the request of the individual adversely affected by the decision of the Secretary not to grant a waiver, the Secretary shall provide to the

individual and reviewing administrative law judge, consistent with the procedures established under clause (i), an unclassified summary of any classified information upon which the decision of the Secretary was based.

(E) New evidence.—The Secretary shall establish a process under which an individual may submit a new request for a waiver, notwithstanding confirmation by the administrative law judge of the Secretary's initial denial of the waiver, if the request is supported by substantial evidence that was not available to the Secretary at the time the initial waiver request was denied.

(4) The Secretary shall establish an appeals process under this section for individuals found to be ineligible for a transportation security card that includes notice and an opportunity for a hearing.

(5) Upon application, the Secretary may issue a transportation security card to an individual if the Secretary has previously determined, under section 5103a of title 49, that the individual does not pose a security risk.

(d) Background records check.--(1) On request of the Secretary, the Attorney General shall—

(A) conduct a background records check regarding the individual; and

(B) upon completing the background records check, notify the Secretary of the completion and results of the background records check.

(2) A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history databases.

(B) In the case of an alien, a check of the relevant databases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international databases or other appropriate means.

(D) Review of any other national security-related information or database identified by the Attorney General for purposes of such a background records check.

(e) Restrictions on use and maintenance of information.--(1) Information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including the individual's employer.

(2) Any information constituting grounds for denial of a transportation security card under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section. The Secretary may share any such information with other Federal law enforcement agencies. An individual's employer may only be informed of whether or not the individual has been issued the card under this section.

(f) Definition.—In this section, the term "alien" has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

(g) Applications for merchant mariners' documents.—The Assistant Secretary of Homeland Security for the Transportation Security Administration and the Commandant of the Coast Guard shall concurrently process an application from an individual for merchant mariner's documents under chapter 73 of title 46, United States Code, and an application from that individual for a transportation security card under this section.

(h) Fees.—The Secretary shall ensure that the fees charged each individual applying for a transportation security card under this section who has passed a background check under section 5103a(d) of title 49, United States Code, and who has a current hazardous materials endorsement in accordance with section 1572 of title 49, Code of Federal Regulations, and each individual with a current merchant mariners' document who has passed a criminal background check under section 7302(d)--

(1) are for costs associated with the issuance, production, and management of the transportation security card, as determined by the Secretary; and

(2) do not include costs associated with performing a background check for that individual, except for any incremental costs in the event that the scope of such background checks diverge.

(i) Implementation schedule.—In implementing the transportation security card program under this section, the Secretary shall—

(1) establish a priority for each United States port based on risk, including vulnerabilities assessed under section 70102; and

(2) implement the program, based upon such risk and other factors as determined by the secretary, at all facilities regulated under this chapter at—
(A) the 10 United States ports that the Secretary designates top priority not later than July 1, 2007;
(B) the 40 United States ports that are next in order of priority to the ports described in subparagraph (A) not later than January 1, 2008; and
(C) all other United States ports not later than January 1, 2009.

(j) Transportation security card processing deadline.—Not later than January 1, 2009, the Secretary shall process and issue or deny each application for a transportation security card under this section for individuals with current and valid merchant mariners' documents on the date of the enactment of the SAFE Port Act.

49 U.S.C. 114 – Transportation Security Administration

…

(f) Additional duties and powers.--In addition to carrying out the functions specified in subsections (d) and (e), the Under Secretary shall--

…

(12) require background checks for airport security screening personnel, individuals with access to secure areas of airports, and other transportation security personnel;
…

49 U.S.C. 5103a – Limitation on issuance of hazmat licenses

(a) Limitation.—

(1) Issuance of licenses.—A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Homeland Security has first determined, upon receipt of a notification under subsection (d)(1)(B), that the individual does not pose a security risk warranting denial of the license.

(2) Renewals included.—For the purposes of this section, the term 'issue', with respect to a license, includes renewal of the license.

(b) Hazardous materials described.—The limitation in subsection (a) shall apply with respect to any material defined as hazardous material by the Secretary of Transportation for which the Secretary of Transportation requires placarding of a commercial motor vehicle transporting that material in commerce.

(c) Recommendations on chemical and biological materials.—The Secretary of Health and Human Services shall recommend to the Secretary of Transportation any chemical or biological material or agent for regulation as a hazardous material under section 5103(a) if the Secretary of Health and Human Services determines that such material or agent poses a significant risk to the health of individuals.

(d) Background records check.—

(1) In general.—Upon the request of a State regarding issuance of a license described in subsection (a)(1) to an individual, the Attorney General—
(A) shall carry out a background records check regarding the individual; and
(B) upon completing the background records check, shall notify the Secretary of Homeland Security of the completion and results of the background records check.

(2) Scope.—A background records check regarding an individual under this subsection shall consist of the following:
(A) A check of the relevant criminal history data bases.
(B) In the case of an alien, a check of the relevant data bases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international data bases through Interpol-U.S. National Central Bureau or other appropriate means.

(e) Reporting requirement.—Each State shall submit to the Secretary of Homeland Security, at such time and in such manner as the Secretary of Homeland Security may prescribe, the name, address, and such other information as the Secretary of Homeland Security may require, concerning—

(1) each alien to whom the State issues a license described in subsection (a); and

(2) each other individual to whom such a license is issued, as the Secretary of Homeland Security may require.

(f) Alien defined.—In this section, the term "alien" has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act.

(g) Background checks for drivers hauling hazardous materials.—

(1) In general.—
(A) Employer notification.—Not later than 90 days after the date of enactment of this subsection, the Director of the Transportation Security Administration, after receiving comments from interested parties, shall develop and implement a process for notifying hazmat employers designated by an applicant of the results of the applicant's background record check, if—
(i) such notification is appropriate considering the potential security implications; and
(ii) the Director, in a final notification of threat assessment, served on the applicant determines that the applicant does not meet the standards set forth in regulations issued to carry out this section.
(B) Relationship to other background records checks.—
(i) Elimination of redundant checks.—An individual with respect to whom the Transportation Security Administration—
(I) has performed a security threat assessment under this section; and
(II) has issued a final notification of no security threat,
is deemed to have met the requirements of any other background check that is required for purposes of any Federal law applicable to transportation workers if that background check is equivalent to, or less stringent than, the background check required under this section.
(ii) Determination by director.—Not later than 60 days after the date of issuance of the report under paragraph (5), but no later than 120 days after the date of enactment of this subsection, the Director shall initiate a rulemaking proceeding, including notice and opportunity for comment, to determine which background checks required for purposes of Federal laws applicable to transportation workers are equivalent to, or less stringent than, those required under this section.
(iii) Future rulemakings.—The Director shall make a determination under the criteria established under clause (ii) with respect to any rulemaking proceeding to

establish or modify required background checks for transportation workers initiated after the date of enactment of this subsection.

(2) Appeals process for more stringent State procedures.—If a State establishes its own standards for applicants for a hazardous materials endorsement to a commercial driver's license, the State shall also provide—

(A) an appeals process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may appeal that denial; and

(B) a waiver process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may apply for a waiver.

(3) Clarification of term defined in regulations.—The term "transportation security incident", as defined in part 1572 of title 49, Code of Federal Regulations, does not include a work stoppage or other nonviolent employee-related action resulting from an employer-employee dispute. Not later than 30 days after the date of enactment of this subsection, the Director shall modify the definition of that term to reflect the preceding sentence.

(4) Background check capacity.—Not later than October 1, 2005, the Director shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Homeland Security of the House of Representatives a report on the implementation of fingerprint-based security threat assessments and the adequacy of fingerprinting locations, personnel, and resources to accomplish the timely processing of fingerprint-based security threat assessments for individuals holding commercial driver's licenses who are applying to renew hazardous materials endorsements.

(5) Report.—

(A) In general.—Not later than 60 days after the date of enactment of this subsection, the Director shall transmit to the committees referred to in paragraph (4) a report on the Director's plans to reduce or eliminate redundant background checks for holders of hazardous materials endorsements performed under this section.

(B) Contents.—The report shall—

(i) include a list of background checks and other security or threat assessment requirements applicable to transportation workers under Federal laws for which the Department of Homeland Security is responsible and the process by which the Secretary of Homeland Security will determine whether such checks or assessments are equivalent to, or less stringent than, the background check performed under this section; and

(ii) provide an analysis of how the Director plans to reduce or eliminate redundant background checks in a manner that will continue to ensure the highest level of safety and security.

(h) Commercial motor vehicle operators registered to operate in Mexico or Canada.—

(1) In general.—Beginning on the date that is 6 months after the date of enactment of this subsection, a commercial motor vehicle operator registered to operate in Mexico or Canada shall not operate a commercial motor vehicle transporting a hazardous material in commerce in the United States until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

(2) Extension.—The Director of the Transportation Security Administration may extend the deadline established by paragraph (1) for a period not to exceed 6 months if the Director determines that such an extension is necessary.

(3) Commercial motor vehicle defined.—In this subsection, the term "commercial motor vehicle" has the meaning given that term by section 31101.

49 U.S.C. 20135 – Licensing or certification of locomotive operators

(a) General.—The Secretary of Transportation shall prescribe regulations and issue orders to establish a program requiring the licensing or certification, after one year after the program is established, of any operator of a locomotive.

…

(4) except as provided in subsection (c)(1) of this section, shall require consideration, to the extent the information is available, of the motor vehicle driving record of each individual seeking licensing or certification, including—
(A) any denial, cancellation, revocation, or suspension of a motor vehicle operator's license by a State for cause within the prior 5 years; and
(B) any conviction within the prior 5 years of an offense described in section 30304(a)(3)(A) or (B) of this title;

…

(c) Waivers.--(1) The Secretary shall prescribe standards and establish procedures for waiving subsection (b)(4) of this section for an individual or class of individuals who the Secretary decides are not currently unfit to operate a locomotive. However, the Secretary may waive subsection (b)(4) for an individual or class of individuals with a conviction, cancellation, revocation, or suspension described in paragraph (2)(A) or (B) of this subsection only if the individual or class, after the conviction, cancellation, revocation, or suspension, successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary.

(2) If an individual, after the conviction, cancellation, revocation, or suspension,

successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary, the individual may not be denied a license or certification under subsection (b)(4) of this section because of—

(A) a conviction for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance; or
(B) the cancellation, revocation, or suspension of the individual's motor vehicle operator's license for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance.

(d) Opportunity for hearing.—An individual denied a license or certification or whose license or certification is conditioned on requirements prescribed under subsection (b)(4) of this section shall be entitled to a hearing under section 20103(e) of this title to decide whether the license has been properly denied or conditioned.

(e) Opportunity to examine and comment on information.—The Secretary, employer, or prospective employer, as appropriate, shall make information obtained under subsection (b)(6) of this section available to the individual. The individual shall be given an opportunity to comment in writing about the information. Any comment shall be included in any record or file maintained by the Secretary, employer, or prospective employer that contains information to which the comment is related.

49 U.S.C. 31310 – Disqualifications

(a) Blood alcohol concentration level.—In this section, the blood alcohol concentration level at or above which an individual when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol is .04 percent.

(b) First violation or committing felony.--(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the Secretary of Transportation shall disqualify from operating a commercial motor vehicle for at least one year an individual—

(A) committing a first violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;
(B) committing a first violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;
(C) using a commercial motor vehicle in committing a felony (except a felony described in subsection (d) of this section);
(D) committing a first violation of driving a commercial motor vehicle when the individual's commercial driver's license is revoked, suspended, or canceled based on the individual's operation of a commercial motor vehicle or when the individual is disqualified from operating a commercial motor vehicle based on the individual's operation of a commercial motor vehicle; or
(E) convicted of causing a fatality through negligent or criminal operation of a commercial motor vehicle.

(2) If the vehicle involved in a violation referred to in paragraph (1) of this subsection is transporting hazardous material required to be placarded under section 5103 of this title, the Secretary shall disqualify the individual for at least 3 years.

(c) Second and multiple violations.--(1) Subject to paragraph (2) of this subsection, the Secretary shall disqualify from operating a commercial motor vehicle for life an individual—

(A) committing more than one violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;
(B) committing more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;
(C) using a commercial motor vehicle in committing more than one felony arising out of different criminal episodes;
(D) committing more than one violation of driving a commercial motor vehicle when the individual's commercial driver's license is revoked, suspended, or canceled based on the individual's operation of a commercial motor vehicle or when the individual is disqualified from operating a commercial motor vehicle based on the individual's operation of a commercial motor vehicle;
(E) convicted of more than one offense of causing a fatality through negligent or criminal operation of a commercial motor vehicle; or
(F) committing any combination of single violations or use described in subparagraphs (A) through (E).

(2) The Secretary may prescribe regulations establishing guidelines (including conditions) under which a disqualification for life under paragraph (1) of this subsection may be reduced to a period of not less than 10 years.

(d) Controlled substance violations.—The Secretary shall disqualify from operating a commercial motor vehicle for life an individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) Serious traffic violations.--(1) The Secretary shall disqualify from operating a commercial motor vehicle for at least 60 days an individual who, in a 3-year period, commits 2 serious traffic violations involving a commercial motor vehicle operated by the individual.

(2) The Secretary shall disqualify from operating a commercial motor vehicle for at least 120 days an individual who, in a 3-year period, commits 3 serious traffic violations involving a commercial motor vehicle operated by the individual.

(f) Emergency disqualification.—

(1) Limited duration.—The Secretary shall disqualify an individual from operating a commercial motor vehicle for not to exceed 30 days if the Secretary determines that allowing the individual to continue to operate a commercial motor vehicle would create an imminent hazard (as such term is defined in section 5102).

(2) After notice and hearing.—The Secretary shall disqualify an individual from operating a commercial motor vehicle for more than 30 days if the Secretary determines, after notice and an opportunity for a hearing, that allowing the individual to continue to operate a commercial motor vehicle would create an imminent hazard (as such term is defined in section 5102).

(g) Noncommercial motor vehicle convictions.—

(1) Issuance of regulations.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue regulations providing for the disqualification by the Secretary from operating a commercial motor vehicle of an individual who holds a commercial driver's license and who has been convicted of—

(A) a serious offense involving a motor vehicle (other than a commercial motor vehicle) that has resulted in the revocation, cancellation, or suspension of the individual's license; or

(B) a drug or alcohol related offense involving a motor vehicle (other than a commercial motor vehicle).

(2) Requirements for regulations.—Regulations issued under paragraph (1) shall establish the minimum periods for which the disqualifications shall be in effect, but in no case shall the time periods for disqualification for noncommercial motor vehicle violations be more stringent than those for offenses or violations involving a commercial motor vehicle. The Secretary shall determine such periods based on the seriousness of the offenses on which the convictions are based.

(h) State disqualification.—Notwithstanding subsections (b) through (g) of this section, the Secretary does not have to disqualify an individual from operating a commercial motor vehicle if the State that issued the individual a license authorizing the operation has disqualified the individual from operating a commercial motor vehicle under subsections (b) through (g). Revocation, suspension, or cancellation of the license is deemed to be disqualification under this subsection.

49 U.S.C. 44709 – Amendments, modifications, suspensions, and revocations of certificates

(a) Reinspection and reexamination.—The Administrator of the Federal Aviation Administration may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, air navigation facility, or air agency, or reexamine an airman holding a certificate issued under section 44703 of this title.

(b) Actions of the Administrator.—The Administrator may issue an order amending, modifying, suspending, or revoking—

(1) any part of a certificate issued under this chapter if—
(A) the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation and the public interest require that action; or
(B) the holder of the certificate has violated an aircraft noise or sonic boom standard or regulation prescribed under section 44715(a) of this title; and

(2) an airman certificate when the holder of the certificate is convicted of violating section 13(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j-1(a)).

(c) Advice to certificate holders and opportunity to answer.—Before acting under subsection (b) of this section, the Administrator shall advise the holder of the certificate of the charges or other reasons on which the Administrator relies for the proposed action. Except in an emergency, the Administrator shall provide the holder an opportunity to answer the charges and be heard why the certificate should not be amended, modified, suspended, or revoked.

(d) Appeals.--(1) A person adversely affected by an order of the Administrator under this section may appeal the order to the National Transportation Safety Board. After notice and an opportunity for a hearing, the Board may amend, modify, or reverse the order when the Board finds—
(A) if the order was issued under subsection (b)(1)(A) of this section, that safety in air commerce or air transportation and the public interest do not require affirmation of the order; or
(B) if the order was issued under subsection (b)(1)(B) of this section—
(i) that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require affirmation of the order; or
(ii) the order, as it is related to a violation of aircraft noise or sonic boom standards and regulations, is not consistent with safety in air commerce or air transportation.

(2) The Board may modify a suspension or revocation of a certificate to imposition of a civil penalty.

(3) When conducting a hearing under this subsection, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(e) Effectiveness of orders pending appeal.—

(1) In general.—When a person files an appeal with the Board under subsection (d), the order of the Administrator is stayed.

(2) Exception.—Notwithstanding paragraph (1), the order of the Administrator is effective immediately if the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the order to be effective immediately.

(3) Review of emergency order.—A person affected by the immediate effectiveness of the Administrator's order under paragraph (2) may petition for a review by the Board, under procedures promulgated by the Board, of the Administrator's determination that an emergency exists. Any such review shall be requested not later than 48 hours after the order is received by the person. If the Board finds that an emergency does not exist that requires the immediate application of the order in the interest of safety in air commerce or air transportation, the order shall be stayed, notwithstanding paragraph (2). The Board shall dispose of a review request under this paragraph not later than 5 days after the date on which the request is filed.

(4) Final disposition.—The Board shall make a final disposition of an appeal under subsection (d) not later than 60 days after the date on which the appeal is filed.

(f) Judicial review.—A person substantially affected by an order of the Board under this section, or the Administrator when the Administrator decides that an order of the Board under this section will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

49 U.S.C. 44710 – Revocations of airman certificates for controlled substance violations

(a) Definition.—In this section, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) Revocation.--(1) The Administrator of the Federal Aviation Administration shall issue an order revoking an airman certificate issued an individual under section 44703 of this title after the individual is convicted, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) an aircraft was used to commit, or facilitate the commission of, the offense; and
(B) the individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

(2) The Administrator shall issue an order revoking an airman certificate issued an individual under section 44703 of this title if the Administrator finds that—

(A) the individual knowingly carried out an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year;

(B) an aircraft was used to carry out or facilitate the activity; and

(C) the individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

(3) The Administrator has no authority under paragraph (1) of this subsection to review whether an airman violated a law of the United States or a State related to a controlled substance.

(c) Advice to holders and opportunity to answer.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator must—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator relies for the proposed revocation; and

(2) provide the holder of the certificate an opportunity to answer the charges and be heard why the certificate should not be revoked.

(d) Appeals.--(1) An individual whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and an opportunity for a hearing on the record. When conducting the hearing, the Board is not bound by findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(2) When an individual files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.

(3) An individual substantially affected by an order of the Board under this subsection, or the Administrator when the Administrator decides that an order of the Board will have a significant adverse effect on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(e) Acquittal.--(1) The Administrator may not revoke, and the Board may not affirm a revocation of, an airman certificate under subsection (b)(2) of this section on the basis of an activity described in subsection (b)(2)(A) if the holder of the certificate is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity.

(2) If the Administrator has revoked an airman certificate under this section because of an activity described in subsection (b)(2)(A) of this section, the Administrator shall reissue a certificate to the individual if—

(A) the individual otherwise satisfies the requirements for a certificate under section 44703 of this title; and

(B)(i) the individual subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; or

(ii) the conviction on which a revocation under subsection (b)(1) of this section is based is reversed.

(f) Waivers.—The Administrator may waive the requirement of subsection (b) of this section that an airman certificate of an individual be revoked if—

(1) a law enforcement official of the United States Government or of a State requests a waiver; and

(2) the Administrator decides that the waiver will facilitate law enforcement efforts.

49 U.S.C. 44935 – Employment standards and training

(e) Security screeners.—

…

(2) Hiring.—

(A) Qualifications.—Within 30 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary shall establish qualification standards for individuals to be hired by the United States as security screening personnel. Notwithstanding any provision of law, those standards shall require, at a minimum, an individual—

(i) to have a satisfactory or better score on a Federal security screening personnel selection examination;

(ii) to be a citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(iii) to meet, at a minimum, the requirements set forth in subsection (f);

(iv) to meet such other qualifications as the Under Secretary may establish; and

(v) to have the ability to demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol.

(B) Background checks.—The Under Secretary shall require that an individual to be hired as a security screener undergo an employment investigation (including a criminal history record check) under section 44936(a)(1).

49 U.S.C. 44936 – Employment investigations and restrictions

(a) Employment investigation requirement.—

(1)(A) The Under Secretary of Transportation for Security shall require by regulation that an employment investigation, including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security, shall be conducted of each individual employed in, or applying for, a position as a security screener under section 44935(e) or a position in which the individual has unescorted access, or may permit other individuals to have unescorted access, to—

(i) aircraft of an air carrier or foreign air carrier; or

(ii) a secured area of an airport in the United States the Under Secretary designates that serves an air carrier or foreign air carrier.

(B) The Under Secretary shall require by regulation that an employment investigation (including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security) be conducted for—

(i) individuals who are responsible for screening passengers or property under section 44901 of this title;

(ii) supervisors of the individuals described in clause (i);

(iii) individuals who regularly have escorted access to aircraft of an air carrier or foreign air carrier or a secured area of an airport in the United States the Administrator designates that serves an air carrier or foreign air carrier; and

(iv) such other individuals who exercise security functions associated with baggage or cargo, as the Under Secretary determines is necessary to ensure air transportation security.

(C) Background checks of current employees.—

(i) A new background check (including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security shall be required for any individual who is employed in a position described in subparagraphs (A) and (B) on the date of enactment of the Aviation and Transportation Security Act.

(ii) The Under Secretary may provide by order (without regard to the provisions of chapter 5 of title 5, United States Code) for a phased-in implementation of the requirements of this subparagraph.

(D) Exemption.—An employment investigation, including a criminal history record check, shall not be required under this subsection for an individual who is exempted under section 107.31(m)(1) or (2) of title 14, Code of Federal Regulations, as in effect

on November 22, 2000. The Under Secretary shall work with the International Civil Aviation Organization and with appropriate authorities of foreign countries to ensure that individuals exempted under this subparagraph do not pose a threat to aviation or national security.

(2) An air carrier, foreign air carrier, airport operator, or government that employs, or authorizes or makes a contract for the services of, an individual in a position described in paragraph (1) of this subsection shall ensure that the investigation the Under Secretary requires is conducted.

(3) The Under Secretary shall provide for the periodic audit of the effectiveness of criminal history record checks conducted under paragraph (1) of this subsection.

(b) Prohibited employment.--(1) Except as provided in paragraph (3) of this subsection, an air carrier, foreign air carrier, airport operator, or government may not employ, or authorize or make a contract for the services of, an individual in a position described in subsection (a)(1) of this section if—

(A) the investigation of the individual required under this section has not been conducted; or

(B) the results of that investigation establish that, in the 10-year period ending on the date of the investigation, the individual was convicted (or found not guilty by reason of insanity) of—

(i) a crime referred to in section 46306, 46308, 46312, 46314, or 46315 or chapter 465 of this title or section 32 of title 18;

(ii) murder;

(iii) assault with intent to murder;

(iv) espionage;

(v) sedition;

(vi) treason;

(vii) rape;

(viii) kidnapping;

(ix) unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

(x) extortion;

(xi) armed or felony unarmed robbery;

(xii) distribution of, or intent to distribute, a controlled substance;

(xiii) a felony involving a threat;

(xiv) a felony involving—

(I) willful destruction of property;

(II) importation or manufacture of a controlled substance;

(III) burglary;

(IV) theft;

(V) dishonesty, fraud, or misrepresentation;

(VI) possession or distribution of stolen property;

(VII) aggravated assault;

(VIII) bribery; and

(IX) illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year, or any other crime classified as a felony that the Under Secretary determines indicates a propensity for placing contraband aboard an aircraft in return for money; or

(xv) conspiracy to commit any of the acts referred to in clauses (i) through (xiv).

(2) The Under Secretary may specify other factors that are sufficient to prohibit the employment of an individual in a position described in subsection (a)(1) of this section.

(3) An air carrier, foreign air carrier, airport operator, or government may employ, or authorize or contract for the services of, an individual in a position described in subsection (a)(1) of this section without carrying out the investigation required under this section, if the Under Secretary approves a plan to employ the individual that provides alternate security arrangements.

(c) Fingerprinting and record check information.--(1) If the Under Secretary requires an identification and criminal history record check, to be conducted by the Attorney General, as part of an investigation under this section, the Under Secretary shall designate an individual to obtain fingerprints and submit those fingerprints to the Attorney General. The Attorney General may make the results of a check available to an individual the Under Secretary designates. Before designating an individual to obtain and submit fingerprints or receive results of a check, the Under Secretary shall consult with the Attorney General. All Federal agencies shall cooperate with the Under Secretary and the Under Secretary's designee in the process of collecting and submitting fingerprints.

(2) The Under Secretary shall prescribe regulations on—

(A) procedures for taking fingerprints; and

(B) requirements for using information received from the Attorney General under paragraph (1) of this subsection—

(i) to limit the dissemination of the information; and

(ii) to ensure that the information is used only to carry out this section.

(3) If an identification and criminal history record check is conducted as part of an investigation of an individual under this section, the individual—

(A) shall receive a copy of any record received from the Attorney General; and

(B) may complete and correct the information contained in the check before a final employment decision is made based on the check.

…

(e) When investigation or record check not required.—This section does not require an investigation or record check when the investigation or record check is prohibited by a law of a foreign country.

5 C.F.R. 919.605 – How does suspension differ from debarment?

Suspension differs from debarment in that—

A suspending official ...	A debarring official ...
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must—	Must conclude, based on a preponderance of the evidence, that the person has engaged in conduct that warrants debarment.
(1) Have adequate evidence that there may be a cause for debarment of a person; and	
(2) Conclude that immediate action is necessary to protect the Federal interest	
(c) Usually imposes the suspension first, and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted	Imposes debarment after giving the respondent notice of the action and an opportunity to contest the proposed debarment.

5 C.F.R. 919.800 – What are the causes for debarment?

We may debar a person for--

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 919.120;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 919.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

6 C.F.R. 37.45 – Background checks for covered employees.

(a) Scope. States are required to subject persons who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card, or current employees who will be assigned to such positions ("covered employees" or "covered positions"), to a background check. The background check must include, at a minimum, the validation of references from prior employment, a name-based and fingerprint-based criminal history records check, and employment eligibility verification otherwise required by law. States shall describe their background check process as part of their security plan, in accordance with § 37.41(b)(4)(ii). This section also applies to contractors utilized in covered positions.

(b) Background checks. States must ensure that any covered employee under paragraph

(a) of this section is provided notice that he or she must undergo a background check and the contents of that check.

(1) Criminal history records check. States must conduct a name-based and fingerprint-based criminal history records check (CHRC) using, at a minimum, the FBI's National Crime Information Center (NCIC) and the Integrated Automated Fingerprint Identification (IAFIS) database and State repository records on each covered employee identified in paragraph (a) of this section, and determine if the covered employee has been convicted of any of the following disqualifying crimes:

(i) Permanent disqualifying criminal offenses. A covered employee has a permanent disqualifying offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction, of any of the felonies set forth in 49 CFR 1572.103(a).

(ii) Interim disqualifying criminal offenses. The criminal offenses referenced in 49 CFR 1572.103(b) are disqualifying if the covered employee was either convicted of those offenses in a civilian or military jurisdiction, or admits having committed acts which constitute the essential elements of any of those criminal offenses within the seven years preceding the date of employment in the covered position; or the covered employee was released from incarceration for the crime within the five years preceding the date of employment in the covered position.

(iii) Under want or warrant. A covered employee who is wanted or under indictment in any civilian or military jurisdiction for a felony referenced in this section is disqualified until the want or warrant is released.

(iv) Determination of arrest status. When a fingerprint-based check discloses an arrest for a disqualifying crime referenced in this section without indicating a disposition, the State must determine the disposition of the arrest.

(v) Waiver. The State may establish procedures to allow for a waiver of the requirements of paragraphs (b)(1)(ii) or (b)(1)(iv) of this section under circumstances determined by the State. These procedures can cover circumstances where the covered employee has been arrested, but no final disposition of the matter has been reached.

(2) Employment eligibility status verification. The State shall ensure it is fully in compliance with the requirements of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) with respect to each covered employee. The State is encouraged to participate in the USCIS E-Verify program (or any successor program) for employment eligibility verification.

(3) Reference check. Reference checks from prior employers are not required if the individual has been employed by the DMV for at least two consecutive years since May 11, 2006.

(4) Disqualification. If results of the State's CHRC reveal a permanent disqualifying criminal offense under paragraph (b)(1)(i) or an interim disqualifying criminal offense under paragraph (b)(1)(ii), the covered employee may not be employed in a position described in paragraph (a) of this section. An employee whose employment eligibility

has not been verified as required by section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) may not be employed in any position.

(c) Appeal. If a State determines that the results from the CHRC do not meet the standards of such check the State must so inform the employee of the determination to allow the individual an opportunity to appeal to the State or Federal government, as applicable.

(d) Background checks substantially similar to the requirements of this section that were conducted on existing employees on or after May 11, 2006 need not be re-conducted.

10 C.F.R. 73.56 – Personnel access authorization requirements for nuclear power plants.

(a) General.

(1) Each licensee who is authorized on April 25, 1991, to operate a nuclear power reactor pursuant to §§ 50.21(b) or 50.22 of this chapter shall comply with the requirements of this section. By April 27, 1992, the required access authorization program must be incorporated into the site Physical Security Plan as provided for by 10 CFR 50.54(p)(2) and implemented. By April 27, 1992, each licensee shall certify to the NRC that it has implemented an access authorization program that meets the requirements of this part.

(2) Each applicant for a license to operate a nuclear power reactor pursuant to §§ 50.21(b) or 50.22 of this chapter, whose application was submitted prior to April 25, 1991, shall either by April 27, 1992, or the date of receipt of the operating license, whichever is later, incorporate the required access authorization program into the site Physical Security Plan and implement it.

(3) Each applicant for a license to operate a nuclear power reactor under §§ 50.21(b) or 50.22 of this chapter, including an applicant for a combined license under part 52 of this chapter, whose application is submitted after April 25, 1991, shall include the required access authorization program as part of its Physical Security Plan. The applicant, upon receipt of an operating license or upon notice of the Commission's finding under § 52.103(g) of this chapter, shall implement the required access authorization program as part of its site Physical Security Plan.

(4) The licensee may accept an access authorization program used by its contractors or vendors for their employees provided it meets the requirements of this section. The licensee may accept part of an access authorization program used by its contractors, vendors, or other affected organizations and substitute, supplement, or duplicate any portion of the program as necessary to meet the requirements of this section. In any case, the licensee is responsible for granting, denying, or revoking unescorted access

authorization to any contractor, vendor, or other affected organization employee.

(b) General performance objective and requirements.

(1) The licensee shall establish and maintain an access authorization program granting individuals unescorted access to protected and vital areas with the objective of providing high assurance that individuals granted unescorted access are trustworthy and reliable, and do not constitute an unreasonable risk to the health and safety of the public including a potential to commit radiological sabotage.

(2) Except as provided for in paragraphs (c) and (d) of this section, the unescorted access authorization program must include the following:

(i) A background investigation designed to identify past actions which are indicative of an individual's future reliability within a protected or vital area of a nuclear power reactor. As a minimum, the background investigation must verify an individual's true identity, and develop information concerning an individual's employment history, education history, credit history, criminal history, military service, and verify an individual's character and reputation.

(ii) A psychological assessment designed to evaluate the possible impact of any noted psychological characteristics which may have a bearing on trustworthiness and reliability.

(iii) Behavioral observation, conducted by supervisors and management personnel, designed to detect individual behavioral changes which, if left unattended, could lead to acts detrimental to the public health and safety.

(3) The licensee shall base its decision to grant, deny, revoke, or continue an unescorted access authorization on review and evaluation of all pertinent information developed.

(4) Failure by an individual to report any previous suspension, revocation, or denial of unescorted access to nuclear power reactors is considered sufficient cause for denial of unescorted access authorization.

10 C.F.R. Pt. 73, App. B – General criteria for security personnel

INTRODUCTION

Security personnel who are responsible for the protection of special nuclear material on site or in transit and for the protection of the facility or shipment vehicle against radiological sabotage should, like other elements of the physical security system, be required to meet minimum criteria to ensure that they will effectively perform their assigned security-related job duties. In order to ensure that those individuals responsible for security are properly equipped and qualified to execute the job duties prescribed for them, the NRC has developed general criteria that specify security personnel qualification requirements.

These general criteria establish requirements for the selection, training, equipping,

testing, and qualification of individuals who will be responsible for protecting special nuclear materials, nuclear facilities, and nuclear shipments.

When required to have security personnel that have been trained, equipped, and qualified to perform assigned security job duties in accordance with the criteria in this appendix, the licensee must establish, maintain, and follow a plan that shows how the criteria will be met. The plan must be submitted to the NRC for approval and must be implemented within 30 days after approval by the NRC unless otherwise specified by the NRC in writing.
…

CRITERIA

I. Employment suitability and qualification.

A. Suitability: 1. Prior to employment, or assignment to the security organization, an individual shall meet the following suitability criteria:

a. Educational development--Possess a high school diploma or pass an equivalent performance examination designed to measure basic job-related mathematical, language, and reasoning skills, ability, and knowledge, required to perform security job duties.

b. Felony convictions--Have no felony convictions involving the use of a weapon and no felony convictions that reflect on the individual's reliability.

14 C.F.R. 61.15 – Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

…

(c) For the purposes of paragraphs (d), (e), and (f) of this section, a motor vehicle action means:

(1) A conviction after November 29, 1990, for the violation of any Federal or State statute relating to the operation of a motor vehicle while intoxicated by alcohol or a

drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug;

(2) The cancellation, suspension, or revocation of a license to operate a motor vehicle after November 29, 1990, for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug; or

(3) The denial after November 29, 1990, of an application for a license to operate a motor vehicle for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.

(d) Except for a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within 3 years of a previous motor vehicle action is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of the last motor vehicle action; or

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

…

20 C.F.R. 404.1506 – When we will not consider your impairment.

(a) Permanent exclusion of felony-related impairment. In determining whether you are under a disability, we will not consider any physical or mental impairment, or any increase in severity (aggravation) of a preexisting impairment, which arises in connection with your commission of a felony after October 19, 1980, if you are subsequently convicted of this crime. Your subsequent conviction will invalidate any prior determination establishing disability if that determination was based upon any impairment, or aggravation, which we must exclude under this rule.

(b) Limited use of impairment arising in prison. In determining whether you are under a disability for purposes of benefit payments, we will not consider any physical or mental impairment, or any increase in severity (aggravation) of a preexisting impairment, which arises in connection with your confinement in a jail, prison, or other penal institution or correctional facility for conviction of a felony committed after October 19, 1980. The exclusion of the impairment, or aggravation, applies in determining disability for benefits payable for any month during which you are confined. This rule does not preclude the establishment of a period of disability based upon the impairment or aggravation. You may become entitled to benefits upon release from prison provided that you apply and are under a disability at the time.

(c) Felonious offenses. We will consider an offense a felony if--

(1) It is a felony under applicable law; or

(2) In a jurisdiction which does not classify any crime as a felony, it is an offense punishable by death or imprisonment for a term exceeding one year.

(d) Confinement. In general, a jail, prison, or other penal institution or correctional facility is a facility which is under the control and jurisdiction of the agency in charge of the penal system or in which convicted criminals can be incarcerated. Confinement in such a facility continues as long as you are under a sentence of confinement and have not been released due to parole or pardon. You are considered confined even though you are temporarily or intermittently outside of the facility (e.g., on work release, attending school, or hospitalized).

22 C.F.R. 62.25 – Secondary school students.

(Hyperlink to return to section regarding foreign exchange students)

(a) Introduction. This section governs Department of State designated exchange visitor programs under which foreign national secondary school students are afforded the opportunity for up to one year of study in a United States accredited public or private secondary school, while living with an American host family or residing at an accredited U.S. boarding school.
…

(d) Program administration. Sponsors must ensure that all officers, employees, representatives, agents, and volunteers acting on their behalf:

(1) Are adequately trained and supervised and that any such person in direct personal contact with exchange students has been vetted through a criminal background check;
…

(j) Host family selection. Sponsors must adequately screen and select all potential host families and at a minimum must:
…

(7) Verify that each member of the host family household eighteen years of age and older has undergone a criminal background check; and

(8) Maintain a record of all documentation, including but not limited to application forms, background checks, evaluations, and interviews, for all selected host families for a period of three years.
…

22 C.F.R. 62.31 – Au pairs.

(a) Introduction. This section governs Department of State-designated exchange visitor programs under which foreign nationals are afforded the opportunity to live with an American host family and participate directly in the home life of the host family. All au pair participants provide child care services to the host family and attend a U.S. post-secondary educational institution. Au pair participants provide up to forty-five hours of child care services per week and pursue not less than six semester hours of academic credit or its equivalent during their year of program participation. Au pairs participating in the EduCare program provide up to thirty hours of child care services per week and pursue not less than twelve semester hours of academic credit or its equivalent during their year of program participation.

…

(h) Host family selection. Sponsors shall adequately screen all potential host families and at a minimum shall:

…

(4) Require that host parents and other adults living full-time in the household have successfully passed a background investigation including employment and personal character references;

…

24 C.F.R. 982.553 – Denial of admission and termination of assistance for criminals and alcohol abusers.

(a) Denial of admission.

(1) Prohibiting admission of drug criminals.

(i) The PHA must prohibit admission to the program of an applicant for three years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(ii) The PHA must establish standards that prohibit admission if:

(A) The PHA determines that any household member is currently engaging in illegal use of a drug;

(B) The PHA determines that it has reasonable cause to believe that a household member's illegal drug use or a pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(C) Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) Prohibiting admission of other criminals—

(i) Mandatory prohibition. The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

(ii) Permissive prohibitions.

(A) The PHA may prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the admission:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

(4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(B) The PHA may establish a period before the admission decision during which an applicant must not to have engaged in the activities specified in paragraph (a)(2)(i) of this section ("reasonable time").

(C) If the PHA previously denied admission to an applicant because a member of the household engaged in criminal activity, the PHA may reconsider the applicant if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, as determined by the PHA, before the admission decision.

(1) The PHA would have "sufficient evidence" if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the PHA verified.

(2) For purposes of this section, a household member is "currently engaged in" criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

(3) Prohibiting admission of alcohol abusers. The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) Terminating assistance—

(1) Terminating assistance for drug criminals.

(i) The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that:

(A) Any household member is currently engaged in any illegal use of a drug; or

(B) A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligation under § 982.551 not to engage in any drug-related criminal activity.

(2) Terminating assistance for other criminals. The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any household member has violated the family's obligation under § 982.551 not to engage in violent criminal activity.

(3) Terminating assistance for alcohol abusers. The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) Evidence of criminal activity. The PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted for such activity.

(d) Use of criminal record.—

(1) Denial. If a PHA proposes to deny admission for criminal activity as shown by a criminal record, the PHA must provide the subject of the record and the applicant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with § 982.554. (See part 5, subpart J for provision concerning access to criminal records.)

(2) Termination of assistance. If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record. The PHA must give the family

an opportunity to dispute the accuracy and relevance of that record in accordance with § 982.555.

(3) Cost of obtaining criminal record. The PHA may not pass along to the tenant the costs of a criminal records check.

28 C.F.R. 97.11 – Pre-employment screening.

Private prisoner transport companies must adopt pre-employment screening measures for all potential employees. The pre-employment screening measures must include a background check and a test for use of controlled substances. The failure of a potential employee to pass either screening measure will act as a bar to employment.

(a) Background checks must include:

(1) A fingerprint-based criminal background check that disqualifies persons with either a prior felony conviction or a State or Federal conviction for a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921;

(2) A Credit Report check;

(3) A physical examination; and

(4) A personal interview.

(b) Testing for controlled substances.

(1) Pre-employment testing for controlled substances must be in accordance with applicable State law.

(2) In the event that there is no applicable State law, pre-employment testing for controlled substances must be in accordance with the provisions of Department of Transportation regulations at 49 CFR 382.301 which will apply regardless of whether a private prisoner transport company is covered by Department of Transportation regulations.

(c) The criminal background check references in paragraph (a)(1) of this section may not be submitted directly to the FBI or any other Federal agency. The private prisoner transport companies must arrange the procedures for accomplishing the criminal background checks with their contracting governmental agencies. In the event that the private prisoner transport company is contracting with a privately run incarceration facility, and not directly with a governmental entity, the private prisoner transport company will have to make arrangements through the private incarceration facility to have the checks completed by the governmental entity ultimately requesting the transport.

28 C.F.R. 105.23 – Procedure for requesting criminal history record check

These procedures only apply to participating states. An authorized employer may obtain a State and national criminal history record check as authorized by section 6402 of Public Law 105-458 as follows:

(a) An authorized employer is required to execute a certification to the State, developed by the SIB or the relevant state agency for purposes of accepting requests for these background checks, declaring that it is an authorized employer that employs private security officers; that all fingerprints and requests for criminal history background checks are being submitted for private security officers; that it will use the information obtained as a result of the state and national criminal history record checks solely for the purpose of screening its private security officers; and that it will abide by other regulatory obligations. To help ensure that only legitimate use is made of this authority, the certification shall be executed under penalties of perjury, false statement, or other applicable state laws.

(b) An authorized employer must obtain a set of fingerprints and the written consent of its employee to submit those prints for a state and national criminal history record check. An authorized employer must submit the fingerprints and appropriate state and federal fees to the SIB in the manner specified by the SIB.

(c) Upon receipt of an employee's fingerprints, the SIB shall perform a fingerprint-based search of its criminal records. If no relevant criminal record is found, the SIB shall submit the fingerprints to the FBI for a national search.

(d) Upon the conclusion of the national search, the FBI will disseminate the results to the SIB.

(e) Based upon the results of the state check and, if necessary, the national check:

(1) If the State has standards for qualifying a private security officer, the SIB or other designated state agency shall apply those standards to the CHRI and notify the authorized employer of the results of the application of the state standards; or

(2) If the State does not have standards for qualifying a private security officer, the SIB or other designated state agency shall notify an authorized employer as to the fact of whether an applicant has been:
(i) Convicted of a felony;
(ii) Convicted of a lesser offense involving dishonesty or false statement if occurring within the previous ten years;
(iii) Convicted of a lesser offense involving the use or attempted use of physical force against the person of another if occurring within the previous ten years; or
(iv) Charged with a felony during the previous 365 days for which there has been no resolution.

(f) The limitation periods set forth in paragraph (e)(2) of this section shall be determined using the date the employee's fingerprints were submitted. An employee shall be considered charged with a criminal felony for which there has been no resolution during the preceding 365 days if the individual is the subject of a complaint, indictment, or information, issued within 365 days of the date that the fingerprints were taken, for a crime punishable by imprisonment for more than one year. The effect of various forms of post-conviction relief shall be determined by the law of the convicting jurisdiction.

28 C.F.R. 105.24 – Employee's rights.

An employee is entitled to:

(a) Obtain a copy from the authorized employer of any information concerning the employee provided under these regulations to the authorized employer by the participating State;

(b) Determine the status of his or her CHRI by contacting the SIB or other state agency providing information to the authorized employer; and

(c) Challenge the CHRI by contacting the agency originating the record or complying with the procedures contained in 28 CFR 16.34.

32 C.F.R. Pt. 86, App. B

Appendix B to Part 86--Criteria For Criminal History Background Check Disqualification

The ultimate decision to determine how to use information obtained from the criminal history background checks in selection for positions involving the care, treatment, supervision, or education of children must incorporate a common sense decision based upon all known facts. Adverse information is evaluated by the DoD Component Head or designee who is qualified at the appropriate level of command in interpreting criminal history background checks. All information of record both favorable and unfavorable will be assessed in terms of its relevance, recentness, and seriousness. Likewise, positive mitigating factors should be considered. Final suitability decisions shall be made by that commander or designee. Criteria that will result in disqualification of an applicant require careful screening of the data and include, but are not limited to, the following:

A. Mandatory Disqualifying Criteria

Any conviction for a sexual offense, a drug felony, a violent crime, or a criminal offense involving a child or children.

B. Discretionary Criteria

1. Acts that may tend to indicate poor judgment, unreliability, or untrustworthiness in working with children.

2. Any behavior; illness; or mental, physical, or emotional condition that in the opinion of a competent medical authority may cause a defect in judgment or reliability.

3. Offenses involving assault, battery, or other abuse of a victim, regardless of age of the victim.

4. Evidence or documentation of substance abuse dependency.

5. Illegal or improper use, possession, or addiction to any controlled or psychoactive substances, narcotic, cannabis, or other dangerous drug.

6. Sexual acts, conduct, or behavior that, because of the circumstances in which they occur, may indicate untrustworthiness, unreliability, lack of judgment, or irresponsibility in working with children.

7. A wide range of offenses such as arson, homicide, robbery, fraud, or any offense involving possession or use of a firearm.

8. Evidence that the individual is a fugitive from justice.

9. Evidence that the individual is an illegal alien who is not entitled to accept gainful employment for a position.

10. A finding of negligence in a mishap causing death or serious injury to a child or dependent person entrusted to their care.

C. Suitability Considerations

In making a determination of suitability, the evaluator shall consider the following additional factors to the extent that these examples are considered pertinent to the individual case:

1. The kind of position for which the individual is applying or employed.

2. The nature and seriousness of the conduct.

3. The recentness of the conduct.

4. The age of the individual at the time of the conduct.

5. The circumstances surrounding the conduct.

6. Contributing social or environmental conditions.

7. The absence or presence of rehabilitation or efforts toward rehabilitation.

8. The nexus of the arrests in regard to the job to be performed.

D. Questions

1. All applications, for each of the categories of individuals identified in § 86.3, will include the following questions: "Have you ever been arrested for or charged with a crime involving a child? Have you ever been asked to resign because of or been decertified for a sexual offense? And, if so, "provide a description of the case disposition." For FCC, foster care, and respite care providers, this question is asked of the applicant regarding all adults, and all children 12 years and older, who reside in the household.

2. All applications shall state that the form is being signed under penalty of perjury. In addition, a false statement rendered by an employee may result in adverse action up to and including removal from Federal service.

3. Evaluation of criminal history background checks is made and monitored by qualified personnel at the appropriate level designated by the Component. Final suitability decisions are made by the designee.

42 C.F.R. 418.114 – Condition of participation: Personnel qualifications.

(a) General qualification requirements. Except as specified in paragraph (c) of this section, all professionals who furnish services directly, under an individual contract, or under arrangements with a hospice, must be legally authorized (licensed, certified or registered) in accordance with applicable Federal, State and local laws, and must act only within the scope of his or her State license, or State certification, or registration. All personnel qualifications must be kept current at all times.
…

(d) Standard: Criminal background checks.

(1) The hospice must obtain a criminal background check on all hospice employees who have direct patient contact or access to patient records. Hospice contracts must require that all contracted entities obtain criminal background checks on contracted employees who have direct patient contact or access to patient records.

(2) Criminal background checks must be obtained in accordance with State requirements. In the absence of State requirements, criminal background checks must

be obtained within three months of the date of employment for all states that the individual has lived or worked in the past 3 years.

45 C.F.R. 2522.205 – To whom must I apply suitability criteria relating to criminal history?

You must apply suitability criteria relating to criminal history to a participant or staff position for which an individual receives a Corporation grant-funded living allowance, stipend, education award, salary, or other remuneration, and which involves recurring access to children, persons age 60 and older, or individuals with disabilities.

45 C.F.R. 2522.206 – What suitability criteria must I apply to a covered position?

Any individual who is registered, or required to be registered, on a State sex offender registry is deemed unsuitable for, and may not serve in, a covered position.

45 C.F.R. 2522.230 – Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

An AmeriCorps program may release a participant from completing a term of service for compelling personal circumstances as demonstrated by the participant, or for cause.

…

(b) Release for cause.

(1) A release for cause encompasses any circumstances other than compelling personal circumstances that warrant an individual's release from completing a term of service.

(2) AmeriCorps programs must release for cause any participant who is convicted of a felony or the sale or distribution of a controlled substance during a term of service.

(3) A participant who is released for cause may not receive any portion of the AmeriCorps education award or any other payment from the National Service Trust.

(4) An individual who is released for cause must disclose that fact in any subsequent applications to participate in an AmeriCorps program. Failure to do so disqualifies the individual for an education award, regardless of whether the individual completes a term of service.

(5) An AmeriCorps*State/National participant released for cause may contest the program's decision by filing a grievance. Pending the resolution of a grievance procedure filed by an individual to contest a determination by a program to release the individual for cause, the individual's service is considered to be suspended. For this type of grievance, a program may not—while the grievance is pending or as part of its resolution—provide a participant with federally-funded benefits (including payments

from the National Service Trust) beyond those attributable to service actually performed, without the program receiving written approval from the Corporation.

(6) An individual's eligibility for a second term of service in AmeriCorps will not be affected by release for cause from a prior term of service so long as the individual received a satisfactory end-of-term performance review as described in § 2522.240(d)(2) for the period served in the first term.

(7) Except as provided in paragraph (e) of this section, a term of service from which an individual is released for cause counts as one of the two terms of service described in § 2522.220(b) for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

(c) Suspended service.

(1) A program must suspend the service of an individual who faces an official charge of a violent felony (e.g., rape, homicide) or sale or distribution of a controlled substance.

(2) A program must suspend the service of an individual who is convicted of possession of a controlled substance.

(3) An individual may not receive a living allowance or other benefits, and may not accrue service hours, during a period of suspension under this provision.

(d) Reinstatement.

(1) A program may reinstate an individual whose service was suspended under paragraph (c)(1) of this section if the individual is found not guilty or if the charge is dismissed.

(2) A program may reinstate an individual whose service was suspended under paragraph (c)(2) of this section only if the individual demonstrates the following:

(i) For an individual who has been convicted of a first offense of the possession of a controlled substance, the individual must have enrolled in a drug rehabilitation program;

(ii) For an individual who has been convicted for more than one offense of the possession of a controlled substance, the individual must have successfully completed a drug rehabilitation program.

(e) Release prior to serving 15 percent of a term of service. If a participant is released for reasons other than misconduct prior to completing 15 percent of a term of service, the term will not be considered one of the two terms of service described in § 2522.220(b) for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

45 C.F.R. 2540.200 – To whom must I apply suitability criteria relating to criminal history?

You must apply suitability criteria relating to criminal history to an individual applying for, or serving in, a position for which an individual receives a Corporation grant-funded living allowance, stipend, education award, salary, or other remuneration, and which involves recurring access to children, persons age 60 and older, or individuals with disabilities.

45 C.F.R. 2540.201 – What suitability criteria must I apply to a covered position?

Any individual who is registered, or required to be registered, on a State sex offender registry is deemed unsuitable for, and may not serve in, a position covered by suitability criteria.

45 C.F.R. 2540.202 – What two search components of the National Service Criminal History Check must I satisfy to determine an individual's suitability to serve in a covered position?

Unless the Corporation approves an alternative screening protocol, in determining an individual's suitability to serve in a covered position, you are responsible for conducting and documenting a National Service Criminal History Check, which consists of the following two search components:

(a) State criminal registry search. A search (by name or fingerprint) of the State criminal registry for the State in which your program operates and the State in which the individual resides at the time of application; and

(b) National Sex Offender Public Registry. A name-based search of the Department of Justice (DOJ) National Sex Offender Public Registry (NSOPR).

45 C.F.R. 2540.203 – When must I conduct a State criminal registry check and a NSOPR check on an individual in a covered position?

(a) The State criminal registry check must be conducted on an individual who enrolls in, or is hired by, your program after November 23, 2007.

(b) The NSOPR check must be conducted on an individual who is serving, or applies to serve, in a covered position on or after November 23, 2007.

(c) For an individual who serves consecutive terms of service in your program with a break in service of no more than 30 days, no additional check is required after the first term.

45 C.F.R. 2540.204 – What procedures must I follow in conducting a National Service Criminal History Check for a covered position?

You are responsible for following these procedures:

(a) Verify the individual's identity by examining the individual's government-issued photo identification card, such as a driver's license;

(b) Obtain prior, written authorization for the State criminal registry check and the appropriate sharing of the results of that check within the program from the individual (but not for the NSOPR check);

(c) Document the individual's understanding that selection into the program is contingent upon the organization's review of the individual's criminal history, if any;

(d) Provide a reasonable opportunity for the individual to review and challenge the factual accuracy of a result before action is taken to exclude the individual from the position;

(e) Provide safeguards to ensure the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant; and

(f) Ensure that an individual, for whom the results of a required State criminal registry check are pending, is not permitted to have access to children, persons age 60 and older, or individuals with disabilities without being accompanied by an authorized program representative who has previously been cleared for such access.

46 C.F.R. 12.02-4 – Basis for denial of a merchant mariner's document.

(a) No person who has been convicted by a court of record of a violation of the dangerous-drug laws of the United States, the District of Columbia, any State, territory, or possession of the United States, a foreign country, or any military court, is eligible for a merchant mariner's document, except as provided by paragraph (c) of this section. No person who has ever been the user of a dangerous drug, addicted or not, or has ever been convicted of an NDR offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304) because of addiction to or abuse of alcohol is eligible for a merchant mariner's document, unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (e) of this section.

(b) An applicant who fails a chemical test for dangerous drugs required by § 12.02-9 will not be issued a merchant mariner's document.

(c) Criminal Record Review and Safety and Security Check. The Coast Guard may conduct a criminal record review and conduct a safety and security check of an applicant

for a merchant mariner's document. An applicant pursuing simultaneous transactions for merchant mariner's credentials shall undergo a single criminal record review and safety and security check. Each applicant must provide written disclosure of all prior convictions (as defined in § 12.01-6) at the time of application.

(1) When a criminal record review and a safety and security check are conducted, the applicant shall provide fingerprints in a form and manner specified by the Coast Guard.

(i) When a criminal record review or a safety and security check leads the Coast Guard to determine that an applicant is not a safe and suitable person (as defined in § 12.01-6) or cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which application is made, the application may be disapproved.

(ii) If an application is disapproved, the applicant will be notified in writing of the fact, and, except as provided by this paragraph, the reason or reasons for disapproval and advised that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal. The applicant will be notified in writing of the reason or reasons for disapproval, unless the Coast Guard determines that such disclosure of information is prohibited by law, regulation, or agency policy, in which case the reason(s) will not be disclosed.

(2) The Officer in Charge, Marine Inspection will use table 12.02-4(c) to evaluate applicants for merchant mariner's documents who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the Officer in Charge, Marine Inspection will establish an appropriate assessment period using the list as a guide. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the Officer in Charge, Marine Inspection. The assessment period may include supervised or unsupervised probation or parole. A conviction for a drug offense more than 10 years prior to the date of application will not alone be grounds for denial.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in table 12.02-4(c) and table 12.02-4(d) based upon the applicant's convictions; the maximum assessment period will be the longest shown in table 12.02-4(c) and table 12.02-4(d) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a merchant mariner's document before the minimum assessment period shown in table 12.02-4(c), or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the applicant must provide, as part of the application package, evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (e) of this section. The Officer in Charge, Marine Inspection will consider the applicant's evidence submitted with the application and may issue the merchant mariner's document in less than the listed minimum assessment period if the Officer in Charge, Marine Inspection is

satisfied that the applicant is suitable to hold the merchant mariner's document for which he or she has applied. If an application filed before the minimum assessment period has elapsed does not include evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the Officer in Charge, Marine Inspection until the applicant provides the necessary evidence as set forth in paragraph (e) of this section.

(5) If a person with a criminal conviction applies for a merchant mariner's document during the time between the minimum and maximum assessment periods shown in table 12.02-4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section, then the Officer in Charge, Marine Inspection shall consider the conviction and, unless there are offsetting factors, shall grant the applicant the merchant mariner's document for which he or she has applied. Offsetting factors include such factors as multiple convictions, failure to comply with court orders (e.g., child support orders), previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the Officer in Charge, Marine Inspection considers the applicant unsuitable for service in the merchant marine at the time of application, the Officer in Charge, Marine Inspection may disapprove the application.

(6) If a person with a criminal conviction applies for a merchant mariner's document after the maximum assessment period shown in table 12.02-4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section, has elapsed, then the Officer in Charge, Marine Inspection will grant the applicant the merchant mariner's document for which he or she has applied unless the Officer in Charge, Marine Inspection considers the applicant still unsuitable for service in the merchant marine. If the Officer in Charge, Marine Inspection disapproves an applicant with a conviction older than the maximum assessment period listed in table 12.02-4(c), the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for the disapproval including the Officer in Charge, Marine Inspection's reason(s) for considering a conviction older than the maximum assessment period listed in table 12.02-4(c). The Officer in Charge, Marine Inspection will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in § 1.03 of this chapter apply.

Table 12.02-4(c).—Guidelines for Evaluating Applicants for Merchant Mariner's Documents Who Have Criminal Convictions

Crime [FN1]	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.

Other crimes against persons [FN2]		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highway	1 year	2 years.
Other vehicular crimes [FN2]		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety [FN2]		
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Dangerous Drug Offenses [FN3], [FN4], [FN5]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions [FN6].		

[FN1] Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[FN2] Other crimes are to be reviewed by the Officer in Charge, Marine Inspection to determine the minimum and maximum assessment periods depending on the nature of the crime.

[FN3] Applicable to original applications only. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section. Note: Applicants for reissue of a merchant mariner's document with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a merchant mariner's document, may have their application withheld until appropriate action has been completed by the Officer in Charge, Marine Inspection under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

[FN4] The OCMI may consider dangerous drug convictions more than 10 years old only if there has been a dangerous drug conviction within the past 10 years.

[FN5] Applicants must demonstrate rehabilitation under paragraph (e) of this section, including applicants with dangerous drug use convictions more than ten years old.

[FN6] Other dangerous drug convictions are to be reviewed by the Officer in Charge, Marine Inspection on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

(d) National Driver Register. A merchant mariner's document will not be issued or reissued with a new expiration date unless the applicant consents to a check of the NDR

for offenses described in section 205(a)(3)(A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The Officer in Charge, Marine Inspection will not consider NDR listed civil convictions that are more than 3 years old from the date of request unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. The Officer in Charge Marine Inspection may determine minimum and maximum assessment periods for NDR listed criminal convictions using table 12.02-4(c). An applicant conducting simultaneous merchant mariner's credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which the application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given or merchant mariner's document issued pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the Officer in Charge, Marine Inspection will make the information available to the applicant for review and written comment. The applicant may submit reports from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will hold an application with NDR listed convictions pending the completion of the evaluation and delivery by the individual of the underlying State records.

(3) The guidelines in table 12.02-4(d) will be used by the Officer in Charge, Marine Inspection when evaluating applicants for merchant mariner's documents who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the Officer in Charge, Marine Inspection under table 12.02-4(c) as applicable.

…

Table 12.02-4(d).—Guidelines for Evaluating Applicants for Merchant Mariner's Documents Who Have NDR Motor Vehicle Convictions Involving Dangerous Drugs or Alcohol [FN1]

No. of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years	Application will be processed, unless suspension, or revocation [FN2] is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than	Not necessary unless suspension or revocation is still in effect.

	3 years old	
2 or more	Any less than 3 years old	1 year since last conviction and at least 3 years from 2nd most recent conviction, unless suspension or revocation is still in effect.
2 or more	All more than 3 years old	Application will be processed unless suspension or revocation is still in effect.

[FN1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section.

[FN2] Suspension or revocation, when referred to in Table 12.02-4(d), means a State suspension or revocation of a motor vehicle operator's license.

(e) If an applicant for an original merchant mariner's document has one or more alcohol or dangerous drug related criminal or NDR listed convictions; if the applicant has ever been the user of, or addicted to the use of, a dangerous drug; or if the applicant applies before the minimum assessment period for his or her conviction has elapsed; the Officer in Charge, Marine Inspection may consider the following factors, as applicable, in assessing the applicant's suitability to hold a merchant mariner's document. This list is intended as a guideline. The Officer in Charge, Marine Inspection may consider other factors which he or she judges appropriate, such as:

(1) Proof of completion of an accredited alcohol- or drug-abuse rehabilitation program.

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation.

47 C.F.R. 73.4280 – Character evaluation of broadcast applicants.

…

FEDERAL COMMUNICATIONS COMMISSION
47 CFR Part 1
[FCC 90-195]

Practice and Procedure: Broadcast Licensing Proceedings, Misconduct; Policy

Statement

Wednesday, June 6, 1990

AGENCY: Federal Communications Commission.

ACTION: Policy statement and final rule.

SUMMARY: The Commission's policies concerning the range of relevant non-FCC related misconduct in broadcast licensing proceedings are modified to reflect the fact that the Commission will consider any felony convictions as bearing on a broadcast applicant or licensee's character qualifications. The Commission will also consider adverse adjudications of antitrust or anticompetitive misconduct relating to any media of mass communications, as defined in 47 U.S.C. 309(i). The FCC also adopted new rules prohibiting any applicant, permittee or licensee from making any written misrepresentation or willful material ommission bearing on any matter within the jurisdiction of the Commission (47 CFR 1.17) and requiring broadcast licensees and permittees to report adverse determinations of relevant misconduct that are finally adjudicated during the term of their permit or license (47 CFR 1.65(c)).

EFFECTIVE DATE: The Policy Statement is effective June 6, 1990; 47 CFR 1.17 will be effective 30 days after publication in the Federal Register; 47 CFR 1.65(c) will be effective 90 days after publication in the Federal Register.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254-6530.

…

Summary of Policy Statement and Order

1. The Commission is modifying its policies regarding character qualifications previously enunciated in Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986), recon. granted in part, denied in part, 1 FCC Rcd 421 (1986), appeal dismissed sub nom. National Association for Better Broadcasting v. FCC, No. 86-1179 (DC Cir. June 11, 1987) (hereinafter referred to as Character Policy Statement). We are also amending our rules to make the provisions of 47 CFR 73.1015 regarding misrepresentation applicable to all applications and/or statements filed with the Commission, and we are adding a new § 1.65(c) requiring broadcast licensees to report adjudications relevant to character qualifications that are issued during the license term.

2. The Character Policy Statement generally indicated that, in connection with non-FCC related misconduct, the Commission would consider only adjudicated (a) Fraudulent representations to governmental units, (b) criminal misconduct involving false statements or dishonesty, and (c) broadcast-related violations of antitrust or other laws dealing with competition. 102 FCC 2d at 1195- 1197, 1200-1203. However, upon further reflection, we believe a propensity to comply with the law generally is relevant to the Commission's public interest analysis, and that an applicant's or licensee's willingness to violate other laws, and, in particular, to commit felonies, also bears on our confidence that an applicant

or licensee will conform to FCC rules and policies.

3. Thus, evidence of any conviction for misconduct constituting a felony will be relevant to our evaluation of an applicant's or licensee's character. Because all felonies are serious crimes, any felony conviction provides an indication of an applicant's or licensee's propensity to obey the law. [FN1] While conviction for a felony raises questions of whether an applicant or licensee has the requisite propensity to obey the law, we continue to believe that there are mitigating factors that must be taken into consideration in our deliberations. See Character Policy Statement, 102 FCC 2d at 1227-29; see also RKO General, Inc., 5 FCC Rcd 642, 644 (1990).

FN1 Moreover, we retain the discretion to consider serious misdemeanor convictions in appropriate or compelling cases, particularly where there is a pattern of such convictions.

4. Moreover, because of the interrelationship of the mass media, we see no reason to limit our focus to broadcast related violations of laws relating to antitrust or anticompetitive misconduct. We therefore believe that adjudicated violations of antitrust or anticompetitive laws involving any media of mass communications, as defined in 47 U.S.C. 309(i), also are relevant to our licensing decisions.

5. We continue to believe that it is appropriate to refrain from making licensing decisions based on mere allegations of relevant non-FCC misconduct, even where those allegations have resulted in an indictment or are otherwise in process of being adjudicated by another agency or court. Character Policy Statement, 102 FCC 2d at 1204-05. [FN2] However, where such matters remain pending in another forum we may, in appropriate cases, condition any grant of the application before us on the outcome of that proceeding. See Id. at 1206 n.66.

FN2 However, we also continue to believe that, where an applicant has allegedly engaged in nonbroadcast misconduct, "so egregious as to shock the conscience and evoke almost universal disapprobation," such conduct "might be a matter of Commission concern even prior to adjudication by another body." Character Policy Statement, 102 FCC 2d at 1205, n.60.

6. Generally, we do not intend to change our policies regarding the case-by-case determination of whether an existing licensee, designated for hearing on character issues with respect to one license, may buy or sell other licenses or have other authorizations renewed. See Character Policy Statement, 102 FCC 2d at 1223-25; Transferability of Broadcast Licenses, 53 RR 2d 126 (1983). We wish to make clear, however, that, in appropriate cases, the Commission may condition the grant of any application involving a licensee that has been designated for hearing on character issues. If the decision in the hearing is adverse to the licensee, we will revisit any such conditioned grants to determine whether we would have made the grant if the adverse hearing determination had been before us.
…

48 C.F.R. 9.406-2 – Causes for debarment.

The debarring official may debar--

(a) A contractor for a conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558)); or

(5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of the Drug-Free Workplace Act of 1988 (Public Law 100-690), as indicated by—

(A) Failure to comply with the requirements of the clause at 52.223-6, Drug-Free Workplace; or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558)).

(iv) Commission of an unfair trade practice as defined in 9.403 (see Section 201 of the Defense Production Act (Public Law 102-558)).

…

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;
(B) Violation of the civil False Claims Act (31 U.S.C. 3729-3733); or
…

48 C.F.R. 9.407-2 – Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; or

(4) Violations of the Drug-Free Workplace Act of 1988 (Public Law 100-690), as indicated by—
(i) Failure to comply with the requirements of the clause at 52.223-6, Drug-Free Workplace; or
(ii) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504);

(5) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558));

(6) Commission of an unfair trade practice as defined in 9.403 (see section 201 of the Defense Production Act (Pub.L. 102-558));

(7) Delinquent Federal taxes in an amount that exceeds $3,000. See the criteria at 9.406-2(b)(1)(v) for determination of when taxes are delinquent; or

(8) Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of—
(i) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;
(ii) Violation of the civil False Claims Act (31 U.S.C. 3729-3733); or

(iii) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in 32.001; or

(9) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

48 C.F.R. 252.203-7001 – Prohibition on persons convicted of fraud or other defense-contract-related felonies.

As prescribed in 203.570-3, use the following clause:
Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (DEC 2004)

(a) Definitions.

As used in this clause--

(1) Arising out of a contract with the DoD means any act in connection with—
(i) Attempting to obtain;
(ii) Obtaining; or
(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) Conviction of fraud or any other felony means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) Date of conviction means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving—

(1) In a management or supervisory capacity on this contract;

(2) On the board of directors of the Contractor;

(3) As a consultant, agent, or representative for the Contractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

…

49 C.F.R. 240.115 – Criteria for consideration of prior safety conduct as a motor vehicle operator.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred more than 36 months before the month in which the railroad is making its certification decision and

shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance;

(2) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(c) If such an incident is identified,

(1) The railroad shall provide the data to the railroad's EAP Counselor, together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder;

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the EAP Counselor in the context of such evaluation; and

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the EAP Counselor, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the EAP Counselor consistent with the technical standards specified in § 240.119(d)(3) of this part.

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the person shall not be currently certified and the provisions of § 240.119(b) will apply.

49 C.F.R. 240.119 – Criteria for consideration of data on substance abuse disorders and alcohol drug rules compliance.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) Fitness requirement.

(1) A person who has an active substance abuse disorder shall not be currently certified as a locomotive engineer.

(2) Except as provided in paragraph (e) of this section, a certified engineer who is determined to have an active substance abuse disorder shall be suspended from

certification. Consistent with other provisions of this part, certification may be reinstated as provided in paragraph (d) of this section.

(3) In the case of a current employee of the railroad evaluated as having an active substance abuse disorder (including a person identified under the procedures of § 240.115), the employee may, if otherwise eligible, voluntarily self-refer for substance abuse counseling or treatment under the policy required by § 219.403 of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to current ineligibility for certification.

…

(d) Future eligibility to hold certificate following alcohol/drug violation. The following requirements apply to a person who has been denied certification or who has had certification suspended or revoked as a result of conduct described in paragraph (c) of this section:

(1) The person shall not be eligible for grant or reinstatement of the certificate unless and until the person has—

(i) Been evaluated by an EAP Counselor to determine if the person currently has an active substance abuse disorder;

(ii) Successfully completed any program of counseling or treatment determined to be necessary by the EAP Counselor prior to return to service; and

(iii) Presented a urine sample for testing under Subpart H of this part that tested negative for controlled substances assayed and has tested negative for alcohol under paragraph (d)(4) of this section.

(2) An engineer placed in service or returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the EAP Counselor and shall be subject to a reasonable program of follow-up alcohol and drug testing without prior notice for a period of not more than 60 months following return to service. Follow-up tests shall include not fewer than 6 alcohol tests and 6 drug tests during the first 12 months following return to service.

(3) Return-to-service and follow-up alcohol and drug tests shall be performed consistent with the requirements of subpart H of part 219 of this chapter.

(4) This paragraph does not create an entitlement to utilize the services of a railroad EAP Counselor, to be afforded leave from employment for counseling or treatment, or to employment as a locomotive engineer. Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

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49 C.F.R. 1515.7 – Procedures for waiver of criminal offenses, immigration status, or mental capacity standards.

(a) Scope. This section applies to the following applicants:

(i) An applicant for an HME or TWIC who has a disqualifying criminal offense described in 49 CFR 1572.103(a)(5) through (a)(12) or 1572.103(b) and who requests a waiver.
(ii) An applicant for an HME or TWIC who is an alien under temporary protected status as described in 49 CFR 1572.105 and who requests a waiver.
(iii) An applicant applying for an HME or TWIC who lacks mental capacity as described in 49 CFR 1572.109 and who requests a waiver.

(b) Grounds for waiver. TSA may issue a waiver of the standards described in paragraph (a) and grant an HME or TWIC if TSA determines that an applicant does not pose a security threat based on a review of information described in paragraph (c) of this section.

(c) Initiating waiver.

(1) An applicant initiates a waiver as follows:
(i) Providing to TSA the information required in 49 CFR 1572.9 for an HME or 49 CFR 1572.17 for a TWIC.
(ii) Paying the fees required in 49 CFR 1572.405 for an HME or in 49 CFR 1572.501 for a TWIC.
(iii) Sending a written request to TSA for a waiver at any time, but not later than 60 days after the date of service of the Final Determination of Threat Assessment. The applicant may request a waiver during the application process, or may first pursue some or all of the appeal procedures in 49 CFR 1515.5 to assert that he or she does not have a disqualifying condition.

(2) In determining whether to grant a waiver, TSA will consider the following factors, as applicable to the disqualifying condition:
(i) The circumstances of the disqualifying act or offense.
(ii) Restitution made by the applicant.
(iii) Any Federal or State mitigation remedies.
(iv) Court records or official medical release documents indicating that the applicant no longer lacks mental capacity.
(v) Other factors that indicate the applicant does not pose a security threat warranting denial of the HME or TWIC.

(d) Grant or denial of waivers.

(1) The Assistant Administrator will send a written decision granting or denying the waiver to the applicant within 60 days of service of the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(2) In the case of an HME, if the Assistant Administrator grants the waiver, the Assistant Administrator will send a Determination of No Security Threat to the licensing State within 60 days of service of the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(3) In the case of a mariner applying for a TWIC, if the Assistant Administrator grants the waiver, the Assistant Administrator will send a Determination of No Security Threat to the Coast Guard within 60 days of service of the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(4) If the Assistant Administrator denies the waiver the applicant may seek review in accordance with 49 CFR 1515.11. A denial of a waiver under this section does not constitute a final order of TSA as provided in 49 U.S.C. 46110.

(e) Extension of time. TSA may grant an applicant an extension of the time limits for good cause shown. An applicant's request for an extension of time must be in writing and be received by TSA within a reasonable time before the due date to be extended; or an applicant may request an extension after the expiration of a due date by sending a written request describing why the failure to file within the time limits was excusable. TSA may grant itself an extension of time for good cause.

49 C.F.R. 1542.209 – Fingerprint-based criminal history records checks (CHRC).

(a) Scope. The following persons are within the scope of this section—

(1) Each airport operator and airport user.

(2) Each individual currently having unescorted access to a SIDA, and each individual with authority to authorize others to have unescorted access to a SIDA (referred to as unescorted access authority).

(3) Each individual seeking unescorted access authority.

(4) Each airport user and aircraft operator making a certification to an airport operator pursuant to paragraph (n) of this section, or 14 CFR 108.31(n) in effect prior to November 14, 2001 (see 14 CFR Parts 60 to 139 revised as of January 1, 2001). An airport user, for the purposes of this section only, is any person other than an aircraft operator subject to § 1544.229 of this chapter making a certification under this section.

(b) Individuals seeking unescorted access authority. Except as provided in paragraph (m) of this section, each airport operator must ensure that no individual is granted unescorted access authority unless the individual has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in paragraph (d) of this section.

(c) Individuals who have not had a CHRC.

(1) Except as provided in paragraph (m) of this section, each airport operator must ensure that after December 6, 2002, no individual retains unescorted access authority, unless the airport operator has obtained and submitted a fingerprint under this part.

(2) When a CHRC discloses a disqualifying criminal offense for which the conviction or finding of not guilty by reason of insanity was on or after December 6, 1991, the airport operator must immediately suspend that individual's authority.

(d) Disqualifying criminal offenses. An individual has a disqualifying criminal offense if the individual has been convicted, or found not guilty of by reason of insanity, of any of the disqualifying crimes listed in this paragraph (d) in any jurisdiction during the 10 years before the date of the individual's application for unescorted access authority, or while the individual has unescorted access authority. The disqualifying criminal offenses are as follows—

(1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.

(2) Interference with air navigation; 49 U.S.C. 46308.

(3) Improper transportation of a hazardous material; 49 U.S.C. 46312.

(4) Aircraft piracy; 49 U.S.C. 46502.

(5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.

(6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.

(7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.

(8) Conveying false information and threats; 49 U.S.C. 46507.

(9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).

(10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.

(11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.

(12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.

(13) Murder.

(14) Assault with intent to murder.

(15) Espionage.

(16) Sedition.

(17) Kidnapping or hostage taking.

(18) Treason.

(19) Rape or aggravated sexual abuse.

(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.

(21) Extortion.

(22) Armed or felony unarmed robbery.

(23) Distribution of, or intent to distribute, a controlled substance.

(24) Felony arson.

(25) Felony involving a threat.

(26) Felony involving—
(i) Willful destruction of property;
(ii) Importation or manufacture of a controlled substance;
(iii) Burglary;
(iv) Theft;
(v) Dishonesty, fraud, or misrepresentation;
(vi) Possession or distribution of stolen property;
(vii) Aggravated assault;
(viii) Bribery; or
(ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.

(27) Violence at international airports; 18 U.S.C. 37.

(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph (d).

(e) Fingerprint application and processing.

(1) At the time of fingerprinting, the airport operator must provide the individual to be fingerprinted a fingerprint application that includes only the following—
(i) The disqualifying criminal offenses described in paragraph (d) of this section.

(ii) A statement that the individual signing the application does not have a disqualifying criminal offense.
(iii) A statement informing the individual that Federal regulations under 49 CFR 1542.209 (l) impose a continuing obligation to disclose to the airport operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she has unescorted access authority. After February 17, 2002, the airport operator may use statements that have already been printed referring to 14 CFR 107.209 until stocks of such statements are used up.
(iv) A statement reading, "The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement on this application can be punished by fine or imprisonment or both. (See section 1001 of Title 18 United States Code.)"
(v) A line for the printed name of the individual.
(vi) A line for the individual's signature and date of signature.

(2) Each individual must complete and sign the application prior to submitting his or her fingerprints.

(3) The airport operator must verify the identity of the individual through two forms of identification prior to fingerprinting, and ensure that the printed name on the fingerprint application is legible. At least one of the two forms of identification must have been issued by a government authority, and at least one must include a photo.

(4) The airport operator must advise the individual that:
(i) A copy of the criminal record received from the FBI will be provided to the individual, if requested by the individual in writing; and
(ii) The ASC is the individual's point of contact if he or she has questions about the results of the CHRC.

(5) The airport operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation of the airport operator or a law enforcement officer.

(6) Fingerprints may be obtained and processed electronically, or recorded on fingerprint cards approved by the FBI and distributed by TSA for that purpose.

(7) The fingerprint submission must be forwarded to TSA in the manner specified by TSA.
…

(g) Determination of arrest status.

(1) When a CHRC on an individual seeking unescorted access authority discloses an arrest for any disqualifying criminal offense listed in paragraph (d) of this section without indicating a disposition, the airport operator must determine, after

investigation, that the arrest did not result in a disqualifying offense before granting that authority. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(2) When a CHRC on an individual with unescorted access authority discloses an arrest for any disqualifying criminal offense without indicating a disposition, the airport operator must suspend the individual's unescorted access authority not later than 45 days after obtaining the CHRC unless the airport operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(3) The airport operator may only make the determinations required in paragraphs (g)(1) and (g)(2) of this section for individuals for whom it is issuing, or has issued, unescorted access authority, and who are not covered by a certification from an aircraft operator under paragraph (n) of this section. The airport operator may not make determinations for individuals described in § 1544.229 of this chapter.

(h) Correction of FBI records and notification of disqualification.

(1) Before making a final decision to deny unescorted access authority to an individual described in paragraph (b) of this section, the airport operator must advise him or her that the FBI criminal record discloses information that would disqualify him or her from receiving or retaining unescorted access authority and provide the individual with a copy of the FBI record if he or she requests it.

(2) The airport operator must notify an individual that a final decision has been made to grant or deny unescorted access authority.

(3) Immediately following the suspension of unescorted access authority of an individual, the airport operator must advise him or her that the FBI criminal record discloses information that disqualifies him or her from retaining unescorted access authority and provide the individual with a copy of the FBI record if he or she requests it.

(i) Corrective action by the individual. The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—

(1) For an individual seeking unescorted access authority on or after December 6, 2001, the following applies:

(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the airport operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The airport operator must obtain a copy, or accept a copy from the

individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to granting unescorted access authority.
(ii) If no notification, as described in paragraph (h)(1) of this section, is received within 30 days, the airport operator may make a final determination to deny unescorted access authority.

(2) For an individual with unescorted access authority before December 6, 2001, the following applies: Within 30 days after being advised of suspension because the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the airport operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The airport operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to reinstating unescorted access authority.

(l) Continuing responsibilities.

(1) Each individual with unescorted access authority on December 6, 2001, who had a disqualifying criminal offense in paragraph (d) of this section on or after December 6, 1991, must, by January 7, 2002, report the conviction to the airport operator and surrender the SIDA access medium to the issuer.

(2) Each individual with unescorted access authority who has a disqualifying criminal offense must report the offense to the airport operator and surrender the SIDA access medium to the issuer within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(3) If information becomes available to the airport operator or the airport user indicating that an individual with unescorted access authority has a disqualifying criminal offense, the airport operator must determine the status of the conviction. If a disqualifying offense is confirmed the airport operator must immediately revoke any unescorted access authority.

(m) Exceptions. Notwithstanding the requirements of this section, an airport operator must authorize the following individuals to have unescorted access authority:

(1) An employee of the Federal, state, or local government (including a law enforcement officer) who, as a condition of employment, has been subjected to an employment investigation that includes a criminal records check.

(2) Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access authority:
(i) An individual who has been continuously employed in a position requiring unescorted access authority by another airport operator, airport user, or aircraft operator, or contractor to such an entity, provided the grant for his or her unescorted access authority was based upon a fingerprint-based CHRC through TSA or FAA.
(ii) An individual who has been continuously employed by an aircraft operator or aircraft operator contractor, in a position with authority to perform screening

functions, provided the grant for his or her authority to perform screening functions was based upon a fingerprint-based CHRC through TSA or FAA.

(n) Certifications by aircraft operators. An airport operator is in compliance with its obligation under paragraph (b) or (c) of this section when the airport operator accepts, for each individual seeking unescorted access authority, certification from an aircraft operator subject to part 1544 of this chapter indicating it has complied with § 1544.229 of this chapter for the aircraft operator's employees and contractors seeking unescorted access authority. If the airport operator accepts a certification from the aircraft operator, the airport operator may not require the aircraft operator to provide a copy of the CHRC.

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49 C.F.R. 1570.3 – Terms used in this subchapter.

For purposes of this subchapter:

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Convicted means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this subchapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this subchapter.

49 C.F.R. 1572.103 – Disqualifying criminal offenses.

(a) Permanent disqualifying criminal offenses. An applicant has a permanent disqualifying offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following felonies:

(1) Espionage or conspiracy to commit espionage.

(2) Sedition, or conspiracy to commit sedition.

(3) Treason, or conspiracy to commit treason.

(4) A federal crime of terrorism as defined in 18 U.S.C. 2332b(g), or comparable State law, or conspiracy to commit such crime.

(5) A crime involving a transportation security incident. A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. The term "economic disruption" does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employer-employee dispute.

(6) Improper transportation of a hazardous material under 49 U.S.C. 5124, or a State law that is comparable.

(7) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device. An explosive or explosive device includes, but is not limited to, an explosive or explosive material as defined in 18 U.S.C. 232(5), 841(c) through 841(f), and 844(j); and a destructive device, as defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f).

(8) Murder.

(9) Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportations system, or an infrastructure facility.

(10) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq., or a comparable State law, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the crimes listed in paragraph (a) of this section.

(11) Attempt to commit the crimes in paragraphs (a)(1) through (a)(4).

(12) Conspiracy or attempt to commit the crimes in paragraphs (a)(5) through (a)(10).

(b) Interim disqualifying criminal offenses.

(1) The felonies listed in paragraphs (b)(2) of this section are disqualifying, if either:
(i) the applicant was convicted, or found not guilty by reason of insanity, of the crime in a civilian or military jurisdiction, within seven years of the date of the application; or
(ii) the applicant was incarcerated for that crime and released from incarceration within five years of the date of the TWIC application.

(2) The interim disqualifying felonies are:
(i) Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as

defined in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5 845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.
(ii) Extortion.
(iii) Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering where the money laundering is related to a crime described in paragraphs (a) or (b) of this section. Welfare fraud and passing bad checks do not constitute dishonesty, fraud, or misrepresentation for purposes of this paragraph.
(iv) Bribery.
(v) Smuggling.
(vi) Immigration violations.
(vii) Distribution of, possession with intent to distribute, or importation of a controlled substance.
(viii) Arson.
(ix) Kidnapping or hostage taking.
(x) Rape or aggravated sexual abuse.
(xi) Assault with intent to kill.
(xii) Robbery.
(xiii) Fraudulent entry into a seaport as described in 18 U.S.C. 1036, or a comparable State law.
(xiv) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq., or a comparable State law, other than the violations listed in paragraph (a)(10) of this section.
(xv) Conspiracy or attempt to commit the crimes in this paragraph (b).

(c) Under want, warrant, or indictment. An applicant who is wanted, or under indictment in any civilian or military jurisdiction for a felony listed in this section, is disqualified until the want or warrant is released or the indictment is dismissed.

(d) Determination of arrest status.

(1) When a fingerprint-based check discloses an arrest for a disqualifying crime listed in this section without indicating a disposition, TSA will so notify the applicant and provide instructions on how the applicant must clear the disposition, in accordance with paragraph (d)(2) of this section.

(2) The applicant must provide TSA with written proof that the arrest did not result in conviction for the disqualifying criminal offense, within 60 days after the service date of the notification in paragraph (d)(1) of this section. If TSA does not receive proof in that time, TSA will notify the applicant that he or she is disqualified. In the case of an HME, TSA will notify the State that the applicant is disqualified, and in the case of a mariner applying for TWIC, TSA will notify the Coast Guard that the applicant is disqualified.

49 C.F.R. 1572.5 – Standards for security threat assessments.

(a) Standards. TSA determines that an applicant poses a security threat warranting denial of an HME or TWIC, if—

(1) The applicant has a disqualifying criminal offense described in 49 CFR 1572.103;

(2) The applicant does not meet the immigration status requirements described in 49 CFR 1572.105;

(3) TSA conducts the analyses described in 49 CFR 1572.107 and determines that the applicant poses a security threat; or

(4) The applicant has been adjudicated as lacking mental capacity or committed to a mental health facility, as described in 49 CFR 1572.109.

(b) Immediate Revocation/Invalidation. TSA may invalidate a TWIC or direct a State to revoke an HME immediately, if TSA determines during the security threat assessment that an applicant poses an immediate threat to transportation security, national security, or of terrorism.

(c) Violation of FMCSA Standards. The regulations of the Federal Motor Carrier Safety Administration (FMCSA) provide that an applicant is disqualified from operating a commercial motor vehicle for specified periods, if he or she has an offense that is listed in the FMCSA rules at 49 CFR 383.51. If records indicate that an applicant has committed an offense that would disqualify the applicant from operating a commercial motor vehicle under 49 CFR 383.51, TSA will not issue a Determination of No Security Threat until the State or the FMCSA determine that the applicant is not disqualified under that section.

(d) Waiver. In accordance with the requirements of § 1515.7, applicants may apply for a waiver of certain security threat assessment standards.

(e) Comparability of Other Security Threat Assessment Standards. TSA may determine that security threat assessments conducted by other governmental agencies are comparable to the threat assessment described in this part, which TSA conducts for HME and TWIC applicants.

(1) In making a comparability determination, TSA will consider—
(i) The minimum standards used for the security threat assessment;
(ii) The frequency of the threat assessment;
(iii) The date of the most recent threat assessment; and
(iv) Whether the threat assessment includes biometric identification and a biometric credential.

(2) To apply for a comparability determination, the agency seeking the determination must contact the Assistant Program Manager, Attn: Federal Agency Comparability Check, Hazmat Threat Assessment Program, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220.

(3) TSA will notify the public when a comparability determination is made.

(4) An applicant, who has completed a security threat assessment that is determined to be comparable under this section to the threat assessment described in this part, must complete the enrollment process and provide biometric information to obtain a TWIC, if the applicant seeks unescorted access to a secure area of a vessel or facility. The applicant must pay the fee listed in 49 CFR 1572.503 for information collection/credential issuance.

(5) TSA has determined that the security threat assessment for an HME under this part is comparable to the security threat assessment for TWIC.

(6) TSA has determined that the security threat assessment for a FAST card, under the Free and Secure Trade program administered by U.S. Customs and Border Protection, is comparable to the security threat assessment described in this part.