

MEMORANDUM

September 8, 2021

Subject: Assessing Four Department of State Methods to Compute Recapturable Immigrant Visa Numbers

From: William A. Kandel, Analyst in Immigration Policy, wkandel@crs.loc.gov, 7-4703

This memorandum was prepared to enable distribution to more than one congressional office.

Congress has set numerical limits on the number of family-sponsored preference and employment-based immigrant visas that may be issued each fiscal year.¹ In the event that those visas go unused, Congress may recapture them through legislation. Some Members of Congress have introduced such legislation as a way to address the current employment-based *backlog*. The backlog consists of over one million foreign nationals and their family members with approved immigrant petitions who are waiting, often for years, for a statutorily, numerically limited, employment-based immigrant visa.²

This memorandum reviews four Department of State (DOS) methods for computing the number of recapturable unused employment-based immigrant preference numbers (visas) and unused family-sponsored immigrant preference numbers that potentially may be made available for recapture through legislation based on four approaches identified by DOS.³ The period considered for this analysis is FY1992—the first year that current immigration limits were implemented under the Immigration Act of 1990 (P.L. 101-649)—through FY2020, the most recent year for which data are available.⁴ The memorandum also incorporates estimated unused preference numbers for FY2021.

¹ Immigration and Nationality Act (INA) §201(c), 8 U.S.C. §1151(c) and §201(d), 8 U.S.C. §1151(d) for family-sponsored preference and employment-based immigrants respectively. For more information on both forms of permanent immigration, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

² For more information, see CRS Report R46291, *The Employment-Based Immigration Backlog*, and CRS Report R45447, *Permanent Employment-Based Immigration and the Per-country Ceiling*.

³ In this memorandum, *immigrant* refers to a foreign national who has been lawfully and permanently admitted to the United States, and is synonymous with lawful permanent resident (LPR) and “green card holder.” Immigrants acquire LPR status either by obtaining an immigrant visa that allows them to travel to the United States from abroad and present themselves for admission before an immigration officer at a U.S. port of entry, or by adjusting from a temporary (nonimmigrant) status to LPR status from within the United States. Because acquiring LPR status does not require obtaining an immigrant visa (for foreign nationals who adjust status), this memorandum refers to the number of numerically limited family-sponsored preference LPRs or employment-based preference LPRs as *preference numbers* rather than *visa numbers*.

⁴ Previously enacted legislation and Department of State (DOS) analyses count unused visas starting from FY1992. However, other commentators have suggested different starting points. For example, one has suggested that counting recapturable visas should start in FY1921, the first year that Congress established numerical limits for LPRs. According to that analysis, roughly 4.5 million immigrant visas allocated by Congress were never issued and could be made available. See Alex Nowrasteh, “Congress Can Recapture 4.5 Million Unused Green Cards,” Cato Institute, July 1, 2019.

CRS has updated 2008 DOS computations of recapturable immigrant preference numbers through FY2020. Adding recent DOS estimated unused preference numbers for FY2021, CRS estimates that roughly 220,000 employment-based and 258,000 family-sponsored immigrant preference numbers could be available for recapture currently.

The memorandum starts by reviewing provisions in the Immigration and Nationality Act (INA) that allow unused family preference numbers and employment preference numbers in one fiscal year to be used in subsequent years. Next, it summarizes four approaches to computing recapturable preference numbers that were presented by DOS⁵ at a 2008 House Immigration Subcommittee hearing on unused visas.⁶ As part of this discussion, the memorandum reproduces four tables that appeared as attachments in the 2008 hearing transcript. The tables, which illustrated the four approaches or *Scenarios* for visa recapture for fiscal years 1992 to 2007 were extended by CRS through FY2020 to compute total recapturable family and employment preference numbers through the end of the most recent fiscal year.⁷ The memorandum compares the four Scenarios and addresses questions of double-counting recapturable preference numbers. The memorandum then reviews the analytic approach Congress took in 2000 and again in 2005 when it passed legislation to recapture unused employment preference numbers.⁸ The memorandum ends with concluding remarks. Two appendices provide additional source data and reproduce relevant text found in the two bills that Congress passed to recapture unused employment preference numbers.

Since 2008, DOS has not published a publicly available analysis of recapturable immigrant preference numbers. DOS does publish a monthly *Visa Bulletin* that announces the annual numerical limits for employment-based and family-sponsored preference immigrants each fiscal year.⁹ DOS also publishes an annual *Report of the Visa Office* that quantifies employment-based and family-based immigrant preference numbers used each year.¹⁰ CRS relies on these reports and other publicly available DOS materials for this analysis.

How Immigrant Preference Numbers Remain Unused

The Immigration Act of 1990 established the current INA numerical limits on family-based immigration¹¹ and employment-based immigration.¹² Family-based immigrants consist of two main categories: numerically unlimited *immediate relatives*¹³ and numerically limited *family-sponsored preference*

⁵ DOS is responsible for tracking and allocating the statutorily limited family and employment preference numbers.

⁶ U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Wasted Visas, Growing Backlogs*, 110th Cong., 2nd sess., April 30, 2008, pp. 148-152 (hereinafter “2008 Immigration Subcommittee hearing”). The 2008 hearing is the only one held that was entirely devoted to this topic since the enactment of the Immigration Act of 1990.

⁷ FY2020 represents the most recent year for which DOS has published the number of unused family-sponsored preference and employment-based immigrant visas.

⁸ In 2000, Congress passed the American Competitiveness in the 21st Century Act of 2000 (AC21A) within the Kids 2000 Act (P.L. 106-313) which recaptured 130,039 employment preference numbers. In 2005, Congress passed the REAL ID Act (RIA) within the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109-13) which recaptured 50,000 employment preference numbers. See “Previously Enacted Recapture Legislation” below.

⁹ See for example, U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin for September 2021* at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-september-2021.html>.

¹⁰ U.S. Department of State, Bureau of Consular Affairs, “Visa Statistics,” at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>.

¹¹ For more information on family-based immigration, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

¹² For more information on employment-based immigration, see CRS Report R46291, *The Employment-Based Immigration Backlog* and CRS Report R45447, *Permanent Employment-Based Immigration and the Per-country Ceiling*.

¹³ Immediate relatives are defined as spouses and minor (under age 21) unmarried children of U.S. citizens and parents of adult

immigrants who are allocated family preference numbers through four family relationship categories.¹⁴ The annual limit for family preference numbers has remained at 226,000 for two decades for reasons described below. Employment-based immigrants are allocated 140,000 employment preference numbers annually through five numerically limited preference labor market contribution categories.¹⁵

The INA contains two sets of provisions to facilitate the full use of each year's numerically limited family and employment preference numbers. *Roll-down* provisions allow unused numbers within a fiscal year in each of the four family-sponsored preference categories and within each of the five employment-based preference immigrants to "roll down" for use by immigrants in the next preference category. For example, when the number of available employment first preference (EB1) numbers exceeds the number of EB1 petitions in a given year, the difference or unused portion can be used for EB2 petitioners *in the same fiscal year*.¹⁶

The INA also contains *fall-across* provisions that allow any unused employment preference numbers remaining at the end of a fiscal year to "fall across" to family preference immigrants *in the following fiscal year*.¹⁷ Likewise, remaining unused family preference numbers fall across for use by employment-based immigrants.¹⁸ In both cases, the fall-across is intended to increase the annual preference limit of the targeted immigrant category in the next fiscal year.¹⁹

Despite these INA provisions, since FY1992 employment preference and family preference numbers have not always been completely used for several reasons. First, following enactment of the Immigration Act of 1992, demand for employment-based (and in some cases family preference) immigrant preference numbers fell below the supply provided by the statutory limits. Second, DOS must regularly coordinate with the U.S. Department of Homeland Security's (DHS's) U.S. Citizenship and Immigration Services (USCIS), the federal agency responsible for processing immigrant petitions and adjustment of status applications. Some of DOS's preference number allocation requires projecting complete use of preference numbers before the end of the fiscal year, projections that sometimes result in too many or too few preference numbers being used.²⁰

Third, and most significantly, the INA's fall-across provisions contain a computational quirk that in most years prevents unused employment preference numbers from being utilized for family-sponsored

U.S. citizens. INA §201(b)(2)(A), 8 U.S.C. §1151(b)(2)(A).

¹⁴ These four categories include adult unmarried children of U.S. citizens (FB1); spouses and minor unmarried children of LPRs (FB2A) and adult unmarried children of LPRs (FB2B); adult married children of U.S. citizens (FB3); and siblings of U.S. citizens (FB4). The INA classifies FB2A and FB2B together as 2nd family-sponsored preference category immigrants although separate numerical limits apply to each sub-category. INA §203(a), 8 U.S.C. §1153(a).

¹⁵ These five categories include persons of extraordinary ability (EB1); professionals with advanced degrees (EB2); skilled and unskilled "shortage" workers for in-demand occupations (EB3); assorted categories of "special immigrants" (EB4); and immigrant investors (EB5). INA §203(b), 8 U.S.C. §1153(b).

¹⁶ Unused FB1 preference numbers roll down to FB2 and so on, while unused FB4 preference numbers roll up to FB1. 8 U.S.C. §1153(a). Unused EB1 preference numbers roll down to EB2 and so on, while unused EB4 and EB5 preference numbers roll up to EB1. 8 U.S.C. §1153(b).

¹⁷ Unused employment-based preference numbers fall across specifically to the 2nd family preference (FB2) category (spouses and unmarried minor children of LPRs). After that, any unused FB2 preference numbers during the same fiscal year roll down to other family preference categories. 8 U.S.C. §1153(a)(2).

¹⁸ The INA does not impose specific employment-based categories to which unused family-sponsored preference numbers must fall across. 8 U.S.C. §1151(d).

¹⁹ The fall-across provisions of the Immigration Act of 1990 did not go into effect until FY1994. 8 U.S.C. §1151(c)(3) and 8 U.S.C. §1151(d)(2).

²⁰ Some have characterized these coordination challenges as "bureaucratic delays." See Citizenship and Immigration Services Ombudsman, *Annual Report to Congress 2010*, June 2010, p. 35. This topic was also discussed in the 2008 Immigration Subcommittee hearing.

immigrants. This outcome, apparently not anticipated when the Immigration Act of 1990 was enacted,²¹ results from how the INA computes the annual family preference limit. The INA determines the annual limit for the number of family-sponsored preference immigrants each fiscal year using an equation that can be described (with notations in parentheses) as follows:

Family Preference Limit =

480,000

minus:

the number of foreign nationals who were issued immigrant visas or who adjusted to LPR status in the prior fiscal year as:

1. immediate relatives of U.S. citizens (IR);
2. children born abroad after their parents received an immediate relative visa (CBA1);
3. children born to LPRs temporarily abroad (CBA2); and
4. certain foreign nationals receiving parole in the *second* preceding year (PRL);

plus: unused employment preference numbers from the previous fiscal year (UEB);

equals: the current fiscal year's family preference limit.²²

As such, the computation of numerically limited family-sponsored preference numbers available in a fiscal year takes into account the number of (unlimited) immediate relatives who acquire LPR status. Ostensibly, to prevent potentially large numbers of immediate relatives from limiting or even eliminating the number of family preference numbers that could be made available through this formula, the INA imposed a *minimum floor* of 226,000 family preference numbers.²³ As such, the annual family preference limit is computed as the greater of either the computation above or 226,000.

The equation for calculating the annual limit for the number of family-sponsored preference immigrants can be represented as follows:

Family Preference Limit = MAX ((480,000 – IR – CBA1 – CBA2 – PRL + UEB), 226,000). Since foreign nationals in categories 2 (CBA1), 3 (CBA2), and 4 (PRL) above tend to be relatively few, the computation can be described more simply as:

Family Preference Limit = MAX ((480,000 – IR + UEB), 226,000).²⁴

If immediate relatives in the prior fiscal year exceed 254,000 (the difference between 480,000 and the 226,000 floor) plus any unused employment preference numbers from the prior fiscal year, the annual limit for family preference immigrants reverts to the 226,000 floor.

²¹ For example, see Amy Nice, “Recapture Unused Green Cards” in David J. Bier (ed.), *Deregulating Legal Immigration: A Blueprint for Agency Action*, Cato Institute, December 18, 2020.

²² INA §201(c), 8 U.S.C. §1151(c). The 480,000 figure in this formula was initially set to 465,000 for FY1992, FY1993, and FY1994 before increasing to 480,000 for all subsequent years.

²³ *Ibid.*

²⁴ The FY2005 family preference limit computation provides the most recent example available to illustrate the relative sizes of the components of this equation. According to DOS, in FY2004, immediate relatives numbered 421,675 and children born abroad to immediate relatives or LPRs totaled 715. Parolees in FY2003 numbered an estimated 10,000, and unused FY2004 employment preference numbers equaled 47,305. Consequently, the family preference limit for FY2005 was set at 226,000. U.S. Department of State, Report of the Visa Office 2005, *Appendix B, Various Determinations of Numerical Limits on Immigrants Required Under the Terms of the Immigration and Nationality Act*.

FY2000 illustrates how unused employment preference numbers can increase the number of family preference immigrants. In FY1999, LPRs for categories 1-3 listed above numbered 263,340. Parolees (category 4) in FY1998 were estimated at 21,000. FY1999 unused employment-based preference numbers equaled 98,941. Therefore, the FY2000 family preference limit was set to 294,601 (480,000 - 263,340 - 21,000 + 98,941).²⁵

FY2001 illustrates the more frequent case of unused employment preference numbers being effectively lost. In FY2000, LPRs under categories 1-3 numbered 353,011. DOS was unable to estimate FY1999 parolees, but they were not expected to alter the computation's outcome. FY2000 unused employment-based preference numbers equaled 31,098. Therefore, the FY2001 family preference limit was set to the 226,000 floor, because the application of the formula (480,000 - 353,011 + 31,098) yielded 158,087, far below the 226,000 statutory floor.²⁶ In this case, all 31,098 unused employment preference numbers were effectively applied to the unlimited category of immediate relatives rather than to the numerically limited category of family preference immigrants. Hypothetically, had unused employment preference numbers equaled zero, 62,196 (double the FY2001 amount), or even 93,294 (triple the FY2001 amount), the same result would still have occurred. The large number of immediate relatives in FY2001 would have still effectively absorbed all of the unused employment preference numbers, and the annual family limit computation would have still produced a number less than 226,000, absent the floor. In such cases, the INA mandates that the family-sponsored preference limit be set to its minimum of 226,000.

This latter situation is what has occurred every year since FY2001. The number of immediate relatives receiving LPR status has far exceeded 254,000 plus any previous year's fall-across of employment preference numbers.²⁷ Consequently, since FY2001, the 226,000 floor for family preference immigrants has also effectively served as its *de facto* upper limit.

In contrast, the annual employment preference limit is computed more simply by just adding the prior fiscal year's unused family preference numbers to 140,000. In FY1999, 2,299 family preference numbers remained unused, and the FY2000 employment preference limit was 142,299. As a result, extra family preference numbers directly increase the number of numerically limited employment-based immigrants who can receive LPR status. In FY2000, unused family preference numbers totaled 52,074, resulting in a FY2001 employment preference limit of 192,074. In FY2001, unused family preference numbers totaled 2,632, resulting in a FY2002 employment preference limit of 142,632 (see **Table 1**).

This computational quirk found in the INA, which effectively eliminates unused employment preference numbers, has resulted in different approaches to computing recapturable unused preference numbers. While practitioners and others have discussed the issue of unused immigrant preference numbers, only DOS has publicly presented four distinct analytic approaches to recapturing them.

Four DOS Approaches to Preference Number Recapture

The INA does not specify how to recapture unused immigrant preference numbers. In attachments to the 2008 Immigration Subcommittee hearing transcript, DOS presented four approaches to computing

²⁵ U.S. Department of State, Report of the Visa Office 2000, *Appendix B, Various Determinations of Numerical Limits on Immigrants Required Under the Terms of the Immigration and Nationality Act*.

²⁶ U.S. Department of State, Report of the Visa Office 2001, *Appendix B, Various Determinations of Numerical Limits on Immigrants Required Under the Terms of the Immigration and Nationality Act*.

²⁷ Since FY1996, immediate relatives have always exceeded 254,000, reaching a low of 258,584 in FY1999 and a peak of 580,348 in FY2006. In FY2019, the most recent year available, they numbered 505,765. Between FY1986 and FY1995, they averaged 230,835 annually. U.S. Department of Homeland Security, *Yearbook of Immigration Statistics*, Table 6, multiple years.

recapturable employment-based and family-sponsored preference numbers.²⁸ The computational approaches (Scenarios) are stated by DOS as follows:

- **Scenario 1:** Unused numbers that fall across (employment or family) categories in the following fiscal year but remained unused are available for recapture in their *original* (employment or family) preference category.
- **Scenario 2:** Unused numbers that fall across in the following fiscal year but remained unused are available for recapture in their *fall-across* category.
- **Scenario 3:** Unused numbers are available for recapture regardless of [ignoring any] fall-across and use in the following fiscal year.
- **Scenario 4:** Unused numbers are available for recapture regardless of [ignoring any] fall-across and use in the following fiscal year, but only up to the family and employment preference minimum limits of 226,000 and 140,000, respectively.

Scenario 1: Unused numbers that fall across (employment or family) categories in the following fiscal year but remained unused are available for recapture in the *original category*²⁹

Family Preference Numbers

According to notes accompanying the Scenario 1 table in the 2008 hearing transcript, “the Family Preference Numbers Available for Recapture total represents the unused Family Preference Numbers in a fiscal year minus the amount of the following fiscal year’s Employment Preference limit above 140,000 that were used or recaptured.”³⁰

In FY2005, for example, 222,051 family preference numbers were used (**Table 1**).³¹ Because the FY2005 family preference limit was 226,000, 3,949 family preference numbers remained unused and fell across to the employment preference category for use in the following fiscal year. As a result, the FY2006 employment preference numerical limit increased by 3,949, from 140,000 to 143,949. In FY2006, these 3,949 unused family preference numbers remained unused for employment-based immigrants, because actual employment preference numbers used in FY2006 were 133,622, or 10,326 preference numbers below the FY2006 employment preference limit. Consequently, the 3,949 unused family preference numbers from FY2005 qualify as recapturable numbers under the original family preference category using this computational method.

Employment Preference Numbers

According to the Scenario 1 notes cited above, “the Employment Preference Numbers Available for Recapture total represents the unused Employment Preference numbers in a fiscal year minus (1) the

²⁸ 2008 Immigration Subcommittee hearing transcript, pp. 148-152.

²⁹ The Scenario 1 approach is the same one presented in the 2007 USCIS Ombudsman’s annual report which relied on DOS figures. See Citizenship and Immigration Services Ombudsman, *Annual Report to Congress 2007*, June 2007, Figure 9. The results of Scenario 1 were also cited as the number of recapturable preference numbers available. Charles Oppenheim, Chief of Visa Control and Reporting Division, U.S. Department of State in an email correspondence to CRS on February 2, 2021.

³⁰ In FY1992, there was no fall-across in either direction for this and all other scenarios described. 2008 Immigration Subcommittee hearing transcript, p. 149.

³¹ The number of family preference numbers issued according to earlier DOS documents differs slightly from the figure reported to CRS subsequently (222,095) because of revisions described in **Appendix A** as “adjustments.”

amount of the following fiscal year's Family Preference limit above 226,000 ... and (2) unused numbers that fell across from Family Preference in the prior fiscal year, remain unused, and are being recaptured in the Family Preference category."³²

In FY2006, for example, 133,623 employment preference numbers were used.³³ Because the FY2006 employment preference limit was 143,949, 10,326 employment preference numbers remained unused. To determine recapturable preference numbers, one must subtract from the 10,326 unused figure, the excess of the following fiscal year's family preference limit above 226,000 (which was zero), as well as unused preference numbers that fell across from the family preference category in FY2005 and which remained unused in FY2006 (3,949). Subtracting zero and 3,949 from 10,326 yields 6,377 recapturable employment preference numbers (**Table 1**).

These examples provide two illustrations of this computational method during a period (FY1992-FY2007) that was otherwise complicated by the absence of fall-across of unused preference numbers for FY1992 and FY1993 (fall-across provisions only went into effect in FY1994) as well as the two recapture laws that affected the calculations of recapturable preference numbers between FY1998 and FY2004.

Table 1. Unused Preference Numbers for Recapture Under Scenario I

(Shaded portion represents 2008 DOS analysis; unshaded portion represents current CRS analysis)

Fiscal Year	Family Preference Numbers Used	Employment Preference Numbers Used	Unused Family Preference Numbers	Unused Employment Preference Numbers	Following Fiscal Year's Family Preference Limit	Following Fiscal Year's Employment Preference Limit	Family Preference Numbers Available for Recapture	Employment Preference Numbers Available for Recapture
1992	220,612	118,829	5,435	21,207	232,483	161,207	3,213 ^a	0 ^a
1993	229,382	161,053	3,213	0	226,000	143,213	3,213	0
1994	219,672	112,491	6,503	29,430	253,721	146,503	0	1,709
1995	253,780	86,790	0	58,694	311,819	140,000	0	0
1996	311,858	118,176	0	21,173	226,000	140,000	0	21,173
1997	226,008	99,201	0	40,710	226,000	140,000	0	40,710
1998	205,094	86,429	20,906	53,571	226,000	160,906	0 ^b	53,571
1999	223,701	61,965	2,299	98,941	294,601	142,299	0 ^b	0 ^b
2000	242,539	111,166	52,074	31,098	226,000	192,074	5,511	0 ^b
2001	223,384	186,536	2,632	5,511	226,000	142,632	0	0 ^c
2002	194,458	171,583	31,532	0	226,000	171,532	31,532	0 ^c
2003	161,576	83,020	64,422	88,482	226,000	204,422	47,305	56,950 ^c
2004	217,565	157,107	8,449	47,305	226,000	148,449	0	0 ^c
2005	222,095	242,335	3,949	0	226,000	143,949	3,949	0
2006	218,857	133,622	7,148	10,326	226,000	147,148	0	6,377
2007	203,293	154,497	22,707	0	226,000	162,707	0	0

³² In all cases, an exception is made for employment preference numbers unused in FY1999-FY2004 that were already recaptured. See 2008 Immigration Subcommittee hearing transcript, p. 148, "Method of Calculation."

³³ The DOS figure shown in Table V of the FY2006 *Report of the Visa Office* is 133,622. However, the DOS figure in the 2008 Immigration Subcommittee transcript for unused employment preference numbers in FY2006 is 10,326. The FY2006 annual limit reported in the September *Visa Bulletin* is 143,949, resulting in the unexplained loss of one preference number. CRS chose to modify the number of employment preference numbers used in FY2006 to make the computation numerically sound.

Fiscal Year	Family Preference Numbers Used	Employment Preference Numbers Used	Unused Family Preference Numbers	Unused Employment Preference Numbers	Following Fiscal Year's Family Preference Limit	Following Fiscal Year's Employment Preference Limit	Family Preference Numbers Available for Recapture	Employment Preference Numbers Available for Recapture
2008	226,105	162,949	0	0	226,000	140,000	0	0
2009	215,333	140,987	10,667	0	226,000	150,657 ^d	395	0
2010	226,651	150,262	0	395	226,000	140,000	0	0
2011	221,042	139,302	4,958	698	226,000	144,951	304	698
2012	207,535	144,647	18,465	304	226,000	158,466	0	0
2013	215,753	161,269	10,247	0	226,000	150,241	0	0
2014	221,193	151,359	4,807	0	226,000	144,796	844	0
2015	225,671	143,952	329	844	226,000	140,338	0	0
2016	230,691	140,350	0	0	226,000	140,000	0	0
2017	225,719	139,604	281	396	226,000	140,292	281	396
2018	224,090	139,483	1,910	809	226,000	141,918	1,332	517
2019	209,752	140,586	16,248	1,332	226,000	156,253	9,100	0
2020	103,719	147,153	122,281	9,100	226,000	262,288 ^e	0	0
Recap.								(50,000)^c
Total			421,462	520,326			106,979	132,101

Sources: Family Preference Numbers Actually Used and Employment Preference Numbers Actually Used (FY1992-FY2020): see sources for **Table A-1**. Figures in all other columns from FY1992-FY2007: 2008 Immigration Subcommittee hearing transcript, p. 149; Unused Family Preference Numbers and Unused Employment Preference Numbers (FY2008-FY2020): computed by CRS by subtracting preference numbers used by preference limit for each fiscal year; Following Fiscal Year's Family Preference Limit and Following Year's Employment Preference Limit (FY2008-FY2020): U.S. Department of State, *Visa Bulletin*, September, multiple years; Family Preference Numbers Available for Recapture and Employment Preference Numbers Available for Recapture (FY2008-FY2019): computed by CRS as described in text.

Notes: Recap. refers to previously recaptured preference numbers that were tracked separately by DOS and must be subtracted from the total. The shaded portion of **Table I** for FY1992-FY2007 reproduces figures from DOS analysis presented on page 149 of the 2008 Immigration Subcommittee hearing transcript. The unshaded portion represents the CRS extension from FY2008-FY2020 of the DOS analysis. Under Scenario 1, unused numbers that fall across between the employment to family preference categories are recaptured in the original preference category only if still unused in the following fiscal year(s). When preference numbers actually used exceed a fiscal year's preference limit, the number of unused preference numbers appears as zero. Unexplained insufficient or excess allocations or "adjustments" may occur for reasons described in **Appendix A**.

- a. According to DOS, unused employment preference numbers did not fall across to the following fiscal year's family preference limit (and vice versa) until FY1994. See 2008 Immigration Subcommittee hearing transcript, p. 149, note 3.
- b. The 98,941 and 31,098 unused employment preference numbers from FY1999 and FY2000, respectively, were recaptured in 2000 by the AC2IA. Although DOS chose to exclude them from its original table, CRS, using the same computational approach as DOS, computed 20,906 and 2,299 recapturable family preference numbers in FY1998 and FY1999, respectively, and 78,035 and 28,834 recapturable employment preference numbers in FY1999 and FY2000, respectively. (Note that the sum of 20,906 and 78,035 equals 98,941, and the sum of 2,299 and 28,834 equals 31,133. The difference of 35 preference numbers between 31,098 per DOS's and 31,133 per CRS's computations is attributable to DOS adjustments.) See 2008 Immigration Subcommittee hearing transcript, p. 149, note 5. The accounting for recaptured preference numbers described above and shown in the two right-hand columns in **Table I** differs from when the recaptured preference numbers were actually issued. The latter occurred in FY2002, FY2005, and FY2007. In those three fiscal years, **Table I** shows that the number of employment preference numbers actually used exceeded that fiscal year's employment preference limit by 28,951, 93,844, and 7,349, respectively.
- c. Unlike the 130,039 employment preference numbers recaptured by the AC2IA that were deducted from the original DOS table, the 50,000 recaptured employment preference numbers from the RIA were left in the table. See 2008

Immigration Subcommittee hearing transcript, p. 159, note 5. DOS has told CRS that this was done so that readers could follow the computation of recapturable preference numbers. The recaptured numbers under the RIA are shown as removed at the bottom of **Table 1**.

- d. Starting in FY2009, unused family preference numbers that are added to the following fiscal year's 140,000 employment preference limit yields a figure that differs slightly from the published DOS employment preference limit for the following year. See **Appendix A** for more information.
- e. FY2021 annual limits are found in the DOS Visa Bulletin for September 2021 at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-september-2021.html>. DOS does not explain why the employment-based limit is 262,288 rather than 262,281 as implied by the 122,281 unused family sponsored preference numbers reported in its Report of the Visa Office 2020.

Scenario 2: Unused numbers that fall across (employment or family) categories in the following fiscal year but remain unused are recaptured in the fall-across category

Family Preference Numbers

For Scenario 2, the Family Preference Numbers Available for Recapture total is “the unused Family Preference Numbers in a fiscal year minus the amount of the following fiscal year’s Employment Preference limit above 140,000.”³⁴ Total recapturable preference numbers computed are therefore the same as those computed for Scenario 1. However, for Scenario 2, unused numbers that fall across are recaptured not in their original category but in the fall-across category (employment), and only if still unused in the following fiscal year.

Using the same example as for Scenario 1, the FY2005 family preference limit was 226,000, and the number of family preference numbers actually used in that fiscal year equaled 222,051, leaving 3,949 unused family preference numbers.³⁵ These 3,949 unused family preference numbers fell across to the employment preference category, increasing the FY2006 employment preference numerical limit from 140,000 to 143,949. This 3,949 excess beyond 140,000 is then subtracted from the unused family preference numbers for FY2005 (which were also 3,949), to yield zero recapturable family preference numbers that fall across as recapturable employment preference numbers for FY2005. The same result—zero recapturable family preference numbers—occurs for FY2006 and essentially for all subsequent years (**Table 2**).³⁶

Employment Preference Numbers

For Scenario 2, “the Employment Preference Numbers Available for Recapture total represents the unused Employment Preference numbers in a fiscal year minus the amount of the following fiscal year’s Family Preference limit above 226,000.”³⁷ As with recapturable family preference numbers above, unused

³⁴ 2008 Immigration Subcommittee hearing transcript, p. 150.

³⁵ According to Table V of the DOS *Report of the Visa Office 2005*, FY2005 family preference numbers totaled 222,095. However, the DOS House Immigration Subcommittee hearing transcript indicates that 3,949 family preference numbers remained used, suggesting that the actual number was 222,051 (which equals the 226,000 annual limit minus 3,949 unused preference numbers). CRS was unable to account for the 44 missing family preference numbers (222,095 minus 222,051).

³⁶ The few recapturable family preference numbers in FY2009, FY2011, FY2013, FY2014, and FY2020 stem from DOS adjustments as described above.

³⁷ 2008 Immigration Subcommittee hearing transcript, p. 150.

employment preference numbers that fall across are recaptured not in their original category but in the fall-across category (family), and only if still unused in the following fiscal year.³⁸

In FY2005, for example, the number of unused employment preference numbers is zero, because the FY2005 employment preference limit (148,449) was exceeded by the number of employment preference numbers used (242,335), resulting in zero unused employment preference numbers.³⁹ Because the FY2005 family preference limit does not exceed 226,000, the recapturable employment number is computed as zero minus zero (**Table 2**).

The computation for FY2006 yields a different outcome. The following fiscal year’s (FY2007) Family Preference limit above 226,000 (which is zero) is subtracted from the 10,326 unused employment preference numbers, yielding 10,326 recapturable employment preference numbers (**Table 2**).

The absence of family preference numbers available for recapture after 1999 is due to the fact that the number of immediate relatives acquiring LPR status in that year, and every year thereafter, exceeds 254,000 by an amount that is greater than the number of unused employment preference numbers that fall across to the family category. As such, unused employment preference numbers falling across are all absorbed by the large number of immediate relatives above the 254,000 level, resulting in zero family preference numbers being available for recapture.

Because methods used for Scenario 1 and Scenario 2 both capture the same unused numbers that fall across categories, the total of all numbers recaptured under both Scenarios is effectively equal. However, their distribution among the employment-based and family-sponsored categories differ.⁴⁰

Table 2. Unused Preference Numbers for Recapture Under Scenario 2
(Shaded portion represents 2008 DOS analysis; unshaded portion represents current CRS analysis)

Fiscal Year	Family Preference Numbers Used	Employment Preference Numbers Used	Unused Family Preference Numbers	Unused Employment Preference Numbers	Following Fiscal Year's Family Preference Limit	Following Fiscal Year's Employment Preference Limit	Family Preference Numbers Available for Recapture	Employment Preference Numbers Available for Recapture
1992	220,612	118,829	5,435	21,207	232,483	161,207	3,213 ^a	0 ^a
1993	229,382	161,053	3,213	0	226,000	143,213	3,213	0
1994	219,672	112,491	6,503	29,430	253,721	146,503	0	1,709
1995	253,780	86,790	0	58,694	311,819	140,000	0	0
1996	311,858	118,176	0	21,173	226,000	140,000	0	21,173
1997	226,008	99,201	0	40,710	226,000	140,000	0	40,710
1998	205,094	86,429	20,906	53,571	226,000	160,906	0 ^b	53,571

³⁸ Exceptions to these computations include FY1992 when there was no fall-across, and FY1999-2004 when employment preference numbers were already recaptured due to prior legislation.

³⁹ The difference between the FY2005 limit for employment preference limit (148,449) and the number of employment preference numbers issued (242,335) is 93,886. As described above, this excess issuance above the limit represents part of the issuance of recaptured employment preference numbers authorized under the AC21A. The other issuances occurred in FY2002 (28,951) and FY2007 (7,349), for a total of 130,039.

⁴⁰ Under Scenario 1, total recapturable preference numbers equal 239,080, distributed as 106,979 family and 132,101 employment preference numbers. Under Scenario 2, total recapturable preference numbers equal 239,406, distributed as 6,741 family and 232,665 employment preference numbers. The difference of 326 preference numbers between the Scenario 1 and Scenario 2 totals (239,406 minus 239,080) occurs because, for some fiscal years, DOS established annual employment preference limits that were not exactly equal to 140,000 plus the number of unused family preference numbers. For example, the FY2021 annual employment preference limit should be 262,281 (140,000 plus 122,281) but DOS established it at 262,000, a difference of 281 preference numbers. Similar but smaller variations occurred for most other years starting in FY2009.

Fiscal Year	Family Preference Numbers Used	Employment Preference Numbers Used	Unused Family Preference Numbers	Unused Employment Preference Numbers	Following Fiscal Year's Family Preference Limit	Following Fiscal Year's Employment Preference Limit	Family Preference Numbers Available for Recapture	Employment Preference Numbers Available for Recapture
1999	223,701	61,965	2,299	98,941	294,601	142,299	0 ^b	0 ^b
2000	242,539	111,166	52,074	31,098	226,000	192,074	0	0 ^b
2001	223,384	186,536	2,632	5,511	226,000	142,632	0	5,511 ^c
2002	194,458	171,583	31,532	0	226,000	171,532	0	0 ^c
2003	161,576	83,020	64,422	88,482	226,000	204,422	0	88,482 ^c
2004	217,565	157,107	8,449	47,305	226,000	148,449	0	47,305 ^c
2005	222,095	242,335	3,949	0	226,000	143,949	0	0
2006	218,857	133,622	7,148	10,326	226,000	147,148	0	10,326
2007	203,293	154,497	22,707	0	226,000	162,707	0	0
2008	226,105	162,949	0	0	226,000	140,000	0	0
2009	215,333	140,987	10,667	0	226,000	150,657 ^d	10	0
2010	226,651	150,262	0	395	226,000	140,000	0	395
2011	221,042	139,302	4,958	698	226,000	144,951	7	698
2012	207,535	144,647	18,465	304	226,000	158,466	0	304
2013	215,753	161,269	10,247	0	226,000	150,241	6	0
2014	221,193	151,359	4,807	0	226,000	144,796	11	0
2015	225,671	143,952	329	844	226,000	140,338	0	844
2016	230,691	140,350	0	0	226,000	140,000	0	0
2017	225,719	139,604	281	396	226,000	140,292	0	396
2018	224,090	139,483	1,910	809	226,000	141,918	0	809
2019	209,752	140,586	16,248	1,332	226,000	156,253	0	1,332
2020	103,719	147,153	122,281	9,100	226,000	262,000	281	9,100
Recap.								(50,000)^c
Total			421,462	520,326			6,741	232,665

Sources: Family Preference Numbers Actually Used and Employment Preference Numbers Actually Used (FY1992-FY2020): see sources for **Table A-1**. Figures in all other columns from FY1992-FY2007: 2008 Immigration Subcommittee hearing transcript, p. 150; **Unused Family Preference Numbers and Unused Employment Preference Numbers (FY2008-FY2020):** computed by CRS by subtracting preference numbers used by preference limit for each fiscal year; **Following Fiscal Year's Family Preference Limit and Following Year's Employment Preference Limit (FY2008-FY2020):** U.S. Department of State, *Visa Bulletin*, September, multiple years; **Family Preference Numbers Available for Recapture and Employment Preference Numbers Available for Recapture (FY2008-FY2019):** computed by CRS as described in text.

Notes: Recap refers to previously recaptured preference numbers that were tracked separately by DOS and must be subtracted from the total. The shaded portion of **Table 2** for FY1992-FY2007 reproduces DOS figures from page 150 of the 2008 Immigration Subcommittee hearing transcript. The unshaded portion represents the CRS extension from FY2008-FY2020 of the DOS analysis. Under Scenario 2, unused numbers that fall across from the employment to family preference categories are recaptured in the preference category to which they fell across only if still unused in the following fiscal year(s). When preference numbers actually used exceed a fiscal year's preference limit, the number of unused preference numbers appears as zero. Unexplained insufficient or excess allocations or "adjustments" may occur for reasons described in **Appendix A**.

- a. According to DOS, unused employment preference numbers did not fall across to the following fiscal year's family preference limit (and vice versa) until FY1994. See 2008 Immigration Subcommittee hearing transcript, p. 150, note 3.

- b. The 98,941 and 31,098 unused employment preference numbers from FY1999 and FY2000, respectively, were recaptured in 2000 by the AC21A. Although DOS chose to exclude them from its original table, CRS, using the same computational approach as DOS, computed 20,906 and 2,299 recapturable family preference numbers in FY1998 and FY1999, respectively, and 78,035 and 28,834 recapturable employment preference numbers in FY1999 and FY2000, respectively. (Note that the sum of 20,906 and 78,035 equals 98,941, and the sum of 2,299 and 28,834 equals 31,133. The difference of 35 preference numbers between 31,098 per DOS's and 31,133 per CRS's computations is attributable to DOS adjustments.) See 2008 Immigration Subcommittee hearing transcript, p. 150, note 4. The accounting for recaptured preference numbers described above and shown in the two right-hand columns in **Table 2** differs from when the recaptured preference numbers were actually issued. The latter occurred in FY2002, FY2005, and FY2007. In those three fiscal years, **Table 2** shows that the number of employment preference numbers actually used exceeded that fiscal year's employment preference limit by 28,951, 93,844, and 7,349, respectively.
- c. Unlike the 130,039 employment preference numbers recaptured by the AC21A that were deducted from the original DOS table, the 50,000 recaptured employment preference numbers from the RIA were left in the table. See 2008 Immigration Subcommittee hearing transcript, p. 150, note 5. DOS has told CRS that this was done so that readers could follow the computation of recapturable preference numbers. The recaptured numbers under the RIA are shown as removed at the bottom of **Table 2**.
- d. Starting in FY2009, unused family preference numbers that are added to the following fiscal year's 140,000 employment preference limit yields a figure that differs slightly from the published DOS employment preference limit for the following year. See **Appendix A** for more information.

Scenario 3: Unused family and employment preference numbers are recaptured regardless of fall-across and use in the following fiscal year

Recapturable Family Preference Numbers

For Scenario 3, the Family Preference Numbers Available for Recapture total is equal to “the unused Family Preference numbers in a fiscal year, regardless of fall-across to and number use in the Employment Preference in the following fiscal year.”⁴¹ Thus, within each category, the sum of unused preference numbers equals preference numbers available for recapture (see total figures in **Table 3**). Total recapturable family preference numbers equal 421,462 in both column totals before DOS adjustments.

Recapturable Employment Preference Numbers

For Scenario 3, employment preference numbers available for recapture are computed the same as family preference numbers described above. However, the number of unused employment preference numbers are not equivalent to the sum of those available for recapture each year, because of prior recapture legislation. As noted above, the AC21A recaptured the 98,941 and 31,098 unused employment preference numbers in FY1999 and FY2000, respectively. The RIA recaptured 50,000 employment preference numbers that DOS tracked separately. Subtracting from the total unused employment preference numbers (520,326) the 130,039 recaptured from the AC21A and the 50,000 recaptured from the RIA yields 340,287 recapturable employment preference numbers (**Table 3**).

Computing recapturable family and employment preference numbers using Scenario 3 (and to a lesser extent in Scenario 4) results in double counting which is described and discussed below in “Assessing the Four Scenario Methods.”

⁴¹ 2008 Immigration Subcommittee hearing transcript, p. 151.

Table 3. Unused Preference Numbers for Recapture Under Scenario 3
 (Shaded portion represents 2008 DOS analysis; unshaded portion represents current CRS analysis)

Fiscal Year	Family Preference Numbers Used	Employment Preference Numbers Used	Unused Family Preference Numbers	Unused Employment Preference Numbers	Following Fiscal Year's Family Preference Limit	Following Fiscal Year's Employment Preference Limit	Family Preference Numbers Available for Recapture	Employment Preference Numbers Available for Recapture
1992	220,612	118,829	5,435	21,207	232,483	161,207	5,435	21,207
1993	229,382	161,053	3,213	0	226,000	143,213	3,213	0
1994	219,672	112,491	6,503	29,430	253,721	146,503	6,503	29,430
1995	253,780	86,790	0	58,694	311,819	140,000	0	58,694
1996	311,858	118,176	0	21,173	226,000	140,000	0	21,173
1997	226,008	99,201	0	40,710	226,000	140,000	0	40,710
1998	205,094	86,429	20,906	53,571	226,000	160,906	20,906	53,571
1999	223,701	61,965	2,299	98,941	294,601	142,299	2,299	0 ^a
2000	242,539	111,166	52,074	31,098	226,000	192,074	52,074	0 ^a
2001	223,384	186,536	2,632	5,511	226,000	142,632	2,632	5,511 ^b
2002	194,458	171,583	31,532	0	226,000	171,532	31,532	0 ^b
2003	161,576	83,020	64,422	88,482	226,000	204,422	64,422	88,482 ^b
2004	217,565	157,107	8,449	47,305	226,000	148,449	8,449	47,305 ^b
2005	222,095	242,335	3,949	0	226,000	143,949	3,949	0
2006	218,857	133,622	7,148	10,326	226,000	147,148	7,148	10,326
2007	203,293	154,497	22,707	0	226,000	162,707	22,707	0
2008	226,105	162,949	0	0	226,000	140,000	0	0
2009	215,333	140,987	10,667	0	226,000	150,657 ^c	10,667	0
2010	226,651	150,262	0	395	226,000	140,000	0	395
2011	221,042	139,302	4,958	698	226,000	144,951	4,958	698
2012	207,535	144,647	18,465	304	226,000	158,466	18,465	304
2013	215,753	161,269	10,247	0	226,000	150,241	10,247	0
2014	221,193	151,359	4,807	0	226,000	144,796	4,807	0
2015	225,671	143,952	329	844	226,000	140,338	329	844
2016	230,691	140,350	0	0	226,000	140,000	0	0
2017	225,719	139,604	281	396	226,000	140,292	281	396
2018	224,090	139,483	1,910	809	226,000	141,918	1,910	809
2019	209,752	140,586	16,248	1,332	226,000	156,253	16,248	1,332
2020	103,719	147,153	122,281	9,100	226,000	145,659	122,281	9,100
Recap.								(50,000)^b
Total			421,462	520,326			421,462	340,287

Sources: Family Preference Numbers Actually Used and Employment Preference Numbers Actually Used (FY1992-FY2020): see sources for **Table A-1**. Figures in all other columns from FY1992-FY2007: 2008 Immigration Subcommittee hearing transcript, p. 151; Unused Family Preference Numbers and Unused Employment Preference Numbers (FY2008-FY2020): computed by CRS by subtracting preference numbers used by preference limit for each fiscal year; Following

Fiscal Year's Family Preference Limit and Following Year's Employment Preference Limit (FY2008-FY2020): U.S. Department of State, *Visa Bulletin*, September, multiple years; Family Preference Numbers Available for Recapture and Employment Preference Numbers Available for Recapture (FY2008-FY2019): computed by CRS as described in text.

Notes: Recap. refers to previously recaptured preference numbers that were tracked separately by DOS and must be subtracted from the total. The shaded portion of **Table 3** for FY1992-FY2007 reproduces figures from DOS analysis presented on page 151 of the 2008 Immigration Subcommittee hearing transcript. The unshaded portion represents the CRS extension from FY2008-FY2020 of the DOS analysis. Under Scenario 3, unused family and employment preference numbers are recaptured regardless of fall-across and use in the following fiscal year. When preference numbers actually used exceed a fiscal year's preference limit, the number of unused preference numbers appears as zero. Unexplained insufficient or excess allocations or "adjustments" may occur for reasons described in **Appendix A**.

- a. The 98,941 and 31,098 unused employment preference numbers in FY1999 and FY2000, respectively were recaptured in 2000 by the AC21A. DOS chose to exclude them from its original table. See 2008 Immigration Subcommittee hearing transcript, p. 151, note 3. The accounting for recaptured preference numbers described above and shown in the two right-hand columns in **Table 3** differs from when the recaptured preference numbers were actually issued. The latter occurred in FY2002, FY2005, and FY2007. **Table 3** shows that the number of employment preference numbers actually used exceeded that fiscal year's employment preference limit by 28,951, 93,844, and 7,349, respectively.
- b. Unlike the 130,039 employment preference numbers recaptured by the AC21A that were deducted from the original DOS table, the 50,000 recaptured employment preference numbers from the RIA were left in the table. See 2008 Immigration Subcommittee hearing transcript, p. 151, note 4. DOS has told CRS that this was done so that readers could follow the computation of recapturable preference numbers. The recaptured numbers under the RIA are shown as removed at the bottom of **Table 3**.
- c. Starting in FY2009, unused family preference numbers that are added to the following fiscal year's 140,000 employment preference limit yields a figure that differs slightly from the published DOS employment preference limit for the following year. See **Appendix A** for more information.

Scenario 4: Unused numbers are recaptured up to the 226,000 family and 140,000 employment preference minimums, regardless of fall-across and use in the following fiscal year

Recapturable Family Preference Numbers

Under Scenario 4, the Family Preference Numbers Available for Recapture total equals "the difference between 226,000 and the Family Preference numbers used in a fiscal year, regardless of fall-across to and number use in the Employment Preference in the following fiscal year."⁴² This approach maintains each year's family preference limit at 226,000. Family preference numbers available for recapture each year equal any positive difference between 226,000 and family preference numbers actually used. If actual family preference numbers used exceed 226,000 in a given year, unused/recapturable family preference numbers equal zero. Under this approach, total unused family preference numbers (366,175) are equal to total family preference numbers available for recapture (**Table 4**).

Recapturable Employment Preference Numbers

Under Scenario 4, employment preference numbers available for recapture are computed like the family preference numbers described above, except using 140,000 as the fixed annual preference limit. With the exception of FY1999 and FY2000, whose unused employment preference numbers were recaptured through the AC21A, unused employment preference numbers equal the sum of those available for recapture each year. Under this approach, total unused employment preference numbers (386,841) are greater than total employment preference numbers available for recapture (206,802). The difference

⁴² 2008 Immigration Subcommittee hearing transcript, p. 152.

between the two totals (180,039) reflects employment preference numbers recaptured by the AC21A in 2000 and the RIA in 2005.

Table 4. Unused Preference Numbers for Recapture Under Scenario 4
 (Shaded portion represents 2008 DOS analysis; unshaded portion represents current CRS analysis)

Fiscal Year	Family Preference Numbers Used	Employment Preference Numbers Used	Unused Family Preference Numbers	Unused Employment Preference Numbers	Following Fiscal Year's Family Preference Limit	Following Fiscal Year's Employment Preference Limit	Family Preference Numbers Available for Recapture	Employment Preference Numbers Available for Recapture
1992	220,612	118,829	5,435	21,207	226,000	140,000	5,435	21,207
1993	229,382	161,053	0	0	226,000	140,000	0	0
1994	219,672	112,491	6,503	26,217	226,000	140,000	6,503	26,217
1995	253,780	86,790	0	52,191	226,000	140,000	0	52,191
1996	311,858	118,176	0	21,173	226,000	140,000	0	21,173
1997	226,008	99,201	0	40,710	226,000	140,000	0	40,710
1998	205,094	86,429	20,906	53,571	226,000	140,000	20,906 ^a	53,571
1999	223,701	61,965	2,299	78,035	226,000	140,000	2,299 ^a	0 ^a
2000	242,539	111,166	0	28,799	226,000	140,000	0	0 ^a
2001	223,384	186,536	2,632	0	226,000	140,000	2,632	0 ^b
2002	194,458	171,583	31,532	0	226,000	140,000	31,532	0 ^b
2003	161,576	83,020	64,422	56,950	226,000	140,000	64,422	56,950 ^b
2004	217,565	157,107	8,449	0	226,000	140,000	8,449	0 ^b
2005	222,095	242,335	3,949	0	226,000	140,000	3,949	0
2006	218,857	133,622	7,148	6,377	226,000	140,000	7,148	6,377
2007	203,293	154,497	22,707	0	226,000	140,000	22,707	0
2008	226,105	162,949	0	0	226,000	140,000	0	0
2009	215,333	140,987	10,667	0	226,000	140,000	10,667	0
2010	226,651	150,262	0	0	226,000	140,000	0	0
2011	221,042	139,302	4,958	698	226,000	140,000	4,958	698
2012	207,535	144,647	18,465	0	226,000	140,000	18,465	0
2013	215,753	161,269	10,247	0	226,000	140,000	10,247	0
2014	221,193	151,359	4,807	0	226,000	140,000	4,807	0
2015	225,671	143,952	329	0	226,000	140,000	329	0
2016	230,691	140,350	0	0	226,000	140,000	0	0
2017	225,719	139,604	281	396	226,000	140,000	281	396
2018	224,090	139,483	1,910	517	226,000	140,000	1,910	517
2019	209,752	140,586	16,248	0	226,000	140,000	16,248	0
2020	103,719	147,153	122,281	0	226,000	140,000	122,281	0
Recap1								(23,205)^a
Recap2								(50,000)^b

Fiscal Year	Family Preference Numbers Used	Employment Preference Numbers Used	Unused Family Preference Numbers	Unused Employment Preference Numbers	Following Fiscal Year's Family Preference Limit	Following Fiscal Year's Employment Preference Limit	Family Preference Numbers Available for Recapture	Employment Preference Numbers Available for Recapture
Total			366,175	386,841			366,175	206,802

Sources: Family Preference Numbers Actually Used and Employment Preference Numbers Actually Used (FY1992-FY2020): see sources for **Table A-1**. Figures in all other columns from FY1992-FY2007: 2008 Immigration Subcommittee hearing transcript, p. 152; Unused Family Preference Numbers and Unused Employment Preference Numbers (FY2008-FY2020): computed by CRS by subtracting preference numbers used by preference limit for each fiscal year; Following Fiscal Year's Family Preference Limit and Following Year's Employment Preference Limit (FY2008-FY2020): U.S. Department of State, *Visa Bulletin*, September, multiple years; Family Preference Numbers Available for Recapture and Employment Preference Numbers Available for Recapture (FY2008-FY2019): computed by CRS as described in text.

Notes: **Recap 1** reflects the remaining number of employment preference numbers that were already recaptured by the AC21A but were not subtracted from the original DOS table above. See **footnote a** below. **Recap 2** reflects employment preference numbers recaptured by the RIA. The shaded portion of **Table 4** for FY1992-FY2007 reproduces figures from DOS analysis presented on page 152 of the 2008 Immigration Subcommittee hearing transcript. The unshaded portion represents the CRS extension from FY2008-FY2020 of the DOS analysis. Under Scenario 4, unused family and employment preference numbers are recaptured up to the 226,000 family and 140,000 employment preference minimums, regardless of fall-across and use in the following fiscal year. When preference numbers actually used exceed a fiscal year's preference limit, the number of unused preference numbers appears as zero. Unexplained insufficient or excess allocations or "adjustments" may occur for reasons described in **Appendix A**.

- a. **Table 4** shows that under Scenario 4, the 130,039 employment preference numbers recaptured under the AC21A would have been distributed as 23,205 recapturable family preference numbers (20,906 in FY1998 and 2,299 in FY1999) and 106,834 recapturable employment preference numbers (78,035 in FY1999 and 28,799 in FY2000). Under the AC21A, however, all recaptured preference numbers were employment-based (98,941 in FY1999 and 31,098 in FY2000). The 106,834 employment preference numbers shown as part of Scenario 4 is conceptual because it did not actually occur. It is also 23,205 fewer than the total preference numbers actually recaptured by the AC21A. DOS chose to exclude the 106,834 recaptured employment preference numbers from its original chart, but it left in the remaining 23,205 recaptured employment preference numbers as recapturable family preference numbers. As such, an additional 23,205 employment preference numbers must be subtracted from total recapturable employment preference numbers to reflect that they were already recaptured by the AC21A. The accounting for recaptured preference numbers under the AC21A described above and shown in the two right-hand columns in **Table 4** differs from when the recaptured preference numbers were actually issued. The latter occurred in FY2002, FY2005, and FY2007. **Table 4** shows that the number of employment preference numbers actually used exceeded that fiscal year's employment preference limit by 28,951, 93,844, and 7,349, respectively.
- b. Unlike the 130,039 recaptured employment preference numbers from the AC21A that were deducted from this table, the 50,000 employment preference numbers recaptured by the RIA were left in the original DOS chart. Note 4 on page 152 of the 2008 hearing transcript states: "Of the employment preference numbers unused in FY2001-FY2004, 50,000 have already been recaptured and used for *Schedule A* applicants. Therefore, only the balance (6,950) remain unused." DOS has told CRS that this was done so that readers could follow the computation of recapturable preference numbers.

Assessing the Four Scenario Methods

Table 5 presents total recapturable family and employment preference numbers computed for FY1992 through FY2020 under Scenarios 1, 2, 3, and 4 described above. All computations reflect the subtraction of the previously recaptured 180,037 employment-based preference numbers. Among the four approaches, Scenario 3 yields the highest number of recapturable preference numbers while Scenario 1 and Scenario 2 yield the fewest.

Table 5. Total Preference Numbers Recaptured Under Scenarios 1, 2, 3, and 4

	Family Preference Numbers		Employment Preference Numbers		Total	
	Unused	Available for Recapture	Unused	Available for Recapture	Unused	Available for Recapture
Scenario 1	421,462	106,979	520,326	132,101	941,788	239,080
Scenario 2	421,462	6,741	520,326	232,665	941,788	239,406
Scenario 3	421,462	421,462	520,326	340,287	941,788	761,749
Scenario 4	366,175	366,175	386,841	206,802	753,016	572,977

Source: See totals in **Table 1**, **Table 2**, **Table 3**, and **Table 4**.

Under Scenario 1, all unused family preference numbers fall across and increase the following fiscal year's employment preference limit. Under current practice, unused employment preference numbers that fall across to the following fiscal year's family preference limit are effectively lost, but under Scenario 1, they are either tallied as recapturable family and employment preference numbers or applied to recapture the 130,039 employment preference numbers as authorized in the AC21A.

Scenario 2 computes recapturable preference numbers similar to Scenario 1 and yields the same total recapturable preference numbers. However, almost all of the total recapturable preference numbers are allocated to employment-based immigrants.

The Scenario 3 approach double counts some family preference numbers. When family preference numbers are unused, they fall across to increase the following year's employment preference limit where they can be largely utilized. However, to then compute these unused numbers as recapturable, which Scenario 3 does, suggests that the unused family preference numbers could be used twice: once to increase the employment preference limit and then again as reclassified recapturable family preference numbers.

Scenario 4, which computes recapturable preference numbers in a similar way as Scenario 3, also double counts some family preference numbers. Because the family and employment preference limits do not exceed 226,000 and 140,000 respectively, total recapturable family and employment preference numbers computed are less than in Scenario 3. In addition, Scenario 4 computes a speculative number of employment preference numbers that would have been recaptured under the 2000 AC21A, had that method of computing recapturable preference numbers been used. Because it was not, 23,205 already recaptured employment preference numbers are not reflected in the original DOS computations and must be subtracted from the total (see **footnote a** in **Table 4**).

The summary figures shown in **Table 5** do not account for additional employment preference numbers that Congress could consider for recapture. This additional figure stems from how the annual family-sponsored preference limit is computed (see "How Immigrant Preference Numbers Remain Unused" above). In a situation where subtractions (i.e., immediate relatives, parolees, etc.) exceed 254,000 (the difference between 480,000 and the 226,000 floor), and where unused employment preference numbers that are added to the computation produce a total that exceeds the 226,000 floor, unused employment preference numbers will effectively be lost. The loss occurs because some unused employment preference numbers must be applied to the number of immediate relatives exceeding 254,000, rather than to family-sponsored preference immigrants.

This situation occurred only once in the 19 fiscal years covered by this analysis. In FY2000, 98,941 unused employment preference numbers from FY1999 fell across to the family preference category. Subtractions for that year equaled 284,340 (30,340 above 254,000). Accordingly, the FY2000 family preference limit was computed as 480,000 minus 284,340 plus 98,941, or 294,601. This computed limit

exceeds the 226,000 family preference floor by 68,601, despite the fact that 98,941 unused employment preference numbers were available. The difference of 30,340 unused employment preference numbers was applied to immediate relatives, parolees, and others, whose numbers are not restricted by the INA. It was not applied to family preference immigrants whose numbers are restricted. Unlike all other computations of recapturable preference numbers, this computed number was embedded in the computation of the annual family preference limit. As such, it was not presented in the original DOS analysis. Because the FY2000 family preference limit was identical for all four scenarios, this situation applies to them equally.

In email communications with CRS regarding what it considers to be the number of preference numbers available for recapture, DOS has repeatedly cited figures computed under Scenario 1.⁴³ DOS has also indicated that it estimates, as of August 28, 2021, that 151,000 family-sponsored immigrant preference numbers and 88,000 employment-based immigrant preference numbers will remain unused by the end of FY2021.⁴⁴ The sizable number of unused immigrant visas resulted from the COVID-19 pandemic.⁴⁵ Combining these additional preference numbers with the FY2020 computed recapturable preference number totals (106,979 family-sponsored, 132,100 employment-based) under Scenario 1 (**Table 1**) yields roughly 258,000 family-sponsored and 220,000 employment-based recapturable immigrant preference numbers at the end of FY2021.

Previously Enacted Recapture Legislation

As noted above, Congress has twice passed legislation to recapture unused employment-based preference numbers in specified fiscal years. In both cases, it has used the same approach. In the first instance, Section 106(d) of the American Competitiveness in the 21st Century Act of 2000 (the AC21A, P.L. 106-313) recaptured

the difference between the number of employment-based visas that were made available in fiscal years 1999 and 2000 and the number of such visas that were actually used in such fiscal years.

The act recaptured 130,039 unused employment preference numbers (98,941 in FY1999 and 31,098 in FY2000). It required that recaptured preference numbers be made available for use starting in FY2001 and only to the first, second, and third employment-based (EB1, EB2, and EB3) preference categories.

In the second instance, in 2005, Congress passed the REAL ID Act within the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (the RIA, P.L. 109-13).⁴⁶ The RIA amended the AC21A by recapturing an additional 50,000 unused employment preference numbers from FY2001, FY2002, FY2003, and FY2004.⁴⁷ Because the second act amended the first by

⁴³ Charles Oppenheim, Chief of Visa Control and Reporting Division, U.S. Department of State, email correspondence to CRS, January 29, 2021, February 10, 2021, and August 28, 2021.

⁴⁴ Charles Oppenheim, Chief of Visa Control and Reporting Division, U.S. Department of State, email correspondence to CRS, August 28, 2021. These estimates are subject to change.

⁴⁵ The COVID-19 pandemic had two major impacts in this regard. It hampered USCIS's and DOS's ability to process FY2021's allocation of immigrant preference numbers, particularly in overseas consulates that closed or limited their operations. It also caused the Trump Administration to restrict immigrant entry which reduced the number of preference numbers utilized. See CRS Legal Sidebar LSB10415, *COVID-19: Federal Travel Restrictions and Quarantine Measures* and CRS Insight IN11362, *COVID-19-Related Suspension of Immigrant Entry*.

⁴⁶ This provision was added to H.R. 1268 as an amendment in the Senate and was accepted by the conferees.

⁴⁷ However, the Act reserved the recaptured preference numbers only for *Schedule A* health care occupations. Schedule A occupations are described in 20 C.F.R. §656.5(a) and include, in large part, nurses and physical therapists.

expanding the number of years from which unused employment numbers could be recaptured, it relied upon the same analytic approach to compute recaptured preference numbers.⁴⁸

Both acts compute the number of recapturable preference numbers as the difference between the “number of employment-based visas that were made available” or the annual limit for employment preference numbers in the specified fiscal years, and the number of employment preference numbers actually used in those fiscal years. This language does not definitively indicate how Congress might have computed the total number of recapturable preference numbers.

One possible interpretation of the language in both acts is that total recapturable preference numbers equal the difference between the annual limit and actual usage for each fiscal year, with no further computations required. In **Table 6**, the sums of all employment preference and family preference numbers actually used between FY1992 and FY2020 are subtracted from the respective sums of annual limits over this 19-year period. The 50,000 previously recaptured employment preference numbers—which DOS accounted for separately—also are subtracted out.⁴⁹ To account for numerous and relatively minor differences described below, a set of what CRS has labeled *DOS adjustments* (described further below), whose net total equals 1,978 employment and 5,987 family preference numbers, are also subtracted out. This computation yields 340,287 recapturable employment preference numbers and 421,462 recapturable family preference numbers, results identical to those of Scenario 3 in **Table 3**.

Table 6. Possible Recapture Method from Prior Legislation
(Subtracting total preference numbers used from total annual limits, FY1992-FY2020)

	Employment-Based Preference Numbers	Family-Sponsored Preference Numbers
Sum of Annual Preference Limits from FY1992-FY2020	4,374,950	6,742,624
Less: Sum of Actual Preference Numbers Used from FY1992-FY2020	(3,986,641) ^a	(6,327,149)
Less: Previously Recaptured Preference Numbers (accounted for separately)	(50,000) ^b	0
Less: DOS Adjustments	(1,978) ^c	(5,987)
Equals: Total Potentially Recapturable Preference Numbers	340,287	421,462

Source: See sources in **Table A-1**.

- This figure includes 130,039 recaptured preference numbers that were issued in excess of DOS annual limits for employment-based immigrants established for FY2002 (28,951), FY2005 (93,886) and FY2007 (7,349) (see **Table A-1**). A difference of 149 preference numbers exists between the number slated for recapture (130,039) and the sum of the three years' excess preference numbers (130,186) which CRS attributes to DOS adjustments.
- These 50,000 recaptured employment preference numbers were tracked separately by DOS. They appear in DOS published annual totals of immigrant visa issuances. See U.S. Department of State, *Annual Report of the Visa Office*, Table V, for FY2006 and FY2007.
- See **Table A-1** and accompanying text for the computation and description of these DOS adjustments.

⁴⁸ Neither of these two acts amended the INA.

⁴⁹ This separate subtraction of 50,000 recaptured employment preference numbers also appears in the 2008 Immigration Subcommittee hearing transcript. DOS has consistently accounted for these recaptured numbers separately from its published tallies of recapturable visas, such as those that appeared in the attachments to the 2008 Immigration Subcommittee hearing transcript. DOS did not remove the 50,000 recaptured employment numbers from the figures in its tables (as it did for the 130,039 recaptured preference numbers from the AC21A) in order to show the affected years' actual calculations. Charles Oppenheim, Chief of Visa Control and Reporting Division, U.S. Department of State, email correspondence to CRS, April 28, 2021. See also **Footnote c** in **Table 4**.

An alternative interpretation of the language in both acts is that Congress confined its definition of recapturable preference numbers only for specified fiscal years (FY1999 and FY2000 for the AC21A, and FY2001-FY2004 for the RIA). Such an interpretation provides that Congress did not expand its consideration to recapturing preference numbers for all fiscal years since the enactment of the Immigration Act of 1990. It follows that had Congress done so, it would have more definitively endorsed, implicitly or explicitly, a methodological approach to be used for all fiscal years. In addition, because Congress only recaptured unused employment preference numbers, one also cannot assume it would have applied the same approach to recapturing unused family preference numbers.

Concluding Observations

Absent legislation, unused immigrant preference numbers cease to be available for use. Legislation to recapture unused preference numbers would allow the United States to admit additional immigrants without increasing statutory limits governing numerically limited immigration. Because the INA does not specify how to compute unused immigrant preference numbers available for recapture, Congress may specify any analytic approach to computing recapturable immigrant preference numbers that it considers appropriate or leave that determination to the Administration.⁵⁰

Congress has twice passed legislation to recapture preference numbers in 2000 and 2005. In doing so, Congress recaptured employment preference numbers, not family preference numbers. While it appears from the legislative language that Congress may have used the Scenario 3 analytic approach in both bills, it is not clear that Congress intended to recapture preference numbers beyond the current numerical limits established in the INA. The Scenario 3 and Scenario 4 approaches, if applied to all fiscal years considered in this analysis, would result in the double counting of unused preference numbers. The Scenario 1 and Scenario 2 approaches would not. Congress could also consider recapturing preference numbers that were lost when DOS determined the FY2000 family-sponsored preference limit, a one-time case.

Supporters of recapturing unused immigrant preference numbers point to the INA's roll-down and roll-across provisions as evidence that Congress intended for all numerically limited preference numbers to be fully utilized. They also point to sizable queues of prospective employment-based and family-based immigrants with approved immigrant petitions, many of whom must wait for years for a numerically limited preference number.⁵¹ Some support for recapturing unused preference numbers reportedly exists for specific situations, such as meeting increased demand for medical professionals during the COVID-19 pandemic.⁵²

Opponents of recapturing unused immigrant preference numbers argue that it effectively increases immigration levels outside of statutory limits established by Congress in 1990. They contend that the United States should not be increasing employment-based immigration at a time when many U.S. workers are struggling economically.⁵³

⁵⁰ CRS takes no position on whether or not Congress should recapture immigrant preference numbers or, if it chooses to do so, on which method for computing recapturable preference numbers it should use.

⁵¹ For more information, see CRS Report R46291, *The Employment-Based Immigration Backlog*.

⁵² See for example, Jeremy L. Neufeld, "Congress Can Tap Unused Visas To Bring Nurses and Physicians To Help Fight COVID-19," Niskanen Center, April 29, 2020.

⁵³ See for example, Robert Law, "Biden Administration Continues to Admit Cheap Foreign Workers," Center for Immigration Studies, April 21, 2021.

Appendix A. Additional Source Data

Table A-1. DOS Annual Preference Immigrant Limits vs. Numbers Used, FY 1992-FY 2020

Fiscal Year	Employment-Based Preference Numbers					Family-Sponsored Preference Numbers				
	DOS Preference Limit	Preference Numbers Used	Unused Preference Numbers per CRS	Unused Preference Numbers per DOS	Adjustments	DOS Preference Limit	Preference Numbers Used	Unused Preference Numbers per CRS	Unused Preference Numbers per DOS	Adjustments
1992	140,000	118,829	21,171	21,207	(36)	226,000	220,612	5,388	5,435	(47)
1993	161,207	161,053	154	0	154	232,483	229,382	3,101	3,213	(112)
1994	143,213	112,491	30,722	29,430	1,292	226,000	219,672	6,328	6,503	(175)
1995	146,503	86,790	59,713	58,694	1,019	253,721	253,780	(59)	0	(59)
1996	140,000	118,176	21,824	21,173	651	311,819	311,858	(39)	0	(39)
1997	140,000	99,201	40,799	40,710	89	226,000	226,008	(8)	0	(8)
1998	140,000	86,367	53,571	53,571	62	226,000	205,115	20,885	20,906	(21)
1999	160,906	61,965	98,941	98,941	0	226,000	223,701	2,299	2,299	0
2000	142,299	111,166	31,133	31,098	35	294,601	242,539	52,062	52,074	(12)
2001	192,074	186,536	5,538	5,511	27	226,000	223,384	2,616	2,632	(16)
2002	142,632	171,583	(28,951)	0	(28,951)	226,000	194,458	31,542	31,532	10
2003	171,532	83,020	88,512	88,482	30	226,000	161,576	64,424	64,422	2
2004	204,422	157,107	47,315	47,305	10	226,000	217,565	8,435	8,449	(14)
2005	148,449	242,335	(93,886)	0	(93,886)	226,000	222,095	3,905	3,949	(44)
2006	143,949	133,622	10,327	10,326	1	226,000	218,857	7,143	7,148	(5)
2007	147,148	154,497	(7,349)	0	(7,349)	226,000	203,293	22,707	22,707	0
2008	162,704	162,949	(245)	0	(245)	226,000	226,105	(105)	0	(105)
2009	140,000	140,987	(987)	0	(987)	226,000	215,333	10,667	10,667	0
2010	150,657	150,262	395	395	0	226,000	226,651	(651)	0	(651)
2011	140,000	139,302	698	698	0	226,000	221,042	4,958	4,958	0
2012	144,951	144,647	304	304	0	226,000	207,535	18,465	18,465	0
2013	158,466	161,269	(2,803)	0	(2,803)	226,000	215,753	10,247	10,247	0
2014	150,241	151,359	(1,118)	0	(1,118)	226,000	221,193	4,807	4,807	0
2015	144,796	143,952	844	844	0	226,000	225,671	329	329	0
2016	140,338	140,350	(12)	0	(12)	226,000	230,691	(4,691)	0	(4,691)
2017	140,000	139,604	396	396	0	226,000	225,719	281	281	0
2018	140,292	139,483	809	809	0	226,000	224,090	1,910	1,910	0
2019	141,918	140,586	1,332	1,332	0	226,000	209,752	16,248	16,248	0
2020	156,253	147,153	9,100	9,100	0	226,000	103,719	122,281	122,281	0
Subtotal	4,374,950	3,986,641	388,309	520,326	(132,017)	6,742,624	6,327,149	415,475	421,462	(5,987)
Recapture					130,039					
Total	4,374,950	3,986,641	388,309	520,326	(1,978)	6,742,624	6,327,149	415,475	421,462	(5,987)

Source: DOS Preference Limits and Actual Preference Numbers Used for FY1992: U.S. Department of State, Report of the Visa Office FY1992; DOS Preference Limits and Actual Preference Numbers Used for FY1993-FY1999: email communication to CRS from Charles Oppenheim; DOS Preference Limits for FY2000-FY2019: U.S. Department of State, *Visa Bulletin*, September, multiple years; DOS Preference Limits for FY2020 and FY2021: U.S. Department of State, *Annual Numerical Limits FY-2020* and *Annual Numerical Limits FY-2021*, undated; Actual Preference Numbers Used for FY2000-FY2020: U.S. Department of State, *Report of the Visa Office*, Table V, multiple years; Unused Preference Numbers Per CRS: computed by CRS by subtracting actual preference numbers used from DOS annual preference limits for each year; Unused Preference Numbers Per DOS for FY1992-FY2007: 2008 Immigration Subcommittee hearing transcript, p. 149; Unused Preference Numbers Per DOS for FY2008-FY2020; computed by CRS, and see table notes; Adjustments: computed by CRS by subtracting unused preference numbers per DOS from unused preference numbers per CRS.

Notes: Unused preference numbers per CRS represent positive and negative arithmetic differences between DOS annual limits and actual preference numbers used, whereas unused preference numbers per DOS represent the arithmetic differences only when the values are positive and zero otherwise. FY2002, FY2005, and FY2007 employment-based adjustments represent recaptured preference numbers from the AC21A as described in the text. The 50,000 employment-based preference numbers that were recaptured in the RIA are not shown because they were tracked separately by DOS. When computing recapturable preference numbers, they must be subtracted out separately, as shown in the tables below.

Adjustments in **Table A-1** can reflect several factors. Relatively small negative and positive numbers, such as those shown for employment-based preference numbers in FY1992 (-36) and FY1993 (154) may reflect subsequent adjustments by DOS to earlier published statistics.⁵⁴

Frequently, unused family preference numbers in a fiscal year that are added to the annual 140,000 employment preference allocation yields an employment preference limit for the following year that differs from the published DOS employment preference limit for the following year. These relatively minor differences appear starting in FY2009, subsequent to the last fiscal year shown in the DOS tables presented in the Immigration Subcommittee hearing transcript. In sum, they reflect the differences between the following year's employment preference limit computed with figures published in DOS's annual visa report, and those published by DOS in its announcements of annual preference limits for the following fiscal year.

Some more sizable differences, such as employment-based preference numbers issued in excess of DOS's annual limits in FY2013 (2,083) and FY2014 (1,118) resulted in part because DOS must estimate in early August the number of preference numbers to allocate for the end of the fiscal year. Unanticipated issues in the ensuring months of August and September can result in preference number utilization that is higher or lower than expected.⁵⁵ Finally, the 130,039 recaptured preference numbers from the AC21A were issued in FY2002 (28,951), FY2005 (93,886) and FY2007 (7,349).⁵⁶ The sum of excess issuances in those three years equals 130,186, or within 147 numbers of what were authorized in the legislation.⁵⁷

⁵⁴ For example, in the FY1993 DOS Report of the Visa Office, DOS notes that in addition to the 482,521 numbers used for visa issuances or INS adjustments of status, 82 family preference numbers were charged for children admitted under INA 211(a) accompanying parents with family preference visas and 16 employment preference numbers were charged for children admitted under INA 211(a) accompanying parents with employment preference visas. U.S. Department of State, *Report of the Visa Office 1993*, page 46. Similar minor differences between DOS figures for the same fiscal year can be seen by comparing figures shown in immigrant visa recapture charts presented in different years of the USCIS Ombudsman report. See Citizenship and Immigration Services Ombudsman, *Annual Report to Congress 2007*, June 2007, Figure 9; and Citizenship and Immigration Services Ombudsman, *Annual Report to Congress 2010*, June 2010, Figure 19. These two USCIS Ombudsman reports represent the only other published year-by-year presentations of recapturable visa computations that CRS is aware of, apart from computations presented in the 2008 Immigration Subcommittee hearing transcript.

⁵⁵ Charles Oppenheim, Chief of Visa Control and Reporting Division, U.S. Department of State, email correspondence to CRS, April 28, 2021.

⁵⁶ See U.S. Department of State, *Report of the Visa Office 2007*, Appendix D.

⁵⁷ CRS was unable to locate an explanation for this difference.

Appendix B. Recapture Text from the AC21A and RIA

The following text comes from Section 106(d) of the American Competitiveness in the Twenty-first Century Act of 2000 which was included in P.L. 106-303:

(d) RECAPTURE OF UNUSED EMPLOYMENT-BASED IMMIGRANT VISAS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the number of employment-based visas (as defined in paragraph (3)) made available for a fiscal year (beginning with fiscal year 2001) shall be increased by the number described in paragraph (2). Visas made available under this subsection shall only be available in a fiscal year to employment-based immigrants under paragraph (1), (2), or (3) of section 203(b) of the Immigration and Nationality Act.

(2) NUMBER AVAILABLE.—

(A) IN GENERAL.—Subject to subparagraph (B), the number described in this paragraph is the difference between the number of employment-based visas that were made available in fiscal years 1999 and 2000 and the number of such visas that were actually used in such fiscal years.

(B) REDUCTION.—The number described in subparagraph (A) shall be reduced, for each fiscal year after fiscal year 2001, by the cumulative number of immigrant visas actually used under paragraph (1) for previous fiscal years.

(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the application of section 201(c)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1151(c)(3)(C)).

(3) EMPLOYMENT-BASED VISAS DEFINED.—For purposes of this subsection, the term “employment-based visa” means an immigrant visa which is issued pursuant to the numerical limitation under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)).

The following text comes from Section 502 of the Real ID Act which was included in P.L. 109-13:

SEC. 502. VISAS FOR NURSES.

Section 106(d) of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106-313; 8 U.S.C. 1153 note) is amended—

(1) in paragraph (1), by inserting before the period at the end of the second sentence “and any such visa that is made available due to the difference between the number of employment-based visas that were made available in fiscal year 2001, 2002, 2003, or 2004 and the number of such visas that were actually used in such fiscal year shall be available only to employment-based immigrants (and their family members accompanying or following to join under section 203(d) of such Act (8 U.S.C. 1153(d))) whose immigrant worker petitions were approved based on schedule A, as defined in section 656.5 of title 20, Code of Federal Regulations, as promulgated by the Secretary of Labor”;

(2) in paragraph (2)(A), by striking “and 2000” and inserting “through 2004”; and

(3) in paragraph (2), by amending subparagraph (B) to read as follows:

“(B)(i) REDUCTION.—The number described in subparagraph (A) shall be reduced, for each fiscal year after fiscal year 2001, by the cumulative number of immigrant visas actually used under paragraph (1) for previous fiscal years.

“(ii) MAXIMUM.—The total number of visas made available under paragraph (1) from unused visas from the fiscal years 2001 through 2004 may not exceed 50,000.”.