

BORDER SECURITY, ECONOMIC OPPORTUNITY AND IMMIGRATION MODERNIZATION ACT

Pre-Title and Title I: Border Security

Title one of the bill and its preamble address issues of border security, the oversight of the border, and the security goals that must be achieved. It provides an alternate border security plan that includes required “triggers,” or goals that must be met, before the bill’s legalization plan can be implemented.

Border Enforcement and Triggers

Requirements, metrics, and goals: Reports to the GAO and congressional committees are required 90 days after enactment, and at regular intervals thereafter, on situational awareness and operational control. “Operational control” means a 90% illegal border crossing effectiveness rate and significant reduction of the movement of drugs and contraband. “Situational awareness” means knowledge and understanding of illicit cross-border activity. Metrics shall be implemented to measure the security at and between ports, including the illegal border crossing effectiveness rate, rate of drug seizure, and other methods, such as recidivism data. Similar metrics must be provided for maritime border. DHS must implement metrics to measure effectiveness at ports and between ports of entry, including illegal border crossing rates, drug seizure rates, and reentry recidivism. DHS is directed to certify in 2 years after submission of plan if situational awareness and operational control have been achieved in high traffic areas. Certification should be provided within 5 years if operational control has been achieved over the southwest border, and annual certifications thereafter. If these goals are not established by the 2 and 5 year deadlines DHS must provide reports explaining why within 60 days.

The Southern Border Security Commission and the Border Security Results

Strategy: This commission will be formed if border security goals are not achieved within 5 years. It will be composed of members appointed by the President, Senate, House, and southern border states, and will provide recommendations on how to achieve and maintain the security goals. The Border Security Results Strategy will be submitted 180 days after enactment and will provide a comprehensive strategy for gaining and maintaining situational and operational control in high traffic areas within 2 years, and operational control of the southwest border within 5 years, of submission of the plan. The Strategy will include assessment of threats, integration of technology, cooperation of DHS components, and staffing requirements. The GAO will review the implementation plan.

Entry-Exit tracking system: DHS is directed to submit a plan within 180 days of enactment to implement biometric exit capability at ports of entry under the US-VISIT program. If such a system is determined not to be feasible, an alternative plan must be submitted to implement an alternative program within 2 years that provides the same security.

Alternate border security strategy and triggers: The alternate strategy allows DHS to consider a security strategy that will require that implementation of the Comprehensive

Southern Border Strategy and Southern Border Fencing Strategy commence before applications will be accepted for the Registered Provisional Immigrants (RPI) legalization program. The goal of the Comprehensive Southern Border Strategy will be achieving a 90% effectiveness rate at all high-risk border sectors, and the Southern Border Fencing Strategy will identify where fencing, double-fencing, and technology and infrastructure will be deployed. Under this alternative, RPIs will not be able to adjust status to lawful permanent resident status until the Comprehensive Southern Border Strategy is substantially deployed and operational, the Southern Border Fencing Strategy has been substantially completed, the E-Verify employment authorization verification system has been made mandatory for all employers, and an electronic exit system at air and sea ports is in use.

Additional resources dedicated to border security: \$3 billion for the Border Security Results Strategy; \$2 billion to carry out the Commission's recommendations; \$1.5 billion for fencing, infrastructure, personnel, and technology; and \$750 million for E-Verify; funds for the hiring of 3,500 CBP officers; funds for increasing prosecution of border crossing violations; enhancements to state law enforcement preparedness through Operation Stonegarden for combating illegal immigration and drug smuggling; 24-hour surveillance of the southwest border region using video, unmanned aircraft, helicopters and watercraft; expanded reimbursement of states' costs of detention of unauthorized immigrants; and training of CBP, Border Patrol and ICE officers. The salaries of border contractors will have caps.

Oversight and humanitarian protections: An independent Department of Homeland Security Border Oversight Task Force, with 33 members appointed by the President, including 14 members from the northern border region and 19 from the southern border region, will be established to make recommendations on border-enforcement policies, the impact of these policies on border communities, the protection of due-process rights and civil rights of border residents and migrants, and the training of border personnel, among other duties. Members will include tribal government officials. Training and reports will be required to address the humanitarian needs of children and the physical safety of immigrants. In addition, the U.S. Citizenship and Immigration Services (USCIS) Ombudsman's authority will be expanded to cover U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).

Title II: Immigrant Visas

This title addresses permanent legal status in the United States. It creates a Registered Provisional Immigrant (RPI) program for undocumented immigrants and incorporates versions of the DREAM Act and AgJOBS, for undocumented young people brought to the U.S. as children and for agricultural workers, respectively. It provides sufficient visas to erase the current backlog of family and employment-based visa applicants in the next 7 years, eliminates or changes some family-based immigration programs, and creates a new

merit system that is based on points accrued through education, employment, and family ties.

The Registered Provisional Immigrant program

Eligibility: The bill will allow undocumented immigrants to apply for Registered Provisional Immigrant (RPI) status if they have been in the U.S. since December 31, 2011, have not been convicted of a felony or three or more misdemeanors, pay their assessed taxes, pass background checks, and pay penalty fees, among other requirements. Applicants must also be admissible under current law, which excludes individuals who have committed certain offenses, participated in terrorist acts, or belong to other excluded categories. Spouses and children of RPIs would also be eligible. RPIs will not be eligible for federal means-tested public benefits such as Medicaid, food stamps, and benefits under the Affordable Care Act.

Implementation: The government is required to publish regulations implementing the program within one year of enactment; during that time, removal of eligible individuals is prohibited, however, DHS shall be free to initiate removal proceedings against individuals who appear ineligible for the program, such as those who have committed crimes or engaged in other disqualifying behavior. RPI enrollment period shall run for one year following publication or regulations with the possibility of an 18 month extension.

Background Checks: RPI applicants must submit biographic and biometric data (fingerprints) to allow DHS to conduct national security and law-enforcement checks. Applicants may be required to appear for a personal interview to determine eligibility. They must pass an additional background check when they renew their RPI status, and nationals of countries that are deemed a threat to national security may be required to pass additional screenings.

Transition to citizenship: The initial grant of RPI status is good for six years. RPI status may be renewed for six years if the immigrant has remained continuously employed, or demonstrates income or resources not less than 100% of the poverty level, or qualifies for certain exceptions; undergoes another background check; pays taxes; and pays an additional penalty, among other requirements. An immigrant who has been in RPI status for at least 10 years will be eligible to apply for a green card, but they will not be able to become lawful permanent residents until all other applications submitted before the enactment of the bill have been processed. The requirements will include maintaining RPI status, paying taxes, meeting English proficiency requirements, maintaining employment, showing available resources or meeting listed exemptions, showing they will not become a burden on the state, passing background checks, and paying an additional penalty. After three years as an LPR, undocumented immigrants who legalize via the RPI track will be able to apply for citizenship.

Undocumented immigrants who arrived as children (DREAMers)

Undocumented youth who would qualify for the DREAM Act apply for RPI status under the same application process as other undocumented immigrants. However, they may

apply for Lawful Permanent Residence after five years in RPI status. To qualify for this accelerated program, an applicant must have entered the U.S. before he or she turned 16, have been in RPI status for at least five years, have earned a high-school diploma or GED, have completed at least two years of college or four years of military service, and have passed an English test and background checks, among other requirements. DREAMers may apply for citizenship as soon as they receive their green card.

Undocumented agricultural workers

Undocumented agricultural workers will be eligible for an immigrant status called a blue card. To qualify they must have performed at least 575 hours or 100 work days of agricultural employment during a two-year period ending December 31, 2012, and must pay a penalty and pass background checks. They must meet the same criminal and admissibility requirements as applicants for RPI status. They can be in blue-card status for up to eight years after regulations are published, and will not be eligible for federal means-tested public benefits. Blue-card holders may apply for Lawful Permanent Resident status five years after enactment of the bill if they have continued to work in agriculture, paid their taxes, and pay a fine. They may apply for citizenship after being permanent residents for five years. This section is modeled on the AgJobs bills introduced in prior sessions of Congress.

Legal Immigration Reforms

This subtitle lays out reforms and new components of the immigration system and addresses backlogs and immigration levels. In particular, it creates a new merit-based point system with two tracks that award points to immigrants with educational credentials, work experience, and other qualifications. It will function alongside the current family-based immigration and employment-based immigration programs, which allow U.S. companies, citizens, and legal permanent residents to file petitions for relatives or employees.

Merit-Based Point System, Track 1: The Track 1 merit-based point system allows foreign nationals to obtain Lawful Permanent Residence in the United States by accumulating points mainly based on their skills, employment history, and educational credentials. At the same time, the current immigrant visa categories for siblings and adult married children of U.S. citizens, as well as the diversity visa program, are eliminated and replaced by this system. Between 120,000 and 250,000 visas would be allocated each year based on the point system. The visa cap would fluctuate using a formula that takes into account the number of visas requested the previous year and the unemployment rate.

Track 1 Tiers: The system would be divided into two “tiers,” one for higher-skilled immigrants with advanced educational credentials and experience, and a second for less-skilled immigrants. Beginning in the 5th fiscal year after the enactment of the bill, 50% of the visas will be allocated to applicants with the highest number of points under

tier 1, and 50% will be allocated to applicants with the highest number of points allocated under tier 2.

Track 1 Points: The allocation of points in both tiers is based on a combination of factors, including education, employment, occupation, civic involvement, English language proficiency, family ties, age, and nationality. There is no “passing score” that needs to be reached to qualify. However, the system prioritizes immigrants who are young, educated, experienced, skilled, and fluent in English. Family ties and regional diversity are less-heavily weighted factors. Ten points maximum of a total of 100 are assigned based on family ties, and 5 points are given to nationals of countries with low immigration to the United States. Years spent working in the U.S. as a W nonimmigrant worker can be credited towards a merit-based application under Track 1, tier 2.

Merit-Based Point System Track 2: The track 2 merit-based system addresses the current backlog of applicants who have applied for or are eligible to apply for a green card through family or employment based applications. This track will clear the backlog of applicants by allocating visas to persons with pending applications in the family or employment based category over the course of 7 years. In addition, the track two merit-based system makes visas available to RPIs who have maintained that status for at least 10 years.

Family-based immigration

Spouses and children of Lawful Permanent Residents under the current family-based system will be considered immediate relatives, making them exempt from current visa caps and immediately eligible for green cards. After a transition period, the family based immigration categories for siblings of U.S. citizens, and married sons or daughters of U.S. citizens who are over 30 years of age will be eliminated. The annual worldwide level of family-based immigrant visas will remain at 480,000 per year, minus the visas assigned to immediate relatives the previous year, but not less than 161,000 per year starting 18 months after enactment.

Employment-based immigration

Country-specific limits on employment-based immigrant visas are eliminated. Certain highly skilled and exceptionally talented immigrants are also exempted from the worldwide cap, such as those who have extraordinary ability or advanced degrees in STEM fields from U.S. universities. STEM graduates would also be exempt from the labor certification requirement. The annual worldwide cap on employment-based immigrant visas will remain at 140,000 per year.

Integration into society

The bill contains provisions to facilitate immigrants’ language acquisition, civic engagement, financial self-sufficiency, and upward economic mobility. In particular, the bill creates three new organizational structures: the Office of Citizenship and New

Americans, the Task Force on New Americans, and the United States Citizenship Foundation that will assist immigrants in applying for RPI status and for naturalization, and help with integration issues.

Other changes to immigrant and non-immigrant visa programs

Nonimmigrant agricultural W visa program: This subtitle creates a new nonimmigrant, less-skilled W visa agricultural worker program. (Note that Title 2 describes the agricultural W visa program while the non-agricultural W visa is described in Title 4.) When this program is operational it will replace the H-2A agricultural worker program. Foreign workers enter the U.S. to work for employers designated by the Department of Agriculture may leave their position to work for other designated agricultural employers. Designated agricultural employers must perform recruitment activities to show there are no available U.S. workers before W visa workers can be employed. The system establishes W-2 visas for contract employees and W-3 visas for “at-will” employees. W visas are valid for 3 year and may be renewed for another 3 year period. Employers must pay W workers the higher of the minimum wage or specified wage rates, must generally provide housing or a housing allowance, and must provide U.S. workers the same benefits, wages, and working conditions. After the 5th year of the program the W agricultural visa cap will be set by the Department of Agriculture using a calculation that takes into account unemployment rates, market demand, and other factors.

Miscellaneous Changes: Various changes are also made to the V visa program, including making it available to siblings of citizens and permanent residents. Additional protections are provided for children of the beneficiaries of visa petitions, stepchildren, widows, and orphans. The EB-5 investor visa program and the Conrad-30 J waiver program for physicians working in medically underserved areas are modified and made permanent. Changes are made to the Child Citizenship Act of 2000 to make the changes retroactive and ease citizenship requirements for children born to or adopted by U.S. citizen parents.

Title III: Interior Enforcement

This title addresses DHS’s ability to enforce immigration laws while correcting many procedural problems with the immigration system. Central to Title III is a phased in, mandatory E-Verify employment eligibility verification program. The bill also addresses important refugee and asylum issues, enhances due-process protections in the immigration courts, increases the oversight of detention facilities, and toughens penalties for gang-related convictions and other offenses.

E-Verify

Improvements to current system: E-Verify is an internet-based system used for verifying the employment authorization of workers. It will be expanded and made mandatory for all employers over a period of five years. The bill requires identity

verification through the use of enhanced fraud-proof documents, such as tamper- and identity-theft resistant Social Security cards, and the use of a photo tool to allow employers to verify an individual's identity. Employers are required to confirm identity and employment authorization within three business days after the employee accepts the offer of employment. A mandatory entry and exit system will be implemented at all air and sea ports to help ensure that foreign nationals are leaving the United States as required. The bill will take precedence over local and state laws related to the hiring of foreign nationals, creating a uniform national standard. However, the bill does *not* allow the creation of a national identification card.

Phase-In: Generally speaking, all employers must use the E-Verify system within five years. Employers with more than 5,000 employees must use it no later than two years after publication of the regulations. Employers with more than 500 employees must use it within three years, with an exception for agricultural employers, who are given four years. All remaining employers subject to mandatory E-Verify must use the system within four years, with an exception for Indian tribal government employers, who are given five years, and for employment that is “casual, sporadic, irregular, or intermittent.”

Penalties: Employers who knowingly hire, recruit, refer, or continue to employ an unauthorized immigrant or fail to comply with E-Verify requirements are subject to increased civil or criminal penalties. Civil fines are increased up to \$25,000 per violation for employers that have committed multiple violations related to hiring unauthorized immigrants. Criminal penalties include two years in prison for employers who have repeatedly hired unauthorized workers, in addition to fines of up to \$10,000. Employers who comply with the system's requirements in good faith will not be penalized if DHS later determines that they have employed an unauthorized worker.

Protections for workers and employers: The bill requires employers to use the E-Verify system for work authorization verification only, and prohibits its use for discriminatory purposes. The system will be subject to regular assessments and audits to detect misuse, discrimination, fraud, identity theft, and civil rights or privacy violations. Workers will have direct access to their information in the system, and will have the right to appeal a determination that they are not work authorized. Reports on the effects of the system on employers, U.S. nationals, and work-authorized individuals will be required.

Protections for Asylees and Other Vulnerable Populations

Asylum process: The one-year asylum filing is eliminated. The bill also eliminates barriers to family reunification and authorizes asylum officers to grant asylum during credible fear interviews. In the interest of efficiency, the President, in consultation with the Secretary of State and DHS, may designate certain persecuted groups with common characteristics whose resettlement in the United States is justified by humanitarian concerns, or is otherwise in the national interest, as meeting the requirements of refugee status. The bill also clarifies that asylum applicants are entitled to work permits within 180 days of filing an asylum application.

Human trafficking and workplace abuse: The bill provides expanded protections against human smuggling and trafficking. Employers recruiting workers abroad are required to register with the Secretary of Labor and post a bond. Employers must disclose the conditions of the visa and the work contract to the worker and are prohibited from charging the workers recruitment fees. The bill expands the availability of the U visa to include victims of serious workplace abuse, slavery, or other serious violations of workers' rights. The bill increases penalties for human smuggling activities and establishes a pilot program to prevent child trafficking.

Miscellaneous: The bill provides additional protections for immigrants who are battered by their spouses and for other vulnerable individuals. Battered immigrants will be eligible to receive certain public housing, and will be eligible for work authorization while their VAWA petitions are pending. The bill also permits qualified stateless individuals to apply for Lawful Permanent Resident status.

Protections for Immigrants in Removal Proceedings

Court Proceedings: The bill allows appointed counsel at government expense for unaccompanied minor children, immigrants with serious mental disabilities, and other particularly vulnerable individuals, and requires that a lawyer be appointed to represent them. The bill requires that immigrants in proceedings have access to evidence in the government's files and adds additional immigration judges, additional court staff, and additional training programs for judges and staff.

Detention Reform: The bill limits the use of solitary confinement and bars its use with children and the seriously mentally ill. In addition, the bill provides for secure, humane alternatives to detention such as electronic monitoring, increases oversight of detention facilities, mandates prompt custody determinations and bond hearings, and provides guidelines for the detention of the parents and caregivers of children.

Enhanced Immigration Penalties for Crimes

Additional Penalties for Criminal Offenses: The bill makes immigrants inadmissible or deportable if they have been convicted of an offense that involves participating in a street gang and promoting the criminal activity of the gang. Undocumented immigrants involved in gangs will also be ineligible for Registered Provisional Immigrant status. The bill makes immigrants inadmissible if they have been convicted of a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment for which they served at least one year in prison, or if they were convicted of more than one such crime. The definition of an aggravated felony is expanded to include three drunk-driving offenses. Criminal penalties for illegal entry, for visa fraud, passport fraud, and passport trafficking are also increased.

Title IV: Reforms to Nonimmigrant Visa Programs

This title reforms the nonimmigrant visa programs for skilled workers and creates new programs for less-skilled workers, investors, and visitors. The visa cap on the H-1B skilled-worker program is raised while worker protections are increased. A new W nonimmigrant visa for less-skilled workers creates a new process for hiring foreign labor. A new nonimmigrant investor visa and an immigrant investor visa are also created.

Nonimmigrant Skilled Worker Visas

The bill raises the annual H-1B visa cap, raises H-1B wage requirements, and requires employers to make significant efforts to recruit U.S. workers. The current H-1B visa cap of 65,000 is replaced with a cap that fluctuates between 115,000 and 180,000 based on a market escalator formula that considers employer demand and unemployment data. The lowest level wage that must be paid to H-1B workers is raised by narrowing the range of wages that employers must pay H-1B workers. Employers are required to place mandatory ads and perform other good faith recruitment to find U.S. workers before hiring an H-1B worker. Employers cannot intentionally displace U.S. workers and must pay an additional fee to place an H-1B worker with another company. Heavy users of the H-1B program, such as H-1B dependent employers or H-1B skilled worker dependent employers, have additional obligations, such as offering the job to U.S. workers first and a prohibition on having more than 50% H-1B or L-1 workers in their workforce. The bill also makes it easier for H-1B workers to change employers and limits employers' ability to place L-1 workers with other employers.

Nonimmigrant Non-Agricultural Less-Skilled Worker Visas

The bill creates a W nonimmigrant visa for less-skilled, non-seasonal, nonagricultural workers, such as workers in janitorial and hospitality industries. (Note that Title 4 describes the non-agricultural W visa program while the agricultural W visa is described in Title 2.) W workers are admitted for a three-year period, renewable for an additional three-year period, and must work for registered non-agricultural employers in registered positions. The program will be supervised by a new entity, the Bureau of Immigration and Labor Market Research, which will designate shortage occupations and provide data and recommendations. The annual W visa cap for registered non-agricultural positions will fluctuate between 20,000 and 200,000, and employers must pay the W workers the actual wage or the prevailing wage for the occupation, whichever is higher. The cap for the construction industry will be 15,000. Employers are required to recruit U.S. workers for their positions, attest that working conditions of U.S. workers will not be adversely affected, and attest that there are no U.S. workers available for the jobs. A complaint process will be established to report violations, and penalties will include back wages, benefits, and civil penalties. The W visa program allows workers to leave their jobs to work for other employers registered with the program. W workers could also eventually apply for Lawful Permanent Residence using Tier 2 of the new Track 1 merit-based point system.

Investor Visas

The bill creates a temporary, three-year, nonimmigrant investor visa, or X visa, which is for entrepreneurs whose businesses have attracted at least \$100,000 in investment, or have created no fewer than three jobs during a two-year period prior to the application and generated \$250,000 in annual revenue. The bill also creates an EB-6 immigrant investor visa for entrepreneurs who have a significant ownership in a U.S. business and have had a significant role in the start-up of the business. The business must have created at least five jobs and must have received at least \$500,000 in venture capital or investment, or created five jobs and generated \$750,000 in annual revenues in the prior two years.

Other Nonimmigrant Visas

The bill creates a nonimmigrant retiree visa for foreign nationals over 55 who do not work, have health insurance, and have \$500,000 to buy a residence in the U.S. The bill creates a Canadian retiree tourist visa that will allow Canadians over age 55 with a residence in Canada to enter the United States for up to 240 days. F-1 student visa holders are authorized to have dual intent, meaning they may be admitted on a temporary basis even if they ultimately intend to live permanently in the U.S. Employers are required to pay H-2B workers (non-agricultural temporary/peak-load/seasonal positions) the prevailing wage or the actual wage paid to U.S. workers, whichever is higher, and employers must attest that they do not displace U.S. workers. Employers must make robust recruitment efforts and the state workforce agency must certify that U.S. workers are not available for the H-2B positions in forestry. Employees of multinational corporations are permitted to enter the United States for 90 days to oversee operations or for 180 days for leadership and development training.