



IMMIGRATION
POLICY
CENTER

AMERICAN IMMIGRATION COUNCIL

Special Report



A Guide to **H.R. 15**

*The Border Security, Economic Opportunity, and
Immigration Modernization Act*

October 2013

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**THE BORDER SECURITY, ECONOMIC OPPORTUNITY,
AND IMMIGRATION MODERNIZATION ACT**

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ABOUT THE IMMIGRATION POLICY CENTER

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

The Basics

On October 2, 2013, Democrats in the House of Representatives proposed an immigration reform bill addressing border security, legalization of the undocumented, interior enforcement of immigration laws, and fixes for our dysfunctional legal immigration programs. The bill is based on S.744, the bipartisan bill passed by the Senate by a vote of 68-32 on June 27, 2013. However, the bill removes the Corker-Hoeven border security amendment and replaces it with the bipartisan House border security bill, H.R. 1417, which was passed unanimously by the Homeland Security Committee in May 2013.

What is in the bill?

The bill is based on the Senate bill as passed by the Judiciary Committee, before the Corker-Hoeven “border surge” amendment, and after six floor amendments were included. The floor amendments included are the following:

- Landrieu amendment 1222 that applies the amendments made by the Child Citizenship Act of 2000 retroactively, repeals the pre-adoption parental visitation requirement for automatic citizenship, and amends section 320 of the Immigration and Nationality Act (INA) relating to automatic citizenship for children born abroad who have a U.S.-citizen parent.
- Tester amendment 1198 that modifies the Border Oversight Task Force to include tribal government officials.
- Manchin amendment 1268 that limits salaries for contractor executives and employees involved in border security.
- Pryor amendment 1298 that promotes recruitment of former members of the Armed Forces and members of the reserve to serve in U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE).
- Heller amendment 1227 that includes a representative from the southwestern state of Nevada on the Southern Border Security Commission.
- Merkley amendment 1237 that requires state workforce agencies to certify that employers are actively recruiting Americans and that Americans are not qualified or available to fill the forestry positions that the employer seeks to fill with H-2B nonimmigrants.

In place of the controversial Corker-Hoeven amendment, which was criticized for indiscriminately “militarizing” the border, the bill incorporates the bipartisan House border security bill, H.R. 1417, or McCaul bill. The McCaul bill takes a more measured approach, requiring extensive reporting and metrics to measure progress and accountability. The bill includes the following:

- Regular reports by the Department of Homeland Security (DHS) on surveillance of and control over the borders, including efforts to assess control over illegal entries, illegal drugs, terrorist threats, and prevention of infringements of human rights. Assessments will be performed by the Government Accountability Office (GAO) of DHS’s methodology and effectiveness.
- A strategy to gain situational awareness and operational control over the southwestern border within five years, starting with high-traffic areas. The strategy must include assessments of threats and metrics to measure effectiveness.
- Submission of a plan to implement a biometric entry-exit system at ports of entry immediately, or if this is determined to not be feasible, an alternate plan that will provide the same level of security.

However, because the McCaul bill is a stand-alone bill, it did not tie the achievement of security requirements, or “triggers,” to the legalization of the undocumented, as the Senate bill did. Instead of modifying the McCaul bill and converting its requirements into “triggers,” the House bill presents the Senate security measures and triggers as an alternative security strategy. At the discretion of the Secretary of Homeland Security, the Senate border security strategies may be implemented and the achievement of the Senate security triggers may be required before the undocumented are allowed to obtain Registered Provisional Immigrant (RPI) status and Lawful Permanent Residence (LPR status, or a “green card”).

What has been removed with Corker-Hoeven?

The Corker-Hoeven “border surge” amendment, which was included in S.744 just before passage in order to obtain additional Republican support, has been removed, in favor of the McCaul border bill. McCaul is more focused on establishing metrics and review of accountability, as opposed to the Corker-Hoeven amendment which established mandatory requirements for spending, infrastructure, border personnel, and technology regardless of actual border security needs. The Corker-Hoeven provisions removed include:

- Over \$30 billion in mandatory additional border spending, which is replaced by McCaul’s more flexible approach to determining necessary border security needs and expenditures.
- Mandatory lists of minimum technology at all border sectors that included fixed towers, camera systems, mobile surveillance systems, hand-held devices, ground sensors, fiber-optic tank inspection scopes, contraband detectors, mobile targeting systems, unmanned aircraft, and radar systems, among other mandatory technology and infrastructure.
- Mandatory deployment of at least 38,405 Border Patrol agents, or more than 19,200 more than currently in place.
- The Southern Border Fencing Strategy and Comprehensive Southern Border Security Strategy, which included 700 miles of mandatory fencing and double-fencing. This will be replaced by the metrics and reporting requirements from the McCaul bill, which will give DHS the discretion to decide on the fencing and technology needed to achieve security goals. However, these strategies from Corker-Hoeven are also included in the House bill as part of the alternate security plan, to be considered at the discretion of DHS.
- Other changes not related to border security that were rolled into Corker-Hoeven as part of the negotiated amendment package are also not included. These changes included 1,000 rescue beacons in areas with high rates of migrant deaths, reductions in the authority of CBP to search without a warrant and enter private lands near the border, a system to closely monitor immigrants who overstay their visas and prioritize their removal, protections against human trafficking for workers in J-1 exchange worker programs, inclusion of seafood processing in the J-1 program, and streamlining of petitions for individuals of extraordinary ability and artists, among other smaller changes.

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.

Border Enforcement and Triggers

What report requirements, metrics, and goals are established?

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 that 90% of illegal border crossings are deterred and that there is a significant reduction in the movement of drugs and contraband across the border. “Situational awareness” means knowledge and understanding of illicit cross-border activity. Within 120 days of enactment, DHS must implement metrics to measure effectiveness at and between ports of entry, including illegal border crossing rates, drug seizure rates, and reentry recidivism. Similar metrics must be used at maritime borders. DHS is directed to certify in two years after submission of the plan if situational awareness and operational control have been achieved in high-traffic areas. Certification should be provided within five years if operational control has been achieved over the entire southwest border, with annual certifications thereafter. If these goals are not established by the two- and five-year deadlines, DHS must provide reports explaining why within 60 days.

What is the Southern Border Security Commission and the Border Security Results Strategy?

This commission will be formed if border security goals are not achieved within five 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 awareness and operational control in high-traffic areas within two years, and operational control of the southwest border within five 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.

What entry-exit tracking system is implemented?

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 two years that provides the same level of security.

What are the alternate border security strategy and triggers?

The alternate strategy allows DHS to consider a security strategy that will require implementation of the Comprehensive Southern Border Strategy and Southern Border Fencing Strategy before applications will be accepted from the undocumented for Registered Provisional Immigrant (RPI) status. The goal of the Comprehensive Southern Border Strategy would be achieving a 90% effectiveness rate in deterrence at all border sectors, and the Southern Border Fencing Strategy would identify where fencing, double-fencing, and technology and infrastructure will be deployed. Registered Provisional Immigrants (RPIs) would not be able to adjust to Lawful Permanent Resident (LPR) 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.

What additional resources does the bill dedicate to border security?

The bill makes significant additional investments in border security, including: \$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; \$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.

What oversight and protections will be implemented?

An independent Department of Homeland Security (DHS) 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 the 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. It provides sufficient visas to erase the current backlog of family and employment-based visa applicants in the next seven 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.

Subtitles A and B: The earned legalization programs

These subtitles create paths that allow undocumented immigrants currently in the United States to show they are eligible to legalize their immigration status and eventually obtain U.S. citizenship.

The Registered Provisional Immigrant program

Who is eligible and what are the requirements?

The bill will allow undocumented immigrants to apply for 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, or benefits under the Affordable Care Act.

When can undocumented immigrants apply for RPI status?

If the House bill becomes law, there will be a delay between its enactment and implementation of the RPI program. The bill gives the government a year to publish regulations governing the program. The official application period should begin on the date of final publication of these regulations and is set to run initially for one year, with a possible extension of an additional 18 months at the discretion of DHS. In the interim, the bill prohibits removal of individuals who are eligible for RPI status, although it does not stop DHS from putting anyone in immigration proceedings who has committed crimes or is otherwise ineligible for status.

How long does RPI status last?

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.

When will RPIs be eligible to become LPRs?

RPIs will be able to apply for LPR status (a “green card”), but they must go to the “back of the line” and have been in RPI status for at least 10 years. They will receive permanent residency only after 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.

When will RPIs be eligible for naturalization?

RPIs who have been lawfully present for 10 years before becoming LPRs will be able to apply for U.S. citizenship after maintaining LPR status for three years. Therefore, undocumented immigrants who legalize via the RPI track will have to wait at least 13 years to become citizens.

What background checks and security measures are included in the RPI process?

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.

Undocumented immigrants who arrived as children

How do DREAMers qualify for RPI status? Is there a different timeline for DREAMers?

DREAMers apply for RPI status under the same application process as other undocumented immigrants. However, they may apply for LPR status 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

Is there a special program for farm workers?

Yes, a special path to legalization based on the AgJOBS bill is provided for agricultural workers.¹ 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 LPR 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 LPRs for five years.

Subtitle C: 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 and employment-based immigration programs, which allow U.S. companies, citizens, and LRP to file petitions for relatives or employees.

The merit-based point system (Track 1)

What is the merit-based point system and how does it work?

This merit-based point system allows foreign nationals to obtain LPR status 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.

How many visas will be allocated each year to the merit-based point 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.

What are tier 1 and tier 2 and how do they work?

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 fifth 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.

How will points be allocated?

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 out 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.

Track two merit-based system

How will the track two system clear the backlog of pending visas?

The current immigrant visa system has created enormous backlogs of applicants, who sometimes have to wait decades to get an immigrant visa. This track will clear the backlog of applicants by allocating visas to applicants with pending applications over the course of seven years starting in 2015, allowing these immigrants to qualify for LPR status by 2021.

Who can obtain LPR status under this track?

Starting October 1, 2014, family- or employment-based applicants whose applications have been pending five years or more under the current system will become eligible for a visa. The Secretary of DHS is authorized to devise a process for distributing these visas over a seven-year period. 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

What are the main changes to the family-based immigration system?

Petitions for spouses and children of LPRs under the current family-based system will be considered immediate relatives, making them exempt from current visa caps and immediately eligible for green cards. There will no longer be an immigrant category for siblings of U.S. citizens, and visas will no longer be available to married sons or daughters of U.S. citizens who are over 31 years of age. These relatives would have to apply under the new point system or find another avenue in order to immigrate. 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.

How does the bill address existing problems in the family-based immigration system?

The House bill makes significant improvements to the family-sponsored immigration system, but does not address all criticisms. Notable improvements include eliminating the current backlogs in the system by 2021, recapturing unused visas from previous years, allowing parents of U.S. citizens to bring their minor children at the time they immigrate, and allowing for immediate reunification for spouses and minor children of LPRs. On the other hand, the bill eliminates the categories for siblings and adult married children of U.S. citizens if they are over 30.

Employment-based immigration

What are the main changes to employment-based immigration?

Country-specific limits on employment-based immigrant visas, which have caused enormous backlogs for applicants from large countries like China and India, are eliminated. This will allow applicants from these countries equal access to the available employment-based visas. 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 science, technology, engineering, and mathematics (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.

How does the bill address existing problems in the employment-based immigration system?

Some of the provisions in the House bill would result in meaningful improvements in the employment-based system. The bill will eliminate the current backlogs of pending applications in the system by 2021, and will allow the recapture of unused visas from previous years, in addition to preventing future backlogs of applicants from oversubscribed countries by eliminating country-specific caps. Highly skilled and very talented immigrants will be exempt from the cap, including immigrants of extraordinary ability, multinational executives, graduates of U.S. universities with advanced degrees in STEM fields, and physicians who fill special medical needs such as working in medically underserved areas. Spouses and children of employment-based immigrants will also be cap exempt, which means that each of the 140,000 visas allocated will go to an applicant hired for a job.

Integration into society

How does the bill help new immigrants integrate into society?

Compared to reform proposals from 2006 and 2007, the House bill contains stronger devices designed 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

What is the new nonimmigrant agricultural W visa program?

This title 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, which has been criticized for being bureaucratic and inflexible. The program is innovative in that foreign workers enter the U.S. to work for employers designated by the Department of Agriculture, and may leave one job to go 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. W-2 visas are issued to contract employees and W-3 visas are issued to "at-will" employees. W visas are approved for three years and renewable for another three. Employers must pay the 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 fifth 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.

What other changes are made to the visa programs?

Various changes are also made to the V visa program, including making it available to siblings of citizens and LPRs. 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.²

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

What are the main changes to E-Verify in the bill?

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.

What are the sanctions for those who do not comply with the new requirements?

Employers that 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.

What are the main protections for employers and workers regarding the implementation of E-Verify?

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.

When will the use of E-Verify become mandatory?

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."

Protections for Asylees and Other Vulnerable Populations

What improvements does the bill make to the asylum process?

Currently, the law requires that asylees apply for asylum within one year of arrival in the United States. This requirement may prevent immigrants with legitimate claims of persecution from gaining asylum protection if their applications were delayed due to fear, lack of information, or other circumstances beyond their control. The bill eliminates the one-year deadline. The bill also eliminates barriers to family reunification and authorizes asylum officers to conduct asylum interviews for applicants who have passed credible-fear interviews rather than referring them to immigration court. 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.

What protections does the bill include for victims of human trafficking and workplace abuse?

The House bill includes 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.

What other protections does the bill have for other vulnerable immigrants?

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 Violence Against Women Act (VAWA) petitions are pending. The bill also permits qualified stateless individuals to apply for LPR status.

Protections for Immigrants in Removal Proceedings

How does the bill protect the rights of immigrants who are in court proceedings?

Under current law, immigrants in removal proceedings do not have the right to appointed counsel if they cannot afford to hire a lawyer. The bill changes this in the case of 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, court staff, and training programs for judges and staff.

How does the bill protect the rights of immigrants who are detained by the government?

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.

Penalties for Crimes

How does the bill increase penalties for immigrants involved in gangs and other criminal activities?

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 RPI 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. In addition, three drunk-driving offenses would be punishable as an aggravated felony, leading to mandatory and permanent deportation.³ 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. These employment-related programs aim to ensure that the U.S. economy has access to the labor and investment that it needs to drive growth and innovation, while protecting workers from exploitation.

Nonimmigrant Skilled Worker Visas

How does the bill change the H-1B and L-1 visa programs?

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.⁴

Nonimmigrant Non-Agricultural Less-Skilled Worker Visas

What is the new W non-agricultural visa program?

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 LPR status using Tier 2 of the new Track 1 merit-based point system.

Investor Visas

What are the new investor visas created by the bill?

The bill aims to attract additional investment and create jobs in the U.S. through new investor visa programs. It creates a 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. This is a temporary nonimmigrant visa that is granted for three years. The bill also creates an EB-6 immigrant investor visa that leads to Lawful Permanent Residence. This visa is 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

What other changes are made to nonimmigrant visa programs?

The bill also creates and changes several other visa programs. It allows F-1 student visa holders to have dual intent. This means that students coming to the U.S. are allowed to have the intent to stay either temporarily or permanently. 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. The bill modifies the H-2B nonimmigrant visa program, which is for non-agricultural, less-skilled workers who fill temporary, peak-load, or seasonal needs. It requires that H-2B workers be paid the prevailing wage or the actual wage paid to U.S. workers, whichever is higher, and requires that employers 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 H-2B positions in forestry.⁵ The bill also allows employees of multinational corporations to enter the United States for 90 days to oversee operations or for 180 days for leadership and development training.

Endnotes

¹ The blue card earned legalization program is closely patterned on the Agricultural Job Opportunities, Benefits, and Security Act of 2006, or AgJOBS Act, that was presented to Congress in 2007.

² Added by Landrieu floor amendment 1222 to the Senate bill S.744.

³ Grassley amendment 44 (MDM13530) to the Senate bill S.744.

⁴ The H-B and L-1 provisions in the House bill are based on provisions in Senate bill S. 744 that were changed extensively by Schumer 2nd degree amendment MDM13698 to Hatch amendment 10.

⁵ H-2B forestry provision added by Merkley floor amendment 1237 to the Senate bill S.744.