



## **Policy Summary**

### **Immigration Reform Legislation in the 113th Congress (2013 - 2014)**

The U.S. House has five bills containing immigration-related reform provisions that have either been heard or passed in the respective House committee, or are pending committee hearing and action. The Senate has adopted S. 744, the “Border Security, Economic Opportunity, and Immigration Modernization Act”, which contains several immigration reform provisions.

The purpose of this document is to summarize the provisions included in each bill. Current status of each bill can be found by searching by bill number at: <http://thomas.loc.gov>.

**Get involved:** Reach out to your Congressional Representative and urge them to act on Immigration Reform <http://www.house.gov/representatives/find/>.

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#### **H.R. 1417 “Border Security Results Act”**

H.R. 1417, the Border Security Results Act, bipartisan legislation reported out of the House Homeland Security Committee on May 15 by voice vote, builds upon past improvements at the border by addressing metrics for measuring control and issues related to surveillance, technology, and personnel. H.R. 1417 is an authorizations bill and does not contain appropriations language – rather than putting money toward border security at the front end, once DHS develops sound metrics, it is assumed that adequate appropriations will follow. Click [here for a complete summary of the bill](#).

#### **H.R. 1772 “Legal Workforce Act”**

Approved by the House Judiciary Committee on June 26, H.R. 1772, the Legal Workforce Act, creates a uniform, national, and modernized policy regarding employment verification, including a mandate for all of the nation’s employers to use E-Verify for new hires, on a phased-in basis. Critically, the bill includes strong preemption language of the state and local laws that currently mandate the use of E-Verify or establish state or local investigation or enforcement schemes. It also creates a clear safe harbor for good faith efforts by employers and requires private employers to only verify new hires (not re-verify their entire workforce). The House bill ensures that employers will no longer be investigated or fined when they act in good faith. In addition to redefining the good faith defense, H.R. 1772 also establishes a good faith compliance standard, ensures there are no obligations beyond the direct employer-employee relationship, establishes that the government must provide an integrated single employment verification obligation (integrating the I-9 process into E-Verify) available fully electronically as well as telephonically, recognizes that further work must be done regarding identity authentication, and avoids any new obligations for federal contractors.

#### **H.R. 1773 “Agricultural Guestworker Act”**

The bill creates a two-pronged visa program (H-2C) that allows registered employers to hire foreign workers based on a contract or at-will. The at-will option would allow workers to travel from registered employer to registered employer without a contract only after the worker completes a contract under

which he/she was admitted. Both the employee and the employer would have the ability to terminate employment at any time. In order to ensure that workers under an agriculture visa do not seek nonagricultural employment, the at-will option will be contingent on the implementation of mandatory E-Verify.

For seasonal employment (contract), the visa length is 18 months with a requirement to return for the worker to return to their home country for three months. For year-round employment (contract), the initial visa term is three years with a three month touchback requirement (i.e. dairy and year-round processing). After that, the visa length is 18 months with a requirement to return to their home country for three months as with seasonal agriculture. There is no continuous period for shepherders or commuters who return to their home country daily.

The total number of aliens who may newly receive H-2C status is limited to 500,000 a year. The Secretary of USDA has the authority to lower this cap but not increase it. Current experienced undocumented agricultural workers would be eligible to transition into the new guestworker program if they had worked 100 days in the two years after enactment. The language suggests that they would not be counted against the 500,000 per year visa cap; however all of them would have to depart the U.S. for an unspecified period after working the required period two years after enactment. They could only return under an H-2C contract. Dairies, food processors and other non-seasonal agricultural employers may use the H-2C program. H-2C workers shall be paid the greater of the prevailing wage or the state minimum wage and employers are not required to reimburse H-2C worker's transportation expenses or provide housing. H-2C workers cannot bring spouses and minor children unless they also qualify as guestworkers.

#### **H.R. 2131 "SKILLS Visa Act Entrepreneur and Investor Provisions"**

Approved by the House Judiciary Committee on June 27, H.R. 2131, the SKILLS Visa Act, establishes a new annual pool of 55,000 green cards for foreign nationals earning U.S. PhDs and Masters in STEM fields, phases out certain family-based green card categories, and eliminates the per country caps that have resulted in lengthy wait times for many employment-based immigrants. H.R. 2131, the SKILLS Visa Act, increases the number of H-1B visas from 65,000, with an additional 20,000 set aside for U.S. graduate degree holders, to 155,000 plus 40,000 for Masters and PhD graduates of U.S. universities in STEM fields. The House approach tightens the required wage rules for hiring foreign workers to ensure Americans get the first crack at jobs, but ensures employers have access to private surveys to identify the required wages.

The bill creates two new green card programs for alien entrepreneurs, with a total of 10,000 green cards available a year. The first program is for venture capital backed entrepreneurs who attract investment of at least \$500,000 from a qualified venture-capital operating company or at least \$100,000 from a qualified angel investor. Such entrepreneurs would be given conditional green cards and up to three years to create jobs for at least five American workers and two years to raise an additional \$1,000,000 in capital or generate not less than \$1,000,000 in revenue. The second program is for entrepreneurs who have been operating businesses in the U.S. under the E-2 treaty investor visa program. The bill would make green cards available to E-2 treaty investors who have maintained their status for a minimum of 10 years and have created jobs for at least five U.S. workers for a minimum of 10 years.

### **H.R. 2278 “Strengthen and Fortify Enforcement Act”**

Congress would be establishing statutorily that States can enforce federal immigration laws. Presently such State activity is restricted to agreements under §287(g) of the statute, which DHS has the discretion to establish and revoke. Physical presence in the country without status is a crime. Current law criminalizes illegal entry but provides no criminal penalty for overstaying an authorized period of stay. Biometric exit controls required for all ports of entry, including airports, sea ports, and land crossings. Virtually none of the provisions of H.R. 2278 have companion provisions or provisions attempting to address similar issues in S. 744.

### **S. 744 “Border Security, Economic Opportunity, and Immigration Modernization Act”**

S. 744 will reduce or, in many cases, eliminate the green card backlog for employment based green card applicants. STEM graduates from U.S. universities will have a fast track to a green card and permits “dual intent” for foreign students so that an employer can start the green card process while the student is still in school. This may allow certain graduates of U.S. universities to avoid the H-1B visa category and move straight to a green card.

The Senate bill creates a Blue Card Program for experienced U.S. farm workers who are currently undocumented, allowing them to obtain legal status. Agricultural workers who can document working in U.S. agriculture for a minimum of 100 workdays or 575 hours in the two years prior to 12/31/12 are eligible for a Blue Card. To be eligible, workers must have performed at least five years of agricultural employment for at least 100 work days per year during the seven year period beginning the date of enactment or performed at least three years of agricultural employment for at least 150 workdays per year during the five year period beginning the date of enactment. In order to obtain a Blue Card, a worker must also show that all taxes have been paid, and that he/she has not been convicted of any felony or violent misdemeanor. STEM graduates from U.S. universities will have a fast track to a green card. The bill permits “dual intent” for foreign students so that an employer can start the green card process while the student is still in school or working pursuant to Optional Practical Training. This may allow certain graduates of U.S. universities to avoid the H-1B visa category and move straight to a green card.

S. 744 also creates a new Agricultural Worker Program that has two work options: 1) a portable, at will employment based visa, and 2) a contract based program. The H-2A program would sunset one year after the regulations implementing the new program are issued. Under the new program visa terms are valid for three years and employers must register with the USDA as a Designated Agricultural Employer (DAE). For the first five years of the program there is a visa cap of 112,333 per year (which compounds) and the cap cannot exceed 337,000 during the first five years. A national annual wage is established for distinct agricultural occupations with an annual floor and inflation cap of 2.5% based on the Economic Cost Index. All DAE’s must provide housing or a housing allowance during the term of employment and contract and at-will workers shall receive one inbound transportation cost reimbursement. Contract workers also get reimbursement for travel to their home country if they complete 27 months of their 36 month visa.

S. 744 establishes an affirmative defense to a charge of unlawfully hiring an unauthorized alien if the employer complies in good faith. Good faith compliance is also recognized unless the employer had knowledge that an individual was not authorized to work.

A 60-day grace period is created for H-1B workers who lose their job to obtain H-1B status through another employer.

The State Department is required to allow certain foreign workers to revalidate their work visas in the U.S. This will reduce costs and business delays that often arise when employees are required to renew their visas overseas at U.S. consulates.