

SUMMARY OF SENATE IMMIGRATION BILL:

“BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT”

SENATE BILL 744: BORDER SECURITY, ECONOMIC COMPETITIVENESS, AND IMMIGRATION MODERNIZATION ACT OF 2013

On June 27, 2013, the Senate passed Senate Bill 744: the Border Security, Economic Competitiveness, and Immigration Modernization Act of 2013, by a vote of 68 to 32. The measure includes significant reforms to family- and employment-based immigration programs, provides an earned path to citizenship for undocumented immigrants, and provides for additional enforcement measures along the U.S.-Mexico border. Highlights of the bill are summarized below:

TITLE I: BORDER SECURITY AND OTHER PROVISIONS SUBTITLE A: BORDER SECURITY

This section of the bill mandates a massive increase in security measures along the U.S.–Mexico border including the use of fencing, surveillance technology, and 38,405 full time Customs and Border Patrol Agents deployed along the border by September 30, 2021. This section also establishes the border security related measures that must be implemented before USCIS can begin processing applications for RPI status and subsequently adjustment of status for those in RPI status.

Border Security and “Triggers” for RPI Status and Adjustment of Status

- Establishes the Southern Border Security Commission tasked with making recommendations to achieve “persistent surveillance” and an effectiveness rate of at least 90% in all border sectors along the Southern border
- Within 180 days of enactment, the DHS Secretary must develop a “Comprehensive Southern Border Security Strategy” to achieve and maintain effective control between the ports of entry in all border sectors along the Southern border
- Within 180 days of enactment, the DHS Secretary must develop a “Southern Border Fencing Strategy” to identify where 700 miles of fencing and technology should be deployed along the Southern border
- DHS must submit to Congress a Notice of Commencement of implementation of the “Comprehensive Southern Border Security Strategy” and “Southern Border Fencing Strategy” before DHS may begin processing applications for RPI status
- Before individuals in RPI status may adjust to LPR status, DHS must submit to Congress certification that:

- The Comprehensive Southern Border Security Strategy has been deployed and is operational
- The Southern Border Fencing Strategy has been implemented (minimum 700 miles of pedestrian fencing and second layer of pedestrian fencing where deemed necessary)
- The mandatory employment verification system (E-Verify) has been implemented
- An electronic exit system at air and sea ports of entry is in use
- No fewer than 38,405 trained U.S. Border Patrol agents are deployed along the Southern Border
- DREAMers and Agricultural (Blue Card) Workers are exempt from these triggers
- Additional funding for drones, other detection and surveillance capabilities

TITLE II: IMMIGRANT VISAS
SUBTITLE A: REGISTRATION AND ADJUSTMENT OF REGISTERED
PROVISIONAL IMMIGRANTS

Section 2101 - Registered Provisional Immigrant Status

This section of the bill creates a new immigration status, "Registered Provisional Immigrant" (RPI), and provides for adjustment of status for noncitizens living without authorization in the United States on or before December 31, 2011 who meet certain criteria. Noncitizens who meet physical presence requirements, pay tax liability and penalties, obtain national security and law enforcement clearances, are not subject to certain criminal bars and grounds of excludability, and apply within the application period may receive RPI status. RPI status will be available for a 6-year period that can be renewed for a second 6-year period.

Eligibility Requirements:

- Continuous physical presence from December 31, 2011 through the approval of the RPI application, "brief, casual, and innocent" and authorized trips after December 31, 2011 excepted
- Dependent unmarried children and spouses also eligible if physically present when principal granted and present on December 31, 2012, if in the U.S. continuously until RPI status granted
- Dependent family members remain eligible to apply if subject to domestic violence or if principal RPI family member dies or divorces
- Payment of tax liability assessed by IRS
- Individuals outside the U.S. who were deported, granted voluntary departure, or entered without permission after December 31, 2011 who are the spouse, child or parent of a U.S. citizen or LPR, and otherwise eligible for RPI or Dreamers may be permitted to apply for RPI in discretion of DHS. If the noncitizen has a criminal conviction, DHS must notify and consult with the crime victim before deciding whether to permit the RPI application

- Current removal proceedings or reinstatement does not bar eligibility
- Public charge, labor certification, and documentation requirements grounds of inadmissibility do not apply
- Unlawful entry, stowaways, misrepresentation, and other grounds of inadmissibility do not apply unless inadmissible conduct after statute enacted
- Failure to attend removal proceeding or prior removal grounds of inadmissibility does not apply unless after date of registration

Ineligible if:

- Convicted of three misdemeanors or one felony (does not include state or local immigration violations), aggravated felony, voted unlawfully, certain foreign offenses, national security
- But state or local immigration-based crimes and minor traffic offenses excepted and conviction does not include an expungement
- LPR, refugee, valid non-immigrant status prevents eligibility for RPI, TPS status excepted
- Subject to grounds of inadmissibility not specifically exempted

Waivers:

- Available for non-criminal, non-security related grounds of inadmissibility based on humanitarian concerns, family unity, public interest

Application process:

- Application period will be for one year after final regulation (possible 18-month extension)
- Pay filing fee (DHS Secretary may limit and exempt certain categories of people from fee requirement)
- Individuals over 21 must pay \$1,000 penalty, which can be paid in installments during the initial 6-year RPI period
- Applications may be filed by family unit
- Filing fee required for those 16 years old and over
- Biometrics and biographic form required
- Additional security checks for individuals who are citizens or long-term residents of countries or regions known to pose national security threat
- Applicant may file an amended application during application period if application is denied for insufficient evidence
- Interview possible

Benefits:

- RPI status allows for protection from deportation, detention, work authorization, travel less than 180 days during calendar year
- No accrual of unlawful presence
- Six years of RPI status and extension
- Employers not subject to employers sanction if know employee is RPI applicant

Revocation if:

- No longer eligible for RPI status
- Used RPI documentation fraudulently
- Absent from U.S. for 180 days during calendar year without extenuating circumstances
- Convicted of fraudulently receiving a federal means-tested public benefit

Public benefits:

- Not eligible for means-tested public benefits
- Not eligible for certain tax credits
- No eligible for Patient Protection and Affordable Care Act benefits

Renewal:

- Permits 2nd 6-year RPI period
- Individual must be in current RPI status
- Subject to new national security and background checks
- Pay tax liability during RPI status
- Pay filing fee
- Regular employment during 1st RPI period, includes no period of unemployment longer than 60 days and not likely to become a public charge, or earn 100% of poverty guidelines, or attending educational institution full-time, or RPI dependent, or under 21, over 60, or mental or physical disability or pregnant

Confidentiality:

- Applications are confidential except if criminal or national security investigation or prosecution, or official coroner purposes

Review of denial or revocation:

- If denied or revoked, one administrative appeal at newly created appellate agency
- Federal court review available
- Stay of removal during review
- If in removal proceedings, circuit court of appeals review with order of removal

Special provision for DACA grantees:

- DHS may grant RPI status to DACA grantee if national security clearances and law enforcement clearances completed and no conduct since DACA grant that would make person ineligible for RPI

Section 2102 - Adjustment of Status of Registered Provisional Immigrants

Individuals in RPI status for 10 years are eligible to apply for legal permanent residency. After 3 years as an LPR, former RPI status holders can apply for U.S. citizenship.

Eligibility:

- Individual have been in RPI status for 10 years, currently in RPI status and remain eligible for RPI status
- Remain in U.S. continuously during RPI status without absences longer than 180 days each calendar year unless extenuating circumstances
- Admissible but previously waived grounds of inadmissibility do not apply
- Individual may not be subject to pending RPI revocation proceedings
- Pay assessed federal tax liability
- Payment of 2nd \$1000 penalty fee
- Regular employment during RPI period, includes no period of unemployment longer than 60 days and not likely to become a public charge, or earn 100% of poverty guidelines, or attending educational institution full-time, or RPI dependent, or under 21, over 60, or mental or physical disability or pregnant. Waiver available for those who can demonstrate extreme hardship to themselves or U.S. citizen or LPR spouse, parent or child
- Individuals 16 years old or older must have satisfied English and civics requirements used in naturalization or be pursuing a course of study. Mandatory waiver available to individuals with disability. Discretionary waiver available to those 70 years old or over.
- English and civics requirements met at adjustment to be used to meet citizenship requirements
- Applicants may only adjust through RPI, Dreamer, or merit-based adjustment to LPR status

Application process:

- Application and filing fee required
- National security and background checks
- Interview may be scheduled

Waivers:

- Available for non-criminal, non-security related grounds of inadmissibility based on humanitarian concerns, family unity, public interest

Naturalization:

- Naturalization after LPR status is available after 3 years

Section 2103 - The Dream Act

This section of the bill provides for adjustment of status to lawful permanent residence for noncitizens brought to the U.S. as children who have been in RPI status for at least five years and meet certain educational requirements.

Eligibility Requirements

- RPI for five years
- Younger than age 16 on date of initial entry to U.S.
- Has a high school diploma, a commensurate alternative award from a public or private high school or secondary school or has a GED recognized under state law or a high school equivalency diploma in the U.S.
- Has higher education degree or at least two years in good standing toward higher education degree; or has served in uniformed services for at least four years and, if discharged, received an honorable discharge. A hardship exception is available if the applicant demonstrates compelling circumstances for inability to meet this requirement
- Provides list of each secondary school attended in U.S.
- Knowledge of civics and English; exception for physical or developmental disability

Special Provision for DACA grantees

- Streamlined procedures for adjustment of status may be adopted for those previously granted Deferred Action for Childhood Arrivals (DACA).

Naturalization

- Time in RPI status considered as LPR status for naturalization eligibility. Those who have served honorably in the U.S. Armed Forces may be eligible to naturalize without RPI status if they meet requirements under INA sections 328 or 329.

SUBTITLE B: AGRICULTURAL WORKERS

Chapter 1, Subchapter A: Earned Status Adjustment for Agricultural Workers

Sections 2211-2212: Eligibility for Temporary and Permanent Residency

This section allows for certain farmworkers present in the United States to apply for temporary status, and later permanent status, based on the number of days they have performed agricultural labor.

- Farmworkers who have been working in the U.S. for 100 “work days” in the last two years can qualify for Agricultural Card Program (“blue card”)
- While in blue card status, can work, travel under advance parole, do not accrue unlawful presence, are protected from deportation
- They can apply for LPR status after working in agricultural employment for either three years (at least 150 days/year) or five years (at least 100 days/year), when pay taxes, \$400 fine, and show no serious criminal conviction
- Spouses and children also eligible to immigrate if physically present on 12/31/12 and reside continuously until principal alien obtains blue card

Chapter 1, Subchapter B: Correction of Social Security Records

This section exempts blue card holders from penalties for providing false information to the Social Security Administration.

Chapter 2: Nonimmigrant Classification for Agricultural Workers

Sections 2231-2232: Nonimmigrant Agricultural Workers

These sections establish new nonimmigrant categories for farmworkers entering the United States to perform full-time agricultural labor.

- New streamlined agricultural guest worker program to replace current H-2A program and ensure adequate supply of farm laborers, as well as worker protections
- W-2 visas for contract laborers; W-3 visas for portable, “at-will” employment
- Spouses and children of the farmworkers are not entitled to any immigration status

SUBTITLE C: FUTURE IMMIGRATION

This section of Senate Bill 744 includes new merit track adjustment of status, elimination of the diversity visa program, and changes to family-based immigration and waivers of inadmissibility

Sections 2301 and 2302: Merit Track One and Two Adjustment of Status

These sections of the bill create a new two-track system for gaining lawful permanent resident status. Eligibility for Track One adjustment is established using a point system based on various factors. Track Two adjustment is available to beneficiaries of family and employment-based petitions that have been pending for at least five years.

- Merit Track 1 Highlights:
 - Includes two tiers of merit-based immigrants referred to as Tier 1 merit-based immigrants and Tier 2 merit-based immigrants
 - Individuals receive points based on educational levels, employment experiences, civic involvement, age, country of origin, certain family relationships to U.S. citizens, and knowledge or proficiency with the English language
 - Requires a fee of \$1,500 plus any fee for application processing costs
 - Individuals with RPI status or with pending or approved petition in another immigrant category are not eligible
 - Applicants may submit an application at least 3 years after enactment, during a 30-day period beginning on October 1st

- Merit Track Two Highlights:
 - Applies to beneficiaries of employment-based and family-based petitions filed before date of enactment (as well as certain family-based petitions filed after date of enactment) if the visa was not issued within five years after the date the petition was filed
 - Applies to long-term workers and other merit-based immigrants who have been lawfully present in the U.S. and permitted to have continuous employment for at least 10 years (not admitted under W visa)
 - Unlawful presence ground of inadmissibility does not apply
 - Eligibility for track two adjustment starts on October 1, 2014

Sections 2304-2313: Changes to Family-Based Immigration

These sections make significant changes to the family-based immigration categories. The bill expands the immediate relative category to include the spouses and minor unmarried children of LPRs. It also allows IRs to include derivations on their petitions. The bill eliminates the 4th preference categories and restricts the 3rd preference category to married sons and daughters of USCs who are 31 or under on the date their petitions are filed. It makes adjustments to the definition of a “child,” and includes further 204(1) protections for surviving relatives.

- Immediate relatives (IRs) would be spouses, minor unmarried children of USCs and LPRs, and parents of USCs aged 21 and over
 - IRs get derivatives
 - K status now available for fiancé(e)s of LPRs
- Preference categories would be:
 - Adult unmarried children of USCs and LPRs
 - Married children of USCs who are 31 or under on date petition filed
- F-3 (Third preference category) eliminated for married sons and daughters of USCs age 31 and over

- F-4 (Fourth preference category) eliminated (18 months after enactment)
- Backlog:
 - Family members currently in backlog will immigrate w/in 10 years
 - V status available again for spouses and children with approved petitions who are stuck in backlog
- Definition of child:
 - Stepchildren must be under 21 when marriage creating step relationship occurred (was under 18)
 - Child adopted under age 18 (was under age 16) is a “child” for immigration purposes
- 204(l): If IR died before enactment, beneficiary has two years following enactment to self-petition
 - Appears to include parents of adult USCs
 - Parole of those removed who would now have relief
 - Anyone removed after death of IR under new definition may be paroled back in and adjust w/o penalty of 212(a)(9)
 - Anyone removed who would have had 204(l) relief may be paroled back in to adjust w/o 212(a)(9) penalties
 - 204(l) available to beneficiaries who are outside the U.S. and consular processing
 - Widow/ers don’t need to self-petition w/in two years of the death of the petitioner

Sections 2307, 2402-2405: Changes to Employment-Based Immigration

- Exemption from annual quotas for various categories (derivative children and spouse, certain professionals, certain foreign doctors)
- Reallocation of annual quota for other employment-based visas
- Increases employment-based visas for skilled workers to 40% of total
- Maintains employment-based visas for special immigrants at 10% of total
- Maintains employment-based visas for those who foster employment at 10% of total
- Creates a three-year INVEST visa for entrepreneurs
- Eliminates sunset for non-minister special immigrants
- Allows for work authorization while timely-filed petition or application is pending

Section 2314: Discretionary Authority with Respect to Removal, Deportation, or Inadmissibility

This section of the bill provides broad waiver authority to immigration judges and DHS to favorably exercise discretion on behalf of certain inadmissible and deportable individuals.

- Immigration Judge has discretion to decline to order removal and to terminate proceedings where IJ determines that removal is not in the public interest or will cause hardship to the noncitizen's USC or LPR parent, spouse or child, or the noncitizen is prima facie eligible for naturalization. This provision does not apply to several specified grounds of inadmissibility and deportability
- DHS Secretary has discretion to waive inadmissibility or deportability where removal or refusal of admission is not in the public interest or will cause hardship to noncitizen's USC or LPR parent, spouse or child. This provision does not apply to several specified grounds of inadmissibility and deportability
- Reinstatement of removal is not applicable where noncitizen reentered U.S. prior to age 18 or reinstatement would not be in the public interest or would result in hardship to the noncitizen's USC or LPR parent, spouse or child

Section 2315: Waivers of Inadmissibility

This section of the Senate bill expands waiver eligibility for unlawful presence under INA § 212(a)(9)(B) and make the exceptions to inadmissibility for unlawful presence applicable to permanent bar inadmissibility. Changes to INA § 212(a)(6)(C) limit inadmissibility for misrepresentations and false claims to citizenship and expand eligibility for a waiver.

Highlights of this section are listed below:

- Inadmissibility for unlawful presence under INA § 212(a)(9)(B):
 - Expands unlawful presence waiver eligibility to parents of USCs and LPRS
 - Must show qualifying relative will suffer hardship, not extreme hardship
 - Exceptions to inadmissibility for unlawful presence under INA § 212(a)(9)(B) apply to inadmissibility under permanent bar provision at INA § 212(a)(9)(C)
- Inadmissibility for misrepresentation under INA § 212(a)(6)(C) limited to misrepresentations within the three-year period prior to seeking to establish admissibility
- Inadmissibility for false claim to citizenship under INA § 212(a)(6)(C)(ii):
 - Inadmissibility requires knowing false claim
 - No inadmissibility where false claim made by person under age 18 or otherwise lacking mental competence to make knowing false claim
- Waiver available for misrepresentation or false claim to citizenship upon showing of extreme hardship to noncitizen or to his or her USC or LPR spouse, parent, son or daughter, and to certain VAWA self-petitioners
- Deportability for false claim to citizenship is defined with reference to inadmissibility for false claim to citizenship

SUBTITLE E: INTEGRATION

Chapter 4: Reducing Barriers to Naturalization

Section 2551: Waiver of English Requirement for Senior New Americans

This section of the bill amends the English language and U.S. history and civics requirements for naturalization to provide for expanded exceptions for disabilities, age and length of residence in the U.S.

- English language and U.S. history and civics requirements exemption for applicants:
 - With mental or physical disability including developmental or intellectual disability
 - Over 65 years of age and LPR for at least 5 years
- English language exemption for applicants:
 - Over 50 years of age and LPR for at least 20 years
 - Over 55 years of age and LPR for at least 15 years
 - Over 60 years of age and LPR for at least 10 years
- U.S. history and civics requirements may be waived on a case-by-case basis for applicants:
 - Over 60 years of age and LPR for at least 10 years

TITLE III: INTERIOR ENFORCEMENT

Subtitle A: Employment Verification

This section of the bill mandates a vast expansion of E-Verify, the employment verification system, and heightened security measures relating to work authorization and identity documents.

- Mandatory employment verification system (E-Verify) shall be put into place; all employers must comply within five years of issuance of implementing regulations; time frame varies depending on number of employees and type of employer
- Non-citizens must show work authorization card at time of hiring and be photo-matched through a “photo tool” that allows employers to verify identity by matching a photo from an identity document with a photo in the USCIS database

Subtitle D: Asylum and Refugee Protections

Sections 3401-3404: Asylum and Refugee Protections

These sections expand protections for asylees and refugees, including eliminating the one-year filing deadline for asylum claims; allowing derivative refugees and asylees to bring their

derivative children to the U.S. in asylee or refugee status; and allowing asylum interviews for arriving alien asylum seekers.

- Eliminates one-year filing deadline for asylum claims
- Provides two-year window following enactment for motions to reopen asylum claims denied solely because of the one-year filing deadline
- Allows for derivative asylee or refugee status for the children of derivative asylees and refugees
- Allows for asylum interviews for arriving alien asylum seekers

Section 3405: Stateless Persons in the United States

This section creates a new “conditional lawful status” for stateless persons in the United States that provides for employment authorization, the ability to apply for a travel document, derivative benefits and a path to LPR status after one year physical presence in the U.S.

- "Stateless person" defined as an individual who is not considered a national under the operation of the laws of any country
- The DHS Secretary may designate certain groups who are considered stateless persons
- Applicant for conditional lawful status must not have lost his or her nationality because of voluntary action or knowing action after arrival in the U.S.
- Applicant not inadmissible under select provisions of INA § 212(a) but waivers available and certain grounds do not apply including public charge, labor certification requirements, documentation requirements, and unlawful presence
- Applicant not considered a persecutor under INA
- Employment authorization may be granted if prima facie eligible or granted status
- Travel documents may be issued to those granted status
- Derivative spouse and children may also be granted conditional lawful status if not inadmissible and the qualifying relationship existed on the date the stateless person was granted status
- Persons granted conditional lawful status can apply for adjustment of status to permanent residence after one year physical presence in the U.S. in such status

Section 3406: U Nonimmigrant Status

This section of the bill (in conjunction with Subtitle B, Section 3201) makes a number of changes to the U nonimmigrant status provisions including increasing the number of U visas available each year, adding additional qualifying crimes and provisions for victims of serious workplace violations.

- Annual cap on U visas increased to 18,000 per year from 10,000
- Allows for work authorization within 180 days of the filing of an application for U or T status
- Expands availability of U status to victims of serious workplace “covered violations,” which include actions such as serious workplace abuse, exploitation, retaliation, and violations of whistleblower protections
- Expands qualifying crimes to include child abuse and elder abuse

Subtitle E: Shortage of Immigration Court Resources for Removal Proceedings

This section of the bill addresses some of the issues related to access to counsel and information in removal proceedings. It provides for appointed counsel in removal proceedings for vulnerable individuals including unaccompanied alien children and individuals with serious mental disabilities.

- Appointment of counsel at government expense, if necessary, to represent:
 - Unaccompanied alien children
 - Individuals who are incompetent due to serious mental disability
 - Particularly vulnerable individuals
- Expansion of Legal Orientation Program (LOP) to ensure that information regarding procedures and rights in removal proceedings are provided to all detainees within five days of being taken into custody

Subtitle G: Interior Enforcement

Changes in this section of the bill include new inadmissibility and deportability grounds for participation in a criminal street gang, and for being convicted of three or more DUI offenses. This section also includes provisions creating a new ground of inadmissibility for domestic violence offenses, and expanding the evidence that may be considered for deportability for sexual abuse of a minor. Provisions of this section include the following:

- Creates new crime-based inadmissibility and deportability for certain convictions involving participation in a criminal street gang
- Creates new crime-based inadmissibility based on clear and convincing evidence of certain conduct involving participation in a criminal street gang where the noncitizen is outside the U.S. and has knowingly participated in a criminal street gang since turning age 18. This conduct-based ground of inadmissibility may be waived where the noncitizen has renounced all association with the gang, is otherwise admissible and does not pose a security threat
- Creates ineligibility for RPI status for persons age 18 or older:
 - with certain convictions involving participation in a criminal street gang

outside the U.S., where there is clear and convincing evidence that, since age 18, the noncitizen has participated in a criminal street gang. This conduct-based inadmissibility may be waived where the noncitizen has renounced all association with the gang, is otherwise admissible and does not pose a security threat

- Creates new crime-based inadmissibility for noncitizen convicted of three or more DUI offenses on separate dates
- Creates new crime-based deportability for noncitizen convicted of three or more DUI offenses where at least one occurs after enactment of the new law
- Amends the aggravated felony crime of violence ground of deportability to include a third drunk driving offense where the term of imprisonment is at least one year, and at least one conviction is after the date of new law enactment
- Provides that evidence outside the record of conviction may be admitted to establish the age of the victim for aggravated felony deportability based on sexual abuse of a minor
- Creates a new ground of inadmissibility for willful failure to comply with a lawful request for biometrics
- Creates new ground of crime-based inadmissibility for certain crimes of domestic violence, stalking, violations of protection orders, and crimes against children. To be inadmissible under this ground, the noncitizen must have served at least one year imprisonment or have multiple offenses not arising out of a single scheme of criminal misconduct, and the acts must have occurred on or after enactment of the new law

TITLE IV: REFORMS TO NONIMMIGRANT VISA PROGRAMS

Subtitle A: Employment-Based Nonimmigrant Visas

Sections 4101-4801: Changes to Nonimmigrant Visa Categories and Requirements

- Increase in annual cap on H-1B visas from 65,000 to 110,000 with gradual rise to 180,000 based on a High Skilled Jobs Demand Index
- Protections for U.S. domestic workers by requiring employers to pay higher wages and undergo recruitment of U.S. workers
- More visas for those with degrees in science, technology, engineering, or mathematics (STEM), which could lead to LPR status
- New W visa category for lower-skilled workers and their dependents
- Initial W visa period is three years, renewable provided not unemployed for more than 60 consecutive days
- Eligible employers must be registered and comply with worker protections
- Annual caps of W visas for first four years, beginning April 1, 2015 (20,000 for first year; 35,000 second year; 55,000 third year; 75,000 fourth year)
- Creation of Bureau of Immigration and Labor Market Research that will determine annual cap of W visas, declare shortage occupations, influence recruitment methods