



SENATE AND HOUSE IMMIGRATION REFORM EFFORTS IN THE 113TH CONGRESS: OVERVIEW

SIDE-BY-SIDE COMPARISON

by Angela S. García, John Skrentny, and Tom Wong, University of California, San Diego, and Linda Forman Naval, Scholars Strategy Network

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On June 27, 2013 the United States Senate passed a comprehensive immigration reform bill for the first time in seven years. The landmark legislation, S. 744, the “Border Security, Economic Opportunity & Immigration Modernization Act,” passed with a bipartisan vote of 68 to 32 with fourteen Republicans joining with all 54 members of the Democratic majority in supporting the legislation. Conversely, the Republican-led House of Representatives, under the leadership of Speaker John Boehner and Judiciary Committee Chairman Bob Goodlatte, is pursuing a piecemeal approach to immigration reform. Prior to the August 2013 recess, four stand-alone immigration-related bills have passed out of the Judiciary Committee:

- H.R. 2278, the “Strengthen & Fortify Enforcement Act” (SAFE Act)
- H.R. 2131, the “Supplying Knowledge-based Immigrants & Lifting Levels of STEM Visas Act” (STEM Visas Act)
- H.R. 1772, the “Legal Workforce Act”
- H.R. 1773, the “Agricultural Guestworker Act” (Ag Act)

The House bills collectively include many similar provisions as S. 744 such as requiring stricter interior immigration enforcement (“SAFE Act”), encouraging more high-skilled immigration (“STEM Visas Act”), mandating employment verification (“Legal Workforce Act”), and creating new visa categories for agricultural (including, for the first time, non-seasonal) guestworkers (“Ag Act”).

There are also differences in approach and substance between the Senate and House bills. Regarding the overall approach, the House bills in various ways reflect the preferences of the Republican majority: greater deference to local discretion, more severe measures against undocumented immigration, less support or fewer opportunities for migrants with legal grievances, and new incentives to ensure temporary workers are indeed temporary.

Regarding substance, there are key provisions in S. 744 that are not addressed by the four House bills:

- Pathway to citizenship: Unlike S. 744, none of the House bills provide a pathway to citizenship for the estimated 11 million unauthorized immigrants currently in the United States (of note, however, is that the Committee is in the early stages of possible consideration of a “Kids Act” that would offer a path to citizenship only to children brought to the U.S. illegally). Under the Senate bill, unauthorized immigrants can acquire legal status by registering for Registered Provisional Immigrant (RPI) status, to be granted if they meet requirements such as having not been convicted of a serious crime, passing a background check and paying back taxes and a fine. Most immigrants granted RPI status must wait 10 years to apply for Legal Permanent Resident (LPR) status, after which they will be eligible to naturalize in three years. The Senate path to citizenship is, however, not to be opened until after certain enforcement “triggers” have been met. The Department of Homeland Security must certify a 90% effectiveness rate in apprehensions of would-be illegal entrants along the southern border. In addition, 700 miles of border fencing must be in place; 38,405 additional border patrol agents must be deployed; and the E-Verify computerized system for employers to check the immigrant status of employees must be fully deployed. The RPI program includes an expedited pathway to citizenship for DREAMers (those brought to the U.S. without authorization as children) and for unauthorized farmworkers.

- Comprehensive restructuring of future flows: While two of the bills passed by the House Judiciary Committee address agricultural guestworkers and highly skilled workers (see summaries of “Ag Act” and “STEM Visas Act” of this report), the Senate bill does the same while establishing a new framework for future legal immigration that overhauls the current family- and employment-based systems and creates two additional merit-based immigration systems. For example, one of the key aspects of the Senate bill is a new “W” worker program that provides visas for low-skilled workers. Reflecting a compromise between business and labor groups, the actual number of W-visas issued per year for non-agricultural industries will take into account the unemployment rate and other economic conditions, and will be capped at no more than 200,000 per year. W visas are for a limited duration, though workers can eventually apply for lawful permanent residence without an employer’s sponsorship.
- Border security: While the House’s SAFE Act addresses interior enforcement, it does not directly deal with border security. The Senate’s S. 744 adds border security provisions to its interior enforcement measures. In particular, it requires persistent surveillance along the southern border and a 90% effectiveness rate in apprehensions along the southern border. To meet these goals, new technologies will be deployed to enhance the capability of DHS to conduct manned or unmanned monitoring of the border; no fewer than 700 miles of pedestrian fencing will be in place along the border; and an electronic exit system will be employed at ports of entry to collect visa and passport information, among other provisions. S. 744 appropriates \$4.5 billion to improve border security and allocates \$30 billion to fund the increase in the number of Border Patrol agents.
- Visa backlogs: S. 744 creates a new “track two” merit-based system to clear the employment and family backlogs, an issue that goes unaddressed in the House bills. Provisions to streamline processing and reduce backlogs include elimination of employment-based country caps, a temporary increase in family-based country limits, and recapture of unused visa numbers.
- Immigrant rights and integration: S. 744 addresses some of the shortcomings in immigration detention, removal, and court processes, including authorizing access to counsel for certain vulnerable populations, giving immigration judges more opportunities to make case-by-case determinations on removal decisions, and streamlining the asylum program. S. 744 also encourages immigrant integration through more targeted civic engagement programs and by providing support to organizations that help legal immigrants become citizens.

Side-by-Side Comparisons (See following pages for a more in-depth analysis)

- Interior Enforcement - S. 744 and the “SAFE Act”: Both cover much of the same ground in bolstering enforcement efforts, but the “SAFE Act” is stricter in several key areas. Notably, it criminalizes visa overstaying, provides incentives for localities to aid in enforcement of immigration laws and disincentives to serve as sanctuaries for undocumented immigrants, supports rather than constrains detention of suspected undocumented migrants, and in contrast to S. 744, offers no legal aid.
- Highly Skilled Workers - S. 744 and the “STEM Visas Act”: Both encourage immigration of highly-skilled workers and their families. Notable differences are the House bill’s lack of restrictions on heavy users of H-1Bs and lack of a Legal Permanent Resident (LPR) point system to keep and attract highly skilled immigrants.
- E-Verify - S. 744 and “Legal Workforce Act”: Both mandate use of the E-Verify employment verification system which is currently voluntary for most employers. Key differences in the House bill include a much faster phase-in for mandatory E-Verify to identify undocumented job applicants, incentives for states to enforce the law, and a lack of legal protections for immigrants wrongfully harmed by enforcement practices.
- Agricultural Workers - S. 744 and the “Ag Act”: Both reform current ag visa program that expands eligibility to non-seasonal workers while offering protections to U.S. workers. There are several significant differences in the House bill, including a different name for the new visa, no path to citizenship for agricultural workers, a much higher visa cap, disincentives for workers to file grievances, employers are not required to provide housing, and mandates wage withholding to incentivize migrant departure at the end of work term.

Stricter Interior Immigration Enforcement

Criminal penalties: illegal entry, visa overstay, and alien smuggling

- Narrows scope of illegal entry crime by removing “attempted” crossings and punishing only actual entrance or crossings.
- Increases criminal penalties for illegal entry from 6 months to up to 12 months for initial violation and 3 years for subsequent violations. Penalties for illegal entry of those convicted of crimes other than illegal entry significantly higher, with jail times of up to 20 years.
- Retains penalty of up to two years for illegal reentry and up to 10 years for repeated illegal reentry; increases penalties for illegal re-entry following a criminal conviction with jail times of up to 25 years.
- Does not criminalize overstaying visa, but requires DHS to take action against 90 percent of people who were admitted as nonimmigrants after the bill’s enactment and who have overstayed their visas by more than 180 days. For each case, DHS must initiate removal proceedings, confirm that the person has applied for or has been granted relief, or close the case.
- Increases criminal penalties for alien smuggling.

- Expands the scope of illegal entry crime by making illegal entry a continuing offense until the time the person is discovered by federal officials.
- Retains criminal penalties for illegal entry (6 months for initial violation and 2 years for subsequent violations). Penalties for illegal entry of those convicted of crimes other than illegal entry significantly higher, with jail times of up to 20 years.
- Retains penalty of up to two years for illegal reentry and up to 10 years for repeated illegal reentry; increases penalties for illegal re-entry following a criminal conviction with jail times of up to 20 years.
- Criminalizes overstaying a visa regardless of compelling circumstances.
- Increases criminal penalties for alien smuggling and subjects anyone who transports or “harbors” a person with the knowledge that the person is unauthorized to criminal penalties, with a limited exception for religious organizations assisting an unauthorized minister or missionary who serves in a voluntary capacity.

Changes to grounds of inadmissibility/ deportability

- Creates new grounds of inadmissibility and deportability relating to gang membership, DUI, and crimes of domestic violence.
 - *Gang membership*: People convicted of an offense that has gang membership as an element or who, under some circumstances, DHS determines to be willing participants in a criminal street gang are both inadmissible and deportable.
 - *DUI*: People who have committed 3 or more offenses are both inadmissible and deportable. For purposes of deportability, one offense must have occurred after enactment of the immigration reform act.
 - *Domestic Violence*: People who commit certain crimes of domestic violence or who violate certain orders of protection are inadmissible (such conduct already makes one deportable).
 - Prohibits entry of immigrants convicted of aggravated felonies or other serious crimes.

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 - *Gang membership*: People convicted of an offense that has gang membership as an element or who, under some circumstances, DHS determines to be willing participants in a criminal street gang are both inadmissible and deportable
 - *DUI*: Undocumented immigrants with one DUI conviction would never be eligible to legalize their status. Immigrants with legal status would be deportable after two DUI convictions, regardless of whether the convictions occurred long ago or were minor misdemeanor offenses.
 - *Domestic Violence*: People who commit certain crimes of domestic violence or who violate certain orders of protection are inadmissible (such conduct already makes one deportable).
 - Prohibits entry of immigrants convicted of aggravated felonies or other serious crimes.

Immigration and Customs Enforcement (ICE): Spending and Personnel

Does the Act increase ICE spending or personnel?	<ul style="list-style-type: none"> • No authorization for additional ICE detention, deportation, or support positions or funding thereof. • Adds 75 immigration judges per year for the next three years to better adjudicate removal cases and clear the backlog in cases currently before the immigration courts. Ensures equivalent of one staff attorney/law clerk and one legal assistant for each immigration judge. • Increases Board of Immigration Appeals staff by 30 members per year for the next three years. 	<ul style="list-style-type: none"> • Authorizes Secretary of Homeland Security to hire 2,500 Immigration and Customs Enforcement detention enforcement officers and appropriates funds. • Adds 5,000 positions for full time active-duty ICE deportation officers and increases the number of positions for full time support staff by 700 above the number of full time positions for which funds were appropriated for FY 2013. • No authorization for immigration court personnel, but increases by 60 the number of full-time trial attorneys working for the ICE Office of the Principal Legal Advisor.
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Role of States and Localities in Immigration Enforcement

What role will states and localities be expected to play in immigration enforcement?	<ul style="list-style-type: none"> • Reauthorizes the State Criminal Alien Assistance Program (SCAAP) to reimburse state and local law enforcement for the cost of incarcerating unauthorized immigrants charged with and convicted of crimes. • Provides increased funding for Operation Stonegarden, a program in which local law enforcement collaborates with federal enforcement agencies in immigration enforcement along the U.S.'s borders. • Does not include provisions relating to 287(g) or Secure Communities. 	<ul style="list-style-type: none"> • Reauthorizes the State Criminal Alien Assistance Program (SCAAP) to reimburse state and local law enforcement for the cost of incarcerating unauthorized immigrants convicted of crimes. • Grants states and localities authority to create, implement, and enforce their own criminal and civil penalties for federal immigration violations so long as the penalties applied do not exceed those under federal law. • Allows state and local law enforcement to investigate, identify, apprehend, arrest, and detain people in violation of immigration laws and to transfer them to federal immigration authorities. • Requires that DHS accede to any state or local jurisdiction's request to participate in the 287(g) program, except where a "compelling reason" exists to refuse participation. • Withholds grants from states and localities that limit compliance with ICE detainer requests and from issuing policies, resolutions, or ordinances that restrict local cooperation with federal law enforcement ("sanctuaries"). • Provides financial assistance to state and local police for assisting in the enforcement of immigration laws and mandates training.
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Rules and Legal Procedures Related to Immigration Enforcement

How does the Act affect detention and deportation procedures?	<ul style="list-style-type: none"> • Mandates provisions to ensure custody and bond determinations within 72 hours of detention. • Allows for greater use of alternatives to detention by contracting with nongovernmental community-based organizations. • Increases oversight of conditions at detention facilities • Limits dangerous deportation practices, like removal through a Southern border point at night. 	<ul style="list-style-type: none"> • Restricts court review of indefinite detention for individuals who cannot be removed and limits the decision to continue to detain solely to the discretion of DHS. • Increases federal detention space by constructing or acquiring detention facilities. • Subjects immigrants whom DHS knows or "has reason to believe" are current or former members of a criminal gang to mandatory detention.
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<p>Does the Act ensure that immigrants have access to legal information and counsel?</p>	<ul style="list-style-type: none"> • Requires the Attorney General to appoint counsel for specific vulnerable populations, including unaccompanied minors and those deemed incompetent • Creates Office of Legal Access Programs, charged with making immigration proceedings more efficient and cost effective, and providing programs to give people facing deportation information about the process and eligibility for relief. 	<ul style="list-style-type: none"> • N/A
<p>How does the Act affect prosecutorial discretion when it comes to immigration enforcement?</p>	<ul style="list-style-type: none"> • Gives immigration judges discretion to terminate removal proceedings and DHS officers discretion to waive removal or inadmissibility in cases that would not be contrary to public interest; that would create hardship to the noncitizen’s U.S. citizen or lawful permanent resident parent, spouse, or child; or if the noncitizen is eligible for naturalization. 	<ul style="list-style-type: none"> • Eliminates administration’s ability to implement Deferred Action for Childhood Arrivals (DACA), which grants eligible unauthorized youth 2 year reprieves from deportation and work authorization. • Eliminates policies related to reviewing deportable people’s immigration cases to determine if they should be allowed to remain, and eliminates current guidance on detainers (the “Morton Memo”) that prioritizes deportation of criminals over all those deportable. • Requires reports to Congress on the exercise of prosecutorial discretion.
<p>Asylum, Refugees, and Stateless Persons</p>	<ul style="list-style-type: none"> • Eliminates time limit of 1-year time after arrival to apply for asylum and removes family reunification barriers for asylees and refugees. • Authorizes streamlined process for certain high-risk refugees and permits qualified stateless individuals to apply for lawful permanent resident status. 	<ul style="list-style-type: none"> • Bars immigrants whom DHS knows or “has reason to believe” are current or former members of a criminal gang from receiving asylum and temporary protected status (TPS). • Precludes refugee or asylee adjustment of status for aggravated felons.
<p>Other Key Provisions</p>		
<p>Exit system and visa overstay monitoring (US-VISIT)/removal</p>	<ul style="list-style-type: none"> • Establishes mandatory exit system by 2015 that requires airline and vessel carriers to collect information from departing foreign passengers’ travel and entry documents and transmit it to DHS; authorizes \$500 million to reimburse carriers for exit system requirements. • Requires DHS to report all visa overstays in order to locate the alien and commence removal proceedings. • Mandates that exit system is operating at all ports with Customs and Border Patrol (CBP) presence before DHS grants lawful permanent residence (LPR) to those with Registered Provisional Immigrant (RPI) status, among other triggers on the pathway to citizenship. • Establishes a visa overstay pilot program to explore the feasibility of notifying individuals that the terms of their admission are about to expire. 	<ul style="list-style-type: none"> • No exit system established to collect information from departing foreign passengers’ travel and entry documents. • Requires that the National Crime Information Center (NCIC) database be filled with noncriminal records of immigrants who have overstayed visas, received voluntary departure or final orders of removal, or have had their visas revoked.

<p>Visa Protections & Terrorism</p>	<ul style="list-style-type: none"> • Provides consular officers with access to all terrorist databases and requires heightened scrutiny of applications for admission from persons listed. • Provides that if a visa is revoked by DOS or DHS, notice of the revocation will be immediately provided to consular officers, law enforcement, through terrorist screening databases, and posted to all DHS port inspectors and to all consular officers. 	<ul style="list-style-type: none"> • Removes and denies benefits to terrorist immigrants , bars those who threaten national security from becoming naturalized, and authorizes DHS and State Department to revoke visas for security or foreign policy interests • Allows DHS to release 1986 Immigration Reform and Control Act (IRCA) information on immigrants' adjustment of status that may be related to terrorism, national intelligence or national security. • Expands the Visa Security Program, an initiative of Immigration and Customs Enforcement to interdict criminals, terrorists and others who try to enter U.S. via legal visa process, to additional high risk posts.
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Encouraging High-Skilled Immigration

<p>Visas for STEM Grads</p>	<ul style="list-style-type: none"> Does not subject immigrants who have a STEM graduate degree from a U.S. institution and meet other requirements to numerical limits on employment-based immigrant visas. Allocates 25,000 H-1B visas (non-immigrant visas for highly skilled workers with at least a BA degree) to immigrants who have a STEM graduate degree from a U.S. institution. 	<ul style="list-style-type: none"> Allocates 55,000 green cards a year to new green card programs for foreign graduates of U.S. universities with advanced STEM degrees.
<p>H-1B Visa Cap</p>	<ul style="list-style-type: none"> Increases current cap of 65,000 H-1B visas to 110,000-180,000 via a market escalator formula that considers employer demand and unemployment data. 	<ul style="list-style-type: none"> Increases current cap of 65,000 H-1B visas to 155,000 plus 40,000 additional visas for graduates of U.S. universities (increased from current allotment of 20,000).
<p>Can those with H-1B visas bring family members with them to the U.S.?</p>	<ul style="list-style-type: none"> Provides that spouses and children of H-1B workers are allowed to accompany them and without counting against visa caps. For the first time, allows work authorization for spouses of H-1Bs. Eliminates the family visa preference category for siblings of U.S. citizens, 1 of 4 current family visa preference categories. 	<ul style="list-style-type: none"> Adds an additional 25,000 green cards per year for the spouses and minor children of permanent residents (currently, there are 87,934 green cards available in this category). Raises the family-sponsored immigrant visa per-country cap from 7% to 15%. For the first time, allows work authorization for spouses of H-1Bs. Eliminates the family visa preference category for siblings of U.S. citizens, 1 of 4 current family visa preference categories.

Other Visa Program Reforms

<p>Investor and Entrepreneur Visas</p>	<ul style="list-style-type: none"> Creates new investor visa (X Visa) for alien entrepreneurs and investors, with a total of 10,000 temporary visas available a year. X visas are for 3 year terms, with some eligibility to apply for legal permanent residency 	<ul style="list-style-type: none"> Creates two new green card programs for alien entrepreneurs, with a total of 10,000 green cards available a year. Strengthens the investor visa green card program by making the regional center pilot project permanent, indexing investment requirements for inflation, and adding anti-fraud protections.
<p>Other Visa Program Reforms Relevant to Highly Skilled Workers</p>	<ul style="list-style-type: none"> Repeals the diversity lottery green card program. Eliminates the employment-based green card per-country cap. Develops merit-based point system allowing foreign nationals to obtain Legal Permanent Resident status by accumulating points mainly based on their skills, employment history, and educational credentials, with tier one visas designated for higher-skilled immigrants with advanced educational credentials and experience. 	<ul style="list-style-type: none"> Repeals the diversity lottery green card program. Eliminates the employment-based green card per-country cap.

Protecting U.S. Workers

Does the Act provide protections for U.S. workers?

- Employers are bound by prevailing wage requirements for 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 have additional obligations, such as offering the job to U.S. workers first and a prohibition on having more than 50 percent H-1B or L-1 workers in their workforce.

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Overview: Employment Verification (E-Verify)

Overview

- Mandates use of E-Verify, an internet-based system that enables employers to determine the eligibility of their employees to work in the U.S by matching information from an accepted identity document with information in the USCIS database. Use of this system is voluntary for most employers under current law.

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National ID Card?

Does the Act mandate a national ID card?

- Does not authorize the creation of a national identification card.

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Phase-in and Safeguards

Do all employers have to start using E-Verify right away?

- Gradual phase-in of E-Verify; within **5** years all non-agricultural employers are required to use the E-Verify system to check immigration status of new hires.
- Within 4 years agricultural employers must begin using E-Verify for newly hired employees and immigrant employees with expiring work-authorization documents.
- Serves as one of 4 triggers for pathway to citizenship. Electronic employment eligibility verification system mandate must be implemented before immigrants with Registered Provisional Immigrant (RPI) status can be eligible to adjust to lawful permanent resident (LPR) status.

- Gradual phase-in of E-Verify; within **2** years all non-agricultural employers are required to use the E-Verify system to check immigration status of new hires.
- Requires employers of agricultural workers to use the system for all new hires 24 months after enactment of bill.
- Within 6 months of enactment, the following members of the current workforce must have their employment eligibility reverified through the system: critical infrastructure employees; workers assigned to a federal contract; and federal, state, and local government employees.
- Beginning 30 days after the bill is enacted, an employer may voluntarily use the electronic system to reverify the employment eligibility of any current employee, as long as the employer reverifies all of its employees.

How does the Act prevent against fraud?

- Mandates use of expanded photo tool that enables employers to verify an individual’s identity by matching a photo on an accepted identity document with a digital E-Verify image.
- Establishes programs to permit victims of identity theft to block use of their Social Security Numbers, and Implements procedures for identifying and preventing multiple uses of Social Security numbers.
- Mandates development of fraud, tamper, identify theft, and wear-resistant Social Security cards.

- Mandates use of expanded photo tool that enables employers to verify an individual’s identity by matching a photo on a covered identity document with a digital E-Verify image.
- Establishes programs to permit victims of identity theft to block use of their Social Security Numbers, and implements procedures for identifying and preventing multiple use of social security numbers

How does the Act protect employers?	<ul style="list-style-type: none"> Protects employers from liability for violations of federal, state, and local criminal or civil law for any employment-related action taken based on good-faith reliance on the information provided by E-Verify. 	<ul style="list-style-type: none"> Protects employers from liability for violations of federal, state, and local criminal or civil law for any employment-related action taken based on good-faith reliance on the information provided by E-Verify.
How does the Act protect workers?	<ul style="list-style-type: none"> Allows workers to appeal E-Verify “no matches” and to have these appeals be reviewed by judges. Expands the scope of antidiscrimination protections under the Immigration and Nationality Act (INA) with respect to hiring, firing, and employment eligibility verification based on national origin or citizenship status. Increases legal protections for immigrant workers who are wrongfully terminated or who experience significant workplace abuse, including legal remedies for immigrant workers who are terminated in violation of labor laws and U-visa relief for victims of serious workplace abuse, exploitation, or retaliation. Increases the total annual number of U visas available from 10,000 to 18,000. 	<ul style="list-style-type: none"> Provides for compensation and injunctive relief for workers who receive an erroneous nonconfirmation of worker eligibility status . Prohibits class action lawsuits. Includes safeguards against the electronic system resulting in unlawful discriminatory practices based on national origin or citizenship status.

Oversight and Enforcement

Who oversees E-Verify?	<ul style="list-style-type: none"> Establishes the Office of the Small Business and Employee Advocate, whose purpose is to help workers and small businesses comply with employment eligibility verification requirements, including resolution of conflicts. Requires DHS to report to Congress on implementation of E-Verify by employers, including any adverse impacts on employers and economic impact on small businesses. Requires a weekly report from USCIS to ICE regarding names and identifying and contact information for anyone who received a final non-confirmation, to be used for enforcement purposes. 	<ul style="list-style-type: none"> Mandates that Inspector General of the Social Security Administration complete audits to uncover evidence of individuals who are not authorized to work in the United States and report them to Congress. Establishes an Office for State and Local Government Complaints run by DHS to which subnational agencies can submit information on violations of act; Office required to report to Congress number and resolution of complaints.
How does the Act affect states and localities?	<ul style="list-style-type: none"> Preempts state and local laws relating to hiring, continued employment, or status verification for employment eligibility of unauthorized workers. Allows states and localities to use business licensing and similar laws as penalty for failure to use electronic verification system. 	<ul style="list-style-type: none"> Preempts states and localities from passing employer sanctions and employment eligibility verification laws. Allows states to use business licensing and similar laws as penalty for failure to use electronic verification system. Allows a state, at its own cost, to enforce the provisions of the Legal Workforce Act as long as it follows the federal regulations, rules, and guidance implementing the act. If a state initiates an enforcement action under the act before the federal government does, the state may then collect any fines assessed under the act.

Overview: Agricultural Guestworkers

Overview

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| <ul style="list-style-type: none"> • Replaces H-2A visa category for temporary foreign national agricultural workers with W-3 and W-4 visa program, establishing a nonimmigrant visa for temporary agricultural guestworkers with a written contract (W-3) or with an “at-will” offer of full-time employment (W-4) with a designated agricultural employer. • For the first time, includes non-seasonal agricultural employers (i.e. dairies, food processors). • Establishes separate agricultural “blue card” for currently unauthorized agricultural workers that grants temporary legal status and provides expedited path to citizenship (see unauthorized immigrants below). • W-3 and W-4 visa program to be run by the Department of Agriculture, rather than the Department of Labor, which runs current H-2A program. | <ul style="list-style-type: none"> • Replaces H-2A visa category for temporary foreign national agricultural workers with H-2C visa program, establishing a nonimmigrant visa for temporary agricultural guestworkers. • For the first time, includes non-seasonal agricultural employers (i.e. dairies, food processors). • In contrast to Senate bill, does not provide a path to citizenship. • H-2C visa program to be run by the Department of Agriculture, which runs current H-2A program. | |
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Legal Status and Future Flows

Does the Act provide for the adjustment of the legal status of unauthorized immigrants?

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| <ul style="list-style-type: none"> • Establishes “blue card” that grants temporary legal status and provides expedited path to citizenship for currently unauthorized agricultural workers who can demonstrate at least 575 hours or 100 days of agricultural work in a two-year period ending December 31, 2012. • Mandates blue card applicants pay penalty and filing fee, pass background checks, and meet the criminal and admissibility requirements for Registered Provisional Immigrant (RPI) status. • Mandates that the provision of blue cards is not subject to border control triggers. • Allows blue card holders who remain in agricultural work, pay taxes and a fine, and are not convicted of serious crime to adjust to Legal Permanent Resident (LPR) status in 3-5 years. • Allows former blue card holders who adjusted to LRP status to apply for citizenship in 5 years. | <ul style="list-style-type: none"> • Makes aliens who are unlawfully present in the United States on April 25, 2013, eligible to adjust to H-2C status if they work in agriculture. • Until H-2C program is implemented, allows unauthorized immigrants to lawfully work in U.S. agriculture. • Does not offer pathway to legal permanent resident status or citizenship for such workers. | |
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<p>How long can agricultural guestworkers stay in the U.S.?</p>	<ul style="list-style-type: none"> • Mandates maximum stay as 3 years, with one 3-year renewal, extending current general 1 year maximum stay under H-2A program. • Mandates workers must remain outside U.S. for 3 months after renewal period before returning on another W-3 or W-4 visa. 	<ul style="list-style-type: none"> • Mandates maximum stay as 18 months in seasonal jobs, extending current general 1 year maximum stay under H-2A program. Afterwards worker must remain outside U.S. for a period equal to at least 1/6 of duration of stay on H-2C visa before returning on another H-2C visa. • Mandates maximum stay as 36 months in non-seasonal jobs, extending current 10 month maximum stay under H-2A program. Requirement to remain outside of U.S. after first 18 month period is waived, but after 36 months workers must leave the U.S. for at least 3 months. Upon returning on another H-2C visa, workers must leave U.S. after each 18 month period of work.
<p>Is there a cap on the number of agricultural guestworker visas that will be given?</p>	<ul style="list-style-type: none"> • Limits the number of W-3 and W-4 visas to 112,333 each for the first five fiscal years, from no cap on current H-2A program. • For the 6th and subsequent years, Secretary of Agriculture sets number of W-3 and W-4 visas after considering a number of factors, and may raise or lower this number based on need. 	<ul style="list-style-type: none"> • Limits the number of annual fiscal year H-2C admissions at 500,000, from no cap on current H-2A program. • Allows Secretary of Agriculture to raise or lower number of visas based on need.
<p>Impact on U.S. Workers</p>		
<p>Does the Act provide protections for U.S. workers?</p>	<ul style="list-style-type: none"> • Requires protections for U.S. workers, with employers to conduct adequate recruitment of U.S. workers before seeking W-3 and W-4 workers. • Requires employers to submit the job posting opportunity to the state workforce agency no later than 60 days before the date of need and authorize the posting on the appropriate DOL electronic job registry for 45 days. • Prohibits employers from willfully displacing U.S. workers. • Prohibits preferential treatment of immigrant workers. • Eliminates the “50-percent” rule under current law that requires an employer to replace an H-2A worker with a qualified U.S. worker who applies up until 50-percent of the work/contract is completed. 	<ul style="list-style-type: none"> • Requires protections for U.S. workers, with employers to conduct adequate recruitment of U.S. workers before seeking H-2C workers. • Requires employers to list jobs with state employment department serving the local area where the H-2C worker will be employed for a minimum of 30 days. • Prohibits employers from willfully displacing U.S. workers. • Prohibits preferential treatment of immigrant workers. • Eliminates the “50-percent” rule under current law that requires an employer to replace an H-2A worker with a qualified U.S. worker who applies up until 50-percent of the work/contract is completed.
<p>Protections for guestworkers?</p>	<ul style="list-style-type: none"> • Extends coverage under the Migrant and Seasonal Agricultural Worker Protection Act, which allows workers to file federal lawsuits to enforce contract rights and other legal requirements. • Continues H-2A’s current extension of coverage of the Legal Services Corporation Act, which provides legal assistance to guestworkers. • Provides for free mediation of labor disputes through the Federal Mediation and Conciliation Service. • Directs the Secretary of Labor to establish a process to investigate complaints against DAEs. • Requires employers to provide free workers' compensation insurance if not covered by state workers compensation law. 	<ul style="list-style-type: none"> • Extends coverage under the Migrant and Seasonal Agricultural Worker Protection Act, which allows workers to file federal lawsuits to enforce contract rights and other legal requirements. • Ends H-2A’s current extension of coverage of the Legal Services Corporation Act, which provides legal assistance to guestworkers. • Allows employers to require that H-2C workers be subject to binding arbitration and mediation, with any costs divided equally between employer and employee. • Mandates payment of back wages or required benefits if employer fails to provide agreed upon benefits, wages, and working conditions. • Requires employers to provide free workers' compensation insurance if the job is not covered by state workers compensation law.

Are agricultural guestworkers eligible for federal benefits?	<ul style="list-style-type: none"> • Bars W-3 and W-4 workers and blue card holders from receiving means-tested federal public benefits, tax credit provisions, and healthcare provisions. 	<ul style="list-style-type: none"> • Bars H-2C workers from receiving means-tested federal public benefits, tax credit provisions, and healthcare provisions.
The Details		
Employer Responsibilities	<ul style="list-style-type: none"> • Similar to current H-2A requirements, requires the employer to offer no-cost housing that meets federal standards or provide reasonable housing allowance, and to reimburse W workers' transportation expenses. 	<ul style="list-style-type: none"> • Does not require employers to provide housing or housing reimbursement to H-2C workers, or to reimburse transportation expenses, both of which are required in current H-2A program.
Admissions & At-Will Employment	<ul style="list-style-type: none"> • Employers must register as a Designated Agricultural Employer (three year renewable term) to be eligible to hire an immigrant agricultural worker. • Unlike current H-2A program, allows workers flexibility to move between employers: W-3 contract workers can accept employment with other DAEs after completion of the original contract, and W-4 at-will can workers to seek employment with other DAEs at any time. 	<ul style="list-style-type: none"> • Allows employers to become registered agricultural employers with the Department of Agriculture in order to employ H-2C workers without petitioning for them. • Unlike current H-2A program, allows employees to seek at-will employment if they have already been admitted to the U.S. through an H-2C petition and have completed agreed-upon period of initial employment or have been terminated by original employer. • At-will component will only be available once mandatory E-Verify is implemented (date undetermined).
Hours and Wages	<ul style="list-style-type: none"> • Requires that employers pay the higher of the federally-determined specified wage rates or minimum wage. • Continues H-2A requirement that employers guarantee to offer employment for at least 75% of hours promised in job offer. 	<ul style="list-style-type: none"> • Requires that employers pay the higher of the prevailing wage or minimum wage. • Reduces H-2A requirement that employers guarantee to offer employment for a specific amount of hours promised in a job offer from 75% to 50%. • Mandates withholding wages from paychecks to provide monetary incentive for workers to return to country of origin upon expiration of visas. To receive remainder of their earnings plus interest, workers are required to travel to U.S. consulate in their homeland within 30 days of the expiration of their visa and demonstrate compliance with the terms of H-2C visa.
Employment Termination & Departure	<ul style="list-style-type: none"> • Allows all W visa workers to terminate employment at any time. • Requires W-3 workers to depart once contract is complete, assuming no new employment with a DAE; requires W-4 at-will workers to depart if not continuously employed with a DAE. • Mandates that W-3 workers who voluntarily abandon the contract period or whose employment is terminated for cause may not accept new employment with another DAE without first departing the U.S. and re-entering under new offer. 	<ul style="list-style-type: none"> • Allows all H-2C visa workers to terminate employment at any time provided they depart the U.S. within 14 days. • Requires employers to report abandonment of employment by H-2C worker to the Secretary of Homeland Security who must promptly remove such worker.

E-Verify	<ul style="list-style-type: none"> Requires monitoring the movement of W-3 and W-4 workers through E-Verify and an electronic monitoring system to be established not later than 2 years after the effective date of law. 	<ul style="list-style-type: none"> Mandates that at-will component will only be available once E-Verify is required for all employers and indicates eligibility for employment in all occupations or only agricultural labor/services.
Oversight	<ul style="list-style-type: none"> Limits government oversight of employers' claims of labor shortages, job terms, and working conditions. Unlike current H-2A program, uses attestation-based process in which employers attest, under threat of penalties, that they have complied with all applicable program requirements. Department of Agriculture responsible for ensuring employer compliance. 	<ul style="list-style-type: none"> Limits government oversight of employers' claims of labor shortages, job terms, and working conditions. Unlike current H-2A program, uses attestation-based process in which employers attest, under threat of penalties, that they have complied with all applicable program requirements. Department of Agriculture responsible for ensuring employer compliance.