

ANALYSIS OF SENATE IMMIGRATION REFORM BILL

Title II: Immigrant Visas

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On April 16, 2013, Senators Menendez (D-NJ), Durbin (D-IL), Schumer (D-NY), Bennett (D-CO), Rubio (R-FL), Graham (R-SC), McCain (R-AZ), and Flake (R-AZ) introduced the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S.744) into the U.S. Senate. The Senate Judiciary Committee approved 141 amendments and voted the bill out of committee on May 21, 2013.¹ The proposal now under consideration incorporates these amendments and makes several other changes to the overall bill, including those that would result from inclusion of the amendment offered by Senators Bob Corker (R-TN) and John Hoeven (R-ND), to be considered by the Senate on June 24, 2013.

The bill is a comprehensive overhaul of much of our nation's immigration system and includes a road to citizenship for millions of currently unauthorized noncitizens. A general summary of the bill, as well as analyses of Title I (the "Border Security" title) and Title III (the "Interior Enforcement" title), are available at www.nilc.org/irsenate2013.html.

Title II of the bill contains many significant provisions, including the creation of a new "registered provisional immigrant" (RPI) status, an overhaul of current family and employment visa categories, and the creation of new farm worker and temporary worker visas. In this bill, the road to citizenship begins with applying for RPI status and is contingent upon the deployment of border security resources, implementation of an employment verification system, as well as provisions that would reduce the current backlog of family- and employment-based immigrant visa applications. Immigrants in RPI status will be required to pay large fines, fees, and taxes, and to demonstrate that they have maintained regular employment. Disappointing features of this title include the elimination of the sibling visa category, a provision that would eliminate immigration sponsorship by parents of adult married children over age 30, and the elimination of the diversity visa lottery. We are supportive of aspects of this title but remain concerned that low-income immigrants will have to overcome dauntingly high barriers on their road to citizenship.

¹¹ See *Key Judiciary Committee Amendments to S. 744* (NILC, June 11, 2013), www.nilc.org/document.html?id=927.

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THE BEGINNING OF THE ROAD: REGISTERED PROVISIONAL IMMIGRANT (RPI) STATUS

The bill creates a new status, registered provisional immigrant, for people who were physically present in the U.S. on or before December 31, 2011; have maintained continuous presence until the date of application; have paid all federally assessed tax liabilities, fees and penalties; and have not been convicted of certain criminal offenses. RPI status may be renewed in 6-year periods. After 10 years, individuals in RPI status may apply to adjust to lawful permanent resident (LPR or “green card”) status. An additional 3 years in LPR status is required before people initially granted RPI status may apply for U.S. citizenship.

People granted RPI status will not be considered “unlawfully present” in the U.S. as of the date they filed their application. They will be authorized to be employed in the U.S. and eligible to obtain Social Security numbers. They also will be allowed to travel outside of the U.S. while in RPI status.

Eligibility Criteria

- **Continuous presence.** To be eligible for RPI status, a person must have been continuously present in the U.S. from December 31, 2011, until granted RPI status, except for “brief, casual and innocent” or authorized departures.
- **Fees and fines.** Fees will be determined by the U.S. Department of Homeland Security (DHS) to cover the cost of the application process; a fine of \$1,000 will be assessed and may be paid in installments, to be completed before the extension of RPI status; another \$1,000 penalty is assessed when the person applies to adjust to LPR status. Those who are under the age of 21, as well as those who entered the U.S. under the age of 16, are not subject to the fines.
- **Taxes.** Applicants for RPI status must pay any outstanding federal tax liability that has been assessed by the Internal Revenue Service, and must pay taxes during the period of RPI status.
- **Time limit to file.** People seeking RPI status must file for it within one year from the time that DHS publishes final regulations implementing the bill’s provisions. The DHS secretary may extend this limit for an additional 18 months.
- **Ability to apply for family members.** A person with RPI status will be able to file an application to obtain RPI status for otherwise eligible dependent children and spouses who were in the U.S. before December 30, 2012, and remain continuously in the U.S. until the date the person is granted RPI status. If the relationship is terminated due to death or divorce, or if the spouse or child has been subject to domestic violence (regardless of whether the relationship has terminated), the spouse or child may apply independently.
- **People in custody or removal proceedings.** People who are apprehended by immigration authorities prior to the RPI application period, are in removal proceedings, or have been ordered removed will be able to apply for RPI status if they can establish that they are prima facie eligible (or appear to meet the basic eligibility criteria) for the status.

- **People who have been removed from the U.S.** People who have been removed from the U.S. or who left the U.S. after a judge’s order of “voluntary departure,” and are outside the U.S. or reentered the U.S. unlawfully after December 31, 2011, will not be eligible to file an application for RPI status. However the DHS secretary may waive this provision for the spouse, parent, or child of a U.S. citizen or LPR. DREAMers also may qualify for this waiver if they have a high school diploma from a U.S. school or a general equivalency diploma (GED) issued in the U.S., or were present in the U.S. for at least 3 of the 6 years prior to the bill’s enactment. Prior to granting this waiver, DHS must determine whether the individual has a criminal conviction, notify and consult with any victim to determine whether to grant the waiver, and notify the victim if the waiver is granted.
- **DACA recipients.** People granted deferred action under the Deferred Action for Childhood Arrivals (DACA) program and who are otherwise eligible may secure RPI status if they are screened for national security and law enforcement purposes.

Individuals Are Not Eligible for RPI Status If . . .

- **They are already lawfully present.** This includes people who are LPRs, refugees, asylees, or people who were in a nonimmigrant status (e.g., on a visitor’s or a nonimmigrant employment-based visa) on April 16, 2013. People who are in temporary protected status (TPS) on this date are eligible.
- **They have been convicted of:**
 - A felony (other than a state or local immigration status–related offense);
 - An aggravated felony;
 - Three or more misdemeanors (other than minor traffic offenses or state or local immigration status–related offenses), if convicted on different dates for each of the three offenses;
 - Certain foreign offenses; or
 - Unlawful voting.

Convictions that are expunged, or set aside do not count. DHS will conduct additional security screening of RPI applicants, spouses, and children who resided in a region or country “known to pose a threat, or that contains groups or organizations that pose a threat to the U.S.”

- **They are considered inadmissible.** (However, several grounds of inadmissibility, such as unlawful presence and final orders of removal, do not apply to people seeking RPI status or subsequently seeking to adjust to LPR status, and many grounds can be waived.)

Waivers. DHS can waive the applicability of some of these ineligibility grounds for humanitarian purposes, to ensure family unity, or if it is in the national interest.

Features of RPI Status

- **Requirements for renewal.** At renewal, RPIs must demonstrate that they have been regularly employed (except for brief periods of no more than 60 days) and are not likely to become a public charge — or they must earn an average income or have resources at 100 percent of the federal poverty level or higher throughout the period of RPI status. Alternatively, they may meet the education requirements or exceptions described below.
- **Challenging denials.** Those whose applications are denied may appeal them administratively and in federal court.
- **Confidentiality.** Applications for benefits under this bill are considered confidential, except for purposes of criminal investigation or prosecution, audits for immigration fraud schemes, and other narrow circumstances.
- **Revocation.** A person's RPI status may be revoked if the person no longer meets the eligibility requirements, knowingly uses documents issued to him or her for unlawful or fraudulent purposes, is convicted of fraudulently claiming or receiving a federal means-tested public benefit while in RPI status, or was absent from the U.S. for single periods of over 180 days, or a total of 180 days within a calendar year, with exceptions for extenuating circumstances beyond the person's control.

THE ROAD TO LAWFUL PERMANENT RESIDENCE (A "GREEN CARD")

Triggers

Before people in RPI status (with the exception of DREAMers) may apply for a green card, the DHS secretary must certify that:

- Immigrant visas are available for all employment- and family-based petitions filed before the date the bill is enacted.
- The Comprehensive Southern Border Security Strategy is substantially deployed and operational, including the use of new technologies to conduct manned and unmanned monitoring, sensing or surveillance of 100 percent of the southern border and vicinity.
- The Southern Border Fencing Strategy is substantially completed, including no fewer than 700 miles of pedestrian fencing.
- A mandatory electronic employment eligibility verification system has been implemented and is being used by all employers.
- An electronic exit system has been implemented at all international air and sea ports within the U.S. where Customs and Border Patrol is deployed.
- No fewer than 38,500 trained, full-time, active-duty Border Patrol agents are deployed along the southern border by 2021.

Eligibility Requirements

To be eligible to adjust from RPI to LPR status, a person must meet these requirements:

- **Ten years of RPI status.** Must have been in RPI status for 10 years (but DREAMers may apply for LPR status after 5 years in RPI status).
- **Continuous presence.** Must have been continuously present in the U.S., with no more than 180 days of absence in any calendar year while in RPI status.
- **Not inadmissible.** Must not be inadmissible, except for grounds that are not applicable or waived.
- **Taxes, fees, fines.** Must have paid his/her tax liability, fees, and a \$1,000 penalty. DHS will establish a process for allowing individuals to pay in installments.
- **Employment or education, and income.**
 - *Employment.* RPIs must demonstrate that they are regularly employed (without a period of unemployment longer than 60 days) and not likely to become a public charge, or demonstrate that they earn an average income or have resources of at least 125 percent of the federal poverty level; or
 - *Education.* They must show that they are enrolled in secondary or higher education, or certain other educational programs.
 - *Exceptions and waivers.* Exceptions are available for people who are under age 21 and people over 60, people with physical or mental disabilities, and others. Waivers are available for people who can demonstrate extreme hardship to themselves, or to a spouse, parent, or child who is a U.S. citizen or LPR.
- **English and civics.** Must have either already satisfied this requirement or be pursuing a course of study in English and history of the U.S. There are exceptions to this requirement for people with a physical or mental disability/impairment, and it may be waived for people who are 70 years old or older when they are filing their application for adjustment to LPR status.
- **Waivers.** DHS may waive certain requirements for humanitarian purposes, to ensure family unity, or in the public interest.
- **Citizenship.** A person who has had RPI status for 10 years and, subsequently, has had LPR status for 3 years may apply for U.S. citizenship.

ANALYSIS

We believe the time has come for Congress to create a road to citizenship for unauthorized immigrants, and we see this bill as an important step in that direction. However, we have grave concerns about whether low-income immigrants will be able to afford the fees, fines, and tax liability that they would be required to pay. And we have grave concerns, too, about other roadblocks that the bill would create for low-income people that might make it impossible for them to *stay* on the road to citizenship once they got on it — extensive employment requirements, as well as the possibility of being disqualified for having been convicted of minor offenses. We are likewise concerned about the “crime victim consultation”

limitation on the deportee waiver, an unprecedented and problematic provision which raises significant confidentiality and implementation concerns.

Unauthorized immigrants have a high workforce participation rate and represent 21 percent of all low-wage workers.² More than a quarter of undocumented families have annual incomes of less than \$20,000.³ Fines totaling \$2,000 per person — in addition to unknown application fees — will pose a significant hurdle for low-income immigrant families, especially those that have several members who are undocumented.

Undocumented immigrants participate in the labor force at a high rate (94 percent for men between the ages of 18 and 64), but requiring proof of regular employment with no gap greater than 60 days from those who seek to renew their status will create yet another significant roadblock to legalization. This requirement is a solution in search of a problem, especially since scholars and policymakers agree that undocumented immigrants come to the U.S. to work. Moreover, individuals in RPI status will likely be working when they are able to do so, because they need income to support themselves and family members and to pay the necessary fees and fines for legalization.

We also are very concerned about the English-language requirement. Many immigrants have a desire to learn English, but, given the limited availability of English-as-a-second-language courses, it is likely that many will be unable to satisfy this requirement. Due to fiscal challenges, many state and local governments have cut back severely on adult education programs, rendering this requirement even more challenging for those who may wish to learn English but cannot access an appropriate course. If this requirement remains in the bill, we must ensure that immigrants have the ability to access affordable and appropriate English-language courses.

The bill features robust administrative and judicial review provisions. Successful implementation of new government programs takes time to get right, and administrative and judicial review procedures provide important safeguards to ensure consistent and fair implementation. Equally important are the confidentiality provisions that ensure that applicants do not have to fear that the truthful and nonfraudulent information contained in their applications could result in adverse consequences for themselves, their family members, or their employers. The bill also includes protections against unscrupulous notaries and others by penalizing the unauthorized practice of law.

We applaud the Senate's efforts to provide a shorter road to citizenship for DREAMers, so that they can reach their full potential as soon as possible. However, the bill needs to be strengthened to ensure that DACA beneficiaries are automatically granted RPI status, after any necessary background checks, without needing to pay additional fees. Their time in DACA status should also be credited towards the amount of time RPIs are required to be in

² Randy Capps, *U.S. Immigration and Immigrant Integration: Implications for States* (a PowerPoint presentation) (Migration Policy Institute, June 3, 2009), www.nga.org/files/live/sites/NGA/files/pdf/0906WEBCASTIMMIGRANTSCAPPS.PDF.

³ Marc R. Rosenblum, Randy Capps, and Serena Yi-Ying Lin, *Earned Legalization: Effects of Proposed Requirements on Unauthorized Men, Women, and Children* (Migration Policy Institute, Jan. 2011), www.migrationpolicy.org/pubs/legalization-requirements.pdf, p. 16.

that status on their road to eventual citizenship. We believe that the road to citizenship for other aspiring citizens should also be shorter so that our country can reap that much quicker the benefits that flow from people becoming full-fledged members of our national community. While the 10-year road the bill provides for is too long and arduous, we are encouraged that it does at least provide that RPIs who adjust to LPR status must wait only 3 years (instead of the normal 5 years) to be eligible to apply for citizenship.

THE FARM WORKER ROAD TO LAWFUL PERMANENT RESIDENCE

The bill allows undocumented farm workers who can demonstrate a minimum of 100 work days or 575 work hours in the two years prior to the date of the bill's enactment to be eligible for an agricultural card ("blue card"). Workers who work at least 100 days a year for 5 years or workers who perform at least 150 days a year for 3 years can adjust to LPR status. To be eligible for LPR status, agricultural workers must show that they have paid all taxes and have not been convicted of any serious crime, and they must pay a \$400 fine. More information about the bill's farm worker provisions is available on the United Farm Workers website, www.ufw.org.

THE DREAM ROAD TO PERMANENT RESIDENCE AND CITIZENSHIP

The following eligibility criteria apply to people who to choose to take the road to U.S. citizenship provided for under the bill's DREAM Act provisions:

- **Childhood arrival.** To qualify for the DREAM road to LPR status and citizenship, a person must have been younger than 16 years of age on the date he or she initially entered the U.S.
- **Secondary education.** The person must have earned a high school diploma or obtained a GED in the U.S.
- **Higher education or military service.** The person must meet at least one of the following criteria:
 - Must have acquired a degree from an institution of higher education or been enrolled for 2 years in a bachelor's or higher degree program in the U.S.
 - Must serve (or have served) at least 4 years in the uniformed services and, if discharged, have received an honorable discharge.

A hardship exception to this requirement is available for compelling circumstances.
- **English and civics requirement.** The person must demonstrate an understanding of the English language and knowledge and understanding of U.S. civics, unless the person has a disability that prevents him or her from meeting this requirement.
- **Years in RPI status.** To be eligible to adjust to LPR status via the DREAM road, the DREAMer must have been in RPI status for 5 years.
- **Immediate eligibility for naturalization.** DREAMers granted LPR status will be immediately eligible to apply for citizenship. RPIs who entered the U.S. before the age of 16 may naturalize immediately upon joining the military while the U.S. is in a period of military hostilities.

- **Restoration of state option to determine residency for purposes of higher education.** This bill would repeal section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which limits states' options to provide in-state tuition without regard to immigration status. Under IIRIRA section 505, states that provide a higher education benefit based on residency to undocumented immigrants must provide the same benefit to U.S. citizens in the same circumstances, regardless of their state of residence.
- **Educational loans.** RPIs who entered the U.S. prior to age 16 and agricultural workers with blue-card status may qualify for federal work study and federal student loans. (They remain ineligible for federal Pell grants until they adjust to lawful permanent residence.)
- **Waivers and other fixes.** This section of the bill addresses various provisions in the immigration laws that relate to immigration status violations by minors.

ANALYSIS

We are very pleased with the bill's DREAM legalization provisions, which provide for a road to U.S. citizenship that would take 5 years to travel. Unlike previous iterations of the DREAM Act, this bill does not include an age cap (it doesn't provide that people over a certain age are ineligible for legalization via DREAM), and it increases immigrants' access to higher education. The military service option, which in previous bills required only 2 years of service, has been increased, in this bill, to 4 years. The repeal of section 505 is a key improvement because it provides more options for states that want to offer in-state tuition to undocumented students who are otherwise eligible. Since implementation of this title's provisions would likely take at least a year, this is an important interim measure to make higher education more affordable for DREAMers.

We believe, however, that DREAMers should be able to reunite with their families by being allowed to file immigration petitions for their deported parents while they (the DREAMers) are in RPI status.

CHANGES TO FUTURE IMMIGRATION & FAMILY VISAS

The bill makes a number of major changes to the legal immigration system. It would create a new "merit-based" system, eliminate the substantial backlogs that have kept families apart for decades, but also restrict or eliminate some important immigration categories. NILC is concerned that the legislation caps the adult-children category at those under 31 and eliminates the sibling category. In addition, the bill's provisions would continue to separate LGBTQ (lesbian/gay/bisexual/transgender/queer) couples by not providing that same-sex couples may petition to immigrate their spouses.

"Immediate Relatives," V & W Visas, Diversity Visas

- **Spouses and minor children of LPRs are "immediate relatives."** Spouses and minor children of LPRs will be able to obtain visas as "immediate relatives," and they will be able to bring with them derivative children and spouses. There will be no numerical cap for them, so they will be able to reunite with their family members in the U.S. without delay.

- **New family “V” visa.** The bill creates a new nonimmigrant V visa for people with approved family-based immigration petitions, so they may work and live in the U.S. with lawful status while waiting for their green card.
- **New “W” Nonimmigrant Visas.** The bill would create a visa program for non-agricultural low-wage workers who work for registered employers in an occupation with labor shortages for 3 years with the ability to renew for an additional 3 years. W visa–holders would have the ability to eventually apply for merit-based green cards and to switch to another registered employer and job at will. Dependents can join the W visa–holder and will receive work authorization.
- **Repeal of the Diversity Visa Program.** The bill repeals the Diversity Visa Program, which especially benefits immigrants from Africa and Eastern Europe, as of Oct. 1, 2014. Noncitizens who are selected in the diversity visa lottery in fiscal year 2013 or 2014 would remain eligible to receive an immigrant visa under the program.

Elimination of Some Family Visa Categories

Currently, there are four family visa preference categories based on family relationships, and 480,000 family visas are distributed per year. Under the new system:

- **Sibling category eliminated and age cap on adult married children.** The current sibling category will be eliminated 18 months after the date of the bill’s enactment, and at that time there also will be instituted a cap at age 31 for married sons and daughters of U.S. citizens seeking immigrant visas.
- **Changes prospective.** These changes would take effect prospectively, 18 months after the date of the bill’s enactment, and people could file visa petitions to immigrate these relatives up until this effective date.

ANALYSIS

The adult-children category and the sibling category are critical to the family unit. Family reunification is the cornerstone of our legal immigration system, and eliminating the diversity visa category, which has benefited historically excluded communities, is contrary to our country’s commitment to family and diversity.

We welcome the creation of a new V visa, which will allow people aspiring to become U.S. residents or citizens to stay or reunite with their children or siblings in the U.S. while they wait for permanent status, rather than having to endure long waits — and thus separations — in their home countries.

New “Point System” for Visas

- **Merit-based “Track One” immigrant visas.** The bill initially would allocate 120,000 Track One immigrant visas per year, a number that could increase by as much as 5 percent each subsequent year as long as unemployment remains under 8.5 percent, up to a cap of 250,000 visas. The visas would be allocated based on a point system that takes into account

various factors, including educational degrees, employment experience, and needs of U.S. employers, U.S. citizen relatives, and age.

ANALYSIS

The point system favors people who have had access to education and work in the formal labor sector. Many women — who are often caregivers and caretakers for family members — and low-wage workers will have difficulty qualifying for a visa under this new system. In many countries, women still do not have access to education, and, as a result, fewer women will qualify for visas under this system. We are concerned that implementation of this new “merit-based” visa program will result in immigrants or potential immigrants being viewed and evaluated mainly through an economic lens and that it will undervalue the importance of family ties to immigrants’ successful integration and happiness. We are also concerned that the allotment of Track One immigrant visas is insufficient to meet the likely demand from the millions of future low-wage nonimmigrant workers who will enter the U.S. through the newly-created W visa program.

- **Merit-based “Track Two” visas.** Track Two is the vehicle through which green cards will be granted to RPIs, and immigrant visas would be made available for people who are currently beneficiaries of employment- and family-based visa petitions that are backlogged, and who have been waiting for an immigrant visa for at least 5 years, and also for individuals who have been lawfully present in the U.S. for at least 10 years (including RPIs).
- **Backlog reduction.** Under the bill, spouses and unmarried children of LPRs will be treated as “immediate relatives” so that they are no longer subject to the numerical limits of the preference system and can obtain immigrant visas immediately. For other family members with pending petitions, they will be allocated transitional merit-based visas such that they should all be allocated over the 7-year period from 2015 to 2021. In other words, those whose cases are in the backlog will obtain green cards by 2021. People in the U.S. with pending petitions may obtain their Track Two visas overseas, a process called consular processing. The bill eliminates the 3- and 10-year bars that these people would have otherwise triggered by departing the U.S.
- **Visas for longtime U.S. residents.** People who are lawfully present and work-authorized for 10 years are eligible for this set of Track Two immigrant visas. W-visa holders are not eligible for these visas. After 2028, a person would have to be lawfully present and work-authorized for 20 years in order to be eligible for this visa.
- **Other technical changes.** As part of an effort to overhaul the legal immigration system, the bill includes a great many additional technical changes to the immigrant visa system.

ANALYSIS

The merit-based Track Two visas will be essential to backlog reduction for families and workers who have been waiting for many years to receive a visa. The 10-year lawful presence requirement, albeit long, treats RPIs and other immigrants equally by providing them an opportunity to adjust to LPR status under the Track Two visa provision.

ACCESS TO PUBLIC BENEFITS AND TO HEALTH COVERAGE UNDER THE AFFORDABLE CARE ACT (ACA)

Federal Public Benefit Programs

A person granted RPI status, blue-card (for farm workers) status, V nonimmigrant status, or Y nonimmigrant status (for “retirees”) will not be eligible for the following “federal means-tested public benefit” programs: nonemergency Medicaid, the Children’s Health Insurance Program (CHIP), Supplemental Nutrition Assistance Program (SNAP or food stamps), Temporary Assistance for Needy Families (TANF), or Supplemental Security Income (SSI) for the duration of their provisional status. When they adjust to LPR status, they generally will be forced to wait at least 5 additional years before becoming eligible for these programs. As a result, a person with RPI status who is otherwise eligible will not be able to enroll in programs such as Medicaid and SNAP for 15 years.

The bill restores Medicaid eligibility for people from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, who enter the U.S. under the Compact of Freely Associated States. However, formerly eligible people who entered the U.S. with a B visa (temporary visitors for business or pleasure) or F visa (students, as well as their spouses and children) would, under S. 744’s provisions, be ineligible for Medicaid and CHIP under the state option.⁴

The bill provides access to federal public housing assistance to “qualified” immigrant survivors of domestic violence. Finally, it prohibits federal officers and employees from waiving the immigrant eligibility restrictions imposed by the federal welfare law or the immigration bill, and it prohibits the U.S. Department of Health and Human Services (HHS) from waiving the immigrant eligibility restrictions and reporting requirements in the TANF program.

Social Security

In order to become “fully insured” for Social Security purposes, people issued a Social Security number (SSN) on or after January 1, 2004, must show that they have been issued a valid SSN and have earned sufficient quarters of work history. To receive Social Security payments based on this work history, a person must be lawfully present in the U.S.

Under the Corker-Hoeven amendment, people granted RPI status and those who overstayed a nonimmigrant visa may not claim credit for any quarter of coverage earned between 2004 and 2014 in which they were not authorized to work. People who do not have sufficient documentary evidence may submit an attestation that they were authorized to work during a particular quarter, with criminal penalties for false attestations ranging from fines to imprisonment of up to 5 years.

The provision applies to quarters used in determining eligibility for Title II Social Security retirement benefits as well as Social Security Disability Insurance (SSDI). It also precludes dependent or surviving spouses and children from receiving benefits based on the work history described above. It applies to individuals issued an SSN on or after January 1, 2004, who file

⁴ This paragraph was revised on June 27, 2013.

benefit applications at least 6 months after the bill's enactment and whose Title II benefit amounts had not been determined before that date.

The restriction denies credit for up to ten years of work performed and Social Security taxes paid by these individuals. It would deprive workers, and their dependents or survivors of critical assistance they may need if they become old, disabled or if they die prior to acquiring sufficient new work history.

Affordable Care Act (ACA)

A person granted RPI, blue-card, or V-nonimmigrant-visa status will be able to purchase private health insurance at full cost through the insurance marketplaces created under the Affordable Care Act. However, during the period of their provisional status, these people will not be eligible for the ACA's premium tax credits and cost-sharing reductions that help make health insurance affordable for low- and middle-income working families. Such individuals will also be excluded from the ACA's requirement to have health insurance or pay a tax penalty, the individual mandate, because they are excluded from the ACA's affordability subsidies. People in these statuses are eligible for employer-sponsored health insurance if it is offered by their employer, similar to other employees.

People in other immigration status categories addressed in the bill, including workers with one of the expanded H-category visas, low-skilled workers who obtain W visas, and people who adjust to LPR status from RPI or blue-card status or through the clearing of the visa backlogs, will be eligible under existing law for ACA programs and related subsidies while in that status, with no waiting period.

Under the Corker-Hoeven amendment, formerly eligible people with a B visa (temporary visitors for business or pleasure) or F visa (students, as well as their spouses and children) are excluded from health-related programs administered by HHS that require participants to be lawfully present in the U.S, namely the ACA. This exclusion will prevent B- and F-visa holders from purchasing full-price insurance under the new insurance marketplaces, the Pre-Existing Condition Insurance Plan program, and the Basic Health Plan. The amendment also requires the Internal Revenue Service (IRS) to comply with this exclusion; as a result, the amendment would make people with B and F visas no longer eligible for the ACA's subsidies and no longer subject to the ACA's requirement to have health insurance, which applies to most lawfully present immigrants as well as citizens.

ANALYSIS

Under the bill's provisions, people granted RPI status, blue-card status, or V visas are arbitrarily and harmfully denied access to affordable health care and nutrition assistance for 5 to 15 years. Yet during this same period, these individuals are expected to work in order to provide for themselves and their families. The bill also alters the ACA to exclude individuals granted B or F visas from obtaining affordable health insurance, even though many of those individuals are unlikely to meet the ACA's other eligibility requirements, or may already have health insurance, as required by many higher education institutions. Those most likely to lose or be shut out of affordable coverage are the spouses and children of students.

No one, however, can predict when he or she will fall ill or be injured in an accident and need medical care. No child in the U.S. should go to bed hungry — not only for moral reasons, but

because children who go to bed hungry are much less able to learn and thrive. Investing in affordable health care and nutrition for these aspiring citizens now and allowing them to pay their fair share will help ensure that they can participate fully in the nation's economies, and will be cost-effective for all of us.

MISCELLANEOUS PROVISIONS

- **Waivers and judicial discretion.** The bill includes new waivers and broadens existing waivers, expanding the circumstances under which DHS and immigration judges may favorably exercise discretion.
- **Limitations on punitive immigration provisions.**
 - *Reinstatement of removal orders.* Limits circumstances under which prior removal orders can automatically be applied to deport a person without the person being given the opportunity to see an immigration judge.
 - *Grounds of inadmissibility.* Addresses overbroad inadmissibility grounds relating to fraud and misrepresentation, by limiting their application to adults who knowingly commit fraud.
- **Judicial review.** The bill amends Immigration and Nationality Act section 242(a)(2)(D) to ensure review of constitutional claims and issues of law in all federal courts.
- **Integration and citizenship provisions.** The bill establishes an “Office of New Americans” within U.S. Citizenship and Immigration Services to promote citizenship preparation and expand access to programs providing assistance to low-income immigrants. In addition, the bill broadens automatic citizenship eligibility for adoptees of U.S. citizens.

ANALYSIS

These provisions are essential to ensuring the implementation of a fair legalization process. Waivers and judicial discretion will help ensure that people who have strong equities will have the opportunity to demonstrate that they should be allowed to remain in the U.S.