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Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744

Updated July 9, 2013

Congressional Research Service
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R43097

CRS REPORT
Prepared for Members and
Committees of Congress

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SUMMARY

R43097

July 9, 2013

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Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744

For several years, some Members of Congress have favored "comprehensive immigration reform" (CIR), a label that commonly refers to omnibus legislation that includes increased border security and immigration enforcement, expanded employment eligibility verification, revision of nonimmigrant visas and legal permanent immigration, and legalization for some unauthorized aliens residing in the country. The omnibus legislative approach contrasts with incremental revisions of the Immigration and Nationality Act (INA) that would address some but not all of these elements, and with sequential reforms that would tackle border security and interior enforcement provisions prior to revising legal immigration or enacting legalization pathways.

Leaders in both chambers have identified immigration as a legislative priority in the 113th Congress. While the House Committee on the Judiciary has ordered reported several distinct pieces of legislation that aim to reform immigration law thus far in the 113th Congress, the debate in the Senate has focused on a single CIR bill: the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744). This report summarizes major provisions of S. 744, which the Senate amended and passed by a yea-nay vote of 68-32 on June 27, 2013.

CRS's analysis of S. 744 focuses on eight major policy areas that encompass the U.S. immigration debate: comprehensive reform "triggers" and funding; border security; interior enforcement; employment eligibility verification and worksite enforcement; legalization of unauthorized aliens; immigrant visas; nonimmigrant visas; and humanitarian provisions.

Among the border and enforcement-related provisions in Senate-passed S. 744 are a number of provisions aimed at strengthening border security, including increased border security personnel, equipment, and infrastructure. The bill would mandate new border security strategies and the development of new border metrics that would be designed to achieve "effective control" of the Southern border. Most notably, S. 744 would authorize $44.5 billion in spending for additional border patrol agents, border fencing, and an electronic exit system to collect machine readable data at air and sea ports of entry.

The legislation would also authorize $750 million for the U.S. Department of Homeland Security (DHS) to implement a mandatory electronic employment verification system to be used by all employers. Furthermore, S. 744 would amend the INA to create additional grounds of inadmissibility and deportability, while broadening judges' discretion to waive some of these grounds. For certain immigration offenses, the bill would increase civil and misdemeanor penalties for first-time offenses and impose felony penalties when aggravating circumstances exist. The bill would amend INA provisions on unlawful reentry to increase criminal penalties. S. 744 would provide additional resources to immigration courts and would encourage alternatives to detention and strengthen detention standards and congressional oversight of immigrant detention. Special provisions would be included to protect children who are affected by immigration enforcement.

In turn, S. 744 would amend the INA to provide pathways for unauthorized aliens to adjust their immigration status to one of the proposed new statuses—"registered provisional immigrant" (RPI) status and "blue card" status—and ultimately legal permanent resident (LPR) status after specified border security and interior enforcement criteria are met. In addition to these legalization provisions, S. 744 would also accelerate the admission of an estimated 4 to 7 million foreign nationals who have pending petitions to become LPRs. S. 744 would substantially revise the categories for the admission of LPRs, eliminating the category for siblings of U.S. citizens, shifting the allocation of the other family-based categories, permitting more categories of LPRs to enter without numerical limits, and increasing the number of employment-based LPRs. The Congressional Budget Office (CBO) projects that the changes to the legal immigration system would result in an increase of 9.6 million LPRs in the first decade after enactment.

Senate-passed S. 744 would revise and expand nonimmigrant (i.e., temporary immigration) programs for high- and low-skilled workers, as well as for tourists, students, and other nonimmigrants. The bill would increase the cap on professional specialty workers (H-1B workers), while also imposing new requirements on businesses that employ H-1B workers, as well as those that employ intra-company transferees (L visas). Reforms would be made to the existing H-2B visa for lower-skilled non-agricultural workers in temporary or seasonal employment, while the H-2A visa for agricultural workers would be phased out. New nonimmigrant visas (the proposed W visas) would be established for lower-skilled agricultural and non-agricultural workers that would be more flexible for employers, while also expanding certain rights for workers. Additional nonimmigrant visa changes would facilitate temporary immigration by doctors, investors, and aliens from certain countries with U.S. trade agreements; encourage tourism within the United States; and strengthen oversight of foreign students and summer-work study exchanges, among other changes.

An accompanying report, CRS Report R43099, *Comprehensive Immigration Reform in the 113th Congress: Short Summary of Major Legislative Proposals,* offers an overview of S. 744 as well.

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Introduction

For several years, some Members of Congress have favored "comprehensive immigration reform" (CIR), a label that commonly refers to omnibus legislation that includes increased border security and immigration enforcement, expanded employment eligibility verification, revision of nonimmigrant visas and legal permanent immigration, and legalization for some unauthorized aliens residing in the country.[1] Other Members of Congress may favor addressing these issues sequentially (e.g., by implementing enforcement provisions and perhaps reforming legal immigration prior to legalization), and/or may disagree with the legalization and increased legal immigration provisions that have been features of major CIR bills. Still others may be interested in legislating on some elements of CIR but not others.[2]

Leaders in both chambers have identified immigration as a legislative priority in the 113th Congress. While the House Committee on the Judiciary has ordered reported several distinct pieces of legislation that aim to reform immigration law thus far in the 113th Congress, the debate in the Senate has focused on a single CIR bill: the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744). As introduced on April 16, 2013, S. 744 was the product of months of negotiations among four Democratic and four Republican Senators—the bill's original co-sponsors—a group widely described as the "Gang of 8."[3]

The Senate Judiciary held three days of hearings on S. 744 in April 2013 and then marked up the bill over five days in May, favorably ordering the bill reported by a vote of 13-5 on May 21, 2013. The Senate Judiciary Committee filed its written report on S. 744 on June 7.[4] The Senate passed the motion to invoke cloture on S. 744 on June 11, 2013, by a yea-nay vote of 82-15. The full Senate debated S. 744 for several weeks in June and considered about two dozen amendments on the floor. Some amendments were folded into other amendments, the most significant of these being the Hoeven-Corker-Leahy amendment on border security (S.Amdt. 1183), which the Senate approved by a yea-nay vote of 69-29. On June 27, 2013, the Senate passed S. 744, as amended, by a yea-nay vote of 68-32.

This report summarizes major provisions of S. 744, as reported by the Senate Judiciary Committee and as modified and passed on the Senate floor. CRS's analysis focuses on eight major policy areas that encompass the U.S. immigration debate: comprehensive reform "triggers" and funding; border security; interior enforcement; employment eligibility verification and worksite enforcement; legalization of unauthorized aliens; immigrant visas; nonimmigrant visas; and humanitarian provisions.

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[1] Previous bills include the Comprehensive Immigration Reform Act of 2006 (S. 2611 as passed by the Senate in 109th Congress), and the Comprehensive Immigration Reform Act of 2007 (S. 1639 as considered by the Senate in 110th Congress). For a fuller discussion see CRS Report R42980, *Brief History of Comprehensive Immigration Reform Efforts in the 109th and 110th Congresses to Inform Policy Discussions in the 113th Congress*, by Ruth Ellen Wasem.

[2] For example, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437 as passed by the House in 109th Congress) was an omnibus immigration enforcement bill that did not include legalization provisions or changes to the legal immigration system. See Ibid.

[3] Members included Senator Michael Bennet (D-CO), Senator Richard Durbin (D-IL), Senator Jeff Flake (R-AZ), Senator Lindsey Graham (R-SC), Senator John McCain (R-AZ), Senator Robert Menendez (D-NJ), Senator Marco Rubio (R-FL), and Senator Charles Schumer (D-NY).

[4] U.S. Congress, Senate Committee on the Judiciary, *Border Security, Economic Opportunity, and Immigration Modernization Act*, 113th Cong., 1st sess., June 7, 2013, S.Rept. 113-40.

Comprehensive Reform "Triggers" and Funding[5]

Some Members of Congress have raised concerns about proposals for comprehensive immigration reform on the grounds that the "bargain" some people see at the heart of such reform—tougher enforcement on the one hand and legalization[6] plus visa reforms on the other—may be difficult to enforce. Some argue, for example, that while supporters of the 1986 Immigration Reform and Control Act (IRCA)[7] promised that a one-time legalization, increased border enforcement, and a prohibition against employing unauthorized workers would solve the problem of illegal migration; some of IRCA's immigration enforcement provisions were incompletely implemented.[8] Partly to allay these concerns, the first sections of S. 744 would make implementation of certain enforcement provisions pre-conditions for the bill's legalization provisions;[9] and S. 744 would directly appropriate funding for certain enforcement measures. These "trigger" and funding provisions were subject to substantive changes on the Senate floor.

Triggers for Legalization and Adjustment to LPR Status

As reported by the Senate Judiciary Committee, Section 3 of S. 744 would establish two sets of triggers for the bill's legalization and adjustment of status[10] provisions.[11]

- *First*, the Department of Homeland Security (DHS) may only commence processing applications for registered provisional immigrant (RPI) status (see "Registered Provisional Immigrants (RPIs)") after DHS notifies Congress that the department has begun to implement a new Comprehensive Southern Border Security Strategy (Comprehensive Security Strategy) and Southern Border Fencing Strategy (Fencing Strategy) mandated by §5 of S. 744 (see "Border Security Strategies and Metrics").[12] DHS would be required to begin implementing the Comprehensive Security Strategy within 180 days after the bill's enactment.[13] Based on the interplay between the triggers in §3 and other provisions of the bill,[14] it appears that aliens likely could begin applying for RPI status within a year of the bill's enactment.

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[5] CRS Legislative Attorney Michael John Garcia contributed to this section of the report.

[6] "Legalization" typically refers to policies to enable unauthorized aliens to become legal permanent residents; see CRS Report R42958, *Unauthorized Aliens: Policy Options for Providing Targeted Immigration Relief*, by Andorra Bruno.

[7] P.L. 99-603.

[8] See for example, U.S. Congress, House Judiciary Committee, *S. 744 and the Immigration Reform and Control Act of 1986: Lessons Learned or Mistakes Repeated?*, 113th Cong., 1st sess., May 22, 2013.

[9] Certain sections prior to Title I of the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) concern border security; these provisions are discussed in "Border Security" section of this report.

[10] Adjustment of status is the process of becoming a legal permanent resident (LPR) while in the United States.

[11] Title II of S. 744 includes additional requirements and timelines for legalization and adjustment of status applications.

[12] S. 744 §3(c)(1).

[13] S. 744 §5(a)(1). The Department of Homeland Security (DHS) would be required to prepare both the Comprehensive Security Strategy and the Fencing Strategy within 180 days of enactment of S. 744; but the bill only specifies an implementation timeline (i.e., immediately after the strategy is submitted) for the Comprehensive Security Strategy.

[14] See S. 744 §2101 (amending the INA to permit certain aliens to adjust to RPI status, but only allowing DHS to accept such applications following the publication of a final rule in the Federal Register); §2110 (requiring promulgation and publication of interim final regulations to implement adjustment provisions within one year of bill's enactment).

- *Second*, as reported by the Senate Judiciary Committee, §3 generally provided that DHS could not begin adjusting the status of persons from RPI to legal permanent resident (LPR)[15] until certain "triggers" are met. Specifically, the DHS Secretary would have been required to certify that four benchmarks have been reached: (1) the Comprehensive Southern Border Security Strategy has been submitted and is "substantially deployed and substantially operational"; (2) the Southern Border Fencing Strategy has been submitted and implemented and is "substantially completed"; (3) DHS has implemented a mandatory employment verification system to be used by all employers (see "Interior Enforcement"); and (4) an electronic exit system to collect machine readable data is being used at air and sea ports of entry (see "Entry-Exit System").[16]

The bill as reported also described an exception to these trigger provisions. If 10 years have elapsed since the bill's enactment and these benchmarks have not been met due to litigation, a Supreme Court ruling that implementation is unconstitutional, or a "force majeure,"[17] the Secretary shall permit RPIs to apply for LPR status.[18] It is not clear, however, whether allowing such applications under this condition means that DHS would be permitted to *adjust* applicants to LPR status, or whether the previous sub-paragraph would prevent DHS from completing such adjustments until the benchmarks are met.[19]

These triggers *would not have applied* to adjustment of status for certain aliens who entered the United States as children (i.e., DREAMers) under Section 2103 of the bill or for aliens granted agricultural "blue card" status under Section 2201 of the bill. The timeline for these groups to adjust status is described in those two sections (see "DREAM Act" and "Agricultural Worker Legalization").

Notable Modifications during Senate Floor Debate

The Hoeven-Corker-Leahy Amendment modified the second set of S. 744 trigger provisions (i.e., the triggers for DHS to begin adjusting the status of persons from RPI to LPR status). The amendment would continue to exempt DREAMers and aliens granted blue cards; and it would not change language concerning the exception to the trigger requirement due to litigation, a Supreme Court ruling, or force majeure. But the amendment generally would augment and expand the main trigger requirements for DHS to begin adjusting RPIs to LPR status. In particular, DHS could not begin such adjustments until six *months after* the DHS Secretary, after consultation with the Attorney General, the Secretary of Defense, the Inspector General of DHS, and the Comptroller General of the United States, certifies to Congress and the President the following:

- The Comprehensive Southern Border Security Strategy includes certain elements added by the Hoeven-Corker-Leahy Amendment, and the Strategy is deployed and operational (see "Border Security Strategies and Metrics"). For purposes of

[15] Legal permanent residents (LPRs) are foreign nationals who come to live lawfully and permanently in the United States; see CRS Report R42958, *Unauthorized Aliens: Policy Options for Providing Targeted Immigration Relief*, by Andorra Bruno; and CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*, by Ruth Ellen Wasem.

[16] S. 744 §3(c)(2)(A).

[17] S. 744 does not define force majeure, but the term generally suggests a failure to meet the objectives, despite acting in good faith, for reasons beyond the DHS Secretary's control.

[18] S. 744 §3(c)(2)(B).

[19] For further discussion of the triggers in section 3, see CRS Sidebar WSLG511, How Do the Enforcement-Related "Triggers" in the Senate Immigration Bill Work? Interpretations May Vary, by Michael John Garcia.

the trigger provision, "operational" is defined to mean that the technology, infrastructure, and personnel deemed necessary by the Secretary (including specific technology allocations described in the bill, as modified) have been procured, funded, and generally are in current use by the Department to achieve effective control of the Southern border.

- The Southern Border Fencing Strategy has been submitted to Congress and implemented (see "Border Security Strategies and Metrics"). The Secretary must certify, pursuant to such Strategy, that at least 700 miles of pedestrian fencing are in place along the Southern border, including the replacement of existing vehicle barriers on non-tribal land with pedestrian fencing where possible, as well as the subsequent installation of secondary fencing in locations where the Secretary deems it necessary or appropriate.
- DHS has implemented a mandatory employment verification system to be used by all employers as required by Section 3101, (see "Electronic Eligibility Verification System").
- DHS is using the electronic exit system created by Section 3303 at all international air and sea ports within the United States where Customs and Border Protection (CBP) officers are deployed.
- No fewer than 38,405 trained full-time active duty U.S. Border Patrol agents are deployed, stationed, and maintained along the Southern border.[20]

Comprehensive Immigration Reform Funds

Section 6 of S. 744 would establish a Comprehensive Immigration Reform (CIR) Trust Fund and a CIR Startup Account. As reported by the Senate Judiciary Committee, the bill would have authorized the transfer of an initial $8.3 billion from the Treasury's general fund to the CIR Trust Fund, and $3 billion from the general fund to the CIR Startup Account.[21] The Hoeven-Corker-Leahy Amendment modified the bill to increase the increase the initial transfer into the CIR Trust Fund to $46.3 billion, and authorized additional expenditures out of the fund.

The initial $46.3 billion effectively would be an appropriation to the CIR Trust Fund and would be made available immediately for obligation and expenditure for the following purposes:[22]

- $30 billion over a 10-year period for the Department of Homeland Security (DHS) to hire and deploy at least 19,200 additional trained full-time active duty U.S. Border Patrol agents along the Southern Border;[23]
- $4.5 billion over a five-year period for DHS to carry out the Comprehensive Security Strategy;[24]

[20] The exception to the trigger requirements, allowing RPIs to apply for adjustment of status within 10 years if any trigger is not achieved to due litigation, and adverse Supreme Court ruling, does not apply to the trigger requirement concerning the stationing of Border Patrol agents along the Southern border.

[21] S. 744 §6(b)(2).

[22] S. 744 §6(a)(3)(A).

[23] As reported by the Senate Judiciary Committee, the CIR Trust Fund would not have designated funds to hire additional Border Patrol agents; this provision was added by the Hoeven-Corker-Leahy Amendment on the Senate floor.

[24] As reported by the Senate Judiciary Committee, the CIR Trust Fund would have designated $3 billion to carry out the Comprehensive Border Security Strategy; an additional $1.5 billion was added to this provision by the Hoeven-

- $2 billion over a 10-year period for DHS to enact recommendations of the Southern Border Security Commission (see "Border Security Strategies and Metrics") and for administrative expenses directly associated with convening and providing summaries of public hearings required by Section 3(c)(2);
- $8 billion over a five-year period for DHS to procure and deploy fencing, infrastructure, and technology pursuant to the Fencing Strategy, with not less than $7.5 billion being used to deploy, repair, or replace fencing;[25]
- $750 million over a six-year period for DHS to expand and implement the mandatory employment eligibility verification system in INA Section 274A as amended by Section 3101 of the bill (see "Employment Eligibility Verification");
- $900 million over an eight-year period for the Department of State to pay for one-time and startup costs to implement the bill; and
- $150 million over a two-year period to be transferred to the Departments of Labor, Agriculture, and Justice for their initial costs of implementing the bill.

The CIR Trust Fund would receive additional funding going forward from several immigration-related fees and penalties.[26] As modified by the Hoeven-Corker-Leahy Amendment, the Secretary of DHS would be directed to modify certain fees and penalties added by S. 744 to ensure that at least $500 million is available in the CIR Trust Fund in FY2014 and at least $1 billion is available for S. 744 authorizations in each of FY2015-FY2023. Immigration fees and penalties added by the bill and deposited into the CIR Trust Fund would be designated for three purposes:

- The first $8.3 billion of such collections would be deposited back in the general fund (i.e., to repay the Treasury for a portion of the initial $46.3 billion transfer) and would be used for federal budget deficit reduction.[27]
- An additional $500 million would be available over five years, without further appropriation, to pay for increased border-crossing prosecutions in the Tucson Sector[28] and to fund Operation Stonegarden[29] pursuant to Section 1104 of S. 744.[30]
- Remaining funds would be available, subject to appropriations, to carry out the authorizations included in S. 744, including personnel increases described in

Corker-Leahy Amendment on the Senate floor.

[25] As reported by the Senate Judiciary Committee, the CIR Trust Fund would have designated $1.5 billion to carry out the Comprehensive Border Security Strategy; an additional $6.5 billion was added to this provision by the Hoeven-Corker-Leahy Amendment on the Senate floor.

[26] S. 744 §6(a)(2)(B). For a fuller discussion of fees and penalties that would be deposited into the CIR Trust Fund, see William A. Kandel and Marc R. Rosenblum, "Funding Accounts, Direct and Discretionary Spending, Fees, and Penalties in S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act," CRS Memorandum available from the authors to congressional clients upon request.

[27] S. 744 §6(a)(3)(B).

[28] Since the late 1990s, the Tucson sector has accounted for the largest share of unauthorized aliens apprehended along the Southwest border; and it is also the sector in which U.S. Customs and Border Protection (CBP) initiated the "Consequence Delivery System," which emphasizes criminal prosecutions for immigration-related crimes as a strategy to reduce recidivism. For a fuller discussion, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, by Marc R. Rosenblum.

[29] Operation Stonegarden is a grant program administered by the Federal Emergency Management Agency (FEMA) within the Department of Homeland Security (DHS) to provide funding to state, local, and tribal law enforcement agencies for border security activities.

[30] S. 744 §§6(a)(3)(B)-(C).

Section 1102 and operations and maintenance of other border security and immigration enforcement investments.[31]

The CIR Startup Account would be used to pay for one-time and startup costs related to the act.[32] Expenditure plans relating to the CIR Trust Fund and CIR Startup Account would be required.

The revenue provisions in S. 744 have raised the "blue slip" procedural matter. "Blue-slipping" is the term applied to the act of returning to the Senate a measure that the House has determined violates its prerogatives, nicknamed because the House returned the legislation to the Senate by resolution printed on blue paper. The U.S. Constitution provides that "(A)ll Bills for raising Revenue shall originate in the House of Representatives."[33] Because S. 744 would, for example, create a new $1,000 fee to be charged to certain employers filing labor certification applications (LCAs) to be used for purposes other than processing the LCAs, the House could "blue slip" the legislation. Rather than "blue slipping" S. 744, the House also could simply ignore it or reintroduce a companion bill in the House.[34]

Border Security[35]

S. 744 includes a number of sections designed to strengthen border security, including mandates for new border security strategies; increased border security personnel, equipment, and infrastructure; DHS waiver authority and access to certain federal lands; provisions related to immigration-related crimes and prosecutions; and efforts to strengthen the entry-exit system. The bill also includes a number of provisions to strengthen oversight of border security activities.

Border Security Strategies and Metrics

Under S. 744, DHS would be required to submit to Congress a "Comprehensive Southern Border Security Strategy" (Comprehensive Security Strategy) and to establish a "Southern Border Fencing Strategy" (Fencing Strategy), both within 180 days of enactment.[36] The Comprehensive Security Strategy would describe plans to achieve and maintain "effective control" of all sectors along the Southern border. "Effective control" is defined in Section 3 to include "persistent surveillance" and at least a 90% "effectiveness rate"; and the effectiveness rate is defined as the sum of alien apprehensions and turn backs divided by total illegal entries.[37] As amended by the Hoeven-Corker-Leahy amendment on the Senate floor, S. 744 includes specific, detailed minimum requirements for the amounts and types of surveillance equipment to be deployed in each Border Patrol sector on the Southwest border as part of the Comprehensive Security Strategy. DHS would be required to implement the Comprehensive Security strategy beginning immediately after its submission, and to report on it semiannually.

The Fencing Strategy would identify locations along the Southern border, including ports of entry, where fencing, infrastructure, and technology should be deployed. DHS would be required

[31] S. 744 §6(a)(3)(D).

[32] S. 744 §6(b)(4).

[33] Article I, Section 7, clause 1 of the U.S. Constitution, known generally as the "Origination Clause."

[34] For further discussion of "blue slipping," see CRS Report RL31399, *The Origination Clause of the U.S. Constitution: Interpretation and Enforcement*, by James V. Saturno.

[35] CRS Legislative Attorney Michael John Garcia contributed to this section of the report.

[36] S. 744 §5.

[37] For a fuller discussion of border security metrics, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, by Marc R. Rosenblum.

to notify Congress upon commencing implementation of the Fencing Strategy. As amended by the Hoeven-Corker-Leahy amendment on the Senate floor, the Fencing Strategy would be required to identify where 700 miles of fencing should be deployed along the Southern border. As noted elsewhere, submission and implementation of the Comprehensive Security and Fencing Strategies would be among the triggers for the RPI legalization and adjustment of status provisions; and Section 6 would authorize direct spending in support of the strategies (see "Comprehensive Reform 'Triggers' and Funding").

In addition, as modified by the Hoeven-Corker-Leahy amendment, within one year of enactment, Section 4 of S. 744 would establish a Southern Border Security Commission (Commission). The Commission would be composed of the governor of each Southern border state (along with Nevada) or her appointee, as well as members appointed by each House of Congress and the President. If the DHS Secretary cannot certify that DHS has achieved effective control of all Southern border sectors for at least one year before the date that is five years after the bill's enactment, the Commission would be required to issue a report making recommendations on how to achieve and maintain border security goals, and would terminate after the issuance of the report. As noted elsewhere, the bill also would authorize direct spending to implementing the recommendations of the Commission (see "Comprehensive Immigration Reform Funds"); such spending would begin after the Commission report is issued, no sooner than five years after the bill's enactment.

As amended on the Senate floor (by the Hoeven-Corker-Leahy Amendment), the Secretary of State, in coordination with DHS and in consultation with Congress, also would be required to develop a strategy to address unauthorized immigration of individuals who transit through Mexico to the United States. The strategy would include steps to enhance the training of border and law enforcement personnel in Mexico and certain Central American states, and to educate the nationals of such countries about certain risks associated with illegal migration to the United States. The bill would authorize the Secretary of State to use funds from the CIR Trust Fund to implement this strategy.[38]

Border Security Personnel, Equipment, and Infrastructure

Sections 1102-1109 of S. 744 would expand certain border enforcement programs and authorize border security funding. These sections would supplement previous investments by DHS and the legacy Immigration and Naturalization Service (INS).[39]

As reported by the Senate Judiciary Committee, Section 1102 of the bill would require U.S. Customs and Border Protection (CBP) to add 3,500 trained CBP officers by the end of FY2017. This section was modified by the Hoeven-Corker-Leahy amendment on the Senate floor to also require that DHS increase the number of trained full-time active duty U.S. Border Patrol agents deployed to the Southern border to 38,405; that the number of CBP Air and Marine crew and personnel increase by 160; and that the number of Air and Marine flight hours increase to 130,000 annually.[40] The section (as amended on the floor) also would require DHS and the

[38] S. 744 §1203.

[39] For a fuller discussion of previous investments in border enforcement and the current state of border security, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, by Marc R. Rosenblum.

[40] By comparison, in FY2012, CBP reported 18,462 Border Patrol agents on the Southwest border; 1,138 Air and Marine agents; and 81,045 flight hours. See ibid.

Department of Defense (DOD) to create a program to recruit former members of the armed forces to serve in CBP and ICE, and use a program to repay student loans as a recruitment incentive.

The bill also would authorize the National Guard, operating under Title 32 authority (i.e., remaining under the authority of state governors while receiving federal pay and benefits), to assist border security efforts, including through the construction of fencing and other infrastructure, the deployment of surveillance aircraft, and by assisting CBP operations in rural, high-trafficked areas.[41] Section 1104 would authorize funding for additional Border Patrol forward operating bases and other infrastructure, including distress beacons along the Northern and Southern borders in areas where migrant deaths are occurring,[42] and would establish a grant program for the construction and improvement of infrastructure to facilitate border crossings. DHS would be directed to deploy manned and unmanned aircraft and other surveillance equipment to ensure "continuous surveillance" of border areas, with necessary funding authorized for FY2014 – FY2018.[43] A grant program would be established and funding authorized to improve 9-1-1 service in rural areas; and funding also would be authorized to improve radio communication among border-area law enforcement agencies.[44] Section 1109 would direct DOD and DHS officials to identify DOD equipment and technology that could be used by CBP at the border.

DHS Waiver Authority and Access to Federal Lands

In general, federal agencies are required to review the potential impact of proposed projects on national and cultural resources prior to committing resources to a project.[45] These environmental and other review requirements may delay the construction of certain border barriers and other infrastructure; but existing law grants DHS broad authority to waive legal requirements that might delay construction of border barriers.[46] S. 744 would grant the DHS Secretary authority to waive any law she determines necessary to ensure expeditious construction of barriers, roads, and other infrastructure to secure the Southern border.[47] This provision is similar to existing waiver authority, but only applies to projects along the Southern border, and potentially applies to a broader range of border infrastructure projects than the waiver authority in current law. The Secretary must identify and justify each law being waived; and the waiver would terminate upon certification that the Comprehensive Security and Fencing Strategy requirements for RPIs to adjust to LPR status have been satisfied (see "Triggers and for Legalization and Adjustment to Status"). Judicial review of action taken pursuant to this authority is limited.

The Southwest border includes extensive federal lands; and some have been identified as "high-risk areas" for marijuana smuggling and illegal migration.[48] DHS has entered into Memoranda of

[41] S. 744 §1103.

[42] Provisions regarding distress beacons were added pursuant to the Hoeven-Corker-Leahy amendment during debate on the Senate floor.

[43] S. 744 §1106.

[44] S. 744 §1107.

[45] See, among other laws, the National Environmental Policy Act of 1969 (42 U.S.C. §§4321 *et seq*.), the Endangered Species Act of 1973 (16 U.S.C. §§1531 *et seq*.), and the National Historic Preservation Act (16 U.S.C. §§470 *et seq*.).

[46] For a fuller discussion, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, by Marc R. Rosenblum.

[47] S. 744 §3(d).

[48] U.S. Government Accountability Office (GAO), *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177, November 2010, p. 15.

Understanding with the U.S. Department of Agriculture and the Department of the Interior governing CBP access to federal lands, among other topics.[49] Some Members of Congress have argued that that DHS should have more complete access to such lands for enforcement purposes.[50] Under Section 1105 of S. 744, the Secretaries of Agriculture and the Interior would be required to provide CBP with immediate access to federal lands within 100 miles of the southern Arizona border for certain border security activities. These activities would be conducted "to the maximum extent practicable" to protect natural and cultural resources. Environmental impact statements would be issued in accordance with the National Environmental Policy Act of 1969,[51] but the impact statements would not restrict or delay DHS actions on federal lands.

Immigration-Related Crimes

Certain aliens apprehended at the border and others involved in facilitating illegal migration may face immigration-related criminal charges under current law (also see "Interior Enforcement"). Several sections in Title III of S. 744 would modify these laws. The bill would rewrite INA Section 275 (unlawful entry) to increase civil and misdemeanor penalties for first-time offenses, impose felony penalties when aggravating circumstances exist (e.g., re-entry following a voluntary departure order), and also to eliminate criminal liability for *attempted* unlawful entry.[52] The bill would amend INA Section 276 (unlawful reentry) to increase criminal penalties, provide affirmative defenses to certain aliens who had been removed as minors, and exempt certain offenses involving emergency humanitarian assistance.[53] Additionally, S. 744 would create new felony offenses relating to the commercial smuggling of five or more people, impose criminal penalties for hindering or obstructing alien apprehensions, and impose enhanced penalties for use of a firearm in an alien smuggling offense.[54] With respect to these border-related crimes, S. 744 would require guidelines to delay prosecutions against aliens seeking humanitarian relief from removal or immigration status until such adjudications are completed.[55] S. 744 also would increase civil penalties for aircraft or vessel operators who fail to detain or transport out of the country unauthorized aliens that were transported by the operator into the country.[56]

Title III of S. 744 also would rewrite chapter 75 of the U.S. Criminal Code (passport and immigration-related document fraud), expanding its scope and increasing penalties for certain offenses.[57] The U.S. Sentencing Commission would be required to reexamine minimum sentencing guidelines for fraud-related offenses.[58] DHS would be required to establish rules to

[49] For a fuller discussion of border security on public lands see CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Carol Hardy Vincent, Laura A. Hanson, and Marc R. Rosenblum.

[50] See for example, U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *The Border: Are Environmental Laws and Regulation Impeding Security and Harming the Environment?*, 112th Cong., 1st sess., April 15, 2011.

[51] 42 U.S.C. §§4321 *et seq*.

[52] S. 744 §3704.

[53] S. 744 §3705.

[54] S. 744 §3712.

[55] S. 744 §3710.

[56] S. 744 §3706. The bill would include a humanitarian exemption from these penalties.

[57] S. 744 §3707.

[58] S. 744 §3710.

deter fraud in the preparation of immigration documents.[59] And S. 744 would impose new criminal penalties for drug cultivation on federal lands.[60]

Historically, most aliens apprehended at the border have been repatriated to their country of origin without facing criminal charges, but DHS has worked with the Department of Justice (DOJ) to charge a higher proportion of people apprehended at the border.[61] Title I of S. 744 includes several provisions to support this goal. Section 1104 would provide funding from the Trust Fund to support increased prosecutions in the Tucson sector, including through the appointment of attorneys, staff, and federal district court and magistrate judges.[62] Trust Fund funding also would reimburse sub-federal and tribal jurisdictions for detention costs relating to those prosecutions; and would fund competitive grants to sub-federal and tribal border-area law enforcement agencies through Operation Stonegarden,[63] with the proviso that at least 90% of such grants would reimburse immigration enforcement and drug smuggling expenses.[64] In addition, the Attorney General would be required to reimburse sub-federal governments for costs related to the prosecution, detention, and other associated costs of federally-initiated criminal cases that are declined by U.S. Attorneys, as long as the underlying apprehensions were lawfully conducted, with appropriations authorized for FY2014-FY2018.[65] And Section 1110 would modify and reauthorize through FY2015 the State Criminal Alien Assistance Program (SCAAP), which reimburses state prisons and local jails for the cost of detaining certain criminal aliens.

Oversight of Border Security Activities

Other provisions in Title I of S. 744 concern oversight of border security activities. DHS would be required to work with DOJ to issue new rules governing the use of force by DHS personnel, as well as procedures to review the use of force, investigate complaints, and discipline those who violate such rules.[66] Section 1112 would require DHS to provide border personnel specialized training to identify fraudulent documents, respect individual rights, and comply with use of force rules; and DHS would be required to provide specialized training for border community liaison officers and to establish standards for the humane treatment of children in CBP custody (also see "Protection of Children during Immigration Enforcement"). An independent task force consisting of Northern and Southern border-area stakeholders would be established to review border enforcement and make recommendations.[67] A new Ombudsman for Immigration Related Concerns would be charged with monitoring immigration and enforcement policies of CBP, U.S.

[59] S. 744 §3708.

[60] S. 744 §3306.

[61] See CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, by Marc R. Rosenblum.

[62] Since the late 1990s, the Tucson sector has accounted for the largest share of unauthorized aliens apprehended along the Southwest border; and it is also the sector in which CBP initiated the "Consequence Delivery System," which emphasizes criminal prosecutions for immigration-related crimes as a strategy to reduce recidivism. See Ibid. As introduced, the bill would have added magistrate judges, but no district judges. As amended during markup, §1104 also would direct the president to appoint eight new district court judges, divided among California, Texas, and Arizona. District court judges would not be funded by the Comprehensive Immigration Reform Trust Fund.

[63] Operation Stonegarden is a grant program administered by the Federal Emergency Management Agency (FEMA) within DHS to provide funding to state, local, and tribal law enforcement agencies for border security activities.

[64] S. 744 §1104.

[65] S. 744 §1108.

[66] S. 744 §1111.

[67] S. 744 §1113.

Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services, (USCIS), recommending policy changes, and assisting victims of crime or violence committed by aliens along the border, among other responsibilities.[68] DHS also would be required to establish procedures to ensure that apprehended families of arriving aliens remain united, when feasible,[69] and that aliens deported or removed to Mexico are repatriated during daylight hours under most circumstances.[70] As amended on the Senate floor, Section 1116 of the bill would restrict DHS authority to conduct warrantless searches of vessels and conveyances and private lands near the Northern border, though the Secretary would be permitted to conduct such searches under certain conditions. Several new DHS reports would be required to help Congress monitor these and other border-related issues.[71]

Entry-Exit System

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 204-208, Div. C) required development of an automated entry-exit system that collects records of alien arrivals and departures and that analyzes such records to identify nonimmigrants who overstay their visas (i.e., "visa overstays"). Subsequent legislation has revised and expanded this entry-exit requirement on several occasions, but the system has never been fully implemented.[72]

The existing system collects and stores *biographic* data (i.e., names, birthdates, and other identifying information) and *biometric* data (i.e., fingerprints and digital photographs) about aliens traveling to and from the United States. The system has been operational at almost all U.S. ports of entry since December 2006, and it has collected biometric data since January 2009 from non-citizens entering through air and seaports and from non-citizens subject to secondary inspection at land ports.[73] Most aliens entering at land ports only provide biographic information, however. And although DHS has tested pilot programs to capture biometric exit data at air and land ports, the current exit system is limited to biographic data, and also is limited to airports and seaports.[74] Under an agreement with Canada, the United States is scheduled to collect biographic data from third country nationals exiting via northern border lands beginning in June 2013.[75]

S. 744 includes several provisions intended to create a more robust exit tracking system. The bill would require DHS, by December 31, 2015, to establish a biographic exit system that collects machine-readable passport and other travel information (i.e., biographic data) for all aliens exiting from air and sea ports.[76] As noted elsewhere, the implementation of this system would be one of the triggers for implementation of the adjustment of status provisions for RPIs (see "Triggers for Legalization and Adjustment to LPR Status").[77] Air and sea carriers would be

[68] S. 744 §1114.

[69] S. 744 §1115.

[70] S. 744 §1122.

[71] S. 744 §§1114, 1115, 1117, 1120, 1122.

[72] For a fuller discussion see CRS Report R42985, *Issues in Homeland Security Policy for the 113th Congress*, coordinated by William L. Painter.

[73] Ibid.

[74] For a fuller discussion, see Ibid.; and CRS Report R42644, *Department of Homeland Security: FY2013 Appropriations*, coordinated by William L. Painter.

[75] CRS briefing with DHS Office of Congressional Affairs, April 3, 2013.

[76] S. 744 §3303(a)(1).

[77] S. 744 §3(c)(2)(A)(iv).

responsible for collecting passenger exit data in a secure manner and for transmitting the information to DHS; and $500 million would be appropriated to reimburse carriers for such data collection.[78] In addition, DHS would be required, within two years of enactment, to establish a *biometric* exit system at the ten U.S. airports with the greatest volume of international air travel.[79] The U.S. Government Accountability Office (GAO) would be required to review the program, and DHS would be required within six years to expand biometric exit data collection to 30 airports, and to develop a plan to expand the system to major land and sea ports.[80] Exit data would be fully integrated and interoperable with other DHS immigration databases, DOJ immigration enforcement databases, and Department of State (DOS) Consular Affairs databases. In addition, Section 3711(b) would make the withholding of information for biometric screening a basis for inadmissibility.

Visa Overstays

A primary goal of the entry-exit system is to limit visa overstays. Section 3303(c) of S. 744 would require DHS to ensure that information about visa overstays is shared across DHS and other federal law enforcement agencies, and that "reasonably available enforcement resources are employed" to locate and commence removal proceedings against visa overstayers identified by the entry-exit system. In addition, S. 744 was modified on the Senate floor (by the Hoeven-Corker-Leahy amendment) to include additional provisions designed to monitor and limit visa overstays. Under Section 1201, DHS would be required, beginning 180 days after enactment, to initiate removal proceedings, confirm that immigration relief has been granted or is pending, or otherwise close at least 90 percent of the cases of nonimmigrants who entered the United States after the bill's enactment and who have overstayed their visa by more than 180 days. The section also would require DHS to issue semiannual reports on visa overstay rates and enforcement outcomes. In addition, Section 1202 would direct DHS to establish a pilot program to notify nonimmigrants who have not departed the United States when their visa or period of authorized admission is about to expire.

Interior Enforcement[81]

The immigration rules established by the INA are supplemented by an enforcement regime to deter and punish violations of those rules. Violations may be subject to criminal penalties (see "Immigration-Related Crimes"), civil fines, and/or may be grounds for an alien to be removed from the country. With respect to the latter, the INA identifies two overarching reasons aliens may be ordered removed: grounds for inadmissibility and grounds for deportability.[82] The standard removal process, described in INA Section 240, is a civil administrative proceeding before an immigration judge from the DOJ Executive Office for Immigration Review (EOIR). In some

[78] S. 744 §3304.

[79] S. 744 §3303(a)(2).

[80] S. 744 §§3303(a)(3)-(5).

[81] CRS Legislative Attorney Michael John Garcia and CRS Specialist in Immigration Policy Alison Siskin contributed to this section of the report.

[82] INA §§212 and 237, respectively. Historically, the INA included separate provisions governing the "exclusion" of aliens who were ineligible to enter the country (i.e. "excludable" persons), and the "deportation" of certain aliens within the United States ("deportable" persons). The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208, Div. C), created a single proceeding to cover both types of "removable" aliens. Nonetheless, the INA retains two separate grounds for removal: (1) for an alien who has not been admitted to the United States and is inadmissible under INA §212, and (2) for an alien who has been admitted to the United States (i.e., enters legally) and is deportable under INA §237.

cases, immigration judges may grant certain forms of relief during the removal process, though their discretion is limited with respect to certain grounds for removal.

Provisions in S. 744 would amend the INA's interior enforcement provisions in several ways. Subtitle E of Title III would provide additional resources to immigration courts (see "Immigration Courts"). The bill would create additional grounds of inadmissibility and deportability, while also broadening judges' discretion to waive certain such grounds (see "Grounds of Inadmissibility, Deportability, and Relief from Removal"). S. 744 also would encourage alternatives to detention and strengthen DHS detention standards as well as congressional oversight of immigrant detention (see "Immigrant Detention"). Subtitle H of Title III of S. 744 establishes special procedures to protect children who are affected by immigration enforcement (see "Protection of Children during Immigration Enforcement"). And other provisions in Title III address several additional aspects of immigration enforcement within the United States (see "Additional Interior Enforcement Provisions").

Immigration Courts[83]

With increased immigration removals in recent years, many immigration courts have seen growth in their hearing dockets, and aliens in removal proceedings may face wait times of months or even years in certain jurisdictions.[84] Some Members of Congress have expressed concerns about long removal wait times for some non-detained aliens placed in removal proceedings before EOIR.[85] Some also have expressed concern that, because removal is a civil proceeding, aliens are not guaranteed legal counsel (though aliens do have a right to counsel at no expense of the government), and some aliens may not be competent to represent themselves.[86]

S. 744 apparently seeks to address these concerns, and generally to ensure that aliens in removal proceedings have adequate opportunities to seek relief. The bill would increase the number of immigration judges by 75 per year for FY2014 through FY2016, and would also increase the number of immigration staff attorneys, paralegals, and Board of Immigration Appeals (BIA) staff attorneys.[87] S. 744 would also provide statutory authority for the BIA (currently established through regulations);[88] codify certain standards for immigration judge and BIA decisions;[89] require EOIR to review and improve training programs for immigration judges, BIA members, and their staffs;[90] and require EOIR to ensure adequate resources and services during immigration proceedings.[91] Funding would be appropriated from the CIR Trust Fund to support the new personnel increases, training, and technology.[92]

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[83] CRS Legislative Attorney Margaret Mikyung Lee, and CRS Specialist in Immigration Policy Alison Siskin contributed to this section of the report.

[84] U.S. Congress, Senate Committee on the Judiciary, *Improving Efficiency and Ensuring Justice in the Immigration Court System*, Testimony of the American Immigration Lawyers Association, 112th Cong., 1st sess., May 18, 2011.

[85] See for example, U.S. Congress, Senate Judiciary Committee, "Building an Immigration System Worthy of American Values," March 20, 2013.

[86] Ibid.

[87] S. 744 §§3501(a)-(c).

[88] S. 744 §3504.

[89] S. 744 §3504.

[90] S. 744 §3505.

[91] S. 744 §3506.

[92] S. 744 §§3501(d), 3502(d), 3503(e), 3505(b), and 3506(f).

Funding also would be appropriated for a pair of programs to enhance aliens' representation during removal proceedings. The Attorney General (AG) would be authorized to provide counsel to aliens in such proceedings at the AG's sole and unreviewable discretion. And the AG would be required to provide counsel, at government expense if necessary, for unaccompanied alien children, persons determined to be legally incompetent due to a serious mental disability, and certain other vulnerable persons.[93] The AG also would be required to maintain an Office of Legal Access Programs within EOIR. The Office would develop legal orientation programs to educate alien detainees and other aliens in removal and asylum proceedings about their rights and to improve access to counsel, including in some cases at government expense.[94] The AG also would assume responsibility, pursuant to the Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457), for providing access to legal representation and appointing independent child advocates to child trafficking victims. Unexpended funds and contract authority to support such services would be transferred from the Secretary of Health and Human Services to DOJ.[95]

In addition, DHS would be required, at the beginning of removal proceedings, to provide an alien with complete copies of all relevant documents that DHS possesses (so-called "A-files"), including documents DHS has obtained from other agencies, with the exception of privileged or law enforcement sensitive documents.[96] Removal proceedings could not proceed until an alien has received the required documents or waived the right to do so.[97] S. 744 would also require EOIR to maintain records and report to Congress information on aliens in removal proceedings, including how the hearings are conducted (e.g., in person, by teleconference) and the outcomes of any hearings.[98]

Grounds of Inadmissibility, Deportability, and Relief from Removal

S. 744 would amend the grounds of inadmissibility and deportability in the INA in several ways.[99] The bill would add language to these provisions regarding conduct related to criminal street gangs, with the inadmissibility grounds related to such activity being somewhat broader in scope. Such conduct also would make aliens ineligible for adjustment to RPI status, though limited waivers would apply in this case and with respect to inadmissibility.[100] The bill also would make three or more convictions for driving under the influence (DUI) a ground for deportability and inadmissibility[101] A third such conviction would be made an aggravated felony for immigration purposes,[102] and therefore such an alien would be subject to more limited relief from removal. Certain types of immigration-related fraud also would be made grounds for deportability and

[93] S. 744 §3502.

[94] S. 744 §3503.

[95] S. 744 §3507.

[96] These documents include information pertaining to all transaction during the immigration process (commonly referred to as an A-file).

[97] S. 744 §3508.

[98] S. 744 §3720(c).

[99] INA §§212 and 237.

[100] S. 744 §3701.

[101] S. 744 §§3702(a)-(b).

[102] S. 744 §3702(c). For a fuller discussion of the aggravated felony provisions of the INA, see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia; and CRS Sidebar WSLG454, *Will Immigration Reform Legislation Revisit the Definition of "Aggravated Felony"?*, by Michael John Garcia.

inadmissibility.[103] And S. 744 would make crimes involving domestic violence, stalking, and child abuse, along with violations of protection orders, grounds for inadmissibility (though these new grounds generally would be more narrow than corresponding grounds of deportability found in current law).[104] As noted elsewhere, withholding information for biometric screening also would be made a ground for inadmissibility (see "Entry-Exit System").[105]

The bill also would expand the grounds for inadmissibility related to torture and extrajudicial killings, and would add war crimes and widespread human rights violations as inadmissibility grounds, though these added grounds would not apply when the acts were committed under duress). The President would be authorized to release the names of persons deemed inadmissible on these grounds.[106] Moreover, the bill would amend the Torture Victims Protection Act to reference some of these added grounds in defining the scope of conduct for which covered entities be held civilly liable. The bill would clarify that sexual abuse of minor is an aggravated felony for immigration purposes regardless of whether the victim's age is established by extrinsic evidence to the record of conviction.[107]

S. 744 also would increase discretion to waive certain grounds of inadmissibility. It would strike "extreme" from the hardship waiver for the 3- and 10-year bars for aliens who have been illegally present in the United States if they are parents of U.S. citizens or LPRs.[108] And it would give immigration judges discretion to not order certain aliens in proceedings to be removed, deported, or excluded if the judge determined that such actions were against the public interest, would create a hardship to the alien's U.S. citizen or permanent resident immediate relatives, or if the alien appeared eligible for naturalization.[109] This waiver would not be available to individuals subject to removal or inadmissibility based on certain criminal and national security grounds. DHS would have similar discretion to waive grounds of inadmissibility. In addition, an exception to the reinstatement of removal orders would be created for aliens who reentered prior to age 18, or where reinstatement would not be in the public interest or create hardship for the alien's U.S. citizen or LPR parent, spouse, or child.[110]

Immigrant Detention

The Immigration and Nationality Act (INA) provides broad authority to detain aliens while awaiting a determination of whether they should be removed from the United States and mandates that certain categories of aliens are subject to mandatory detention (i.e., the aliens must be detained) by DHS.[111]

Aliens placed in removal proceedings who are not subject to mandatory detention may, depending on the circumstances, be detained or released either on conditional parole (including on the

[103] S. 744 §3709.

[104] S. 744 §3711(c).

[105] S. 744 §3711(b).

[106] S. 744 §3719.

[107] S. 744 §3703.

[108] S. 744 §2315.

[109] S. 744 §2314.

[110] S. 744 §2314.

[111] For a fuller discussion of immigrant detention, see CRS Report RL32369, *Immigration-Related Detention*, by Alison Siskin. For discussion of judicial interpretation of mandatory detention provisions, see CRS Sidebar WSLG524, How "Mandatory" Is the Mandatory Detention of Certain Aliens in Removal Proceedings?, by Michael John Garcia.

alien's own recognizance) or on bond.[112] S. 744 would establish new statutory requirements for bond hearing procedures and the filing of notices to appear for aliens. All aliens would have the opportunity to appear before an immigration judge after DHS's custody determination. Other than in the cases of certain terrorists and criminal aliens, detention would be required only if the Secretary demonstrates that no conditions, including the use of alternatives to detention that maintain custody over the alien, will reasonably assure the appearance of the alien and the safety of any other person. Except for certain criminal aliens and terrorist aliens, immigration judges would be required to review custody determinations (even in the case of mandatory detainees); and the bill would also provide for additional review by an immigration judge every 90 days as to whether the custody of a detained alien is warranted.[113]

For aliens not eligible for bail or to be released on recognizance, S. 744 would require DHS to establish a secure alternative program offering a "continuum of supervision mechanisms and options" within each ICE field office.[114] All aliens, including those subject to mandatory detention (other than suspected terrorists and security threats held under INA Section 236A) would potentially be eligible for the secure alternative program.[115] DHS would also be authorized to contract with non-governmental organizations to implement secure alternatives.[116]

For aliens in detention, ICE has adopted national detention standards specifying detention conditions for immigration detainees; but existing standards do not themselves have the force of law, and detainees may have more limited recourse to violations of these standards than violations of applicable statutes and regulations.[117] S. 744 would require DHS to adopt such standards and would provide oversight and compliance mechanisms. These mechanisms would include regular inspections (at least annually) of all DHS detention facilities, financial penalties and/or the termination of contracts for non-compliant facilities; and annual reports to Congress.[118] The bill also would limit the use of solitary confinement of detained aliens, and set procedures that would have to be followed if an alien was placed in solitary confinement.[119] Furthermore, S. 744 would require DHS to maintain records and report to Congress on the detention of aliens, including information regarding the length of an alien's detention, the charges that serve as the basis for removal proceedings against him, and the status of such proceedings.[120]

Protection of Children during Immigration Enforcement

S. 744 include provisions intended to ensure that an alien's detention and/or removal does not result in the termination of a parent or caregiver's parental rights.[121] The bill would require state

[112] INA §236(a). Release from immigration authorities' custody under "conditional parole" is distinct from the parole of aliens into the United States under INA §212(d)(5), under which the Secretary of DHS may permit the temporary physical entry of aliens into the United States for urgent humanitarian reasons or a significant public benefit, without such entry constituting formal admission into the country for immigration purposes. See Matter of Luis Castillo-Padilla, 25 I & N Dec. 257 (BIA 2010).

[113] S. 744 §3717.

[114] S. 744 §§3715(a)-(b). An ICE pilot program established in 2004 provides such alternatives in certain locations; for a fuller discussion see CRS Report RL32369, *Immigration-Related Detention*, by Alison Siskin.

[115] S. 744 §§3715(c)-(d).

[116] S. 744 §3715(b).

[117] For a fuller discussion see CRS Report RL32369, *Immigration-Related Detention*, by Alison Siskin.

[118] S. 744 §3716.

[119] S. 744 §3717(b).

[120] S. 744 §3720.

[121] S. 744 §2107(b).

child welfare agencies to offer certain protections and services to children in foster care who are separated from their parents due to immigration enforcement, and generally would make the fact that a child's parent had been detained or removed because of an immigration proceeding a compelling reason for a state child welfare agency *not* to seek termination of parental rights (TPR) to a child in foster care. Further, before the agency could file for TPR, S. 744 would require the agency to make reasonable efforts to locate a parent who has been removed from the country, notify that parent of the TPR proceedings, or reunite the child with the parents.

The bill would stipulate that a state's child protection standards cannot disqualify a parent or other relative as a placement option solely based on the immigration status of the adult and would require state child welfare agencies to ensure certain services and protections are offered to children in foster care whose parents are deported or detained under immigration law. Such services would include providing a case manager or native language interpreter, documenting in the child's written case plan the location of the parent or relative from whom the child was removed, and working with DHS to ensure parents who want their children to leave the country with them have enough time and access to necessary documents, among other requirements. The bill would also require DHS to determine within two hours if an individual apprehended during an immigration enforcement action is a parent or other primary caregiver of a child in the United States. DHS would be required to provide such parents or caregivers at least two telephone calls to arrange for the child's care, to notify relevant child welfare agencies if the parent or caregiver is unable to make arrangements for the child or if the child is at imminent risk of harm, and to ensure that the best interest of the child is considered on any decisions related to detention.[122]

In addition, S. 744 would require that detention facilities provide mechanisms for detained parents/caregivers to maintain contact and custody of their children including by permitting regular calls and contact with the children and allowing detainees to participate in family court proceedings, ensuring that the detainee is able to fully comply with all family court or child welfare agency orders impacting custody of their children, and providing access to applications to request travel documents for their children.[123] The bill would mandate that the Secretary of DHS, in consultation with the AG, Secretary of HHS and child welfare and family law experts, develop training on the new requirements under the bill.[124]

Additional Interior Enforcement Provisions

S. 744 includes several additional provisions related to the enforcement of immigration laws within the United States and related issues (also see "Immigration-Related Crimes"). The bill would narrow immigration officers' authority to engage in enforcement actions in "sensitive locations" such as schools and hospitals without prior approval or exigent circumstances. It would also require DHS to report annually to Congress on any such enforcement actions[125] The bill would provide that stipulated removal pursuant to INA Section 240(d) may only be granted following an in-person hearing that finds that the concession of removability is voluntary, knowing, and intelligent.[126] S. 744 also would appear to give the State Department discretion to discontinue granting only certain types of visas upon notification that a country is refusing repatriation of its nationals, rather than discontinuing all immigrant or nonimmigrant visas (or

[122] S. 744 §3803.

[123] S. 744 §3804.

[124] S. 744 §3805.

[125] S. 744 §3720.

[126] S. 744 §3717.

both) as may occur under current law.[127] In addition, S. 744 would eliminate the INA provision that currently allows a U.S. citizen to renounce citizenship during a time of war if the Attorney General approves the renunciation as not contrary to the interest of national defense.[128] And it would broaden the criminal investigatory authority of State Department and Foreign Service Special Agents.[129]

Employment Eligibility Verification and Worksite Enforcement[130]

Since the enactment of the Immigration Reform and Control Act (IRCA) of 1986, it has been illegal for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed.[131] Employers are required to review documents to verify the identity and work eligibility of new employees; and employers and employees must sign a form attesting that they have reviewed such documents (in the case of the employer) and are authorized to work in the United States (in the case of the worker).[132] The law also gives immigration officers and administrative law judges (ALJs) authority to investigate alleged violations of these provisions, and establishes civil monetary penalties for substantive and paperwork violations, as well as criminal penalties for a pattern or practice of violations.[133] Certain employers also use E-Verify, an Internet-based system that checks information provided by workers during the verification process against federal databases.[134]

Section 3101 of S. 744 would strike and re-write the employment verification and worksite enforcement provisions of the INA, imposing a new requirement to be phased in over time that all employers use an electronic eligibility verification system (EVS) similar to E-Verify, and strengthening the law's compliance provisions, among other changes. In general, civil and criminal penalties for hiring unauthorized workers would roughly double relative to their current levels. The law also would provide for several types of enhanced penalties, including special compliance plans, property liens, and potential debarment from federal contracts. At the same time, the bill would impose a tougher standard of proof for liability, and pre-penalty notices that only could be issued if there is reasonable cause to believe a civil violation has occurred in the past three years. Other sections of S. 744 include a number of provisions apparently designed to limit the burden on employers that would result from these changes to INA Section 274A (see

[127] S. 744 §3718.

[128] S. 744 §3713 (striking INA §349(a)(6)). This provision could have implications for the detention or trial of a U.S. person deemed to be an enemy belligerent either in the conflict with Al Qaeda or some other future conflict. For example, in 2004, a dual U.S.-Saudi national detained by U.S. military authorities as an "enemy combatant" was released from U.S. custody and permitted to return to Saudi Arabia after he agreed to renounce his U.S. citizenship.

[129] S. 744 §3714.

[130] CRS Specialist in Immigration Policy Andorra Bruno and CRS Legislative Attorney Kate M. Manuel contributed to this section of the report.

[131] For an overview of existing employer sanctions provisions, see CRS Report R40002, *Immigration-Related Worksite Enforcement: Performance Measures*, by Andorra Bruno.

[132] INA §274A(b)

[133] INA §274A(e)-(f).

[134] For an overview of the E-Verify program, see CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno.

"Employer Protections"), and to prevent discrimination and otherwise protect lawful workers against potential adverse effects of the new system (see "Worker Protections").

As noted elsewhere (see "Comprehensive Immigration Reform Funds"), Section 6 of S. 744 would appropriate $750 million over a six-year period for DHS to expand and implement the EVS.[135] In addition, Section 3301 would establish an Interior Enforcement Account, and authorize $1 billion to support actions by DHS, the Commissioner of Social Security, the Attorney General, and the Department of State to carry out provisions described in Title III. Included within this authorization, DHS would be authorized, within five years, to increase to 5,000 the number of USCIS and ICE personnel assigned to administer and enforce the laws discussed in this section. The Secretary of DHS and the Commissioner of the Social Security Administration (SSA) would be required to enter into a reimbursable agreement to cover the full costs of SSA's responsibilities under the EVS. DHS would be required to issue regulations to implement Section 3101 no later than one year after the bill's enactment.[136]

Document Verification Requirements and Document Integrity

The document verification requirements under Section 3101 of S. 744 would be similar to the existing system, with employers and new employees, respectively, required to attest to having reviewed workers' documents evidencing identity and work authorization and to being authorized to work in the United States. The bill would add "enhanced" driver's licenses or identification cards to the list of documents workers may present to establish both identity and employment eligibility.[137] In addition, Section 3101 would include two new tools to combat the use of fraudulent documents by unauthorized workers. USCIS would be required to publish pictures of acceptable documents on its website. And employers would be required to use a new identity authentication mechanism to be developed by DHS. For certain documents, the mechanism would consist of a "photo tool" to detect documents that have been altered by photo substitution by allowing employers to check photographs on certain identity documents presented by workers against original images from the same documents.[138] DHS would develop another mechanism for documents whose images are not available. Section 3101 would authorize $250 million for a DHS grant program for states to provide DHS with access to driver's license information to support the photo tool.

The bill also would address document integrity by requiring the Commissioner of Social Security, within five years of enactment of S. 744, to issue only "fraud-resistant, tamper-resistant, wear-resistant, and identity theft-resistant" Social Security cards.[139] New criminal penalties would be created for fraudulent use of or traffic in a Social Security card or number.[140] And DHS would be

[135] S. 744 §6(a)(3)(A)(iv).

[136] S. 744 §3106.

[137] Such licenses or cards would be those that meet the requirements of §202 of the REAL ID Act of 2005 (P.L. 109-13, Div. B) and that are certified as suitable by DHS. Under current law, INA §274A(b)(1)(D) provides that driver's licenses may be used to establish identity, but not work eligibility. For a fuller discussion of the identification standards under the REAL ID Act, see archived CRS Report RL32754, *Immigration: Analysis of the Major Provisions of the REAL ID Act of 2005*, by Michael John Garcia, Margaret Mikyung Lee, and Todd B. Tatelman.

[138] USCIS currently makes such a photo tool available through the E-Verify system for certain identity documents. See CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno.

[139] S. 744 §3102(a).

[140] S. 744 §3102(c).

required to study the possible addition of biometric data to employment authorization documents.[141]

Electronic Eligibility Verification System

Section 3101 of S. 744 would establish and make permanent an electronic eligibility verification system (EVS) modeled on the current E-Verify system, and eventually would require that all employers use the system. Under E-Verify, employers submit information from workers' identity and work eligibility documents to USCIS to be checked against Social Security and (in some cases) DHS databases to confirm that the information matches federal records. In this way, E-Verify is designed to detect certain types of fraudulent documents.[142]

Current law makes E-Verify a primarily voluntary system;[143] but S. 744 would require certain employers to begin using the EVS immediately, and would require all employers to use the system within six years of the bill's date of enactment.[144] Participating employers would be required to register and to comply with EVS procedures. Eventually, all employers would have to use the system to verify newly-hired workers during the first three days of employment, and to re-verify all workers with expiring employment authorization documents. An employer who hires a worker without using the EVS after the date on which the employer is required to use the system would be presumed to have knowingly hired an unauthorized worker.[145] Section 3101 would also authorize DHS to require that certain employers verify current workers who were not previously confirmed through the EVS.[146]

Similar to E-Verify, the EVS would be designed to immediately (or within three days) provide either a confirmation of work eligibility, or a "further action notice" indicating that the worker's eligibility initially could not be confirmed. Employers would be required to notify workers in receipt of a further action notice, to allow workers to correct potential database or user errors; and workers would have 10 days to contest the notice.[147] In cases in which a worker fails to contest a further action notice or nonconfirmation, or exhausts his or her opportunities to contest or appeal a finding by the system that the worker is unauthorized, an employer would be required to terminate the worker's employment. Failure to do so would create a rebuttable presumption that the employer knowingly hired and continued to employ an unauthorized worker. USCIS also would be required to provide ICE with information about workers nonconfirmed by the system.

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[141] S. 744 §3103.

[142] For a fuller discussion, see CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno.

[143] See CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno. In addition, certain state and local laws require employers to use E-Verify; see CRS Report R41991, *State and Local Restrictions on Employing Unauthorized Aliens*, by Kate M. Manuel.

[144] Federal agencies and departments and federal contractors would be required under §3101(a) to participate in the EVS immediately or within 90 days of the date of enactment; and employers participating in E-Verify before the bill's date of enactment would be required under §3101(e) to participate in the new EVS to the same extent and in the same manner as in E-Verify. Other employers would be required under §3101(a) to participate in the EVS within one to five years after implementing regulations for the section are published, beginning with critical infrastructure employers, followed, in turn, by large employers, smaller employers, agricultural employers, and tribal government employers.

[145] Such employers would thus be presumed to have violated INA §274A(a)(1)(A).

[146] DHS could require certain employers to participate in the EVS to protect critical infrastructure, and such employers would be permitted, and could be required, to re-verify the eligibility of workers hired prior to the employer's use of the EVS. Employers determined to have engaged in a pattern or practice of unlawful employment also could be required to use the EVS to re-verify current employees.

[147] The DHS Secretary could extend the 10-day deadline for cause.

Employer Protections

Some Members of Congress have raised concerns about how changes to strengthen employment eligibility verification and worksite enforcement may affect certain U.S. employers.[148] Some Members also have raised concerns about the costs to certain businesses of using the EVS.[149] And with several states and localities passing laws to combat the employment of unauthorized workers, business groups have pushed for uniform national standards for employment verification.[150]

S. 744 includes several provisions apparently designed to address these concerns. With respect to uniform standards, the bill would expressly preempt state and local measures that include fines or "penalty structures" related to the hiring, continued employment, or status verification for employment eligibility purposes of unauthorized aliens.[151] Section 3101 describes conditions under which the DHS Secretary or an administrative law judge may mitigate certain penalties, and includes more detailed provisions than in current law for challenging penalty claims. The section also would broaden existing language describing an employer's good-faith compliance defense against prosecution for violations of these provisions, and would protect employers from liability for actions taken in good faith based on the EVS.

Under S. 744, DHS would be required to make arrangements to enable employers or employees who are not otherwise able to access the EVS to use electronic and telephonic formats, federal or public facilities, or other locations to utilize the system. Section 3101 of S. 744 also would require reports by DHS and GAO on unique challenges of implementing the EVS in the agricultural industry,[152] on adverse impacts on employers associated with EVS implementation,[153] and on the effects of new documentary requirements on different categories of work-authorized workers and employers.[154] In addition, a new Office of the Small Business and Employee Advocate would be created.[155] The office would be charged with assisting small businesses and individuals to comply with the law, and also to abate certain penalties.

Worker Protections

Along with adding employer sanctions provisions, the 1986 IRCA included provisions to prohibit employment discrimination (other than against unauthorized workers) based on national origin or citizenship status.[156] The DOJ Office of Special Counsel for Immigration-Related Unfair Employment Practices was created to respond to the concern that some employers would discriminate against foreign-looking or foreign-sounding individuals to avoid possibly being

[148] See for example, U.S. Congress, House committee on the Judiciary, Subcommittee on Immigration and Border Security, *H.R. 1772: The "Legal Workforce Act,"* 113th Cong., 1st sess., May 16, 2013.

[149] Ibid.

[150] Ibid.

[151] States and localities still would be permitted to exercise their authority over business licensing and "similar laws" as a penalty for failure to use the EVS.

[152] S. 744 §3101(b); DHS would be required to consult with the Department of Agriculture on this report.

[153] S. 744 §3101(c).

[154] S. 744 §3101(d). The GAO report in this section also concerns the potential for discriminatory effects of the EVS on certain lawful workers; also see in this report "Worker Protections."

[155] S. 744 §3107.

[156] INA §274B(a).

penalized under INA Section 274A. E-Verify was intended, in part, to combat such discrimination, but evaluations of E-Verify have produced ambiguous findings about its effects.[157]

Section 3101 of S. 744 would require that the DHS Secretary design the EVS to allow for auditing to detect possible cases of this type of employment discrimination and other adverse actions, and to allow workers to check their own verification case histories, to verify their own eligibility through the system, and to temporarily lock their own or their children's Social Security numbers. DHS would develop procedures to notify workers directly when their records are queried and when they receive a further action notice, nonconfirmation, or confirmation. DHS also would conduct regular civil rights and civil liberties assessments of the EVS; and the DHS Inspector General would conduct annual audits of EVS accuracy rates. Section 3101 also outlines detailed provisions for administrative and judicial review of final nonconfirmations of a worker's eligibility, and would allow an ALJ, as part of the administrative review process, to uphold or reverse an EVS determination and to order lost wages and other appropriate remedies in cases of erroneous nonconfirmations.[158]

In addition to the worker protections in the EVS, S. 744 includes additional provisions apparently designed to prevent discrimination or other adverse outcomes during the verification process. In cases of labor disputes, all rights and remedies provided under federal, state, or local law relating to workplace rights, including back pay, would be available to an employee despite the employee's status as an unauthorized alien.[159] And reinstatement would be available to individuals who lose employment authorized status due to unlawful acts of an employer.[160] The bill also would make certain prohibited uses of the EVS unfair immigration-related employment practices, and therefore subject to civil penalties through the DOJ Office of Special Counsel (OSC).[161] And it would the OSC's jurisdiction to cover certain small employers now exempt from the section. Section 3105 also would require the Equal Employment Opportunity Commission to refer all allegations of immigration-related unfair employment practices to the DOJ Special Counsel, and would more than double the monetary penalties for violations of worker rights under these provisions. The section also would authorize $120 million in FY2014-FY2016 to publicize these worker protections.

As noted elsewhere, section 3107 would create a new Office of the Small Business and Employee Advocate (see "Business Protections"). The office would be charged with assisting individuals and small businesses with complying with employment verification requirements, including by helping individuals correct erroneous further action notices and nonconfirmations.[162]

S. 744 includes additional provisions to protect certain foreign workers. Section 3201 would expand eligibility for the U visa to cover a wider class of alien crime victims than under current law, as well as aliens who have been or may be helpful in a wider range of criminal investigations. The visa also would be expanded to include as new "covered violations," serious

[157] Westat, *Findings of the E-Verify Program Evaluation*, December 2009; for a fuller discussion see CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno.

[158] S. 744 §3101(a).

[159] S. 744 §3101(a).

[160] S. 744 §3101(a).

[161] S. 744 §3105(a). Prohibited practices would include discharging individuals for whom further action notices or nonconfirmations are received prior to the completion of the appeals process, use of the system for unauthorized purposes, use of the system to re-verify the eligibility of current employees (with certain exceptions), and unauthorized selective use of the system. Such practices are prohibited under USCIS' E-Verify rules, but current law does not provide for penalties against employers who violate these rules.

[162] S. 744 §3107.

workplace abuse, exploitation, retaliation, or violations of whistleblower protections. DHS would be required to stay the removal of certain aliens arrested or detained in the course of worksite enforcement activities, and to notify appropriate law enforcement agencies with jurisdiction over the violations. The section also amends other provisions of the INA to protect victims of "serious violations" of labor and employment law. Certain penalties collected from employers who hire or employ unauthorized workers would be deposited in the CIR Trust Fund and made available to DHS and DOJ to educate employers and workers about the EVS.[163] The bill also would direct the U.S. Sentencing Commission to provide enhanced sentencing guidelines for persons convicted of certain employment-related offenses,[164] and would generally preclude the disclosure of information provided by aliens who are victims of certain crimes.[165]

Legalization of Unauthorized Aliens[166]

How to address the unauthorized alien population in the United States is a key and controversial issue in comprehensive immigration reform. There is a fundamental split between those who want to grant legal status to unauthorized aliens in the United States and those who want unauthorized aliens to leave the country. Among those who support legalization for at least some portion of the unauthorized population, there also may be disagreement about how to treat different segments of the unauthorized population as part of a legalization process.[167] S. 744 proposes to establish a general legalization program for unauthorized aliens in the United States (see "Registered Provisional Immigrants (RPIs)"), with special pathways for aliens who entered the country as children (See "DREAM Act") and for agricultural workers (see "Agricultural Worker Legalization"). As noted elsewhere, the implementation of certain enforcement provisions under Section 3 of the bill serve as pre-conditions for the bill's legalization provision (see "Triggers for Legalization and Adjustment to LPR Status"). Interim final regulations to implement all of the legalization provisions discussed in this section would have to be issued no later than one year after the enactment of S. 744 and would take effect immediately upon publication.[168]

Registered Provisional Immigrants (RPIs)

Under current law, there are limited avenues for unauthorized aliens in the United States to become lawful permanent residents.[169] Sections 2101, 2102 and 2103 of S. 744 would establish a new multi-step, multi-year process that would enable eligible unauthorized aliens to transition into a provisional legal status and ultimately to lawful permanent residence.

S. 744 Section 2101 would add a new section (245B) to the INA, allowing adjustment to a newly created "registered provisional immigrant (RPI)" status. The Secretary of DHS would be authorized to grant RPI status to a foreign national who meets the specified eligibility requirements, submits an application in the specified period, and pays a fee and a penalty, if

[163] S. 744 §3202.

[164] S. 744 §3203.

[165] S. 744 §3204.

[166] CRS Specialist in Immigration Policy Andorra Bruno, CRS Legislative Attorney Margaret Mikyung Lee, and CRS Legislative Attorney Kate M. Manuel contributed to this section of the report.

[167] See CRS Report R42958, *Unauthorized Aliens: Policy Options for Providing Targeted Immigration Relief*, by Andorra Bruno.

[168] S. 744 §2110.

[169] See CRS Report R42958, *Unauthorized Aliens: Policy Options for Providing Targeted Immigration Relief*, by Andorra Bruno.

applicable. The RPI eligibility requirements state that the alien must be physically present in the United States on the date of submitting the RPI application, must have been physically present in the United States on or before December 31, 2011, and must have maintained continuous physical presence in the United States from December 31, 2011, until the date the alien is granted RPI status. Dependent spouses and children could be classified as RPI dependents if they were physically present in the United States on or before December 31, 2012, have maintained continuous physical presence in the United States from that date until the date the principal alien is granted RPI status, and meet the other RPI eligibility requirements.

Under S. 744, a foreign national would be ineligible for RPI status if he or she has a conviction for specified criminal offenses or for unlawful voting; if the Secretary of DHS knows or has reasonable grounds to believe that the alien has engaged, or is likely to engage, in terrorist activity; or if the alien is inadmissible under certain provisions of the INA. Aliens with LPR, refugee, asylum, or (with specified exceptions) legal nonimmigrant status on the date S. 744 was introduced also would be ineligible. Section 2101 of S. 744 would further require that aliens satisfy any applicable federal tax liability[170] prior to filing an RPI application, and that aliens submit biometric and biographic data and clear national security and law enforcement background checks as part of the application process. An RPI applicant also may be subject to additional security screening at the discretion of the DHS Secretary.[171] The RPI application period would run for one year beginning on the date a final rule is published; the Secretary could extend the application period for an additional 18 months.

Aliens seeking RPI status under S. 744 would be required to pay both a processing fee and a penalty. Aliens age 16 and older would be charged a processing fee in an amount set by the DHS Secretary that is sufficient to cover the full costs of processing applications. Aliens 21 and older (who are not covered by DREAM Act provisions; see "DREAM Act") would be required to pay a penalty of $1,000, which could be paid in installments. The processing fees would be deposited into the existing Immigration Examinations Fee Account and the penalties would be deposited into the new CIR Trust Fund (see "Comprehensive Immigration Reform Funds").

Under S. 744, an alien who is apprehended before or during the RPI application period and appears to be eligible for RPI status would be given an opportunity to file an application and could not be removed until a final determination on the application is made. Similarly, in the case of an alien in removal proceedings during the same time frame who appears to be eligible for RPI status, S. 744 would provide for suspension of the removal proceedings to give the alien a reasonable opportunity to apply for RPI status.

Aliens outside the United States who departed the country while subject to an order of exclusion, deportation, removal, or voluntary departure, and such aliens who reentered illegally after December 31, 2011, generally would not be eligible to file an application for RPI status under S. 744. The Secretary could waive this provision if the alien is the spouse or child of a U.S. citizen or LPR or the parent of a U.S. citizen or LPR child, or if the alien meets certain requirements under the DREAM Act provisions.

While an alien's RPI application is pending, the alien could receive advance parole[172] in urgent circumstances, could not be detained or removed unless the Secretary of DHS determines the

[170] As used here, *applicable federal tax liability* means all federal income taxes assessed in accordance with section 6203 of the Internal Revenue Code since the date on which the applicant was authorized to work in the United States in RPI status.

[171] This provision was added to §2101 during markup by the Senate Judiciary Committee and only applies to RPIs.

[172] *Advance parole* is permission to reenter the United States after traveling abroad. It allows an otherwise inadmissible

alien is no longer eligible for RPI status, would not be considered unlawfully present, and would not be considered to be an unauthorized alien for employment purposes. In general, an employer who knows that an alien is or will be an applicant for RPI status would be permitted to employ the alien pending adjudication of the alien's RPI application.

A foreign national granted RPI status generally would be considered to have been admitted and lawfully present in the United States as of the application filing date, and would be permitted to travel in and out of the United States. The DHS Secretary would issue RPIs a machine-readable and tamper-resistant identity document with a digitized photo. The Commissioner of Social Security, in coordination with the DHS Secretary, would be required to implement a system to assign Social Security numbers and cards to each RPI. RPIs would be ineligible for federal means-tested public benefits (see "Access to Federal Public Benefits").

Section 2107 would specify that those who receive RPI status would not receive credit towards insured status or a benefit for Social Security coverage earned between January 1, 2004 and December 31, 2013. It would also specify that no quarter of coverage could be credited if it was earned by a person present under an expired visa, unless the person was authorized to work during that period. These limitations would not apply to anyone issued a Social Security Number (SSN) prior to January 1, 2004. S. 744 would allow persons who are unable to obtain documentation of work authorization to attest to such authorization but would criminally penalize a person for making a false attestation.

Under S. 744, the initial period of RPI status would be six years. This initial period could be extended for one or more additional periods of six years if the alien remains eligible for RPI status and meets specified requirements, including a continuous employment requirement. In general, to satisfy this employment requirement, an alien either must establish that he or she was regularly employed (allowing for periods of unemployment of up to 60 days) and is not likely to become a public charge, or must demonstrate average income or resources above a specified level throughout the RPI admission period. An alien also could satisfy the employment requirement by full-time attendance at certain educational institutions or programs. The employment requirement would not apply to RPI dependents and would be subject to other exceptions and waivers.

RPI Adjustment of Status to Lawful Permanent Residence

To enable RPIs to eventually become LPRs, S. 744 Section 2102 would add a new section (245C) to the INA on RPI adjustment of status.[173] Under INA Section 245C, RPIs would not be permitted to adjust to LPR status until the Secretary of State certifies that immigrant visas have become available for all approved petitions that were filed under applicable sections of the INA before the enactment of S. 744.[174]

For RPIs seeking to adjust to LPR status, the waivers of inadmissibility for aliens initially seeking RPI status would continue to apply. In addition, to adjust to LPR status in accordance with INA

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individual to physically enter the United States due to compelling circumstances, though such entry does not constitute legal admission into the country for purposes of immigration law.

[173] The adjustment of status provisions for RPIs in INA §245C do not provide a complete adjustment of status process. Instead, INA §245C describes certain qualifications and procedures for RPIs to adjust to LPR status. In order to become an LPR, an RPI would have to adjust status under either the DREAM Act provisions (see in this report, "DREAM Act") or the provisions on merit-based track two permanent admissions in section 2302 of the bill (see in this report, "Merit-Based Track Two").

[174] This "back-of-the-line" language seems to be unclear about the treatment of pending petitions for immigrant visas filed before the bill's date of enactment on behalf of aliens who subsequently become RPIs.

Section 245C, an alien would have to have remained eligible for RPI status, including by satisfying the employment requirement, and would have to have been continuously physically present in the United States during the period of admission as an RPI, as specified. RPIs adjusting status in accordance with INA Section 245C also would be required to satisfy any applicable federal tax liability[175] and to register under the Military Selective Service Act if applicable, and would be subject to renewed national security and law enforcement checks prior to adjustment. Applicants 16 and older would be required to meet, or to be pursuing a course of study to meet, the INA English language and civics requirements for naturalization, subject to exceptions and waivers.

INA Section 245C would impose a second set of processing and penalty fees on RPIs who apply to adjust to LPR status under its terms. Applicants would have to pay a penalty of $1,000, which could be paid in installments. Processing fees would be deposited into the existing Immigration Examinations Fee Account and penalties would be deposited into the CIR Trust Fund (see "Comprehensive Immigration Reform Funds").

RPIs who satisfy these requirements under INA Section 245C could adjust to LPR status under the Merit-Based Track Two visa provisions pursuant to S. 744 Section 2302. These visas would become available beginning in FY2024, as discussed elsewhere (see "Merit-Based Track Two"). Those RPIs who also meet additional eligibility criteria set forth in the DREAM Act provisions (in S. 744 §2103) may have the option of adjusting status more quickly under a new INA Section 245D (see next section, "DREAM Act"). RPIs *only* could adjust status under the Merit-Based Track Two provisions or the DREAM Act provisions.

S. 744 Section 2102 also would amend current law to provide for naturalization[176] of certain LPRs who were lawfully present in the United States and eligible for work authorization for at least 10 years prior to becoming an LPR—language apparently covering RPIs following their adjustment to LPR status under the Merit-Based Track Two provisions (see "Merit-Based Track Two"). These aliens would be able to apply for naturalization after three years in LPR status, rather than five years as is usually the case for LPRs currently seeking to naturalize.

DREAM Act

S. 744 would add a new section (245D) to the INA on adjustment of status for certain RPIs who entered the United States as children and satisfy a set of requirements. Such aliens previously have been the subject of similar stand-alone legislation known as the Development, Relief, and Education for Alien Minors (DREAM) Act.[177] Under S. 744, the DHS Secretary could adjust the status of an RPI to that of an LPR if the alien demonstrates that he or she

- has been an RPI for at least five years;
- was under age 16 at the time of initial entry into the United States;
- has earned a high school diploma, general education development (GED) certificate, or the equivalent in the United States; and

[175] As used here, *applicable federal tax liability* means all federal income taxes assessed in accordance with section 6203 of the Internal Revenue Code.

[176] Naturalization is the process through which an LPR becomes a U.S. citizen.

[177] For a discussion of DREAM Act legislation, see CRS Report RL33863, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation*, by Andorra Bruno.

- has earned a degree from an institution of higher education or has completed at least two years in good standing in a bachelor's or higher degree program in the United States, or has served in the uniformed services for at least four years.[178]

Such aliens would be required to provide DHS with a list of secondary schools attended in the United States; and they would be subject to English language and civics requirements and national security and law enforcement screening. Aliens adjusting under INA Section 245D would be exempt from the $1,000 penalty charged to RPIs adjusting status under INA Section 245C, and would face a somewhat different set of application requirements than other RPIs.

For purposes of naturalization, an alien granted LPR status under INASection 245D would be considered to have been lawfully admitted for permanent residence and to have been in the United States as an LPR (and therefore accumulating time toward the residency requirement for naturalization)[179] during the period the alien was an RPI. With some exceptions, however, an alien could not apply for naturalization while in RPI status.

S. 744 would amend the INA to exempt aliens who adjust to LPR status under INA Section 245C (for RPIs) or INA Section 245D (the DREAM Act) from the worldwide numerical limits on permanent admissions.[180] In addition, S. 744 would repeal Section 505 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which places certain restrictions on state provision of postsecondary educational benefits to unauthorized aliens.[181]

The bill would further specify that RPIs who initially entered the United States before age 16 and aliens granted blue card status (see "Agricultural Worker Legalization")) would only be eligible for certain types of federal student financial assistance under Title IV of the Higher Education Act (HEA) of 1965.[182] These aliens would be eligible for student loans, federal work-study programs, and services.

Agricultural Worker Legalization

S. 744 would establish a new legal temporary status, termed "blue card" status, for agricultural workers who satisfy specified work and other requirements.[183] Broadly similar provisions have been included in measures introduced regularly in recent Congresses, including in bills known as the Agricultural Job Opportunities, Benefits, and Security Act (AgJOBS Act).

S. 744 provides that the Secretary of DHS could grant blue card status to an alien who

- either performed not fewer than 575 hours or 100 work days of agricultural employment in the United States during the two-year period ending on December 31, 2012, or
- is the spouse or child of such an alien, was physically present in the United States on or before December 31, 2012, and has maintained continuous presence in the

[178] S. 744 §2103.

[179] INA §316.

[180] S. 744 §2103.

[181] Ibid. Language to repeal this 1996 provision has been regularly included in DREAM Act bills; see CRS Report RL33863, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation*, by Andorra Bruno.

[182] P.L. 89-329; 20 U.S.C. §§1070 *et seq*.

[183] S. 744 §2211.

United States from that date until the date on which the alien is granted blue card status.[184]

The application period for blue card status would run for one year beginning on the date a final rule is published, and the DHS Secretary could extend the period for an additional 18 months. The Secretary of DHS, in consultation with the Secretary of Agriculture, would have to issue final regulations to implement these provisions no later than one year after the enactment of S. 744.[185] No alien would be permitted to remain in blue card status after the date that is eight years after regulations are published.[186] The Secretary could only accept applications from aliens within the United States, except for aliens who have participated in the H-2A visa program,[187] who could apply from abroad.

Apart from their work experience, blue card applicants generally would be subject to similar eligibility restrictions and waivers of inadmissibility as RPIs (see "Registered Provisional Immigrants (RPIs)"), except that legal nonimmigrants in H-2A status would be eligible for blue cards. Blue card applicants also would be subject to national security and law enforcement background checks. They would enjoy similar protections as RPIs from being removed during the application period, and would similarly receive an identity document, work authorization, and permission to travel into and out of the United States. Applicants for blue card status also would be subject to processing and penalty fees, though penalties, at $100, would be lower than for RPI applicants. Processing fees would be deposited into the Immigration Examinations Fee Account, and the penalties would be deposited into the CIR Trust Fund.

Each employer of an alien with blue card status would be required to annually provide a record of the alien's employment to the alien and the Secretary of Agriculture. The Secretary of DHS would be allowed to adjust an alien with blue card status to RPI status if the alien is unable to fulfill the agricultural work requirement for adjustment from blue card status to LPR status, as specified.

Adjustment of Status to Lawful Permanent Residence

S. 744 would add a new section (245F) to the INA to provide for the adjustment of status of aliens with blue card status to LPR status. The DHS Secretary, in consultation with the Secretary of Agriculture, would be required to issue final regulations implementing these provisions within one year of the enactment of S. 744.[188] Under this new INA section, the DHS Secretary, not earlier than five years after the enactment of S. 744, would be required to adjust the status of certain aliens with blue card status if the alien has performed either: not less than 100 work days of agricultural employment annually for five years in the eight-year period beginning on the date of enactment, or not less than 150 work days of agricultural employment annually for three years in the five-year period beginning on the date of enactment.[189]

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[184] Ibid.

[185] Ibid.

[186] S. 744 §2211 does not separately specify the length of the period of blue card admission.

[187] The H-2A program allows for the temporary admission of foreign workers to the United States to perform agricultural labor or services of a seasonal or temporary nature, provided that U.S. workers are not available; see CRS Report R42434, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*, by Andorra Bruno.

[188] S. 744 §2211.

[189] In certain specified circumstances, the DHS Secretary could credit an alien with up to 12 additional months of agricultural employment to meet this requirement.

The Secretary of DHS could not adjust the status of an alien with blue card status if the alien is no longer eligible for blue card status or has failed to meet the agricultural work requirement. As with RPIs, grounds of inadmissibility waived during the initial application period would continue to apply for purposes of adjustment of status; and aliens adjusting from blue card status would be required to satisfy any applicable federal tax liability,[190] and to pay a processing fee and a $400 penalty. S. 744 also would establish a criminal penalty for false statements in applications for blue card status or in applications for adjustment from blue card status to LPR status.[191]

The Secretary of DHS would grant LPR status to the spouse or child of an alien whose status was adjusted from blue card status to LPR status if the spouse or child applies for such status, the principal alien includes the spouse or child in an adjustment of status application, and the spouse or child is not ineligible for LPR status under the ineligibility provisions for obtaining RPI status (see "Registered Provisional Immigrants (RPIs)"). An alien granted blue card status would only be permitted to adjust to LPR status under this section, the RPI adjustment of status provisions,[192] or the merit-based track two permanent admissions provisions (see "Merit-Based Track Two"). S. 744 further provides that worldwide and per-country immigration limits would not apply to adjustments of status from blue card status to LPR status.[193]

Immigrant Visas[194]

Immigrants are persons admitted as legal permanent residents (LPRs) of the United States. Under current law, permanent admissions are subject to a complex set of numerical limits and preference categories that give priority for admission on the basis of family relationships, an offer or employment in the United States, and geographic diversity of sending countries. These limits include an annual *flexible worldwide cap* of 675,000 immigrants, plus refugees and asylees. The INA specifies that each year, countries are held to a numerical limit of 7% of the worldwide level of U.S. immigrant admissions, known as per-country limits. The pool of people who are eligible to immigrate to the United States as LPRs each year typically exceeds the worldwide level set by U.S. immigration law, and as a consequence millions of prospective LPRs with approved petitions are waiting to receive a numerically limited visa (commonly referred to as the "backlog" or "queue"). The *immediate relatives of U.S. citizens* (i.e., their spouses and unmarried minor children, and the parents of adult U.S. citizens) are admitted outside of the numerical limits and are the flexible component of the worldwide cap.

S. 744 would revise the numerical limits on legal permanent immigration and would alter the system that allocates the visas. It would repeal the Diversity Visa Program[195] beginning in

[190] As used here, *applicable federal tax liability* means all federal income taxes assessed in accordance with section 6203 of the Internal Revenue Code since the date on which the applicant was authorized to work in the United States in blue card status.

[191] S. 744 §2212.

[192] INA §245C, as added by S. 744 §2102.

[193] S. 744 §2212. Worldwide and per-country immigration limits are described in INA §§201 and 202; also see in this report "Immigrant Visas." A conforming amendment (S. 744 §2212(b)) would amend the INA to exempt from the worldwide numerical limits on permanent admissions aliens adjusted to LPR status under INA §245F.

[194] CRS Analyst in Immigration Policy William Kandel, CRS Legislative Attorney Margaret Mikyung Lee, and CRS Specialist in Immigration Policy Alison Siskin contributed to this section of the report.

[195] The Diversity Immigrant Visa Program allocates visas to natives of countries from which immigrant admissions were lower than a total of 50,000 over the preceding five years; see CRS Report R41747, *Diversity Immigrant Visa Lottery Issues*, by Ruth Ellen Wasem.

FY2015, but enable those who received diversity visas for FY2013 and FY2014 to be eligible to obtain LPR status. Two new "merit-based" categories would be created (see "Merit-Based Track One" and "Merit-Based Track Two"), one of which would be designed, in part, to replace the diversity visa. The basic worldwide limits on family- and employment-based preference (i.e., numerically-capped) visas would be unchanged at 480,000 and 140,000, respectively; but the bill would allow the allocation of unused roll-over and recaptured visas from previous years,[196] would eliminate the per-country ceiling for employment-based preferences, and would increase the per-country ceiling for family-based preferences from 7% to 15%,[197] in addition to other changes to these systems (see "Family-Based Immigration" and Employment-based Immigration"). S. 744 also would modify rules for investor visas (see "Investor Visas"), and include provisions to promote immigrant integration (see "Immigrant Integration").

In addition, S. 744 would make numerous other revisions to LPR immigration, including new procedures for how DHS and DOS manage visa backlogs, new provisions for fiancés and fiancées of LPRs, changes to the petition process when the sponsoring relative dies, and changes to certain country-specific and other special immigrant visas.[198]

Point Merit-Based Systems

S. 744 would include two different "merit-based" systems: one designed as a point system to admit aliens based on their employment skills, and the other designed to expedite the admission of certain people in the existing visa backlog.

Merit-Based Track One

The proposed Merit-Based Track One visa would replace the diversity visa and would admit 120,000 to 250,000 LPRs annually, with the annual flow based upon a sliding formula that would depend on demand for the visa in the previous year. If the average annual unemployment rate in the previous fiscal year was greater than 8.5%, the level would not be increased. Unused visas from past years would be recaptured.[199]

During each of the years FY2015 through FY2017, Track One visas would be made available to foreign nationals who meet existing criteria for the third preference professional, skilled shortage, and unskilled shortage workers. In FY2018 and subsequent years, visas would be allocated as follows:

- 50% would be allocated to Tier 1 based upon education (college plus), employment experience, high-demand occupation, entrepreneurship, younger workers, English language, familial relationship to a U.S. citizen, country of origin diversity, and civic engagement.
- 50% would be allocated to Tier two based upon employment in high-demand occupations that require little to medium preparation (high school diploma or GED) and caregivers, younger workers, English language, familial relationship to a U.S. citizen, country of origin diversity, and civic engagement.

[196] S. 744 §2304.

[197] S. 744 §2306. For a fuller discussion, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*, by Ruth Ellen Wasem.

[198] See generally, S. 744 §§2305, 2310-2322, 4804.

[199] S. 744 §2301.

Foreign nationals who have pending LPR petitions or who acquire RPI status would not be eligible for Track One visas. GAO would be required to evaluate how this point system functions and report to Congress not later than seven years after enactment.

Merit-Based Track Two

S. 744 would create a second Merit System (Track Two) that has four components.[200] The first would consist of employment preference petitioners who filed before enactment of S. 744 and whose petitions were pending (i.e., were in the visa queue backlog) for at least five years. The second would consist of family preference petitioners who filed before enactment and whose petitions were pending (i.e., were in the visa queue backlog) for at least five years. The third would consist of persons filing current third or fourth- preference family petitioners during the first 18 months after the date of enactment (i.e., before the bill's final changes to the family preference categories become effective; see "Family-based Immigration") and whose visas are not issued during the first five years after the bill's date of enactment. The fourth would consist of long-term workers (other than W visa holders) who worked 10 years in a legally present status with employment authorization, a category apparently designed to describe RPIs.

Under S. 744, the first two components of the Track Two merit system would function as current backlog reduction, as visas would be issued to 1/7 of the petitioners in these two categories, ordered by filing date, during each year from FY2015 through FY2021, regardless of country of origin or other numerical limits. During FY2022-FY2023, visas would be issued to the current family third and fourth preference petitioners filing after the date of enactment, with one half of such filers receiving visas in each of these years (ordered by filing date). These visas would thus accommodate certain family petitioners who no longer would be eligible following the implementation of reforms to the family preference system in S. 744 (see "Family-Based Immigration").

Ten years after enactment of S. 744 (i.e., beginning in FY2024), the Track Two merit system would become a pathway for RPIs adjusting to LPR status. Beginning in FY2029, aliens would be required to have been lawfully present in an "employment authorized status" for 20 years prior to filing for Track Two merit adjustment. The bill expressly waives the unlawful presence ground of inadmissibility of Track Two adjustments.[201]

Family-Based Immigration

Under current law, to qualify as a family-based LPR, a foreign national must be a spouse or minor child of a U.S. citizen; a parent, adult child, or sibling of an adult U.S. citizen; or a spouse or unmarried child of a lawful permanent resident. At least 226,000 and no more than 480,000 family preference LPRs are admitted each year within four different preference categories. Immediate relatives of U.S. citizens may be eligible for non-preference (i.e., uncapped) visas.

Section 2305 of S. 744 would revise the family-based system in two main ways. First, it would reclassify spouses and minor unmarried children of LPRs as immediate relatives, making them exempt from family preference numerical limits. Second, S. 744 would reallocate family preference visas in two stages. For the first 18 months after enactment, family preference visas would be allocated as follows: (1) adult unmarried children of U.S. citizens would be capped at 20% of the worldwide limit for family-preference immigrants; (2) adult unmarried children of LPRs would be capped at 20% of the worldwide limit for family-preference immigrants plus

[200] S. 744 §2302.

[201] S. 744 §2302.

unused visas from the first category; (3) adult married children of U.S. citizens would be capped at 20% of the worldwide limit for family-preference immigrants, plus unused visas from the first two categories; and (4) siblings of U.S. citizens would be capped at 40% of the worldwide limit for family-preference immigrants, plus unused visas from the first three categories.

Beginning eighteen months after enactment, S. 744 would eliminate the current family fourth preference category for adult siblings of U.S. citizens,[202] and allocate the family preference visas as follows: U.S. citizens' unmarried sons or daughters would not exceed 35% of worldwide level; U.S. citizens' married sons or daughters 31 years of age or younger (at the time of filing) would not exceed 25% of the worldwide level;[203] and LPRs' unmarried sons and daughters would not exceed 40% of the worldwide level.[204]

In addition, S. 744 would make nonimmigrant V visas available to all persons with approved petitions pending within a family preference category. Thus, U.S. citizens' unmarried sons and daughters and LPRs' unmarried sons and daughters, as well as persons who are U.S. citizens' married sons and daughters under age 31, could reside in the United States until their visa date becomes current. They would also be granted work authorization during that period. U.S. citizens' siblings and adult sons and daughters age 31 or older with pending family preference visas could reside in the United States for 60 days per year, but would not be authorized to work.

Employment-Based Immigration

The current employment-based LPR visa system consists of five numerically limited preference categories. To qualify within one of these categories, a foreign national must be an employee whom a U.S. employer has received approval from the Department of Labor to hire; a person of extraordinary or exceptional ability in specified areas; an investor who will start a business that creates at least 10 new jobs; or someone who meets the narrow definition of the "special immigrant" category.[205] The INA currently allocates 140,000 admissions annually for employment-preference immigrants.

S. 744 would make substantial changes to the employment-based system. Foremost, the bill would exempt from the numerical limits on employment-based LPRs the following:

- derivatives (i.e., accompanying immediate family members) of employment-based LPRs;
- persons of extraordinary ability in the arts, sciences, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers, who are currently first preference employment-based;
- persons who earned a doctorate degree from an institution of higher education in the United States or the foreign equivalent; persons who earned a graduate degree in STEM fields from a U.S. institution within the five-year period before the petition filing date and have a U.S. offer of employment in the related field; and

[202] INA §203(a)(4).

[203] Under INA §203(a)(3), the current family third preference category for married sons and daughters does not include an age limit.

[204] S. 744 §2307.

[205] Special immigrants include ministers of religion, religious workers other than ministers, and certain employees of the U.S. government abroad.

- foreign national physicians who have completed foreign residence requirements under INA Section 212(e).[206]

The bill would make the first preference employment-based category exempt from numerical limits, and amend that category to include aliens who are members of the professions holding advanced degrees who have a U.S. job offer (subject to a "national interest" waiver), including alien physicians accepted to a U.S. residency or fellowship program, or prospective employees of national security facilities. The second preference category would consist of advanced degree holders and generally would be allocated 40% of 140,000; but aliens with advanced degree in science, technology, engineering, or math (STEM) fields would be exempted from numerical limits if they have a job offer and meet other requirements. Employers petitioning for such aliens also would be exempted from labor certification required under INA Section 212(a)(5).[207]

S. 744 also would change certain procedures for admitting second preference employment-based immigrants to facilitate physician immigration (also see "Conrad State 30 Program"). Under the bill, certain nonimmigrant alien physicians would be exempt from numerical limits if they adjust to LPR status as EB-2 immigrants.[208] And EB-2 labor certification requirements would be waived for certain alien physicians.[209]

S. 744 also would amend the third preference employment-based category (i.e., skilled workers with at least two years training, professionals with baccalaureate degrees, and unskilled workers in occupations in which U.S. workers are in short supply) from 28.6 % to 40% of the worldwide level and would repeal the cap of 10,000 on unskilled workers within that 40%. It would also amend the INA to increase visa allocation to fourth preference employment-based special immigrants and fifth preference employment-based employment creation/investors from 7.1% each to 10% each. The bill would also facilitate the admission and naturalization of aliens who are current or potential employees of certain federal national security facilities.[210]

Investor Visas

There are currently one category of immigrant investor visas (admitted as conditional LPRs) and two categories of nonimmigrant investor visas.[211] These investor visas are intended to benefit the U.S. economy by providing an influx of foreign capital and stimulating job creation. S. 744 would make changes to these existing visas and also create new immigrant and nonimmigrant investor categories (with respect to the latter, see "New Nonimmigrant Investor Visas").

Changes to the EB-5 Category

Under current law, the visa category used for immigrant investors is the fifth preference employment-based (EB-5) visa category, which allows for up to 10,000 admissions annually and generally requires a minimum $1 million investment.[212] The minimum is reduced to $500,000 for

[206] S. 744 §2307.

[207] S. 744 §2307.

[208] S. 744 §2307(b)(1).

[209] S. 744 §2402.

[210] S. 744 §2307.

[211] For a fuller discussion, see CRS Report RL33844, *Foreign Investor Visas: Policies and Issues*, by Alison Siskin.

[212] Only $500,000 is required if investing in an area of high unemployment or a rural area (i.e., a "Targeted Employment Area").

aliens who invest in certain targeted investment programs (known as regional centers) through the Regional Center Pilot Program.[213] The pilot program is set to expire at the end of FY2015.

S. 744 would exempt spouses and children (derivatives) of EB-5 petitioners from the numerical limits. It would also redefine "Target Employment Area" to include areas with high poverty, as with other employment-based categories. Section 2308 would include communities adversely affected by a recommendation by the Defense Base Closure and Realignment Commission as targeted employment areas for purposes of satisfying requirements for fifth preference employment creation/investors. In addition, beginning on January 1, 2016, the bill would begin automatically adjusting the required investment amount by the Consumer Price Index (CPI-U) every five years.[214] S. 744 also would specify the criteria for removing or terminating an alien's conditional LPR status and would permit the Secretary of DHS to delegate this authority to the Secretary of Commerce.[215]

S. 744 would permanently authorize the Regional Center Pilot program and would make numerous changes to the program. Currently, almost all the requirements related to the Regional Center program are in regulation, not in statute. The bill would establish statutory requirements for those applying for a regional center designation, and specify the type of information that should be contained in a regional center proposal. It would also create a mechanism for a commercial enterprise affiliated with a regional center to be preapproved. The Secretary of DHS would also be authorized to establish a premium processing option for aliens investing in preapproved commercial enterprises. The bill would also create a series of sanctions for regional centers that violate newly created financial reporting requirements.[216]

New EB-6 Investor Visas

Subtitle H of Title IV of S. 744 would create a new EB-6 immigrant visa category designed to permit the entry of up to 10,000 immigrant entrepreneurs per year. (The bill also would create a new nonimmigrant entrepreneur visa; see "New Nonimmigrant Investor Visas"). To qualify for an EB-6 visa, the alien would have to be a qualified entrepreneur;[217] to have maintained a valid nonimmigrant status during the past two years; and to have had significant ownership in a business that created at least five jobs and either raised $500,000 from qualified investors or generated not less than $750,000 in annual revenue. Broadly similar requirements would apply for qualified entrepreneurs with advanced STEM degrees seeking to become EB-6 LPRs.[218]

The DHS Secretary would be required to promulgate regulations covering EB-6 (and nonimmigrant investor visas) within 16 months, and to ensure that the visas are implemented in a manner that protects national security and promotes economic growth, job creation, and competitiveness. The minimum investments and other dollar amounts for EB-6 eligibility would be adjusted every five years based on the CPI-U, in a manner similar to the EB-5 category.[219]

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[213] A regional center is a private enterprise/corporation or a regional governmental agency with an investment program within a defined geographic area.

[214] Automatic adjustments would not occur if the amount is adjusted by the Secretary of Commerce.

[215] S. 744 §§4805-4806.

[216] S. 744 §4404.

[217] A qualified entrepreneur would be defined as an individual with significant ownership in a business entity who is employed in a senior executive position and had a substantial role in founding or growth of such an entity.

[218] S. 744 §4802.

[219] S. 744 §4803.

Immigrant Integration

S. 744 would define immigrant integration and rename the USCIS's Office of Citizenship as the Office of Citizenship and New Americans (OCNA). OCNA's functions would include promoting institutions and providing training and educational materials on aliens' citizenship responsibilities and leading such activities across federal agencies and with state and local entities.

The OCNA would also work with the Task Force on New Americans (TFNA), to be established within 18 months of enactment. The Task Force would be charged with coordinating federal program and policy responses to integration issues and advising and assisting the federal government in carrying out the immigration integration policies and goals in the bill. Membership would include the secretaries of most cabinet-level executive branch agencies. TFNA members would liaison with their agencies to ensure agency participation in creating goals, developing indicators, facilitating state and local participation, and collecting data. Eighteen months after formation, the TFNA would provide recommendations on these issues and assist in developing legislative and policy proposals to DHS and the Domestic Policy Council.[220]

The OCNA, working with a new nonprofit United States Citizenship Foundation, also would administer a pair of grant programs: Initial Entry, Adjustment, and Citizenship Assistance (IEACA) grants to provide direct assistance to aliens who apply for provisional legal status, adjust to LPR status, or seek naturalization;[221] and a Pilot Grant Program (PGP) to support state and local government activities fostering immigrant integration.[222] The two grant programs would be authorized $100 million for the FY2014-FY2018 period and such sums as may be necessary for subsequent years.[223]

With the express objective of reducing "barriers to naturalization," S. 744 would waive the English and history and civics naturalization requirements for persons who, on the date of application, were unable to comply with such requirements because of physical or mental disability, or were age 65+ with five years as an LPR. It would waive the English requirement for persons above ages 50, 55, and 60, if they had 20, 15, and 10 years, respectively, as an LPR. It would also waive the civics requirement for persons aged 60+ with 10 years as an LPR on a case-by-case basis. The bill would allow individuals to continue to use paper-based application forms to petition for LPR status or U.S. citizenship until October 1, 2020.[224]

Citizenship of Adopted Children

As a result of an amendment approved on the Senate floor, the bill would ease requirements for international adoptions and naturalization of international adoptees. The age for an adopted child would be increased from under 16 years old to under 18 years old and only one parent from an adopting couple, rather than the two together, would be required to have a pre-adoption visit with a child adopted abroad. In order to be automatically naturalized under INA Section 320, a child born abroad would only be required to be physically present after a lawful admission, rather than required to be residing in the United States as an LPR. Additionally, a person who no longer has legal status or is physically present in the United States may be deemed to have satisfied the

[220] S. 744 §§2511, 2521-2524.

[221] S. 744 §§2531-2537.

[222] S. 744 §§2538-2539.

[223] S. 744 §2541.

[224] S. 744 §§2551-2552.

requirements of INA Section 320 as amended by the bill if that person would have satisfied them if they have been in effect when the person was originally lawfully admitted. The automatic naturalization under INA Section 320 would apply to an adopted child regardless of when the adoption was finalized and the naturalization provisions for children in INA Sections 320 and 322 would apply regardless of when requirements were satisfied.[225]

Naturalization Based on Military Service

The Senate also approved a floor amendment that would streamline military-service-based naturalization for persons who have awards for active engagement or participation in combat by deeming them to have satisfied most substantive requirements, including English and civics knowledge, attachment to the principles of the U.S. Constitution, being well disposed to the good order and happiness of the United States, good moral character, and honorable service and discharge. Naturalization under this provision would still be subject to potential revocation for discharge under other than honorable circumstances before serving honorably for an aggregate period of five years.[226]

Nonimmigrant Visas

Nonimmigrants—such as tourists, foreign students, diplomats, temporary workers, cultural exchange participants, or intracompany business personnel—are admitted for a specific purpose and a temporary period of time.[227] Nonimmigrants are required to leave the country when their visas expire, though certain classes of nonimmigrants are "dual intent," meaning they may adjust to LPR status if they otherwise qualify. Current law describes 24 major nonimmigrant visa categories, and over 70 specific types of nonimmigrant visas, which are often referred to by the letter that denotes their section in the statute, such as H-2A agricultural workers, F-1 foreign students, or J-1 cultural exchange visitors.

S. 744 would make extensive revisions to nonimmigrant categories for professional specialty workers (see "H-1B Professional Specialty Workers"), intra-company transferees (see "L Visa Intra-Company Transferees"), and other skilled workers (see "Other Skilled and Professional Worker Visas"). The bill also would reform existing lower-skilled visa categories (see "Reforms to the H-2B Program") and establish a new "W" temporary worker category (see "New Nonimmigrant Visas for Lower Skilled Workers"). Additional nonimmigrant provisions in S. 744 would be designed to promote tourism (see "Tourism Related Provisions") and would make changes to student and other nonimmigrant visas (see "Other Nonimmigrant Visa Changes").

High-Skilled Workers[228]

H-1B Professional Specialty Workers

Current law makes H-1B visas available for "professional specialty workers," an employment category closely associated with science, technology, engineering, and mathematics (STEM)

[225] S. 744, §§2312, 2554.

[226] S. 744, §2555.

[227] For a fuller discussion of nonimmigrant visas, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

[228] CRS Legislative Attorney Margaret Mikyung Lee and CRS Specialist in Immigration Policy Alison Siskin

fields, but not limited to them.[229] H-1B visas are good for three years, renewable once; and they are "dual intent," meaning aliens on H-1B visas may seek LPR status without leaving the United States. Current law generally limits annual H-1B admissions to 65,000, but most H-1B workers are exempted from the limits because they are returning workers or they work for universities and nonprofit research facilities that are exempt from the cap.[230]

Employers seeking to hire an H-1B worker must attest that the employer will pay the nonimmigrant the greater of the actual wages paid to other employees in the same job or the prevailing wages for that occupation; that working conditions for the nonimmigrant will not adversely affect other workers; and that there is no applicable strike or lockout. The employer must provide a copy of the labor attestation to representatives of the bargaining unit where applicable, or must post the labor attestation in conspicuous locations at the work site. Prospective H-1B nonimmigrants must demonstrate to USCIS that they have the requisite education and work experience for the posted positions.[231]

Changes to Facilitate H-1B Recruitment

In recent years, the H-1B visa has been an important pathway for many foreign students seeking employment in the United States after completing their degrees, and an important avenue for many U.S. businesses seeking to recruit high-skilled foreign workers.[232] Thus, despite the fact that a majority of H-1B workers are exempted from annual limits, applications for new H-1B workers have routinely exceeded such limits in recent years—in some years exceeding limits during the first week or even on the first day that applications are excepted.[233]

S. 744 would seek to address perceived H-1B shortages by replacing the 65,000 per year cap on new H-1B admissions with a flexible cap that would range from a floor of 115,000 to a ceiling of 180,000 annually, with a "market-based" mechanism to increase or decrease the cap based on demand during the previous year (i.e., whether and how quickly the previous year's limit was reached).[234] Up to 25,000 STEM advanced degree graduates would be exempted from the cap.[235] Spouses of H-1B workers would be permitted to work, thereby eliminating a potential barrier to H-1B recruitment and also likely further increasing the number of skilled foreign workers admitted (i.e., because many H-1B nonimmigrants have spouses who are also skilled workers).[236] And the bill would ease the renewal of H-1B (and L visas; see "L Visa Intra-Company Transferees") by limiting the review of such renewals to material errors, substantive changes and

contributed to this section of the report.

[229] For a fuller discussion of science, technology, engineering, and mathematics (STEM) fields, see CRS Report R42642, *Science, Technology, Engineering, and Mathematics (STEM) Education: A Primer*, by Heather B. Gonzalez and Jeffrey J. Kuenzi.

[230] For a fuller discussion of H-1B visas, see CRS Report R42530, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees* , by Ruth Ellen Wasem.

[231] Ibid.

[232] See CRS Report R42530, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees* , by Ruth Ellen Wasem.

[233] Ibid.

[234] S. 744 §4101(a).

[235] S. 744 §4101(b).

[236] S. 744 §4102. Spouses of L workers would similarly be permitted to work.

newly discovered information.[237] In addition, H-1B workers would have a 60-day grace period after loss of a job to seek additional employment without losing his or her visa status.[238]

Changes to Protect U.S. Workers

In addition to these concerns about whether employers have adequate access to H-1B workers, some Members of Congress have raised questions about whether H-1B workers may have an adverse effect on U.S. workers, including possibly by placing downward pressure on wages and/or by discouraging U.S. workers from entering STEM fields.[239] S. 744 would establish two new fees apparently designed to address these concerns: a $1,000 fee for Labor Certification Applications (LCAs) for EB-2 and EB-3 immigrants, with the fee designated to fund STEM grants, scholarships, and training ;[240] and a $1,250-$2,500 fee for H-1B and L visas, with the fee designated to provide ongoing funding for the CIR Trust Fund.[241]

Subtitle B of Title IV of S. 744 also would seek to protect U.S. workers by modifying H-1B application requirements and procedures for investigating H-1B complaints. The bill would amend the H-1B labor certification process to revise wage requirements based on Department of Labor (DOL) surveys,[242] and would require employers to advertise for U.S. workers on a DOL website.[243] With some exceptions, the four-level wage structure for current H-1B workers would be changed to a three-level wage structure.[244]

The subtitle would establish two new classes of H-1B employers: H-1B dependent employers, defined as a function of the proportion of an employer's workforce which consists of H-1B workers; and H-1B skilled worker dependent employers, defined as a function of the proportion of an employer's workforce which consists of H-1B workers in highly skilled occupations. New rules to prevent H-1B workers from being hired intentionally to displace U.S. workers would be established, with different requirements for each type of employer. Employers would be required to make good faith efforts to recruit U.S. workers prior to hiring H-1B workers, and H-1B skilled worker dependent employers would be required to offer a position to any equally or better qualified U.S. worker applying for a job otherwise to be filled by an H-1B worker. Certain H-1B dependent employers would not be permitted to outsource H-1B workers, and employers who are eligible to outsource H-1Bs would pay a fee of $500 per outplaced worker.[245]

In addition, the subtitle would revise requirements for H-1Cs (nonimmigrant nurses), including by reducing the number of visas available for such workers from 500 to 300 per year, and by facilitating visa portability for such workers.[246] Section 4213 would impose additional restrictions on how employers advertise for H-1B positions, and would impose limits on the total number of

[237] S. 744 §4103(a).

[238] S. 744 §4103(b).

[239] See CRS Report R42530, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees* , by Ruth Ellen Wasem.

[240] S. 744 §4104.

[241] S. 744 §§4105 and 6(a)(2)(B)(vii).

[242] S. 744 §4211(a).

[243] S. 744 §4211(b) and §4231.

[244] S. 744 §4211(a).

[245] S. 744 §4211.

[246] S. 744 §4212. Visa portability refers to the ability of a nonimmigrant worker to change employers.

H-1B and L workers certain employers can hire. The DOL would be permitted to review an H-1B LCA for evidence of fraud and to investigate and adjudicate any evidence of fraud identified.[247]

Subtitle B of Title IV of S. 744 also would broaden DOL's authority to investigate alleged employer violations, would require DOL to conduct annual compliance audits of certain employers, and would increase information sharing between DOL and USCIS as well as DOL reporting requirements.[248] Employers who willfully violate the terms of their LCAs would be subject to increased fines and would be liable for the lost wages and benefits of employees harmed by such violations.[249] Employers also would be prohibited from failing to offer H-1Bs insurance, pension plans, and bonuses offered to U.S. workers, and from penalizing H-1B workers for terminating employment before a previously agreed date.[250]

In addition, the subtitle would require DHS and DOS to provide H -1B and L workers with information regarding their rights and employer obligations.[251] Certain H-1B dependent employers would be required to pay an additional $5,000 - $10,000 in filing fees beginning in FY2015 (also see "L Visa Intra-Company Transferees" regarding similar fees for L dependent employers).[252] The bill would further authorize fees for premium processing of employment-based immigrant petitions.[253] And Section 4237 would permit visa portability and streamline adjustment of status for certain aliens with long-standing employment-based petitions.

L Visa Intra-Company Transferees

Current law permits certain workers to enter the United States on nonimmigrant L visas as intracompany transferees. The L visa is designed for executives, managers, and employees with specialized knowledge of the firm's products. It permits multinational firms to transfer top-level personnel to their locations in the United States for up to five to seven years.[254] Some Members of Congress have raised concerns that the L visa may displace U.S. workers who had been employed in those positions. These employees are often comparable in skills and occupations to H-1B workers, yet lack the labor market protections the law sets for hiring H-1B workers. These concerns have been raised, in particular, with respect to certain outsourcing and information technology firms that employ L workers as subcontractors within the United States.

In addition to extending certain H-1B protections described in Subtitle B of Title IV of S. 744 to L visa holders (see "Changes to Protect U.S. Workers"), S. 744 includes additional L visa protections. The bill would add prohibitions on the outsourcing and outplacement of L employees, including by charging a $500 fee to be deposited in the STEM Education and Training Account.[255] Employers seeking to bring an L-visa worker to the United States to open a new office would face special application requirements.[256] DHS would be required to work with

[247] S. 744 §4214.

[248] S. 744 §§4221, 4223, 4224, and 4225.

[249] S. 744 §4222.

[250] S. 744 §4222.

[251] S. 744 §4232.

[252] S. 744 §§4233.

[253] S. 744 §4234.

[254] For a fuller discussion, see CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem.

[255] S. 744 §4301.

[256] S. 744 §4302.

DOS to verify the existence of multinational companies petitioning for the L workers.[257] And Section 4304 would impose caps on the total proportion of certain employers' workforces that may consist of L and H-1B workers, falling from an upper limit of 75% in FY2015 to an upper limit of 50% after FY2016.[258] Section 4305 would also impose additional fees of $5,000 - $10,000 for certain H-1B/L-dependent employers beginning in FY2014.[259]

With respect to compliance, DHS would be authorized to investigate and adjudicate alleged employer violations of L-visa program requirements for up to 24 months after the alleged violation; and DOL would be required to conduct annual compliance audits of certain employers.[260] The subtitle also would impose civil monetary penalties and other remedies for violations, including debarment from L-worker petitions and liability for lost wages and benefits to employees harmed by violations.[261] In addition, Section 4308 would add whistleblower protections for L-workers. And DHS would be required to report on the L-visa blanket petition process.[262]

Other Skilled and Professional Worker Visas

Current law includes two nonimmigrant visa categories similar to H-1B visas for temporary professional workers from specific countries: North American Free Trade Agreement (NAFTA) TN visas for Canadian and Mexican temporary professional workers, and E-3 treaty professional visas for Australians.[263] In addition, several employment-based nonimmigrant visas are intended to attract outstanding individuals, entrepreneurs, professionals, and high-skilled workers. These nonimmigrant visa categories include persons with outstanding and extraordinary ability (O visas), cultural exchange workers (J visas), and international investors (E visas).

S. 744 would add visa portability for foreign nationals on O-1 visas and would add flexibility to the requirements for being admitted on an O-1 visa based on achievement in motion picture or television production.[264] The bill also would make changes to the E and J visa programs, and would establish a new nonimmigrant X visa for entrepreneurs.

Reforms to E Treaty Visas

Current law with respect to nonimmigrant investor visas includes provisions for E-1 visas for treaty traders and E-2 visas for treaty investors.[265] S. 744 would amend the requirements for the E visa to allow E visas to be issued to citizens from countries where there is a bilateral investment treaty or a free trade agreement.[266] S. 744 would amend the E-3 visa category so that nationals of

[257] S. 744 §4303.

[258] S. 744 §4304.

[259] S. 744 §4305.

[260] S. 744 §4306.

[261] S. 744 §4307.

[262] S. 744 §§4309 and 4311.

[263] §501 of P.L. 109-13, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005.

[264] S. 744 §4404.

[265] There is also an E-3 category for Australian specialty workers coming to the United States under the provision of the U.S.-Australian Free Trade Agreement. The E-3 category is limited to 10,500 visas a year. For more information on the E-3 category, see CRS Report RL32982, *Immigration Issues in Trade Agreements*, by Ruth Ellen Wasem.

[266] Currently, E-1 and E-2 visas can only be issued to nationals from countries that have treaties of commerce and navigation. Free trade agreements are not considered treaties of commerce and navigation.

Ireland would be eligible. The Irish national would not be required to be employed in a professional specialty, and could provide services as an employee, provided he/she has at least a high school education or, within five years, two years work experience in an occupation that requires two years of training or experience.[267] There would be a limit of 10,500 E-3 visas per year for Irish nationals.

The bill also would create a new E-4 visa category that would be limited to 5,000 visas per year per country; only principal aliens would be counted against the cap. Additionally, the bill would create an E-5 visa category for South Korean workers in specialty occupations that would be limited to 5,000 visas annually. Employers seeking to hire E-4 or E-5 workers would have to file a labor attestation form with DOL.[268] A new E-6 nonimmigrant visa category would be established for nationals of eligible sub-Saharan African countries[269] or beneficiary countries of the Caribbean Basin Economic Recovery Act[270] who are coming to the United States to work, and have at least a high school education or, within the past five years, two years of work experience in an occupation that requires at least two years of training/experience. These visas would be limited to 10,500 per year.[271]

Conrad State 30 Program

Currently, foreign medical graduates (FMGs) may enter the United States on J-1 nonimmigrant visas in order to receive graduate medical education and training. Such FMGs must return to their home countries after completing their education or training for at least two years before they can apply for certain other nonimmigrant visas or LPR status, unless they are granted a waiver of the foreign residency requirement. States are permitted to sponsor up to 30 waivers per state, per year on behalf of FMGs under a temporary program, known as the Conrad State Program or the Conrad 30 Program. The objective of the Conrad 30 Program is to encourage immigration of foreign physicians to medically underserved communities.

S. 744 would make the Conrad 30 waiver program permanent, and would allow the program to grow by up to five waivers per year based on demand for the program, or to be reduced (though never below 30) based on falling demand.[272] The bill also includes a number of provisions to regulate working conditions and add flexibility to the J visa program for such physicians.[273] And S. 744 would make changes to facilitate physicians holding J or H-1B visas seeking to remain in the United States, including by allowing dual intent for J-1 foreign medical graduates,[274] by making alien physicians who received a Conrad waiver or completed their two-year home residency requirement exempt from numerical limits if they adjust to LPR status as EB-2 immigrants (see "Employment-Based Immigration"),[275] and by making the spouses and children of J-1s no longer subject to the two-year home residency requirement.[276] The bill would also

[267] S. 744 §4403.

[268] For more on labor attestation, see CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem.

[269] These countries would be defined by §104 of the African Growth and Opportunity Act (19 U.S.C. §3703).

[270] 19 U.S.C. §§2701 *et seq*.

[271] S. 744 §4402.

[272] S. 744 §2401.

[273] S. 744 §2403.

[274] S. 744 §2403(c).

[275] S. 744 §2307(b)(1).

[276] S. 744 §2405(c).

allow physicians in H-1B status and completing their medical training to automatically have such status extended.[277]

New Nonimmigrant Investor Visas

In addition to creating a new EB-6 entrepreneurship LPR visa (see "Investor Visas"), S. 744 would create a new nonimmigrant X visa for qualified entrepreneurs whose U.S. business entities attracted at least $100,000 in total investment from qualified investors[278] during the previous three years, or whose businesses created at least three jobs and generated at least $250,000 in annual revenue during the previous two years. Nonimmigrants with X visas would be admitted for three years, and the visa would be renewable for additional three-year periods if the alien's business met similar criteria. In addition, the visa would be renewable twice for periods of one year (a total of two years) under criteria established by DHS in consultation with the Secretary of Commerce if the alien was making substantial progress towards meeting the visa requirements and such renewal was economically beneficial to the United States.[279] There would be a $1,000 fee for each nonimmigrant admitted under an X visa that would be deposited into the CIR Trust Fund.[280]

Lower-Skilled Workers[281]

Reforms to the H-2B Program

Current law permits the admission of H-2B visa holders to perform temporary, non-agricultural work when sufficient qualified U.S. workers are not available. Employers must apply to DOL to certify that such employment will not have an adverse effect on the wages or working conditions of U.S. workers.[282] H-2B visas generally are limited to 66,000 new visas per year.[283]

S. 744 would increase the number of H-2B workers eligible to be admitted in a year, while also imposing additional requirements on H-2B employers. Renewing an H-2B returning worker exemption from the annual cap in effect in FY2005-FY2007, the bill would provide that H-2B nonimmigrants counted toward numerical limits for FY2013 would be exempt from numerical limits for FY2014 - FY2018.[284] In another change, certain ski instructors now typically admitted as H-2B nonimmigrants would be eligible for admission as P-visa athletes.[285] With respect to

[277] S. 744 §2405(b). If the petition for extending H-1B status is eventually denied, the employment authorization would expire 30 days after the denial.

[278] Qualified investors include a qualified venture capitalist, a qualified super angel investor, a qualified government entity, a qualified community development financial institution, qualified startup accelerator, or such other type of entity or investors, as determined by the Secretary, or any combination of such entities or investors.

[279] S. 744 §4801.

[280] §4801 indicates that X-1 visa fees shall be deposited in the Comprehensive Immigration Reform Trust Fund established under "§6(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act"; this may represent a drafting error.

[281] CRS Specialist in Immigration Policy Andorra Bruno and CRS Legislative Attorney Margaret Mikyung Lee contributed to this section of the report.

[282] See CRS Report R42434, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*, by Andorra Bruno. The requirement for H-2B labor certification is described in DHS regulations at 8 C.F.R. 214.2(h)(6)(iii)(C).

[283] INA §214(g)(1)(B).

[284] S. 744 §4601.

[285] Ibid. P-visas are good for five years and may be renewed for up to five years; they are not subject to numerical

recruitment requirements, Section 4602 would require that an employer petitioning for an H-2B worker attest that U.S. workers are not and will not be displaced, and would require such employers to pay H-2B workers' transportation costs and immigration fees, as well as a $500 fee for labor certification, with the fee being deposited in the CIR Trust Fund. As a result of an amendment approved on the Senate floor, employers seeking to hire H-2B workers in forestry occupations would be required to conduct a "robust effort" to recruit U.S. workers and to submit a labor certification application to each appropriate state workforce agency. DOL could not grant labor certification unless the state workforce agency director determines that U.S. workers are not available to fill the jobs in question.[286]

In addition, Section 4211(a)(2) of S. 744 would revise INA Section 212(p) regarding computation of prevailing wage levels to specify that wages for H-2B nonimmigrant workers shall be the greater of the actual wage paid by the employer to other employees with similar experience and qualifications for the job or the prevailing wage level for the occupational classification of the job in the geographic area of the employment, based on the best information available at the time that the application was filed. The best information available could be the wage for the occupation in a collective bargaining agreement or the wage that applies to federal contracts (meaning, presumably, the Davis-Bacon Act or Service Contract Act). If such information is inapplicable, the best information could be a wage commensurate with the experience, training, and supervision required for the job based on U.S. Bureau of Labor Statistics (BLS) data; or if BLS data are unavailable, a wage from a private survey.

New Requirements for J Summer Work/Travel

The Senate approved a floor amendment to S. 744 that would impose a $100 fee on designated program sponsors for each nonimmigrant entering on a J visa as part of a summer work/travel exchange.[287] The J-1 visa is for individuals participating in work- and study-based exchange visitor programs and encompasses a variety of work-related programs. Although many J-1 programs include work, they are not categorized as temporary work programs under the INA and are not subject to standard temporary work program requirements or standard nonimmigrant visa petitioning procedures. The $100 fee would be deposited in the CIR Trust Fund and could not be charged to the nonimmigrant. The bill would also specify that summer work/travel exchange program participants are eligible to be employed in seafood processing in Alaska. S. 744 would also make aliens coming to the United States to perform specialized work that requires proficiency of languages spoken in countries with less than 5,000 LPR admissions in the previous year eligible for a J visa.[288]

New Nonimmigrant Visas for Lower-Skilled Workers

Current law permits employers to hire certain lower-skilled foreign temporary workers, for temporary or seasonal employment; but does not provide for nonimmigrant visas for lower-skilled employment where the employer's need is not temporary.[289] Given the high level of labor

limits.

[286] S. 744 §4607.

[287] The fee was $500 in S. 744 as reported.

[288] S. 744 §§4407, 4408.

[289] See CRS Report R42434, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*, by Andorra Bruno.

force participation among unauthorized immigrants,[290] some Members of Congress have argued that increasing the number of employment-based lower-skilled nonimmigrant visas is a key element of comprehensive immigration reform. S. 744 would address this policy goal by creating a new "W" nonimmigrant visa category, which would accommodate ongoing employment in lower-skilled agricultural and non-agricultural positions.

In general, W visas would differ from the current H-2A agricultural worker and H-2B nonagricultural worker visas in that the W visas would not be limited to temporary or seasonal work. W visas would be good for three years, and could be renewed.[291] In addition, rather than tying a worker's nonimmigrant status to a single employer, as under the current H-2 visas, W workers would be permitted to work for any employer that has registered within their respective visa programs, with some restrictions in the case of contract agricultural workers.[292] Another key difference would be that prospective W employers, unlike prospective H-2 employers, would not have to apply to the Department of Labor for labor certification. W visa holders would lose their status if they are unemployed for a period of more than 60 days, though the DHS Secretary could waive this requirement in certain cases. DHS and the U.S. Department of Agriculture (USDA) would be required to establish an electronic monitoring system to monitor the presence and employment of W workers.

W-3 and W-4 Agricultural Workers

Sections 2231 and 2232 of S. 744 would create new W-3 and W-4 nonimmigrant visas for agricultural workers. The W-3 visa would be for contract agricultural workers and the W-4 visa would be for at-will agricultural workers. W-3 and W-4 visas would be capped at 112,333 visas per year during the program's first five years, with provisions for the Secretary of Agriculture, in consultation with the Secretary of Labor, to adjust these caps and to set visa limits for subsequent years based on specified and other appropriate factors. W-3 and W-4 workers would not be allowed to bring their spouses and children with them to the United States as dependents. Beginning one year after W-3 and W-4 regulations go into effect,[293] the H-2A program would be eliminated, making the W-3 and W-4 the only nonimmigrant agricultural visas available to U.S. employers.[294]

As set forth in S. 744, employers seeking to hire W-3 or W-4 workers would be required to pay a fee to cover the costs of the program and to register as designated agricultural employers.[295] As part of the registration process, an employer would have to document that he or she is engaged in

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[290] About four out of five unauthorized alien adults are estimated to be in the workforce; see archived CRS Report R41207, *Unauthorized Aliens in the United States*, by Andorra Bruno.

[291] Under S. 744 §4703, non-agricultural W-1 visas could be renewed an unlimited number of times. Under §2232, agricultural W-3 and W-4 visas could be renewed for one additional three-year term, after which the visa holder would be required to return to a residence outside the United States for at least 3 months, and then would be eligible to apply for a new W visa.

[292] A W-3 contract worker would be permitted to accept employment with a new registered employer after the worker completes his or her existing contract, but a W-3 alien who voluntarily abandons employment before the end of the contract period or whose employment is terminated for cause may not accept employment with another employer without first departing the United States. Termination of a contract by mutual agreement would not be considered voluntary abandonment.

[293] These regulations would have to be issued not later than six months after the date of the enactment of S. 744, while regulations implementing the W-3 and W-4 program would have to be issued not later than one year after the date of the enactment of S. 744. S. 744 §§2232(b), 2241(b).

[294] S. 744 §2233.

[295] S. 744 §2232.

agriculture and needs specified agricultural occupations, and would have to estimate the number and timing of needed workers. A registration would be good for three years and could be renewed for another three years if the employer remains eligible.

In order to import W-3 or W-4 workers, designated agricultural employers would be required to advertise jobs on a DOL job registry, to list the job for 45 days, and to offer employment to any equally or better qualified U.S. worker who applies during this period. Employers could not displace U.S. workers (except for good cause), as specified. A designated agricultural employer would have to submit a petition to the DHS Secretary not later than 45 days before the date of need for workers. Unless the petition is incomplete or obviously inaccurate, the Secretary would process the petition and approve or deny it within seven days of the filing date.

Under S. 744, W-3 and W-4 employers would be required to offer workers certain benefits and wages.[296] They would be required to guarantee employment to W-3 contract workers for at least three-quarters of the contract period, with exceptions available in cases of natural disasters. If a job is not covered by state workers' compensation insurance, employers would be required to provide comparable insurance at no cost. Certain W-3 and W-4 workers would be eligible for housing or a housing allowance, as well as transportation expenses. Wage rates would be defined based on one of six standard agricultural occupational classifications, with certain wages specified and others to be determined by USDA in consultation with DOL.[297] In general, employers would be required to offer U.S. workers the same or better benefits and wages as W-3 and W-4 workers.[298]

Section 2232 of S. 744 further specifies that W-3 and W-4 workers would be covered by all applicable labor and employment laws, including the Migrant and Seasonal Agricultural Workers Protection Act. DOL would establish procedures to investigate complaints and to implement penalties for non-compliance; and W-3 and W-4 workers would have whistleblower protections.

W-1 and W-2 Non-Agricultural Workers and Families

Sections 4702 and 4703 of S. 744 would create the new W-1 and W-2 visas. Previous proposals to establish or expand temporary worker visas have been controversial, with business and labor groups often taking strongly opposing positions about the size and details of such programs. Partly to address the policy questions at the heart of these disagreements, S. 744 would establish a Bureau of Labor Market Research as an independent statistical agency within USCIS. The Bureau would be responsible for making recommendations about employment-based visa programs; determining methodologies for the index used to calculate numerical limits in the W-1 program; calculating annual changes to such limits, designating certain "shortage occupations" to be partially exempted from such limits;[299] conducting specialized employment surveys and reporting to Congress on employment-based visa programs; and assisting with W visa recruitment, among other duties.[300]

[296] S. 744 §2232.

[297] S. 744 §2232 would establish special procedures concerning housing, pay, and application requirements for certain agricultural industries, including sheep- and goat herding, beekeeping, and open range production of livestock.

[298] Employers would not have to offer U.S. workers a housing allowance, and would not have to pay or withhold from W-3 or W-4 workers Federal Insurance Contribution Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes.

[299] The bill, as amended on the floor, would require that Alaskan seafood processing must be designated as a shortage occupation. S. 744, §4701(d)(4) and (5).

[300] S. 744 §§4701(b)-(f).

The W-1 visa program would be capped at 20,000 positions during the program's first year, climbing to 75,000 during the fourth year, with subsequent years calculated based on a formula spelled out in S. 744. The total number of program positions would always range from 20,000 to 200,000 per year. Additional positions could be created for shortage occupations (as designated by the Bureau) and as special allocations for certain employers who meet specified recruitment requirements. Registered positions would be limited to lower-skilled occupations and generally to metropolitan areas where the unemployment rate is 8.5% or less, though DHS could waive this restriction under certain conditions.[301]

Aliens certified at a U.S. embassy or consulate as being eligible for a W-1 visa could be admitted to work in a registered position with a registered W-1 employer in an eligible location, and would be permitted to enter with dual intent (i.e., would not have to prove their intention to depart the United States at the end of the visa term). Upon admission, W-1 visa holders would have to begin working within 14 days of admission to meet the visa's employment requirement. Spouses and children of W-1 workers would be admissible as W-2 nonimmigrants and also would be authorized to work in the United States.

Employers seeking to hire W-1 workers would be required to pay a fee to cover program costs and to register as W-1 employers for three years at a time. Employers would be subject to fraud detection investigations, and could be made ineligible for the W-1 program based on program violations. Applications for being a registered employer would include the estimated number of W-1 workers to be employed, while applications for designating a job as a registered position would include descriptions of W-1 positions, and attestations about wages and recruitment efforts. Employers could only hire W-1 workers if no qualified U.S. worker is available for the position and could not hire a W-1 worker in the case of a strike or lockout. Employers would be required to advertise positions for at least 30 days on a DOL website and with state workforce agencies, and would have to meet additional recruitment requirements to be identified by DHS before a position could be designated as a registered W-1 position.

W-1 wages would have to at least equal the higher rate of either the actual wages paid to other employees or the prevailing wages in the area based on information from collective bargaining agreements, federal contract wages, government surveys, or private surveys. Higher wage rates would apply for workers hired as special allocations outside of the program's numerical limits.[302] W-1 employers whose workforces consist of more than 15% W nonimmigrants could not outsource W-1 workers. And S. 744 includes a number of provisions designed to protect the terms of W-1 employment, including the applicability of relevant labor laws, whistleblower protections, a prohibition on treating W-1 workers as independent contractors, and provisions related to the investigation of complaints against W-1 employers and the imposition of civil penalties and other remedies for violations of W-1 employment conditions.

Foreign Labor Contractors[303]

Some Members of Congress have argued that many migrant workers and other foreign workers are vulnerable to exploitation at the hands of foreign labor contractors, smugglers, and human

[301] All discussion of W-1 visas in the remainder of this section is based on provisions in S. 744 §4703.

[302] These employers would be required to pay W-1 workers the greater of the Level IV wage provided by the Office of Foreign Labor Certification of DOL or the average wage for the highest two-thirds of employees in the occupation in the MSA of employment.

[303] CRS Legislative Attorney Jon O. Shimabukuro contributed to this section of the report.

traffickers.[304] Contractors often play a critical role in the labor migration process by matching willing workers with willing employers. Yet because many prospective migrants depend on such "middle men" to help them enter the United States (legally or otherwise) and to connect them with employers, contractors may take advantage of migrant workers to extract unfair payments or other such concessions.

S. 744 would establish new requirements to regulate foreign labor contractors and to combat human trafficking.[305] The bill would require foreign labor contractors to provide workers with written information, in English and the worker's native language, about the terms and conditions of employment, with information about the worker's visa, and with other information.[306] Employers and contractors would be prohibited from discriminating against workers on the basis of race, sex, national origin, religion, age, disability, or other similar factors;[307] and could not charge workers a fee for contracting activity.[308]

To facilitate enforcement of these provisions, contractors would be required to register with DOL every two years, to provide annual reports on their activities, and to post a bond ensuring their ability to fulfill their responsibilities.[309] The Secretary of Labor would maintain a list of registered contractors, and the Secretary of State would provide relevant information to certain nonimmigrant visa applicants.[310] DOL would establish procedures to investigate complaints and impose civil fines against noncompliant contractors or employers; and individuals also could sue contractors for civil damages.[311] Employers would be required to use registered contractors.[312]

Tourism-Related Provisions[313]

Several provisions in S. 744 are intended to encourage tourism to the United States. The bill would amend the INA to establish a pilot fee-based premium processing service to expedite visa interview appointments.[314] It would also direct the Secretary of DOS to require overseas visa processing posts to report monthly on the availability of visa appointments during the previous two years to allow applicants to identify periods of low demand when wait times are lower.[315] In addition, S. 744 would require, not later than 90 days after enactment, the Secretary of DOS to

- require U.S. missions to conduct nonimmigrant visa interviews expeditiously, consistent with national security and resource allocation requirements;

[304] See for example, U.S. Congress, Senate Committee on Foreign Relations, *The Next Ten Years in the Fight Against Human Trafficking*, 112th Cong., 2nd sess., July 17, 2012.

[305] Human trafficking refers to the recruitment, transfer, harboring, or receipt of persons by means of the threat or use of force, along with other forms of similar coercion; see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Sun Wyler.

[306] S. 744 §3602.

[307] S. 744 §3603.

[308] S. 744 §3604.

[309] S. 744 §§3605, 3606.

[310] S. 744 §§3607-3609.

[311] S. 744 §3610.

[312] S. 744 §3610.

[313] CRS Legislative Attorney Margaret Mikyung Lee and CRS Specialist in Immigration Policy Alison Siskin contributed to this section of the report.

[314] S. 744 §4501.

[315] S. 744 §4505.

- set a goal of interviewing 80% of nonimmigrant visa applicants, worldwide, within three weeks of receipt of application;
- explore expanding visa processing capacity in China and Brazil with the goal of keeping interview wait times under 15 work days; and,
- report on needed resources to the appropriate congressional committees.[316]

It would allow DHS to expand registered traveler programs to include individuals employed by international organizations that maintain a strong working relationship with the United States. It would require that the individual traveler be sponsored by such an organization; complete security screening requirements; not be citizen of a state sponsor of terrorism; and that the individual's passport be from a country with a Trusted Traveler Arrangement with DHS.[317]

S. 744 would direct the Secretary of DOS to develop and conduct a pilot program to use secure remote video-conferencing as a method to conduct interviews for B (short-term tourist/business) visas, unless the Secretary determines that it poses an undue security risk. The Secretary of DOS would be required to submit a report on the efficacy, efficiency, and security of such a program within 90 days of its termination.[318] The bill would also require the collection of a $5 fee from each nonimmigrant admitted on a B visa to be deposited in the CIR Trust Fund.[319]

S. 744 also would encourage Canadian tourism to the United States by authorizing the Secretary of DHS to admit into the United States (on a B visa) qualifying Canadian citizens who are at least 55 years old, and their spouses, for a period not to exceed 240 days if the person maintains a Canadian residence and owns a U.S. residence or has rented a U.S. accommodation for the duration of such stay. Such visitors would not be authorized to work, and must not seek PRWORA-described assistance/benefits.[320]

New Y Visa for Retirees

S. 744 would create a new Y visa for foreign nationals who are over 55 years old. To qualify, aliens would be required to use at least $500,000 in cash to buy one or more residences, maintain ownership of residential property valued at least $500,000 during the period, and reside in the United States for more than 180 days a year in a residence worth at least $250,000. The bill would allow the qualifying alien's children and spouse to accompany him/her. Y visa holders would be required to possess health insurance, could not be employed in the United States (except for management of the residential property owned by the alien), and could not seek PRWORA-described assistance/benefits. The Y visa would be renewable every three years, indefinitely.[321]

Visa Waiver Program

S. 744 would authorize the Secretary of DHS, in consultation with the Secretary of State, to designate a country as a Visa Waiver Program (VWP) country if the overstay rate and/or refusal

[316] S. 744 §4508.

[317] S. 744 §4507.

[318] S. 744 §4410.

[319] S. 744 §4509. Section 4509 indicates that B visa fees shall be deposited in the Comprehensive Immigration Reform Trust Fund established under §6(a)(1) "of the Illegal Immigration Reform and Immigrant Responsibility Act"; this may represent a drafting error.

[320] S. 744 §4503.

[321] S. 744 §4504.

rate was less than 3% in the previous fiscal year.[322] The bill would allow the Secretary of DHS to waive the refusal rate requirement if certain conditions were met.[323] The bill would revise the current probationary period and procedures for terminating a country's participation in the VWP if that country failed to comply with any of the program's requirements. The bill would also specify that Hong Kong could be designated a VWP country if it meets the program criteria.[324]

Other Nonimmigrant Visa Changes[325]

S. 744 would make a number of additional changes to nonimmigrant visas. It would waive the INA requirement for the State Department to personally interview certain nonimmigrants (i.e., A, E, G, H, I, L, N, O, P, R, and W visas) who are renewing their visas, allowing such visas instead to be renewed within the United States under certain conditions.[326] Nonimmigrants granted work authorization under the A, E, G, H, I, J, L, O, P, Q, R, and TN visa categories whose status expired but who filed a timely petition for an extension would be permitted to continue employment with the same employer during adjudication of the application/petition.[327]

S. 744 would make a number of additional changes affecting certain high-skilled workers entering the United States for purposes other than traditional employment. S. 744 would revise INA Section 214(a) to permit certain employees of multinational companies to enter the United States for up to 90 or 180 days to observe or oversee company operations, or to participate in leadership training. Such nonimmigrants would be prohibited from receiving U.S.-sourced compensation except for incidental expenses.[328] The bill would expand the conditions under which certain B visa nonimmigrant aliens would be eligible to enter the United States and receive honoraria.[329] It would also add new provisions for B-visa nonimmigrants to enter the United States to participate in disaster relief operations, and would add provisions for B-visa nonimmigrant aliens to perform maintenance or repairs for common carriers (airlines, ships, railways) on equipment manufactured outside the United States.[330] S. 744 would also make aliens who are providing services aboard a fishing vessel having a home port or operating base in the United States, who is landing in Hawaii and departing on the same vessel eligible for a D visa.[331]

Student Visas

For foreign students admitted on F visas who are seeking bachelors or graduate degrees, S. 744 would permit such aliens to have dual intent.[332] The bill also would change accreditation

[322] For more on the Visa Waiver Program, see CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

[323] The conditions are almost identical to current law regarding the nonimmigrant refusal rate waiver.

[324] Although Hong Kong's refusal rate is low enough to qualify for the VWP, Hong Kong is not a country, and only countries currently can qualify to be part of the VWP.

[325] CRS Legislative Attorney Margaret Mikyung Lee, and CRS Specialist in Immigration Policy Alison Siskin contributed to this section of the report.

[326] S. 744 §4103.

[327] S. 744 §4405.

[328] S. 744 §4603.

[329] S. 744 §4604.

[330] S. 744 §4606.The bill would also make changes regarding the requirements for interviewing for B visas; see in this report "Tourism-Related Provisions."

[331] Currently only similarly situated aliens landing in Guam and the Commonwealth of the Northern Mariana Islands are eligible for D (crewman) visas. S. 744 §4414.

[332] S. 744 §4401.

requirements for schools accepting F students and for flight schools accepting foreign students. In addition, the bill would remove the 12-month limit for students on F visas who attend public secondary schools, and charge a $100 fee on all nonimmigrants admitted on F-1 visas.[333]

The bill would also modify the U.S. Immigration and Customs Enforcement's (ICE's) Student and Exchange Visitor Program (SEVP), which is responsible for administering the Student and Exchange Visitor Information System (SEVIS). SEVIS maintains information on schools that can accept foreign students, exchange programs, and on international students and exchange visitors in the United States on F, J, and M visas. SEVP also certifies schools to accept foreign students. S. 744 would require DHS to implement a real-time transmission of data from SEVIS to CBP databases. This interoperability would have to be completed within 120 days of enactment or the Secretary would be required to suspend the issuance of foreign student (F and M) visas.[334] The bill would also require accrediting agencies or associations to notify DHS about the denial, withdrawal, suspension, or termination of accreditation so that the school could be immediately withdrawn from SEVP and prohibited from accessing SEVIS and enrolling foreign students. Within 180 days of enactment, DHS would be required to implement GAO's recommendations regarding SEVP and SEVIS, and report to Congress on the risk assessment strategy to prevent malfeasance in the student visa issuance system. Within two years after enactment, DHS would be required to deploy both phases of the second generation SEVIS system.[335]

The bill would also increase the criminal penalties for fraud and misuse of visa documents if the offense was committed by an owner, official, or employee of a SEVP certified school, and would allow the Secretary of DHS to impose fines on institutions that failed to comply with reporting requirements. The bill would also allow the Secretary of DHS to immediately withdraw an institution's SEVP certification if there is a reasonable suspicion that the owner or school official has committed fraud relating to any aspect of the SEVP. Any person convicted of such fraud would be ineligible to hold a position of authority at any institution that accepts F or M foreign students. The bill would also prohibit individuals from serving as a designated school official[336] or being granted access to SEVIS unless the individual is a U.S. national or an LPR, and has undergone a background check during the past three years.[337]

Humanitarian Provisions[338]

Refugee and Asylum Provisions

The United States has long held to the principle that it will not return a foreign national to a country where his life or freedom would be threatened. This principle is embodied in several provisions of the INA, most notably in provisions defining refugees and asylees. Refugees are aliens displaced abroad who are unable or unwilling to return to their country of origin on account

[333] S. 744 §4406, §4409.

[334] S. 744 §4401(c). This section appears to direct the DHS Secretary to suspend issuing such visas, though it is the Secretary of State that actually issues such visas; this may represent a drafting error.

[335] S. 744 §§4910-4913.

[336] Under the SEVP, schools must have at least one "designated school official" who is responsible for maintaining the SEVIS records and reporting on the nonimmigrant foreign students at the school.

[337] S. 744 §4903, §§4906-4908.

[338] CRS Legislative Attorney Margaret Mikyung Lee and CRS Specialist in Immigration Policy Alison Siskin contributed to this section of the report.

of their race, religion, nationality, membership in a particular social group, or political opinion; or, under certain conditions, who are in their home country and have a well-founded fear of persecution on one of these grounds.[339] Refugees are processed and admitted to the United States from abroad.[340]

Foreign nationals also may claim asylum in the United States if they demonstrate a well-founded fear that if returned home, they will be persecuted based upon one of these same five characteristics.[341] Foreign nationals arriving or present in the United States may apply for asylum affirmatively with USCIS after arrival into the country, or they may seek asylum defensively before an immigration judge during removal proceedings.[342]

S. 744 would increase the flexibility of these asylum and refugee provisions several ways, potentially rolling back some of the changes made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208). S. 744 would repeal a current provision that requires asylum claims to be filed within one year of an alien's arrival in the United States, and would provide for the reconsideration of certain asylum claims that were denied because of the failure to file within one year.[343] The bill also would authorize the spouse or child of a refugee or asylee who is admitted to the United States to bring his or her own accompanying child, also under a refugee or asylum visa.[344] With respect to aliens found to have a credible fear of persecution based on an interview with a USCIS asylum officer during expedited removal, the asylum officer would be authorized to grant asylum under certain circumstances, rather than referring the alien to an immigration judge.[345] And the bill would require that DHS issue work authorization to asylum applicants after 180 days.[346]

A new category of "stateless persons" would be defined, and such persons would be permitted to apply for conditional lawful status under certain conditions, and to adjust to LPR status after one year, as special immigrants under the employment-based preference category.[347] S. 744 would increase the number of U visas available annually from 10,000 to 18,000 (also see "Worker Protections), with no more than 3,000 going to aliens who are victims of covered violations.[348] In addition, the president, based on a recommendation by DOS, would be authorized to designate certain high-need groups as refugees, facilitating their admission as a refugee.[349] S. 744 would establish requirements for overseas refugee adjudications, including the right to legal counsel (not at government expense), a written record of the decision, and administrative review of a denial.[350]

S. 744 also includes provisions that would tighten refugee and asylum laws and would be especially aimed at national security concerns. Pursuant to Section 3411 an alien granted refugee

[339] INA §101(a)(42).

[340] INA §207; 8 U.S.C. §1157. For a fuller discussion, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

[341] INA §208; 8 U.S.C. §1158.

[342] For a fuller discussion, see CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy* , by Ruth Ellen Wasem.

[343] S. 744 §3401, striking INA §208(a)(2)(B).

[344] S. 744 §3402.

[345] S. 744 §3404.

[346] S. 744 §3412.

[347] S. 744 §3405.

[348] S. 744 §3406.

[349] S. 744 §3403.

[350] S. 744 §3408.

or asylum status who returns to the alien's country of nationality or habitual residence would have his or her status terminated unless the DHS Secretary determines that the alien returned for good cause, or unless the alien is eligible to adjust to LPR status pursuant to the Cuban Adjustment Act of 1966 (P.L. 89-732). And Section 3409 would impose additional law enforcement and national security checks during the refugee and asylum application process.

Section 3403 would terminate preferential treatment for certain Amerasian immigrants that was established by Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988.[351] Section 3410 would authorize 5,000 immigrant visas during the three-year period beginning on October 1, 2013, for certain qualified displaced Tibetans who have been residing in Nepal or India continuously since before the date of enactment of S. 744.

Anti-Trafficking Provisions

S. 744 also includes special provisions to protect children who are trafficking victims. DOL would be required to establish specialized training for personnel who come into contact with such children, and to ensure under most circumstances that child trafficking victims are placed under care of the Office of Refugee Resettlement within 72 hours.[352] S. 744 would require that all procedures and decisions concerning unaccompanied immigrant children pursuant to the INA would make the best interests of the child a primary consideration.[353] S. 744 would provide work authorization for aliens whose applications for T or U status[354] is approved or pending for 180 days, whichever occurs first.[355] There would also be new reporting requirements for human trafficking offenses in the Federal Bureau of Investigation's (FBI's) Uniform Crime Reports, and human trafficking would be a part 1 crime for calculating funding under the Edward Byrne Memorial Justice Assistance Grant Program.[356]

S. 744 contains provisions to address the issue of protecting unaccompanied alien children from becoming victims of human trafficking. The bill would transfer from HHS to DOJ the responsibility for ensuring, to the greatest extent possible, that unaccompanied alien children in DHS custody have counsel to represent them and access to child advocates.[357] It would require the Secretary of DHS, in consultation with child welfare experts, to create mandatory training for CBP personnel and other personnel who come in contact with unaccompanied alien children. The bill would also mandate that all unaccompanied alien children who will undergo any immigration proceedings before EOIR are transferred to HHS custody within 72 hours after apprehension. In addition, the bill would direct HHS to hire child welfare professionals to provide assistance in no fewer than seven of the CBP offices or stations with the largest number of unaccompanied minors. Such professionals would have to have trauma-centered and developmentally appropriate interviewing expertise and, among other duties, would be responsible for screening unaccompanied alien children to ensure that they are not trafficking victims, and ensuring that the children are appropriately cared for while in CBP custody. S. 744 would require HHS to submit to the Secretary of DHS a final determination on family relationships, and the Secretary of DHS

[351] 8 U.S.C. §1101 note.

[352] S. 744 §3611.

[353] S. 744 §3612.

[354] T status is for trafficking victims and U status is for crime victims.

[355] S. 744 §3407.

[356] S. 744 §1119. For more on the Edward Byrne Memorial Justice Assistance Grant Program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James.

[357] These programs were created in P.L. 110-457, §235(c)(5)-(6). S. 744 §3507.

shall consider such adult relatives for community-based support alternatives to detention (also see "Immigrant Detention"). The bill would also direct the Administrator of the U.S. Agency for International Development (USAID), in conjunction with the Secretaries of DHS, DOJ, and HHS and non-governmental organizations to create a multi-year program to implement best practices to ensure the safe repatriation of unaccompanied alien children. The bill would specify that in all procedures and decisions concerning unaccompanied immigrant child the best interests of the child shall be a primary consideration.[358]

Status for Certain Battered Spouses and Children

S. 744 would grant legal status to derivative spouses or children of nonimmigrants who: (1) accompany or follow to join principal nonimmigrants or aliens admitted under the blue card status provisions of Section 2211 of this act and (2) were subjected to battery or extreme cruelty by such principal nonimmigrants. The status would be granted under the same provisions as the principal alien, for the longer of either three years or the same admission period of the principal alien. DHS would grant employment authorization to the abused derivative alien and could renew his or her grant or extension of status. DHS could adjust the status of the abused derivative alien to LPR status if: (1) he or she either meets the admissibility criteria under INA Section 212(a) or DHS can justify his or her presence on humanitarian or public interest grounds or to ensure family unity; and (2) the status under which the principal nonimmigrant was admitted to the United States would have potentially allowed for eventual adjustment of status. Termination of the relationship with the principal alien would not alter status granted under this provision if abuse was the central reason for such termination.[359]

Access to Federal Public Benefits[360]

Noncitizens' eligibility for major federal benefits largely depends on their immigration status and how long they have lived and worked in the United States. Eligibility rules differ for federal public benefits, including federal means-tested benefits. Under Section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, P.L. 104-193), federal means-tested benefits have been defined by regulation to include Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Medicaid, and the Children's Health Insurance Program (CHIP).

Eligibility Rules for LPRs, Asylees, and Refugees

LPRs, asylees, refugees, and other humanitarian migrants[361] are generally eligible for federal public benefits. While humanitarian migrants are eligible for federal means-tested programs for at least five to seven years after entry, however, LPRs generally must have a substantial work history or military connection, or must meet additional requirements to be eligible for such programs, including in some cases a five year legal residency requirement.[362] An additional factor

[358] S. 744 §§3611-3613.

[359] S. 744 §4413.

[360] CRS Legislative Attorney Kate M. Manuel and CRS Specialist in Immigration Policy Alison Siskin contributed to this section of the report.

[361] For a fuller discussion of humanitarian immigration, see in this report "Humanitarian Provisions."

[362] For a full discussion, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

affecting eligibility for benefits is that not all households or all aliens fall squarely into one category. "Mixed status"[363] families and "quasi-legal"[364] aliens pose ambiguities in the context of federal benefit programs, and how they are treated varies considerably across programs.[365]

S. 744 would not amend federal laws on public benefits. Moreover, the Senate approved a floor amendment to S. 744 that expressly forbids an officer or employee of the federal government from waiving compliance with any requirement in title IV of V PRWORA in effect on the date of enactment or with any restriction on eligibility for any form of assistance or benefit described in Section 403 of PRWORA (i.e., federal means-tested public benefit).[366]

Treatment of Aliens with Newly Created Statuses

S. 744 would expressly bar aliens who legalize under the bill from receiving federal means-tested benefits and certain other "benefits." Specifically, S. 744 states that aliens with RPI status (see "Registered Provisional Immigrants (RPIs)", blue card status (see "Agricultural Worker Legalization"), and the newly-expanded V nonimmigrant visa status for family members would not be eligible for any federal means-tested public benefit, as defined and implemented by Section 403 of PRWORA.

The bill also would limit the access of aliens who legalize under the bill to certain benefits of the Patient Protection and Affordable Care Act (ACA).[367] Aliens with RPI status and blue card status would be considered lawfully present for all purposes under S. 744, except that they would not be entitled to the premium assistance tax credits[368] or cost sharing subsidies established by the ACA,[369] and they would be exempt from the individual mandate to have health insurance.[370] Such aliens would be eligible, however, to purchase insurance through an exchange without any credits or subsidies.[371]

Restricted Eligibility of Certain Nonimmigrants for Health Benefits

The Senate approved a floor amendment to S. 744 that would exclude short-term visitors for business or pleasure (B visas) and foreign students (F visas) from being considered lawfully residing for the purposes of the Children's Health Insurance Program (CHIP) option for states to cover pregnant women and children. S. 744 would further specify that all other U.S. Department of Health and Human Service (HHS) programs that use the term "lawfully present" should reflect these restrictions that S. 744 would impose. In other words, the S. 744 as passed by the Senate

[363] Mixed status families refer to families (households) in which some members are unauthorized and some are U.S. citizens or LPRs, including for example households with unauthorized parents and U.S.-born (and therefore U.S. citizen) children.

[364] In certain circumstances, DHS issues temporary employment authorization documents (EADs) to otherwise-unauthorized aliens. These "quasi-legal" aliens are permitted to obtain Social Security numbers, but are ineligible for certain benefits. See CRS Report RL32004, *Social Security Benefits for Noncitizens*, by Dawn Nuschler and Alison Siskin.

[365] CRS Report RL34500, *Unauthorized Aliens' Access to Federal Benefits: Policy and Issues*, by Ruth Ellen Wasem.

[366] S. 744 §2323.

[367] P.L. 111-148 as amended by P.L. 111-152, known as the Affordable Care Act (ACA).

[368] §36B of the Internal Revenue Code of 1986, as added by the ACA.

[369] §1402(e) of the ACA.

[370] Section 5000A(d)(3) of the Internal Revenue Code of 1986, as added by ACA.

[371] For a fuller discussion of the ACA, see CRS Report R43048, *Overview of Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (ACA)*, by Annie L. Mach.

directs the Secretary of HHS to amend the definition for eligibility under the ACA to exclude short-term visitors and foreign students.[372]

Congressional Budget Office Analysis of S. 744

The Congressional Budget Office (CBO) projects that the changes to immigration resulting from S. 744 as passed by the Senate would result in a net increase of 9.6 million LPRs in the first decade after enactment. Although CBO has observed the long-standing convention of not incorporating macroeconomic effects in cost estimates, CBO and the Joint Committee on Taxation "relaxed that assumption by incorporating in this cost estimate their projections of the direct effects of the act on the U.S. population, employment, and taxable compensation." The increase in the number of legal residents would boost federal revenues, according to CBO, mostly because of the larger size of the labor force. CBO further estimates that the number of legal residents would boost direct spending for federal benefit programs and notes that under S. 744 direct spending for enforcement and other purposes would also increase. As a consequence, CBO estimates that enacting S. 744 as passed by the Senate would "lead to a net savings of about $135 billion over the 2014-2023 period."[373]

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[372] S. 744 §4417.

[373] Congressional Budget Office, *S. 744, Border Security, Economic Opportunity, and Immigration Modernization Act*, As passed by the Senate on June 27, 2013, July 3, 2013, http://cbo.gov/publication/44397/.