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FUTURE FLOWS AND WORKER RIGHTS IN S. 744

**A Guide to How the Senate Immigration Bill Would
Modify Current Law**

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On June 27, 2013, the U.S. Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act (also known by its bill number, S. 744) by a vote of 68 to 32. If enacted into law, S. 744 would require extensive reforms of all major aspects of the U.S. immigration system. Many of these reforms would directly affect the U.S. labor market by, for example, modifying rules and annual limits in permanent and temporary foreign worker programs, by creating new protections for foreign and U.S. workers, and by giving unauthorized migrant workers and their families the opportunity to apply for a newly created “provisional” legal status if they meet specified requirements.

This document is intended as a resource for anyone seeking to understand how S. 744’s provisions would modify current—or create new—immigration laws regarding future flows of foreign workers, including the recruitment of foreign workers, the rights of U.S. and foreign workers, and how the status of unauthorized workers and their families would be regularized. Other useful guides to S. 744 exist,¹ but most broadly summarize the law, and none lays out the elements of these provisions in as much detail. However, the provisions in Title III that reform the electronic employment verification system (also known as “E-Verify”) have been intentionally omitted because they primarily deal with immigration enforcement, although they include some new due process protections for job applicants.²

This guide shows that S. 744 would affect U.S. and foreign workers, their families, and employers in the following ways:

Labor and employment rights and remedies: The legislation would modify and expand existing nonimmigrant visa programs that can provide lawful status to victims of criminal activity, violations of labor and employment laws committed by employers, and human trafficking. The legislation would also allow unauthorized workers to collect back pay, a remedy that has been blocked for over a decade by the U.S. Supreme Court’s ruling in the case of *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002).

Legalization program for unauthorized migrants, workers, and their families: The legislation would create a new program to permit qualifying unauthorized migrants and derivative family members to apply for a newly created legal status (Registered Provisional Immigrant status, or “RPI”), and later for permanent residency and citizenship if additional requirements are satisfied. There are additional legalization provisions for unauthorized migrants who entered the United States before age 16 (often referred to as “DREAMers”), and for those who work a minimum number of hours in qualifying agricultural occupations (as well as for their derivative family members) via a newly created “blue card” status. Both the DREAMer and blue card agricultural worker programs offer a faster path to permanent residency and citizenship than the RPI path.

Foreign labor recruitment and human trafficking–related provisions: S. 744 would create a new program requiring foreign labor contractors (FLCs) who recruit foreign workers to register with the Department of Labor and to disclose certain information about recruited workers, employers, subcontractors, and job terms, and to post a bond. Employers and FLCs would also be prohibited from discriminating or retaliating against workers, or from charging recruitment fees. A new complaint and investigation process would be established along with administrative fines and a private right of action, allowing either the government or an aggrieved person to bring a civil action against any foreign labor contractor in federal court. FLCs and sponsors who recruit workers through the State Department’s Exchange Visitor Program (J-1 visa) are exempt from these requirements.

Foreign labor recruitment and human trafficking-related provisions for exchange visitors: The bill would create new protections for participants in the J-1 Exchange Visitor Program and establish a new definition of foreign labor recruitment in the context of the program. The State Department, which manages the program, would have new responsibilities, including the promulgation of new regulations (in consultation with the Department of Labor) on disclosing information and limiting program fees, and be subject to new legal requirements to audit and report on various J-1 categories, and to maintain a list of employers against whom there have been substantiated complaints. In order to enforce program rules, S. 744 would grant the State Department and J-1 exchange visitors the right to bring a civil action in federal court against a program sponsor, foreign entity, or an employer.

Nonimmigrant visa categories: The legislation would make major reforms to the existing nonimmigrant temporary foreign worker visa programs and create new programs. The existing H-2A temporary agricultural foreign worker program would expire and be replaced with a new program (W-3 and W-4 visas), and a new temporary foreign worker program with an annual limit of 200,000 (with certain exceptions) would be created (the W-1 visa). A new Bureau of Immigration and Labor Market Research would be established to help set the annual limit of the W-1 program and to study and report on occupational labor shortages in the United States. A temporary (five-year) returning worker exemption would be created in the existing program for less-educated temporary foreign workers (H-2B), and the existing program for college-educated temporary foreign workers (H-1B) would be permanently increased by nearly 150 percent and undergo various rule changes.

Immigrant visa categories: The legislation would make major reforms to the existing employment-based (EB) and family-based (FB) immigrant visa programs that grant legal permanent resident (LPR) status. Many existing employment-based subcategories would be exempted from annual numerical limits, and the share of total visas allotted to major categories would be modified. Two new “merit-based” immigrant visa programs would be created. One would have a corresponding point system. The other is intended to eventually clear the existing and future backlog of EB and FB visas and serve as the program for eligible applicants who wish to transition from Registered Provisional Immigrant status into LPR status. The bill would also eliminate two immigrant visa categories: the Diversity Visa “lottery” and the fourth FB preference for adult brothers and sisters of U.S. citizens. The definition of “immediate relative” would be amended to include the spouses and children of LPRs.

Jobs for Youth: A new temporary Youth Jobs Fund would be established in the U.S. Treasury in order to create and provide summer and year-round employment opportunities to low-income youth in the United States. The program would be funded by a \$10 application surcharge on certain nonimmigrant and employment-based immigrant visa categories. The program would principally be administered by the U.S. Department of Labor, which would disburse funds to qualifying states.

Labor and Employment Rights and Remedies

These sections of the legislation would modify and expand existing nonimmigrant visa programs that can provide lawful status to victims of criminal activity, employer labor violations, and human trafficking. The legislation would also allow unauthorized workers to collect back pay, a remedy that has been blocked since 2002 by the U.S. Supreme Court’s ruling in the case of *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002).

Issue	Substance	Bill Section
<p><i>Protections from employer retaliation against unauthorized workers and temporary foreign workers</i></p>	<p>Access to the nonimmigrant U visa is expanded for victims of criminal activity (i.e., new labor/retaliation crimes added).</p> <p>.....</p> <p>A temporary stay of removal is granted for unauthorized workers if an investigation is ongoing.</p> <p>.....</p> <p>A temporary work authorization for an unauthorized worker can be granted by the Department of Homeland Security (DHS) while a U visa petition is pending.</p>	<p>3201 3406</p>
<p><i>Back pay for unauthorized workers</i></p>	<p>In response to current case law from ruling in U.S. Supreme Court’s <i>Hoffman Plastics</i> case, “all rights and remedies provided under any Federal, State, or local law relating to workplace rights, including but not limited to back pay” will be available to unauthorized workers.</p> <p>.....</p> <p>These rights are presumably extended to include National Labor Relations Act back pay prohibited under <i>Hoffman</i>.</p>	<p>3101</p>
<p><i>Reinstatement of unauthorized workers</i></p>	<p>An unauthorized migrant worker can be reinstated at his or her job if:</p> <ul style="list-style-type: none"> ▪ the worker can obtain status by the time the remedy of reinstatement is ordered, or ▪ the worker lost employment-authorized status due to unlawful acts of the employer. 	<p>3101</p>
<p><i>Nonimmigrant U visas for victims of criminal activity</i></p>	<p>The U visa definition expands to include labor violations, retaliation, and whistleblower protections.</p>	<p>3201</p>

<i>Nonimmigrant U visas: cap increase</i>	The annual limit (cap) on U visas increases to 18,000 (from 10,000 under current law). Only 3,000 are allowed for “covered violations” (i.e., new labor/retaliation crimes).	3406
<i>Nonimmigrant U visas: temporary stay of removal</i>	A temporary stay of removal can be granted to an unauthorized worker by the Department of Homeland Security (DHS) if there is a bona fide workplace claim and an investigation is ongoing.	3201
<i>Nonimmigrant U visas: work authorization</i>	Work authorization can be granted to an unauthorized worker while a U visa petition is pending.	3407
<i>Nonimmigrant T visas for victims of human trafficking</i>	Work authorization can be granted to an unauthorized alien while a T visa petition is pending.	3407

Legalization program for unauthorized migrants, workers, and their families

These sections of the legislation would create a new program to permit qualifying unauthorized migrants and derivative family members to apply for a newly created legal status (Registered Provisional Immigrant status, or “RPI”), and later for permanent residency and citizenship if additional requirements are satisfied. There are additional legalization provisions for unauthorized migrants who entered the United States before age 16 (often referred to as “DREAMers”), and for those who work a minimum number of hours in qualifying agricultural occupations (as well as for their derivative family members) via a newly created “blue card” status. Both the DREAMer and blue card agricultural worker programs offer a faster path to permanent residency and citizenship than the RPI path.

Issue	Substance	Bill Section
<p><i>Registered Provisional Immigrant (RPI) status</i></p>	<p>Unauthorized migrants who meet certain criteria may apply for RPI status. RPI status authorizes the beneficiary to be employed in the U.S. In general, the applicant must:</p> <ul style="list-style-type: none"> ▪ be physically present in the U.S. on the date the alien submits an application for RPI status; ▪ have been physically present in the U.S. on or before December 31, 2011; and ▪ have maintained continuous physical presence in the U.S. from December 31, 2011, until the date the alien is granted status as a registered provisional immigrant under this section. <p>.....</p> <p>Unauthorized migrants who have committed certain felonies and offenses or 3 or more misdemeanors are ineligible.</p> <p>.....</p> <p>Applicants must have satisfied any applicable federal tax liability (i.e., all federal income taxes assessed in accordance with § 6203 of the Internal Revenue Code of 1986).</p> <p>.....</p> <p>A Department of Homeland Security (DHS) processing fee (in an amount to be determined later) must be paid. A \$1,000 penalty must also be paid if the applicant is over 21 years of age.</p> <p>.....</p> <p>RPI status is valid for 6 years.</p> <p>.....</p> <p>Certain requirements may be waived for humanitarian purposes, to ensure family unity, or if it is otherwise in the public interest.</p> <p>.....</p> <p>Spouses and dependent children of RPIs are eligible for RPI status if they are physically present in the U.S. on or before December 31, 2012, and have maintained continuous presence.</p> <p>.....</p>	<p>2101</p>

DHS will accept applications for RPI status during a one-year period after publication of regulations.

- DHS may extend the application period for 18 months.

.....
DHS will collect certain information on the application, including for the purpose of understanding immigration trends:

- an explanation of how, when, and where the applicant entered the U.S.;
- the country in which the applicant resided before entering the U.S.; and
- other demographic information specified by DHS.
 - This collected information shall be provided anonymously on the application form and shall be subject to confidentiality protections.
 - DHS will submit a report to Congress that contains a summary of the statistical data collected.

.....
If an alien is apprehended during the time after enactment but before the end of the application period, and appears prima facie eligible for RPI status as determined by DHS, then DHS:

- shall provide the alien with a reasonable opportunity to file an application for RPI status during the application period; and
- may not remove the alien until a final administrative determination is made on the application.

.....
An alien outside of the U.S., or who has reentered the U.S. without authorization after December 31, 2011 without receiving DHS consent to apply for admission, who departed from the U.S. while subject to an order of exclusion, deportation, or removal, or pursuant to an order of voluntary departure, shall not be eligible to file an application for RPI status unless granted a waiver.

.....
DHS may grant a waiver if an alien:

- is the spouse or child of a U.S. citizen or lawful permanent resident;
 - is the parent of a child who is a U.S. citizen or lawful permanent resident;
 - was younger than age 16 when initially entering the U.S. and has earned a high school diploma, a commensurate alternative award from a public or private high school or secondary school, or has obtained a general education development certificate recognized under state law, or a high school equivalency diploma in the U.S.; or
 - was younger than age 16 when initially entering the U.S., and is 16 years or older when applying for RPI status, and was physically present in the U.S. for an
-

aggregate period of not less than 3 years during the 6-year period immediately preceding the date of the enactment of S. 744.

.....
An alien in RPI status may not be detained by DHS or removed from the U.S., unless DHS determines that:

- such alien is, or has become, ineligible for RPI status; or
- such alien's RPI status has been revoked.

.....
If DHS determines that an alien, during the period beginning on the date of the enactment and ending on the last day of the RPI application period is in removal, deportation, or exclusion proceedings before the Executive Office for Immigration Review (EOIR) and is prima facie eligible for RPI status:

- DHS shall provide the alien with an opportunity to file for RPI status; and
- upon motion by DHS and with the consent of the alien or upon motion by the alien, EOIR shall:
 - terminate such proceedings without prejudice to future proceedings on any basis; and
 - provide the alien a reasonable opportunity to apply for such status.

.....
If EOIR determines that an alien, during the period beginning on the date of the enactment and ending on the last day of the application period is in removal, deportation, or exclusion proceedings before EOIR and is prima facie eligible for RPI status:

- EOIR shall notify DHS of such determination; and
- if DHS does not dispute the determination of prima facie eligibility within 7 days after notification, the EOIR, upon consent of the alien, shall:
 - terminate such proceedings without prejudice to future proceedings on any basis; and
 - permit the alien a reasonable opportunity to apply for RPI status.

.....
If an alien meets the RPI eligibility requirements and is present in the U.S., and has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the U.S.:

- the alien may apply for RPI status; and
- if granted such status, the alien shall file a motion to reopen the order, and the motion shall be granted unless one or more of the grounds of ineligibility is established by clear and convincing evidence.

.....
During the period beginning on the date on which an alien applies for RPI status and the date on which DHS makes a final decision regarding the application, the alien:
.....

- may receive advance parole to reenter the U.S. if urgent humanitarian circumstances compel such travel;
- may not be detained by DHS or removed from the U.S. unless DHS makes a prima facie determination that such alien is, or has become, ineligible for RPI status;
- shall not be considered unlawfully present; and
- shall not be considered an unauthorized alien.

.....
As soon as practicable after receiving each application for RPI status, DHS shall provide applicants with a document acknowledging the receipt of such application.
.....

An employer who knows that an alien employee is an applicant for RPI status or will apply for RPI status once the application period commences is not in violation of Immigration and Nationality Act (INA) § 274A(a)(2) if the employer continues to employ the alien pending adjudication of the application.
.....

DHS may not grant RPI status to an alien or an alien dependent spouse or child unless such alien submits biometric and biographic data in accordance with procedures established by DHS.

- DHS shall provide an alternative procedure for RPI applicants who cannot provide the biometric data required because of a physical impairment.

.....
DHS shall collect, from each alien applying for status under this section, biometric, biographic, and other data DHS determines to be appropriate:

- to conduct national security and law enforcement clearances; and
- to determine whether there are any national security or law enforcement factors that would render an alien ineligible for RPI status.

.....
DHS, in consultation with the Department of State (DOS) and other interagency partners, shall conduct an additional security screening upon determining, in DHS's opinion based upon information related to national security, that an alien or alien dependent spouse or child is or was a citizen or long-term resident of a region or country known to pose a threat, or that contains groups or organizations that pose a threat, to the national security of the U.S.
.....

The required clearances and screenings shall be completed before an alien may be granted RPI status.
.....

DHS will issue documentary evidence of RPI status to each alien whose application has been approved. The documentary evidence provided:

- shall be machine-readable and tamper-resistant, and shall contain a digitized photograph;
-

- shall, during the alien’s authorized period of admission, and any extension of such authorized admission, serve as a valid travel and entry document for the purpose of applying for admission to the U.S.;
- may be accepted during the period of its validity by an employer as evidence of employment authorization and identity;
- shall indicate that the alien is authorized to work in the U.S. for up to 3 years; and
- shall include such other features and information as may be prescribed by DHS.

As soon as practicable after the date of the enactment, the DHS, in cooperation with approved entities and in accordance with a plan adopted by DHS, shall broadly disseminate, in the most common languages spoken by aliens who would qualify for RPI status, to television, radio, print, and social media to which such aliens would likely have access:

- the procedures for applying for such status;
- the terms and conditions of such status; and
- the eligibility requirements for such status.

Registered Provisional Immigrant (RPI) status: renewal of status

2101

Those in RPI status applying for renewal after 6 years must meet certain criteria:

- have been regularly employed while in RPI status, and have been unemployed only “for brief periods lasting not more than 60 days”;
- not be likely to become a public charge under INA § 212(a)(4); or
- be able to demonstrate average income or resources that are not less than 100 percent of the federal poverty level throughout the period of admission;
- pass background checks equivalent to those described in INA § 245D(b)(1)(E); and
- have satisfied any federal tax liabilities.
- Enrollment in certain education and career training programs is acceptable in lieu of meeting the employment requirement.
- An applicant does not have to meet the employment or education requirement if he or she:
 - is younger than 21;
 - is older than 60;
 - possesses a physical or mental disability;
 - is on medical leave;
 - is on maternity leave;

- is a primary caretaker; or
- is unable to work due to circumstances outside the control of the applicant.
- DHS may also waive employment or education requirements if the applicant demonstrates extreme hardship to himself or herself or to a spouse, parent, or child who is a U.S. citizen or a legal permanent resident (LPR).

.....

Aliens who are age 16 or older and are applying for RPI status or for an extension of RPI status must pay a processing fee to DHS in an amount determined later by DHS.

.....

The \$1,000 penalty required for initial RPI status (which must be paid if the applicant is over 21 years of age) must be paid in full before the extension of RPI status may be granted.

- DHS shall establish a process for collecting payments that permits the penalty to be paid in periodic installments that must be completed before the alien may be granted an extension of status.

Registered Provisional Immigrant (RPI) status: ineligibility for public benefits

RPI status recipients are not eligible for any federal means-tested public benefit (as defined and implemented in § 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613)).

2101

Registered Provisional Immigrant (RPI) status: terms and conditions

A registered provisional immigrant shall be authorized to be employed in the U.S. while in such status.

.....

A registered provisional immigrant may travel outside of the U.S. and may be admitted, if otherwise admissible, upon returning without having to obtain a visa if:

- the alien is in possession of:
 - a valid, unexpired documentary evidence of RPI status; or
 - a travel document, duly approved by DHS, that was issued to the alien after the alien's original documentary evidence was lost, stolen, or destroyed;
 - the alien's absence from the U.S. did not exceed 180 days, unless the alien's failure to timely return was due to extenuating circumstances beyond the alien's control;
 - the alien meets the requirements for an extension; and
 - the alien establishes that the alien is not inadmissible.
-

2101

An alien granted RPI status shall be considered to have been admitted and lawfully present in the U.S. in such status as of the date on which the alien's application was filed.

An alien granted RPI status:

- is lawfully admitted to the United States; and
- may not be classified as a nonimmigrant or as an alien who has been lawfully admitted for permanent residence.

DHS may revoke the status of a registered provisional immigrant at any time after providing appropriate notice to the alien, and after the exhaustion or waiver of all applicable administrative review procedures, if the alien:

- no longer meets the eligibility requirements;
- knowingly used documentation issued as evidence of RPI status for an unlawful or fraudulent purpose;
- is convicted of fraudulently claiming or receiving a federal means-tested benefit (as defined and implemented in section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613)) after being granted RPI status; or
- was absent from the U.S.:
 - for any single period longer than 180 days unless the alien's failure to timely return was due to extenuating circumstances beyond the alien's control; or
 - for more than 180 days in the aggregate during any calendar year, unless the alien's failure to timely return was due to extenuating circumstances beyond the alien's control.

In determining whether to revoke an alien's RPI status, DHS may require the alien to:

- submit additional evidence; or
- appear for an interview.

If an alien's registered provisional immigrant status is revoked, any documentation issued by DHS to such alien shall automatically be rendered invalid for any purpose except for departure from the U.S.

A noncitizen granted registered provisional immigrant status shall be considered lawfully present in the U.S. for all purposes while such noncitizen remains in such status, except that the noncitizen:

- is not entitled to the premium assistance tax credit authorized under § 36B of the Internal Revenue Code of 1986 for his or her coverage;

- shall be subject to the rules applicable to individuals not lawfully present that are set forth in subsection (e) of such section;
- shall be subject to the rules applicable to individuals not lawfully present that are set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. § 18071); and
- shall be subject to the rules applicable to individuals not lawfully present set forth in § 5000A(d)(3) of the Internal Revenue Code of 1986.

.....

The Social Security Administration (SSA), in coordination with DHS, shall implement a system to allow for the assignment of a Social Security number (SSN) and the issuance of a Social Security card to each alien who has been granted RPI status under this section.

.....

DHS shall provide SSA with information from the applications filed by aliens granted RPI status and such other information as the SSA determines to be necessary to assign a Social Security account number to such aliens.

- SSA may use information received from DHS to assign Social Security account numbers to such aliens and to administer the programs of the SSA. The SSA may maintain, use, and disclose such information only as permitted under § 552a of title 5, United States Code (commonly known as the Privacy Act of 1974) and other applicable Federal laws.

Registered Provisional Immigrant (RPI) status: application for Legal Permanent Residency (LPR) status

Persons in valid RPI status for 10 years may apply for LPR status.

.....

DHS may adopt streamlined procedures for those applicants seeking adjustment to their LPR status who are beneficiaries of the “Deferred Action for Childhood Arrivals” initiative (DACA).

.....

An applicant for LPR status must meet the following criteria:

- not have been continuously absent from the U.S. for more than 180 days in any calendar year;
- have been regularly employed while in RPI status, and only have been unemployed “for brief periods lasting not more than 60 days”; and
- not be likely to become a public charge under INA § 212(a)(4); or
- be able to demonstrate average income or resources that are not less than 125 percent of the federal poverty level throughout the period of admission.

.....

Enrollment in certain education and career training programs is acceptable in lieu of employment requirement.

.....

2102

An applicant does not have to meet the employment or education requirement if he or she is:

- younger than 21;
- older than 65;
- possesses a physical or mental disability;
- on medical leave;
- on maternity leave;
- a primary caretaker; or
- unable to work due to circumstances outside the control of the applicant.

.....
DHS may also waive the employment or education requirement if the applicant demonstrates extreme hardship to himself or herself or to a spouse, parent, or child who is a U.S. citizen (USC) or LPR.
.....

Any federal tax liabilities must be satisfied.
.....

All applicants 16 years of age or older must satisfy English language/government history requirements under INA § 312, or be satisfactorily pursuing a course of study to achieve understanding of English and history of the government of the U.S.

- Applicants with disabilities or over 70 years old are exempted from this requirement.

.....
Applicants are subject to the “back of the line” requirement: Applicants may not adjust to LPR until the State Department certifies that “immigrant visas have become available for all approved petitions for immigrant visas that were filed under §§ 201 and 203 before the date of the enactment.”

- Sections 201 and 203 of the INA set the worldwide levels and preference categories for immigrant visas available each year in the employment- and family-based categories.

.....
Applicants must apply for adjustment of status under the newly created merit-based Track 2 (§ 2302). No annual or cumulative limit exists for immigrant visas granted under Track 2.
.....

A DHS processing fee (in an amount to be determined later) must be paid. Also a \$1,000 fine must be paid if the applicant is over 21 years old.
.....

Applicants will be permitted to apply for naturalization (citizenship) if they have:

- resided continuously within the U.S. for at least 3 years after being lawfully admitted for permanent residence;

- during the 3-year period immediately preceding such filing for naturalization, have been physically present in the U.S. for periods totaling at least 50 percent of such period; and
- resided within the state or in the jurisdiction of the USCIS field office in the U.S. in which the applicant filed such application for at least 3 months.

DREAM ACT-authorized adjustments to LPR

2103

A successful RPI beneficiary may adjust to LPR under newly created DREAM Act provisions if he or she:

- has been in RPI status for 5 or more years;
- was younger than 16 when initially entering the U.S.;
- earned a high school diploma or equivalent, or a general education development certificate;
- acquired a degree from an institution of higher education or has completed at least 2 years in a program for a bachelor's degree or higher (exemption available for compelling circumstances); or
- served in "Uniformed Services" for at least 4 years and, if discharged, received an honorable discharge.

.....
 Applicants must satisfy English language/government history requirement under INA § 312(a) (exemption available if disabled).

Applicants must submit biometric and biographic data unless prevented from doing so due to a physical impairment.

Applicants must undergo background checks.

DHS may adopt streamlined procedures for DACA recipients.

DREAM Act-eligible applicants are exempt from annual limits on the number of permanent resident visas.

If an applicant is granted LPR status, time spent in RPI status will be treated as if the beneficiary was in LPR status for the purpose of naturalization.

Agricultural workers: New "blue card" status eligibility and requirements

2211

Newly created "blue card" status (BCS) may be granted to an applicant who:

- performed agricultural employment in the U.S. for not fewer than 575 hours or 100 work days during the 2-year period ending December 31, 2012; or
-

- is the spouse or child of such applicant and was physically present in the United States on or before December 31, 2012, and has maintained continuous presence in the U.S. from that date until the date on which the (principal) alien is granted blue card status, with the exception of absences from the U.S. that are brief, casual, and innocent, whether or not such absences were authorized by DHS; and
- is not ineligible under paragraph (3) or (4) of INA § 245B(b) (other than a non-immigrant alien admitted to the U.S. for agricultural employment in the H-2A program).

BCS applicants must also:

- not be excluded by certain immigration laws;
- submit biometric and biographic data;
- complete national security and law enforcement clearances;
- not have been convicted of a felony, 3 or more misdemeanors, or certain other crimes; and
- pay a DHS processing fee (in an amount to be determined later) and a \$100 fine.

Agricultural workers; blue card application period

2211

The application period lasts for one year after final regulations have been published and may be extended for an additional 18 months at the discretion of DHS.

Aliens who have participated in the H-2A nonimmigrant program may apply from outside the U.S.

If an alien is apprehended during the period beginning on the date of enactment and ending on the application period and appears prima facie eligible for blue card status, DHS shall provide an opportunity to file an application for BCS and may not remove the alien from the U.S. until a final administrative decision is made.

During the application period, an alien granted BCS may not be detained by DHS or removed from the U.S. unless:

- the alien is, or has become, ineligible for BCS; or
- the alien's BCS has been revoked.

If DHS determines that an alien, during the period beginning on the date of enactment and ending on the last day of the application period is in removal, deportation, or exclusion proceedings before EOIR and is prima facie eligible for BCS under this section, DHS shall provide the alien with the opportunity to file an application for BCS status; and upon motion by DHS and with the consent of the alien or upon motion by the alien, the EOIR shall:

- terminate such proceedings without prejudice to future proceedings on any basis; and
- provide the alien a reasonable opportunity to apply for such status; and
- if EOIR determines that an alien, during the application period is in removal, deportation, or exclusion proceedings before it and is prima facie eligible for BCS under this section:
 - EOIR shall notify DHS of such determination; and
 - if DHS does not dispute the determination of prima facie eligibility within 7 days after such notification, the EOIR, upon consent of the alien, shall terminate such proceedings without prejudice to future proceedings on any basis; and permit the alien a reasonable opportunity to apply for such status.

.....

If an alien who meets the eligibility requirements for BCS is present in the U.S. and has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the U.S. under any provision of this Act, notwithstanding such order or INA § 241(a)(5):

- the alien may apply for BCS; and
- if the alien is granted BCS, the alien shall file a motion to reopen the exclusion, deportation, removal, or voluntary departure order, and the motion will be granted unless one or more of the grounds of ineligibility is established by clear and convincing evidence.
- The limitations on motions to reopen set forth in INA § 240(c)(7) shall not apply to motions filed under this clause.

.....

If an alien has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the U.S.:

- the alien may apply for BCS, and
- if granted BCS, the beneficiary shall file a motion to reopen the order, and the motion will be granted unless other grounds of excludability can be proven.

.....

While a BCS petition is pending, a BCS applicant:

- may receive advance parole to reenter the U.S. if travel required for “urgent humanitarian circumstances”;
- may not be detained or removed from the U.S. unless DHS makes a prima facie determination that the applicant has become ineligible for BCS;
- shall not be considered “unlawfully present” in the U.S. under the INA; and
- shall not be considered an “unauthorized alien” under the INA.

*Agricultural
workers: blue
card status bene-
ficiaries*

2211

BCS beneficiaries and derivative beneficiaries (family) are authorized to be employed in the U.S.

BCS beneficiaries will receive a document proving their status which can be accepted as a valid travel document and as evidence of employment authorization.

If traveling outside the U.S., BCS beneficiaries may not remain outside the U.S. for more than 180 days, unless the delayed return is due to extenuating circumstances beyond the alien's control.

BCS beneficiaries are considered lawfully admitted to the United States and may not be classified as a nonimmigrant or as an alien who has been lawfully admitted for permanent residence.

BCS will be revoked if the beneficiary:

- no longer meets the eligibility requirements for blue card status;
- knowingly used documentation for an unlawful or fraudulent purpose; or
- was absent from the U.S. for:
 - any single period longer than 180 days or
 - for more than 180 days in the aggregate during any calendar year, unless due to extenuating circumstances.

BCS beneficiaries are not eligible for any federal means-tested public benefit.

BCS beneficiaries:

- are not entitled to the premium assistance tax credit under § 36B of IRS code of 1986 and are treated as not lawfully present under subsection (e);
- are subject to the rules applicable to individuals who are not lawfully present under § 1402(e) of the Patient Protection and Affordable Care Act; and
- shall be subject to the rules applicable to individuals not lawfully present set forth in § 5000A(d)(3) of the Internal Revenue Code of 1986.

Duration of status: No person may remain in BCS 8 years after the date the relevant regulations were published. No extensions are permitted.

*Agricultural
workers: blue
card status and
employers*

2211

Employers must annually provide each BCS beneficiary a written record of employment and a copy of the record to the Department of Agriculture (USDA). Failure to provide such a record or inclusion of a false statement of fact in the record can result in a civil penalty for the employer not to exceed \$500 per violation.

Employers are protected from unlawful employment violations under INA § 274A(a)(2) if they know an unauthorized worker is an applicant for BCS or will apply for BCS (and the employer may continue to employ the BCS applicant).

Employment records and other evidence of employment in support of an application for BCS may not be used against an employer in a civil or criminal prosecution or investigation of that employer for the prior unlawful employment of that alien under INA § 274A or the Internal Revenue Code of 1986 regardless of the adjudication of such application or reconsideration by DHS of the applicant's prima facie eligibility

Agricultural workers: adjustment to legal permanent resident status from blue card status

2212

5–8 years after enactment of S. 744, BCS beneficiaries may apply for adjustment to LPR status if:

- during the 8-year period beginning on the date of enactment, they performed not less than 100 work days of agricultural employment during each of 5 years; or
- during the 5-year period beginning on the date of enactment, they performed not less than 150 work days of agricultural employment during each of 3 years.

12 months of work for this period may be credited for the following extraordinary circumstances:

- pregnancy, disabling injury, or disease;
- illness, disease, or other special needs of a child;
- severe weather conditions that prevented agricultural employment for a significant period of time; or
- termination from agricultural employment, if the termination was without just cause and applicant was unable to find alternative agricultural employment after a reasonable job search.

Applicants must still be in BCS when applying for adjustment to LPR status.

Applicants must pay a \$400 fine.

Applicants must pay DHS a processing fee (with the amount to be determined later).

Applicants must satisfy any applicable federal tax liability.

The spouse or child of a successful applicant/LPR beneficiary is also granted LPR status.

Annual numerical limits on permanent immigrant visas under INA §§ 201 and 202 do not apply to applicants under this section (cap-exempt).

Recipients of Legal Services Corporation (LSC) funds are not prevented from providing legal assistance to an individual if it is directly related to an application for BCS, or to an individual who has been granted BCS, or for an application for an adjustment of status by a BCS beneficiary.

- Under current law, LSC-funded organizations are prevented from providing legal assistance to most noncitizens, with a notable exception of nonimmigrant farm-workers admitted with H-2A visas.

Foreign labor recruitment and human trafficking–related provisions

These sections of the legislation would create a new program requiring foreign labor contractors (FLC) who recruit foreign workers to register with the Department of Labor and to disclose certain information about recruited workers, employers, and subcontractors, job terms, and to post a bond. Employers and FLCs would also be prohibited from discriminating or retaliating against workers, or from charging recruitment fees. A new complaint and investigation process would be established along with administrative fines and a private right of action, allowing either the government or an aggrieved person to bring a civil action against any foreign labor contractor in federal court. FLCs and sponsors who recruit workers through the State Department’s Exchange Visitor Program (J-1 visa) are exempt from the requirements in this section.

Issue	Substance	Bill Section
<i>Definitions</i>	Defines the terms “foreign labor contractor” and “foreign labor contracting activity”, and specifies that the term “worker” in this subtitle does not include exchange visitors in the J-1 visa program (as defined in § 62.2 of title 22, Code of Federal Regulations, or any similar successor regulation).	3601
<i>Disclosure and transparency</i>	Under newly created requirements, foreign labor contractors must provide information to recruited workers, including the identity and address of the employer and subcontractors, a signed copy of the work contract, visa terms, an itemized list of expenses and deductions, and information regarding access to benefits.	3602
<i>Discrimination</i>	Newly created prohibitions make it unlawful for an employer or a foreign labor contractor to “fail or refuse to hire, discharge, intimidate, threaten, restrain, coerce, or blacklist any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, creed, sex, national origin, religion, age, or disability.” Discrimination is also prohibited under existing civil rights and disability laws.	3603
<i>Prohibition on recruitment fees</i>	Employers and foreign labor contractors and their agents are prohibited from charging fees to workers for any foreign labor contracting activity (including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs).	3604

<p><i>Registration of foreign labor contractors</i></p>	<p>Foreign labor contractors must register and receive a newly created certificate of registration from the Department of Labor.</p> <p>The Secretary will promulgate regulations creating an electronic process to investigate and approve registration applications, and will charge a fee.</p> <p>Registered status can be revoked or refused for up to 5 years if the foreign labor contractor has made misrepresentations or been convicted of certain crimes in the last 5 years. Violators of program rules can be reinstated after 5 years.</p> <p>Employers who engage in recruiting on behalf of themselves are not required to register.</p>	<p>3605</p>
<p><i>Bonding requirement</i></p>	<p>The Secretary shall promulgate regulations requiring a foreign labor contractor to post a bond in an amount sufficient to ensure the ability of the foreign labor contractor to discharge its responsibilities and to ensure protection of workers, including wages.</p>	<p>3606</p>
<p><i>Enforcement</i></p>	<p>The Secretary will establish a new complaint and investigation process.</p> <p>There is a 3-year statute of limitations on complaints.</p> <p>After notice and a hearing, the Secretary may impose a fine of up to \$10,000 per violation and, after 3 violations, up to \$25,000 per violation.</p>	<p>3610</p>
<p><i>Private right of action and remedies</i></p>	<p>Workers can initiate a newly created private right-of-action in federal district court if the Secretary has not issued a final decision within 120 days of the filing of the complaint. The action must be filed within 180 days of the end of the 120-day period.</p> <p>The Secretary or any aggrieved person may bring a civil action against any foreign labor contractor that does not meet the section's requirements in any court of competent jurisdiction to:</p> <ul style="list-style-type: none"> ▪ seek remedial action, including injunctive relief; ▪ recover damages; and ▪ ensure compliance with the section. <p>Bond liquidation and forfeiture can also be a remedy.</p>	<p>3610</p>

Employer and recruiter liability

3610

Beginning 180 days after regulations have been promulgated pursuant to § 3605(c), an employer who retains the services of a foreign labor contractor must only use foreign labor contractors who are registered.

Safe harbor for employers: An employer is not liable under this section if the employer hires workers referred by a foreign labor contractor that is validly registered.

Liability for agents: Foreign labor contractors are liable under the provisions of this section for violations committed by the foreign labor contractor's agents or subcontractees of any level in relation to their foreign labor contracting activity to the same extent as if the foreign labor contractor had committed the violation.

Discrimination and retaliation for disclosures of violations

3610

Under a newly created rule, it is unlawful to retaliate against recruited foreign workers or their family members for disclosing information related to violations of the registration regime:

- No person shall intimidate, threaten, restrain, coerce, discharge, or in any other manner discriminate or retaliate against any worker or their family members (including a former employee or an applicant for employment) because such worker disclosed information to any person that the worker reasonably believes evidences a violation of this section (or any rule or regulation pertaining to this section), including seeking legal assistance of counsel or cooperating with an investigation or other proceeding concerning compliance with this section (or any rule or regulation pertaining to this section).
-

An individual who has been subjected to such discrimination or retaliation and who is party to a civil action resulting from such conduct, may recover appropriate relief, including reasonable attorneys' fees and costs, with respect to the violation.

Any civil action related to discrimination or retaliation under this section will be stayed during the pendency of any criminal action arising out of the violation.

Access to justice

3610

DHS has new authority to grant advance parole to permit a nonimmigrant to remain legally in the U.S. for a time sufficient to fully and effectively participate in all legal proceedings related to any action taken pursuant to this section.

Recruited foreign workers are eligible for representation and legal assistance by the Legal Services Corporation (LSC) and organizations receiving LSC funding if the matter is related to provisions in this subtitle. (Under current law, many LSC-funded organizations are prevented from providing legal assistance to noncitizens.)

Agreements by employees purporting to waive or to modify their rights under this subtitle shall be void as contrary to public policy.

Foreign labor recruitment and human trafficking-related provisions for exchange visitors

These sections of the legislation would create new protections for participants in the J-1 Exchange Visitor Program and establish a new definition of foreign labor recruitment in the context of the program. The State Department, which manages the program, would have new responsibilities, including the promulgation of new regulations (in consultation with the Department of Labor) on disclosing information and limiting program fees, auditing and reporting on various J-1 categories, and maintaining a list of employers against whom there have been substantiated complaints. In order to enforce program rules, the legislation would grant the State Department and J-1 exchange visitors the right to bring a civil action in federal court against a program sponsor, foreign entity, or an employer.

Issue	Substance	Bill Section
<i>Definitions</i>	<p>There is a new legal definition of “exchange visitor” and “exchange visitor program recruitment activities”, the latter of which is defined as:</p> <ul style="list-style-type: none"> ▪ activities related to recruiting, soliciting, transferring, providing, obtaining, or facilitating participation of individuals who reside outside the United States in an exchange visitor program including when such activity occurs wholly outside the United States. 	3901
<i>Disclosure and transparency for exchange visitors</i>	<p>Under a newly created requirement, DOS must consult with DOL to promulgate or amend regulations within 18 months to require certain information to be disclosed to exchange visitors, including the:</p> <ul style="list-style-type: none"> ▪ identity and address of sponsor; ▪ employer and foreign entities that may charge fees; ▪ terms and conditions of employment; copy of the agreement between sponsor, exchange visitor and employer; ▪ permitted charges and deductions; and ▪ existence of any labor organizing effort, collective bargaining agreement (CBA), strike, lockout or other labor dispute at the employer’s workplace. 	3902
<i>Discrimination</i>	<p>A newly created prohibition on retaliation and discrimination makes it unlawful for an Exchange Visitor Program sponsor, foreign entity, or host entity (which includes employ-</p>	3903

ers) to fail or refuse to hire, discharge, intimidate, threaten, restrain, coerce, or blacklist any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, creed, sex, national origin, religion, age, or disability.

Discrimination of exchange visitors is also prohibited under existing civil rights and disability laws.

Fees

Under newly created rules on fees in the Exchange Visitor Program, within 2 years, the DOS, in consultation with DOL, must promulgate regulations to set limits on the mandatory fees charged by exchange visitor program sponsors, host entities, and their foreign entities to the exchange visitor, and conduct public meetings with relevant subject matter experts.

The maximum fees may be updated to conform to economic conditions.

Sponsors must provide DOS with an itemized list of fees charged to exchange visitors, foreign entities, subcontractors, and foreign entities' agents.

A newly created 3-party document outlining basic fee structure and itemized mandatory and optional fees must be signed by the exchange visitor, foreign entity, and sponsor.

3904

***Recruitment
transparency***

Exchange Visitor Program sponsors shall notify DOS at least once a year of the identity of any third party, agent, or exchange visitor program sponsor employee involved in any exchange visitor program recruitment activity for, or on behalf of, the exchange visitor program sponsor.

Employers of exchange visitors are required to notify DOS if they know that any Exchange Visitor Program sponsors are not complying with the section.

Sponsors are required to notify DOS if they know that any employers or foreign entities are not complying with the section.

3905

***Jurisdiction
and venue for
recruiters***

Under a newly created requirement, any of the foreign entities involved in recruiting must agree in writing to be subject to jurisdiction in the U.S.

The appropriate venue for all disputes and enforcement actions is the U.S. District Court for the District of Columbia.

3905

Revocation of sponsor designation

An Exchange Visitor Program sponsor’s designation may be revoked for up to 5 years (current regulation also allows revocation for up to 5 years under 22 C.F.R. § 62.61), if the sponsor has:

- materially misrepresented a fact;
- committed any felony under state or federal law;
- committed certain violent crimes; or
- committed crimes related to gambling or alcohol in connection with or incident to any recruitment activities.

3905

Bonding requirement

DOS is granted authority to require a newly created bond in an amount that is sufficient to ensure the ability of a sponsor to discharge its responsibilities and to ensure protection of exchange visitors, including wages or stipends.

.....
DOS must promulgate regulations to implement the new bonding requirement.
.....

Forfeiture of the bond shall be in addition to or in conjunction with other remedies in § 3910 or any other provision of law.

3906

State Department’s responsibilities

DOS must ensure that each U.S. diplomatic mission has a person responsible for receiving information from any exchange visitor who has been subject to violations.

.....
The designated responsible person is encouraged to coordinate with governments and non-governmental organizations in countries of origin to help support exchange visitors.
.....

The Department of Justice (DOJ) and DOS must have a mechanism for any actions that need to be taken in response to information about possible violations.

.....
DOS must coordinate with consulates to make sure they have information about the foreign entities under contract with sponsors to handle recruitment activities.

- DOS must post the identity of sponsors on its website.
- The identity of foreign entities in each foreign country must be publicly available on the websites of U.S. embassies in those countries.

3909

Enforcement and remedies

DOS must adhere to certain requirements for newly created civil compliance actions and sanctions against exchange visitor program sponsors.

.....
DOS or an exchange visitor may bring a civil action against a program sponsor, foreign entity (e.g., recruiters located abroad), or an employer in civil court.
.....

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- Court-ordered relief may include injunctive relief, damages, attorney’s fees, and other remedies.
- There is a statute of limitations: An action must be filed within 3 years of the date the exchange visitor became aware of the violation, and not more than 5 years after the date the violation occurred.

.....

The court may also award statutory damages of up to \$1,000 per plaintiff per violation, except:

- multiple violations of a single provision shall only constitute one violation; and
- in the case of a class action, the court may award:
 - damages up to an amount equal to the amount of actual damages;
 - statutory damages of not more than the lesser of up to \$1,000 per class member per violation, or up to \$500,000;
 - other equitable relief;
 - reasonable attorneys’ fees and costs; and
 - such other and further relief, including declaratory and injunctive relief, as necessary to effectuate the purposes of this subtitle.

.....

Bond funds may be released to satisfy the plaintiff’s award.

Employer and recruiter liability

Safe harbor for employers: Host entities (i.e., employers of exchange visitors) shall not have any liability under this section for the actions or omissions of an Exchange Visitor Program sponsor that has a valid designation with DOS, unless the employer/host entity has engaged in conduct that violates this subtitle.

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.....

Liability of foreign entities (including recruiters): Sponsors are liable for violations by any foreign employees, agents, foreign entities, or subcontractors of any level in relation to the recruitment activities, to the same extent as if the sponsor had committed the violation, unless the program sponsor took certain reasonable steps.

Discrimination and retaliation for disclosures of violations

Under a newly created rule, it is unlawful to retaliate against exchange visitors or their family members for disclosing information related to Exchange Visitor Program violations:

3910

- No person shall intimidate, threaten, restrain, coerce, discharge, or in any other manner discriminate or retaliate against any exchange visitor or his or her family members (including a former exchange visitor or an applicant for employment) because such exchange visitor disclosed information to any person that the exchange
-

visitor reasonably believes evidences a violation of this section (or any rule or regulation pertaining to this section), including speaking with a worker organization, seeking legal assistance of counsel, or cooperating with an investigation or other proceeding concerning compliance with this section (or any regulation pertaining to this section).

Under a newly created prohibition on retaliation, it is unlawful for an Exchange Visitor Program sponsor or foreign entity to terminate or remove from the Exchange Visitor Program, ban from the program, adversely annotate an exchange visitor's Student and Exchange Visitor Information System (SEVIS) record (as defined in § 4902), fire, demote, take other adverse employment action, or evict, or to threaten to take any of such actions against an exchange visitor in retaliation for complaining about program conditions, including housing and job placements, wages, hours, and general treatment, or in retaliation for disclosing retaliation by an exchange visitor sponsor, exchange visitor foreign entity, or host entity against any exchange visitor.

Access to justice

If other immigration relief is not available to the exchange visitor, DHS has new authority to permit (on the basis of proof) the exchange visitor to remain lawfully in the U.S. for the time sufficient to allow the exchange visitor to fully and effectively participate in legal proceedings.

Exchange visitors are eligible under this section for representation by the Legal Services Corporation (LSC) and organizations receiving LSC funding if the matter is related to provisions in this subtitle. (Under current law, many LSC-funded organizations are prevented from providing legal assistance to noncitizens, including exchange visitors.)

Agreements between exchange visitors and sponsors, foreign entities, or host entities (employers) purporting to waive or to modify the exchange visitor's rights under this subtitle shall be void as contrary to public policy

3910

Employer information for sponsors

Employer "black list": DOS in consultation with DOL must maintain a newly created list of employers against whom there has been a complaint, substantiated by the DOS, for significant program violations.

The list will be available to sponsors (not the public).

3910

Audits and program transparency

New audit reports must be filed by Exchange Visitor Program sponsors in following J-1 categories:

3911

- summer work travel;
- trainees and interns;
- camp counselors;
- au pairs; and
- teachers.

Audit reports must be conducted by a certified public accountant, qualified auditor, or licensed attorney and submitted to DOS. In addition:

- the format of the report will be designated by DOS;
- the report will be paid for by the sponsor; and
- the report will not be conducted more frequently than biannually.

Within one year, a new annual report on the Exchange Visitor Program must be submitted to Congress by DOS.

The new report must contain the following information about each program category:

- summary data on the number of exchange visitors and countries participating in that category;
- public diplomacy outcomes; and
- recent sanctions imposed by DOS.

Nonimmigrant visa categories

The legislation would make major reforms to the existing nonimmigrant temporary foreign worker visa programs and create new programs. The existing H-2A temporary agricultural foreign worker program would expire and be replaced with a new program (W-3 and W-4 visas), and a new temporary foreign worker program with an annual limit of 200,000 (with certain exceptions) would be created (the W-1 visa). A new Bureau of Immigration and Labor Market Research would be established to help set the annual limit of the W-1 program and to study and report on occupational labor shortages in the United States. A temporary (five-year) returning worker exemption would be created in the existing program for less-educated temporary foreign workers (H-2B), and the existing program for college-educated temporary foreign workers (H-1B) would be permanently increased by nearly 150 percent and undergo various rule changes.

Issue	Substance	Bill Section
<p><i>Establishment of new nonimmigrant agricultural worker program: visa categories</i></p>	<p>A new temporary foreign worker visa program is created for aliens coming to the U.S. to perform full-time agricultural work in two categories:</p> <ul style="list-style-type: none"> ▪ A W-3 visa for agricultural work to be performed by a “contract agricultural worker” with a written contract that specifies the wages, benefits, and working conditions of such full-time employment in an agricultural occupation with a “designated agricultural employer” for a specified period of time; and ▪ A W-4 visa for agricultural workers who have an offer of full-time employment in an agricultural occupation and who will work on an “at-will” basis with a designated agricultural employer. 	<p>2231</p>
<p><i>Establishment of new nonimmigrant agricultural worker program: designated agricultural employers (DAE)</i></p>	<p>In order to be able to hire workers in the new nonimmigrant agricultural worker program, employers must apply to the Department of Agriculture (USDA) for certification as a “designated agricultural employer” (DAE), a newly created status.</p> <p>.....</p> <p>DAE status is valid for 3 years and may be renewed.</p> <p>.....</p> <p>DAEs must pay a registration fee (to be established later).</p>	<p>2232</p>
<p><i>Establishment of new nonimmigrant agricultural worker program: annual numerical limit (cap)</i></p>	<p>In the first 5 years of the program, the annual limit (or “cap”) will be 112,333 plus any numerical adjustment made by USDA (and also made in consultation with DOL) based on various factors, which include:</p> <p>.....</p>	<p>2232</p>

- a demonstrated shortage of agricultural workers;
- the level of unemployment and underemployment of agricultural workers during the preceding fiscal year;
- the number of applications for blue card status;
- the number of blue card visa applications approved;
- the number of nonimmigrant agricultural workers sought by employers during the preceding fiscal year;
- the estimated number of U.S. workers, including blue card workers, who worked in agriculture during the preceding fiscal year;
- the number of nonimmigrant agricultural workers issued a visa in the most recent fiscal year who remain in the U.S. in compliance with the terms of their visas;
- the number of U.S. workers who accepted jobs offered by employers using the Electronic Job Registry during the preceding fiscal year;
- any growth or contraction of the U.S. agricultural industry that has increased or decreased the demand for agricultural workers; and
- any changes in the real wages paid to agricultural workers in the U.S. indicating a shortage or surplus of agricultural labor.

.....
Special note about the annual cap: Although the language of S. 744 states that the level of visas will be 112,333 plus adjustments in the first 5 years, multiple news reports and analysis from major agricultural industry groups suggest the cap will be 337,000 in years 3, 4, and 5 of the program.³

After 6 years, the USDA, in consultation with DOL, will establish the annual cap each fiscal year based on the same listed factors.

The annual allocation shall be evenly allocated among the 4 quarters of the fiscal year unless USDA determines an alternative allocation would better accommodate the seasonal demand for visas. Any unused visas from one quarter roll over to the next quarter of the same fiscal year.

Emergency procedures: The USDA shall establish, by regulation, procedures for immediately adjusting an annual allocation for labor shortages.

Establishment of new nonimmigrant agricultural worker program: status and admis-

A nonimmigrant agricultural worker visa is valid for an initial period of 3 years and may be renewed for one additional 3-year period.

A worker who has been admitted to the U.S. for 2 consecutive 3-year terms may not renew status as a nonimmigrant agricultural worker unless the worker:

2232

*sions period for
workers*

- returns to a residence outside the U.S. for 3 months; and
- seeks to reenter the U.S. under the terms of the program.

.....
A nonimmigrant agricultural worker will lose status if:

- after the completion of the contract with a DAE, the worker is not employed in agricultural employment by a DAE; or
- as an at-will worker, the worker is not continuously employed by a DAE in agricultural employment as an at-will agricultural worker.

.....
A nonimmigrant agricultural worker may not be unemployed for more than 60 days.

- A waiver of this requirement is available if unemployment lasts more than 60 days due to injury or natural disaster.

.....
Contract workers may seek and accept employment from any DAE after termination of the original work contract with the original DAE.

- If a contract worker voluntarily abandons employment or is terminated for cause, the worker:
 - may not accept subsequent employment without departing the U.S. and reentering with a new offer of employment; and
 - is not entitled to the 75 percent payment guarantee.

.....
An at-will worker may seek employment as an at-will agricultural worker with any other DAE.

.....
Employment of nonimmigrant agricultural workers is not limited to a geographical area or type of agricultural employment.

.....
Nonimmigrant agricultural workers may only work with DAEs.

.....
A spouse or child of a nonimmigrant agricultural worker is not entitled to a visa or any immigration status by virtue of the relationship to the worker.

.....
A spouse or child of a nonimmigrant agricultural worker may be provided status as a nonimmigrant agricultural worker if the spouse or child is independently qualified for such status.

.....
Nonimmigrant agricultural workers are not eligible for any program of financial assistance under federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need.

Establishment of new nonimmigrant agricultural worker program: employer responsibilities and recruitment of U.S. workers

At least 45 days before the date of need, a DAE must file a petition making certain attestations including the number of workers requested and information about the job opening and evidence of offers of employment to U.S. workers.

At least 60 days before the date of need, employers must submit information about the job opportunity to the local office of the state workforce agency (SWA) and authorize the posting on the appropriate DOL electronic job registry for 45 days.

- Employers must keep a record of all eligible, able, willing, and qualified U.S. workers who apply for agricultural employment for those positions.

Employers are required to hire U.S. workers who are equally or better qualified than nonimmigrant workers and who will be available at the time and place of need and who apply during the 45-day recruitment period.

- However, the employer may offer the job to a nonimmigrant agricultural worker instead of an alien in blue card status (BCS) if the worker:
 - was previously employed by the employer as an H-2A worker;
 - worked for the employer for 3 years during the most recent 4-year period; and
 - the employer will pay the worker the adverse-effect wage rate under subsection (f)(5)(b) of this section.

Employers must provide U.S. workers the same wages and working conditions as nonimmigrant workers, with the exception of housing (outlined below in this section).

Employers are prohibited from displacing a U.S. worker employed by the employer, other than for good cause, during the period of employment and 30 days preceding it.

Employers may not use nonimmigrant agricultural workers to replace workers on strike or who are being locked out in the course of a labor dispute.

Employers must guarantee contract workers the hourly equivalent of at least 75 percent of the work days of the total period of employment, beginning with the first work day after the arrival of the worker and ending on the expiration date specified in the job offer.

If, before the work contract ends, an employer no longer requires the services of a contract worker for reasons beyond the employer's control (such as any form of natural disaster, including a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought), the employer:

- may terminate the worker's employment;
- shall fulfill the employment guarantee for the work days that have elapsed from the first work day to the termination of employment;

- shall make efforts to transfer the worker to other comparable employment acceptable to the worker; and
- if such a transfer does not take place, shall provide return transportation.

.....
If the job is not covered by a state workers' compensation law, the employer must provide insurance covering injury and disease arising out of the job at no cost to the worker. The benefits of the coverage must be at least equal to those provided by the state workers' compensation law for comparable employment.
.....

The employer may not employ a nonimmigrant agricultural worker for employment that is not agricultural.
.....

The employer can only make deductions from wages that are authorized by law and are reasonable and customary in the occupation and area of employment.
.....

With certain exceptions, a DAE shall provide a nonimmigrant agricultural worker with housing at no cost to the worker. The employer may provide a reasonable housing allowance, and must make a good faith effort to help the worker find housing.

- If the employer arranges for the worker public housing that requires direct payment, the employer shall pay the landlord directly.
- An allowance can only be given to contract workers if the governor of the state certifies adequate housing is available in the area of employment.

.....
The amount of the allowance must be equal to the average fair market rental value for existing housing in the area.
.....

An allowance is not required for workers who reside outside of the U.S. if their place of residence is within normal commuting distance and the job site is within 50 miles of an international land border of the U.S.
.....

Employers may not collect deposits from workers for housing-related incidentals such as bedding.
.....

Employers may require workers to reimburse for damages caused to housing that did not result from normal wear and tear.
.....

For contract workers, the employer may choose to either provide daily transportation or reimburse the worker for the cost of daily transportation from the worker's living quarters to the place of employment.
.....

Contract and at-will workers shall be reimbursed by their first employer for the cost of the worker's transportation and subsistence from the worker's place of origin to the location of first employment.

- The amount of reimbursement provided to the worker shall not exceed the lesser of:
.....

- the actual cost to the worker of the transportation and subsistence involved; or
- the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

.....

If a contract worker completes at least 27 months with a single DAE, such employer must reimburse the worker for the cost of the worker’s transportation and subsistence from the place of employment to the worker’s foreign residence.

Establishment of new nonimmigrant agricultural worker program: wage rates

2232

Nonimmigrant agricultural workers must be paid the higher of the federal, state, or local minimum wage, or the (newly created) statutorily specified wage rates in this section.

.....

If an employer pays a “piece” rate or other incentive method and requires one or more minimum productivity standards as a condition of job retention, such standards must be specified in the job offer and be no more than those which have been normally required (at the time of the employer’s first application for designated employer status) by other employers for the activity in the geographic area of the job, unless USDA approves a higher standard.

.....

Workers must be assigned to one of the following occupational classifications as defined by Bureau of Labor Statistics:

- First-Line Supervisors of Farming, Fishing, and Forestry Workers (45–1011).
 - Animal Breeders (45–2021).
 - Graders and Sorters, Agricultural Products (45–2041).
 - Agricultural Equipment Operator (45–2091).
 - Farmworkers and Laborers, Crop, Nursery, and Greenhouse (45–2092).
 - Farmworkers, Farm, Ranch and Aquacultural Animals (45–2093).
- Classifications apply if the worker performed activities in the occupation for at least 75 percent of the time in a semiannual employment period.

.....

Wage rates for these job categories are specified in this section for the calendar years of 2014–2016.

.....

USDA will increase wages in subsequent years (after calendar year 2016) by an amount equal to:

- 1.5 percent, if the percentage increase in the Employment Cost Index for wages and salaries during the previous calendar year, as calculated by the Bureau of Labor Statistics (BLS), is less than 1.5 percent; or
-

- the percentage increase in the Employment Cost Index, if such percentage increase is between 1.5 percent and 2.5 percent; or
- 2.5 percent, if the percentage increase in the Employment Cost Index is greater than 2.5 percent.

.....
 The adverse effect wage rates in effect on April 15, 2013, will remain in effect until the H-2A program expires.

Employers are exempt from paying FICA and FUTA taxes on nonimmigrant agricultural workers.

With the exception of providing housing, employers seeking to hire U.S. workers shall offer the U.S. workers not less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to nonimmigrant agricultural workers.

No job offer may impose on U.S. workers any restrictions or obligations that will not be imposed on the employer’s nonimmigrant agricultural workers.

New wage rates may be established for the “Special Procedures Industry”, which includes:

- sheep herding and goat herding;
- itinerant commercial beekeeping and pollination;
- open range production of livestock;
- itinerant animal shearing; and
- custom combining industries.

Establishment of new nonimmigrant agricultural worker program: worker protections, enforcement, and dispute resolution

Nonimmigrant agricultural workers shall not be denied any right or remedy under any federal, state, or local labor or employment law applicable to U.S. workers engaged in agricultural employment.

Nonimmigrant agricultural workers shall be considered migrant agricultural workers for purposes of the Migrant and Seasonal Agricultural Worker Protection Act (AWPA).

Nonimmigrant agricultural workers are considered to be in LPR status for purposes of establishing eligibility for legal services under the Legal Services Corporation Act on matters relating to wages, housing, transportation, and other employment rights (similar to current law in H-2A context).

Federal Mediation and Conciliation Service (FMCS) is available to workers and employers without charge.

2232

If a nonimmigrant agricultural worker files a complaint under § 504 of the AWPA, not later than 60 days after the filing, a party to the action may file a request to FMCS to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute.

- Upon filing the request and giving of notice to the parties, the parties shall attempt mediation within a 90-day period.
- The FMCS may conduct mediation or other nonbinding dispute resolution activities for a period not to exceed 90 days beginning on the date on which it receives a request for assistance unless the parties agree to an extension of such period.
 - \$500,000 is appropriated to the FMCS for each fiscal year to carry out these activities.
 - The Director of the FMCS is authorized to conduct the mediation or other dispute resolution activities from any other account containing amounts available to the Director; and to reimburse such account with the appropriated amounts.

.....
If all parties agree, a private mediator may be employed as an alternative to FMCS.
.....

Nonimmigrant agricultural workers are also entitled to the rights granted to other classes of aliens under INA §§ 242(h) and 245E.
.....

Agreements by nonimmigrant agricultural workers to waive or modify any rights or protections under this section are considered void or contrary to public policy except as provided in a collective bargaining agreement with a bona fide labor organization.
.....

DOL shall establish a new process for receipt, investigation, and disposition of complaints based on the failure to meet a condition or employer misrepresentation of a material fact on a petition.
.....

Any aggrieved person or organization, including bargaining representatives, may file a complaint within one year.
.....

DOL shall conduct an investigation to determine if reasonable cause exists.
.....

If DOL finds a DAE failed to meet a condition or a made a material misrepresentation of fact in a petition, DOL shall notify the USDA of such finding and may impose other administrative remedies against the DAE (including civil money penalties in an amount not to exceed \$1,000 per violation) as DOL determines to be appropriate; and USDA may disqualify the DAE for one year.
.....

If DOL finds, after notice and opportunity for hearing, a willful failure to meet a condition or a willful misrepresentation of a material fact in a registration or petition, DOL shall notify the USDA of such finding and may impose such other administrative remedies against the DAE (including civil money penalties in an amount not to exceed
.....

\$5,000 per violation) as DOL determines to be appropriate; DOL may seek appropriate legal or equitable relief; and USDA may disqualify the DAE for a period of 2 years.

If DOL finds an employer displaced a U.S. worker during the period of employment specified on the petition or during the 30 days preceding such period of employment as the result of a willful failure to meet a condition or because of a willful misrepresentation of a material fact in a registration or petition:

- DOL may impose administrative remedies (including civil money penalties in an amount not to exceed \$15,000 per violation) as DOL determines to be appropriate; and
- USDA may disqualify the DAE for 3 years.

If DOL finds an employer failed to pay the require wage level, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment required, DOL shall assess payment of back wages or other required benefits. The amount shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

No more than \$90,000 in penalties can be assessed with respect to a petition.

Workers may not simultaneously pursue an administrative complaint through DOL and file a civil action.

Any settlement reached through mediation or from a complaint filed with DOL will preclude any right of action arising from the same facts unless specifically provided in the settlement agreement.

DOL is not precluded from compliance investigations under any other labor law.

The employer may not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee, including a former employee or an applicant for employment, because the employee:

- has disclosed information to the employer, or to any other person, that the employee reasonably believes shows a violation; or
- cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with any rule or regulation under this section.

USDA must monitor the movement of W-3 and W-4 workers with E-Verify and a new electronic monitoring system to be established no later than 2 years after the effective date of the nonimmigrant agricultural program. (The new monitoring system is to be based on the SEVIS and SEVIS II tracking system administered by Immigration and Customs Enforcement.)

H-2A visa for nonimmigrant agricultural workers: sunset provision

The H-2A program expires one year after the effective date of the regulations for the new nonimmigrant agricultural program, but an employer may continue to employ an H-2A worker for the shorter of 10 months or the time specified in the petition.

2233

New visa category for executives and managers

A new nonimmigrant visa category is created for executives and managers who are principally stationed abroad but are employed by a firm or corporation or an affiliate or subsidiary thereof operating in the U.S.

Nonimmigrants in this category are permitted to enter the U.S. for 90 days or less to oversee and observe U.S. operations of related companies and establish strategic objectives.

Nonimmigrants in this category cannot receive a salary from U.S. source, except for travel and other basic services.

Employer associations may be liable for violations under certain circumstances.

4603

New visa category for employees of multinational corporations

A new nonimmigrant visa category is created for employees of multinational corporations.

Nonimmigrants in this category are permitted to enter the U.S. to observe the operations of a related U.S. company and participate in select leadership and development training activities for a period not to exceed 180 days.

Nonimmigrants in this category cannot receive a salary from a U.S. source, except for travel and other basic services.

4603

B visa: honoraria payments for academics and performers

Rules on nonimmigrants in the B visa category receiving “honoraria” payments are clarified.

Honoraria payments will be permitted to beneficiaries for brief visits for:

- “a usual academic activity or activities” at an institution of higher education or nonprofit or governmental research organization; or
- for “performance, appearance and participation in United States based programming” with a media entity.

4604

New B visa category: humanitarian visas

4605

A new subcategory in the nonimmigrant B visa category is created for nonimmigrants participating in relief operations in response to a federal or state declared emergency or disaster.

The alien may stay in the U.S. performing such work for a period of up to 90 days.

The alien must have been employed in a foreign country by one employer for not less than one year prior to the date of admission.

New B visa category: common carriers

4606

A new subcategory in the nonimmigrant B visa category is created permitting workers with specialized knowledge to perform maintenance on common carriers if equipment or machinery is manufactured outside the U.S.

Nonimmigrants in this subcategory may not receive income from a U.S. source unless for travel and other basic services.

An alien admitted in this visa category must pay a fee of \$500 (in addition to any fee assessed to cover the costs of processing an application under this subsection).

E, F, H, L, O, P, V, and W visa programs: dual-intent

4401

The law is amended so that an F-1 visa can be considered “dual intent” if the F-1 beneficiary is pursuing a bachelor’s or graduate degree.

- An alien in a “dual intent” nonimmigrant category may be the beneficiary of an immigrant petition without prejudicing the acquisition or maintenance of his or her nonimmigrant status.

E, F-1, F-2, H-1B, H-1C, L, O, P, V, and W nonimmigrant visa categories are statutorily designated as “dual-intent” visas.

- Many of these visa categories are already considered dual-intent, but the INA and applicable federal regulations may be silent or unclear on the matter.

E visa category for treaty traders and treaty investors

4402

The nonimmigrant E visa category for Treaty Traders (E-1) and Treaty Investors (E-2) who enter the U.S. in pursuance of a treaty of commerce and navigation that the U.S. is party to, is expanded to include bilateral investment treaties and free trade agreements.

A new E-4 visa category is created for workers in specialty occupations pursuant to a free trade agreement, for countries other than Chile, Singapore, or Australia. For E-4 visas, employers must file a labor condition application with DOL under INA §212(t).

A new E-5 visa category is created for workers in specialty occupations from the Republic of Korea and for whom an employer has filed a labor condition application with DOL under INA §212(t).

“Specialty occupations” in the E-4 and E-5 contexts means any job that requires a college degree or its equivalent.

The numerical limit on E-4 and E-5 categories is “5,000 per fiscal year for each country with which the United States has entered into a Free Trade Agreement.”

A new E-6 visa category with an annual limit of 10,500 is created for workers who:

- have at least a high school education or its equivalent, and
- have at least 2 years of work experience in an occupation which requires at least 2 years of training or experience, in the last 5 years, and
- are from a sub-Saharan African country under § 104 of the African Growth and Opportunity Act or a country designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act.

E-3 visa for Australians: expanded for Irish nationals

4403

10,500 additional E-3 visas are made available for permitting nationals of Ireland to work temporarily in the U.S. if:

- the worker has at least a high school education or its equivalent, or
- within 5 years, has at least 2 years of work experience in an occupation which requires at least 2 years of training or experience.

No bachelor’s degree is required for the E-3 visa for Irish nationals.

- The E-3 visa for Irish nationals is distinct from the E-3 for Australians, who must possess a bachelor’s degree.

The E-3 visa for Irish nationals may be renewed indefinitely in 2-year increments (same as current law for Australians).

Spouses of Irish E-3 beneficiaries may be authorized to work in the U.S., but children of E-3 beneficiaries are not (same as current law for Australians).

Certain existing grounds of ineligibility for admission to the U.S. under INA §§ 212(a)(6), (7), and (9), including the mandatory 3- and 10-year bars to admission to the U.S. for prior unlawful presence in the U.S. exceeding 6 and 12 months, respectively, are waived under this section for qualifying Irish nationals.

10,500 E-3 visas (under current law) are still reserved for Australians.

***H-2B visa:
returning worker
exemption***

A new returning-worker exemption is created and valid for 5 years, specifying that non-immigrant workers granted H-2B visas in fiscal year 2013 will not count against the H-2B annual limit (cap) of 66,000 during the fiscal years (FY) of 2014 through 2018.

- As a result, if the maximum of 66,000 visas is reached in 2013, during 2014-2018, the number of H-2B visas granted could be as many as 132,000 (but the number granted could only reach 132,000 if the annual cap is reached and if every H-2B worker granted a visa in 2013 reapplies and is granted a visa).

4601

***H-2B visa: pre-
vailing wage***

Currently the H-2B prevailing wage is set by DHS and DOL regulations. The wage is set either by:

- an applicable Davis-Bacon or Service Contract Act wage, or the wage of a controlling collective bargaining agreement;
- the arithmetic mean (average) wage in the occupation and local area; or
- an approved private survey.

.....
This section uses broader language than current regulations, setting the H-2B wage under S.744 as the greater of:

- the actual wage level paid by the employer to other employees with similar experience and qualifications for the position; or
- the prevailing wage level for the occupational classification of the position in the geographic area of the employment, based on the best information available at the time of filing the application.
- “Best information available” means:
 - a controlling collective bargaining agreement or federal contract wage, if applicable;
 - if there is no applicable wage paid to other similarly situated employees, the wage level commensurate with the experience, training, and supervision required for the job based on Bureau of Labor Statistics (BLS) data; or
 - if BLS data are not available, a legitimate and recent private survey of the wages paid for such positions in the metropolitan statistical area.

4211

***H-2B visa: dis-
placement of U.S.
workers***

An employer wanting to hire an H-2B worker will now have to certify and attest that the employer did not displace and will not displace a U.S. worker employed by the

4602

employer in the same metropolitan statistical area 90 days before hiring the H-2B worker until the end of the period the H-2B worker is needed.

H-2B visa: transportation costs

4602

Employers will now be required by law to pay transportation and reasonable subsistence costs during the period of travel for H-2B nonimmigrants, from:

- the place of recruitment to the place of the nonimmigrant's employment; and
- the place of employment to the nonimmigrant's place of permanent residence or a subsequent worksite.

Under current H-2B regulations, H-2B employers are only required to pay for the non-immigrant's outbound travel if the employer dismisses the nonimmigrant prior to the end of the certified period of employment.

H-2B visa: labor certification fee

4602

There is a new \$500 fee for any employer filing an H-2B labor certification with DOL.

H-2B visa: forestry

4607

A new definition of forestry work is created by this section.

Employers of H-2B forestry workers must conduct additional recruitment efforts:

- advertising at employment or job-placement events, such as job fairs;
- placing the job opportunity with the SWA and working with SWA to identify qualified and available U.S. workers;
- advertising in appropriate media, including local radio stations and commonly used, reputable Internet job-search sites; and
- such other recruitment efforts as the SWA considers appropriate for the sector or positions for which H-2B nonimmigrants would be considered.

H-2B employers are required to file a (newly created) separate application for temporary employment certification and petition for each state in which the employer plans to employ H-2B nonimmigrants in forestry for 7 days or longer. DOL will review and certify or deny the petitions.

Under this new process, before DOL can certify a petition, the SWA must submit a report to DOL certifying that:

- the employer has complied with all the additional recruitment requirements and that there is legitimate demand for the employment of H-2B nonimmigrants in each of those states; or

- the employer has amended the application by removing or making appropriate modifications with respect to the states in which the recruitment/legitimate demand criteria have not been met.
- The report must make a formal determination that nationals of the U.S. are not qualified or available to fill the employment opportunities offered by the employer.

***H-1B visa:
annual numerical
limit***

4101

The H-1B annual numerical limit (cap) rises from 65,000 to a minimum of 115,000, with a maximum of 180,000, fluctuating according to an employer-demand formula.

The limit of available H-1B visas may not increase if the national occupational unemployment rate for “Management, Professional, and Related Occupations”, as published monthly by BLS, averages 4.5 percent or greater over the preceding 12-month period.

Additional H-1B visas reserved for workers possessing at least a master’s degree from a U.S. university rises from 20,000 (under current law) to 25,000, and adds a new requirement that the master’s degree or higher be in a science, technology, engineering, and mathematics (STEM) field (specifically in computer and information sciences and support services, engineering, mathematics and statistics, biological and biomedical sciences, or physical sciences).

The total number of cap-subject visas increases to 205,000 (180,000 + 25,000). Current law permits 85,000 (65,000 + 20,000).

Cap-exempt H-1B petitions for nonprofit and research institutions remain unlimited (no change from current law).

***H-1B visa: pre-
vailing wage***

4211

Current wage Level 1 is eliminated from existing 4-level prevailing wage scale, creating a new 3-level wage scale. DOL survey data establishes H-1B wage levels, by occupation and local area:

- Level 1 is “the mean of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed.”
- Level 2 is “the mean of wages surveyed” (average wage of all workers in an occupation in a local area).
- Level 3 is “the mean of the highest two-thirds of wages surveyed.”

If the employer is an H-1B dependent employer (i.e., if more than 15 percent of the employer’s workforce possesses an H-1B visa) the employer must:

- offer each H-1B nonimmigrant a wage that is not less than the Level 2 wage level; and
- provide working conditions for H-1B nonimmigrants that will not adversely affect the working conditions of other workers similarly employed.

H-1B visa: prevailing wage for educational, non-profit, research, and governmental entities

If the employer of an H-1B nonimmigrant worker is an institution of higher education, or a related or affiliated nonprofit entity; or a nonprofit research or governmental research organization; the prevailing wage level is calculated based on wages earned by employees at such institutions and organizations in the area of employment. (Under current law, all employers use the applicable prevailing wage, which is calculated by occupation and local area, and includes all workers in a given occupation.)

4211

The governmental survey providing prevailing wage levels must provide at least 4 levels of wages commensurate with experience, education, and the level of supervision.

If an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.

For institutions of higher education, only teaching positions and research positions may be paid using this special educational wage level.

H-1B visa: worker mobility

If an H-1B worker's employment relationship is terminated before the visa expires, the worker has 60 days to find a new sponsoring employer. (Current law does not permit periods of unemployment.)

4103

H-1B visa: recruitment of U.S. workers

Updates rules for employers regarding the recruitment of U.S. workers before hiring on H-1B worker:

4211

- All H-1B employers must post job openings online for 30 days on a newly created DOL website;
- all employers must conduct "good faith recruitment" of U.S. workers (currently, only "H-1B dependent" employers must attest to conducting good faith recruitment of U.S. workers); and
- if the employer is an H-1B "skilled worker dependent employer" (a newly created classification meaning that 15% or more of an employer's employees in Occupational Information Network Database Job Zone 4 and 5 occupations possess H-1B visas), the employer must offer the job to any equally or better-qualified U.S. worker who applies.

***H-1B visa:
nondisplacement***

4211

An H-1B employer in the new “skilled worker dependent” classification must attest that it has not and will not displace a U.S. worker employed by the employer for 90 days before and after filing the visa petition.

H-1B employers who are not considered “skilled worker dependent employers” are not subject to 90-day nondisplacement attestation unless:

- the employer is filing the H-1B petition with the intent or purpose of displacing a specific U. S. worker from the position to be occupied by the beneficiary of the petition; or
 - workers are displaced who:
 - provide services, in whole or in part, at one or more worksites owned, operated, or controlled by a federal, state, or local government entity, other than a public institution of higher education, that directs and controls the work of the H-1B worker; or
 - are employed as public school kindergarten, elementary, middle school, or secondary school teachers.
-

The H-1B “dependent employer” will now have to attest that it did not and will not displace a U.S. worker employed by the employer for 180 days before or after filing the visa petition (an increase from 90 days under current law).

***H-1B visa: out-
placement***

4211

Non-H-1B dependent firms may outplace H-1B workers (place them with another employer) if they pay a \$500 fee per worker; but H-1B dependent firms are prohibited from outplacement.

Outplacement is permitted if a firm is nonprofit education or research institution, or “primarily a health care business and is petitioning for a physician, a nurse, or a physical therapist or a substantially equivalent health care occupation” and if the firm pays the \$500 fee.

***H-1B visa:
dependent
employers***

4211

The same regulatory definition of an “H-1B dependent employer” at 20 CFR § 655.736(a)(1) is codified in statute.

However, this section clarifies that “intending immigrants” shall not count toward the H-1B dependent calculation.

***H-1B visa: skilled
worker dependent
employers***

4211

H-1B “skilled worker dependent employer” is defined as:

- an employer (other than nonprofit education and research institutions) that employs H-1B nonimmigrants in the U.S. in a number that in total is equal to at least 15 percent of the number of its full-time equivalent employees in the U.S. employed in occupations contained within Occupational Information Network Database (O*NET) Job Zones 4 and 5.
- “Intending immigrants” shall not count toward the H-1B skilled worker dependent calculation.

H-1B and L-1 visa: “intending immigrants” defined

4211

A new concept of “intending immigrant” is created. An intending immigrant is a non-immigrant who intends to work and reside permanently in the U.S., as shown by:

- a pending or approved application for a labor certification filed by a covered employer; or
- a pending or approved immigrant status petition filed by a covered employer.
 - A “covered employer” is: an employer that has filed immigrant status petitions for not less than 90 percent of current employees who were the beneficiaries of applications for labor certification that were approved during the 1-year period ending 6 months before the filing of an application or petition for which the number of intending immigrants is relevant.

H-1B: new Labor Condition Application attestation and reporting requirements

4213

The law on H-1B Labor Condition Applications (LCA) is amended to require new employer attestations regarding recruitment and discrimination.

The employer must now attest on the LCA that it has not advertised any available position specified in the relevant job application in an advertisement that states or indicates that:

- such position is only available to an individual who is or will be an H-1B non-immigrant or an alien participating in optional practical training (OPT) through the F-1 visa program for international students; or
- an individual who is or will be an H-1B nonimmigrant or participant in such OPT will receive priority or a preference in the hiring process for such position.

The employer must attest on the LCA that it has not solely recruited individuals who are or who will be H-1B nonimmigrants or participants in OPT (through the F-1 visa program) to fill a position.

The employer must attest to complying with newly created limits on the total number of H-1B and L visa nonimmigrants that a for-profit employer may employ in its workforce.

If a for-profit employer employs 50 or more employees in the U.S., the sum of the number of nonimmigrant employees with H-1B and L visas may not exceed:

- 75 percent of the total number of employees, for fiscal year 2015;
- 65 percent of the total number of employees, for fiscal year 2016; and
- 50 percent of the total number of employees, for each fiscal year after fiscal year 2016.

“Intending immigrants” are not counted as H-1B or L visa nonimmigrant employees for the purposes of this determination.

- 501(c)(3) nonprofit educational and research employers are exempt from these limits.
- Under a newly created requirement, employers must submit to DHS an annual report that includes the IRS W-2 tax form filed by the employer for each H-1B nonimmigrant employed by the employer during the previous year.

H-1B visa: review of Labor Condition Applications

4214

The standard of review for LCAs are changed from current law, which allows DOL to review an LCA “only for completeness and obvious inaccuracies.” Under this section DOL may review an LCA “for completeness and evidence of fraud or misrepresentation of material fact.”

Under this section DOL must now certify the LCA unless it “presents evidence of fraud or misrepresentation of material fact, or is obviously inaccurate.” This provision changes current law, which requires that DOL certify the LCA unless it “is incomplete or obviously inaccurate.”

Under this section DOL must review and make a determination on an LCA within 14 days, an increase from the 7 days required under current law.

Under current law, DOL must conduct an investigation “if there is reasonable cause to believe...a failure or misrepresentation has occurred [on an LCA].” This section modifies the investigative authority of DOL when reviewing an LCA, granting DOL discretionary investigative authority which allows DOL to conduct an investigation and a hearing if DOLs “review of an application identifies evidence of fraud or misrepresentation of material fact.”

Under current law, an employer must wait until an H-1B LCA petition has been certified by DOL before submitting an I-129 Petition for Nonimmigrant Worker to USCIS. This section amends the law to allow employers to submit the I-129 to DHS before receiving the approved H-1B LCA from DOL. However, the I-129 petition may not be approved by DHS until the LCA has been approved.

***H-1B visa: pro-
cedures for invest-
igation and
disposition of
complaints***

4221

A dedicated toll-free number and publicly available Internet website is created to accept the submission of complaints in the H-1B program.

Regulations must be issued requiring for-profit employers to “inform their employees of such toll-free number and Internet website and of their right to file complaints.”

The statute of limitations on complaints from aggrieved parties regarding violations on an LCA increases from 12 to 24 months.

DOL no longer must show “reasonable cause” before DOL may investigate a complaint (new language states DOL “may initiate an investigation”).

DOL granted new authority to conduct voluntary surveys of the degree to which employers comply with LCA requirements.

New provisions require that DOL:

- conduct annual compliance audits of each employer with more than 100 employees who work in the U.S. if more than 15 percent of employees are H-1B nonimmigrants; and
- make an executive summary or report describing the general findings of the audits available to the public.

DOL’s Inspector General must now report on DOL’s efforts to enforce the requirements in this section one year after enactment and every five years thereafter, to the Committee on the Judiciary and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on the Judiciary and the Committee on Education and the Workforce of the House of Representatives.

***H-1B visa: invest-
igations, working
conditions, and
penalties***

4222

The fine for a failure to meet a condition, a substantial failure to meet a condition on an LCA, or a misrepresentation of material fact on an LCA increases to \$2,000 from \$1,000 under current law.

- New employer liability: an employer is liable for lost wages and benefits to any employee harmed by those LCA violations.

The fine for a willful failure to meet a condition or a willful misrepresentation of material fact on an LCA increases to \$10,000 (from \$5,000 under current law).

- New employer liability: an employer is liable for lost wages and benefits to any employee harmed by those LCA violations.

The period that a U.S. worker cannot be displaced as a result of a failure to meet an LCA condition or a willful misrepresentation of a material fact increases to 180 days before and after the filing of a related petition (from 90 days under current law).

- Administrative remedies are mandatory (versus discretionary under current law).
- New employer liability: an employer is liable for lost wages and benefits to any employee harmed by those LCA violations.

Under the expanded anti-employer retaliation protection in this section, employers may not “take, or threaten to take, a personnel action” against employees for disclosing evidence of a violation in this section or cooperating with an investigation.

Under a newly created rule, employers may not fail to offer H-1B nonimmigrant workers the same benefits and eligibility for benefits, including the opportunity to participate in the following: health, life, disability, and other insurance plans; retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance).

- Violation of this section is subject to a (newly created) \$2,000 fine.

The fine for requiring an H-1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed upon by both parties increases to \$2,000 from \$1,000 under current law.

H-1B visa: initiation of investigations

4223

The current requirement that, in order for DOL to conduct an H-1B investigation, DOL must have reasonable cause to initiate the investigation and must certify that reasonable cause exists, is eliminated.

The current requirement that DOL know the identity of the person who has provided credible information about a possible violation is eliminated. DOL authority is also expanded to apply to issues of compliance with an LCA, not just the “alleged failure or failures” regarding an LCA.

The current provision prohibiting DOL employees from filing complaints regarding an LCA is eliminated, thus permitting them to file complaints.

The statute of limitations for filing a complaint about an LCA increases to 24 months after the date of the alleged failure (from 12 months under current law).

H-1B visa: information sharing

4224

Under a new requirement, USCIS must provide DOL with information submitted by employers as part of the adjudication process if anything indicates the employer is not complying with H-1B program requirements.

- DOL may initiate and conduct an investigation after receiving information about noncompliance.

- This section does not prevent DOL from taking actions related to wage and hour and workplace safety laws.

.....

DOL is required to facilitate the posting of H-1B job descriptions on the website of the state labor or workforce agency for the state in which the position will be primarily located, at the same time the job is posted on DOL's website.

H-1B and L-1 visas: transparency and reporting

4225

Requirements for reporting in USCIS annual H-1B nonimmigrant characteristics report expand to include additional data on H-1B, their employers, and the makeup of the workforces of H-1B employers.

.....

This section requires the creation of a new characteristics report on the L-1 visa (similar to the existing one on H-1B) that includes data on L-1 employers and the makeup of the workforces of L-1 employers.

.....

Responsibility to publish the H-1B and new L-1 characteristics reports and deliver it to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, shifts from USCIS to the new Bureau of Immigration and Labor Market Research.

H-1B: posting available positions through DOL

4231

No later than 90 days after enactment, DOL must establish a searchable, free, and public website for posting H-1B positions.

.....

DOL may work with private companies and nonprofit organizations to develop and operate the website.

.....

DOL must submit to Congress and publish in the Federal Register a notice of the date the website will be operational.

.....

Employers must begin using the website 30 days after the website becomes operational.

H-1B and L-1 visas: information for workers

4232

Under a new requirement, the office issuing the H-1B visa to an applicant outside of the U.S. must provide the applicant with:

- a brochure outlining the obligations of the applicant's employer and the rights of the applicant with regard to employment under federal law, including labor and wage protections; and
 - the contact information for appropriate federal agencies or departments that offer additional information or assistance in clarifying such obligations and rights.
-

Upon approval of an application for H-1B or L-1 status, the same information and materials must be provided to the applicant by DHS if the applicant is inside the U.S. or by DOS if the applicant is outside of the U.S.

Under a new requirement, employers must provide a beneficiary of an LCA or L-1 status with copies of all applications and petitions filed by the employer with DOL and DHS on behalf of the beneficiary.

- The employer may redact any financial or proprietary information.

The Comptroller General must prepare a new report on job classification and wage determinations within one year of enactment.

- The report must analyze the accuracy and effectiveness of the Secretary of Labor's current job classification and wage determination system.
- The report shall:
 - specifically address whether the systems in place accurately reflect the complexity of current job types as well as geographic wage differences; and
 - make recommendations concerning necessary updates and modifications.

H-1B and L-1 visas: new filing fees for dependent employers

4233

New filing fees must be paid by H-1B/L-1 dependent employers as follows:

- For each fiscal year beginning in fiscal year 2015, \$5,000 for applicants that employ 50 or more employees in the U.S. and more than 30 percent, but less than 50 percent of the applicant's employees are H-1B or L nonimmigrants.
- For each of the fiscal years 2015 through 2017, \$10,000 for applicants that employ 50 or more employees in the U.S. and more than 50 percent, but less than 75 percent of the applicant's employees are H-1B or L nonimmigrants.

"Intending immigrants" in H-1B or L visa status are not counted as H-1B or L nonimmigrant employees in this calculation.

Fees collected shall be deposited in the Comprehensive Immigration Reform Trust Fund.

501(c)(3) nonprofit educational and research employers are exempt from these fees.

H-1B visa: applicability of amendments and requirements

4236

Amendments made to the H-1B program in this subtitle only apply to applications filed on or after the date of the enactment of this act.

Amendments made regarding H-1B nondisplacement and recruitment rules shall not apply to any application or petition filed by an employer on behalf of an existing employee.

H-1C visa for nonimmigrant nurses in health professional shortage areas: program reauthorization

The H-1C visa program for nonimmigrant nurses in health professional shortage areas, ended by law on December 20, 2009, is permanently reauthorized, with two main modifications:

- the H-1C annual visa cap is reduced from 500 to 300, and
- an additional 3-year extension of validity period is added; making a total of 6 years permitted (up from the current maximum of 3 years).

4212

H-1C visa for nonimmigrant nurses in health professional shortage areas: worker mobility

If an H-1C worker's employment relationship is terminated before the visa becomes expires, the H-1C worker has 60 days to find a new sponsoring employer (current law does not permit periods of unemployment).

4212

H-4 visa for spouses and children of H-1B visa nonimmigrants

Spouses of H-1B beneficiaries who possess H-4 visas may be employed (currently, H-4 visa beneficiaries may not be employed).

.....
DOS may request that DHS "suspend employment authorizations...to nationals of a foreign country that does not permit reciprocal employment to nationals of the United States who are accompanying or following to join the employment-based nonimmigrant husband or wife of such spouse to be employed in such foreign country based on that status."

4102

J-1 visa for exchange visitors: seafood processing in Alaska

The DOS will no longer ban J-1 Summer Work Travel program participants from being employed in seafood processing occupations in Alaska.

4408

L-1 visa for intracompany transferees: outplacement

This section modifies rules on outplacement of L-1 visa beneficiaries.

.....
Firms must pay a \$500 fee on every outplaced employee

.....
Outplacement is prohibited unless:
.....

4301

- the L-1 beneficiary will not be controlled or supervised principally by the subsequent employer; and
- the placement is not essentially a labor for hire arrangement.

Employers with more than 15% of their workforce on L-1 status are prohibited from all outplacement, outsourcing, leasing, or otherwise contracting of L-1 workers.

L-1 visa for intracompany transferees: new offices

4302

This section modifies rules governing employees sent to the U.S. as an executive or manager (under an L-1 visa) to establish a new office (i.e., a subsidiary or affiliate company) for the foreign employer.

Under a new requirement, an L-1 new office applicant must not have been the beneficiary of 2 or more new office petitions during the immediately preceding 2 years.

For extension of the L-1 under this section, additional evidence is required to prove compliance with the business plan and to prove that business is being conducted at the new office.

L-1 visa for intracompany transferees: verifying existence of foreign companies

4303

DHS will cooperate with DOS to “verify the existence or continued existence of a company or office in the United States or in a foreign country.”

- Some cooperation between DHS and DOS on this already exists and it is not clear what types of additional “cooperation” this section would require.

H-1B and L-1 visa for intracompany transferees: workforce limitation

4304

For the first time, there are limits on the total number of H-1B and L visa nonimmigrants a for-profit employer may have in its workforce.

If a for-profit employer employs 50 or more employees in the U.S., the sum of the number of nonimmigrant employees with H-1B and L visas may not exceed:

- 75 percent of the total number of employees, for fiscal year 2015;
- 65 percent of the total number of employees, for fiscal year 2016; and
- 50 percent of the total number of employees, for each fiscal year after fiscal year 2016.

“Intending immigrants” are not counted as H-1B or L visa employees for the purposes of this determination.

***H-1B and L-1
visa: filing fees***

For-profit employers must pay a new filing fee based on percentage of H-1B and L visa nonimmigrants in the employer's workforce.

- Current law requires a \$500 antifraud fee (for all petitions), and if an employer has 50 or more employees in the U.S. and more than 50 percent of its U.S. employees have H-1B, L-1A or L-1B nonimmigrant status, an additional fee of \$2,000 is required for H-1B petitions and \$2,250 for L-1A and L-1B petitions.

.....
The new filing fees are as follows:

- For each fiscal year beginning in 2014, \$5,000 per L visa applicant if:
 - the employer has 50 or more employees in the U.S., and if
 - more than 30 percent but less than 50 percent of the employees are H-1B or L nonimmigrants.
- For each of the fiscal years 2014 through 2017, \$10,000 per L visa applicant if:
 - the employer has 50 or more employees in the U.S., and if
 - more than 50 percent but less than 75 percent of the employees are H-1B or L nonimmigrants.
- "Intending immigrants" are not counted as H-1B or L visa employees for the purposes of this determination.

***L-1 visa for
intracompany
transferees: com-
plaints against
employers***

DHS has new authority to initiate an investigation of any employer of L-1 nonimmigrants with regard to the employer's compliance with new L-1 requirements.

.....
DHS must have received specific credible information from a source likely to have knowledge of an employer's practices, employment conditions, or compliance with the requirements.

.....
DHS may withhold the identity of a source from an employer and the identity of such source shall not be subject to disclosure.

.....
DHS shall establish a procedure for any person desiring to provide to it with information that may be used to start an investigation.

.....
No investigation (or hearing based on such investigation) may be conducted with respect to information about a failure to comply with L-1 requirements unless DHS receives the information within 24 months after the date of the alleged failure.

.....
Before commencing an investigation DHS shall provide notice to the employer of the intent to conduct such investigation.

4306

- The notice required shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation begins.
- DHS is not required to comply with this clause if it determines that to do so would interfere with an effort to investigate or secure compliance by the employer.

.....
 No judicial review of a determination by DHS is available under this section.

If after an investigation DHS determines that there is a reasonable basis to make a finding that the employer failed to comply with L-1 requirements, DHS shall provide the interested parties with notice of such determination, and an opportunity for a hearing, no later than 120 days after the date of such determination. DHS must make a finding concerning the matter within 120 days after the date of the hearing.

If after a hearing DHS finds a reasonable basis to believe that the employer has violated the L-1 requirements, DHS shall impose a penalty under subparagraph K (§ 4307).

DHS may conduct voluntary surveys regarding the degree to which employers comply with new L-1 requirements.

DHS shall conduct annual compliance audits of each employer with more than 100 employees who work in the U.S. if more than 15 percent of such employees are nonimmigrants in the L category, and make an executive summary or report describing the general findings available to the public.

L-1 visa for intracompany transferees: penalties for violators

4307

.....
 New penalties are instituted for employers who violate L-1 rules.

If an employer fails to meet a condition or a makes a misrepresentation of material fact in a petition to employ L-1 nonimmigrants, DHS shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed \$2,000 per violation) as DHS determines to be appropriate.

- An employer found in violation is prohibited from employing L-1 nonimmigrants for at least one year; and
- the employer shall be liable to the employees harmed for lost wages and benefits.

.....
 For a willful failure by an employer or a willful misrepresentation of material fact in a petition to employ L-1 nonimmigrants, DHS shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed \$10,000 per violation) as DHS determines to be appropriate.

- An employer found in violation is prohibited from employing L-1 nonimmigrants for at least 2 years; and

- the employer shall be liable to the employees harmed for lost wages and benefits.

L-1 visa for intracompany transferees: prohibition on retaliation

4308

Under new rules in this section, an employer who has filed a petition for an L-1 nonimmigrant may not take, or fail to take, or threaten to take or fail to take, a personnel action, or to intimidate, threaten, restrain, coerce, blacklist, discharge, or discriminate in any other manner against an employee because the employee:

- discloses information the employee reasonably believes is evidence a violation of L-1 rules; or
- cooperates or seeks to cooperate with an investigation of alleged noncompliance with L-1 rules.

P-1 visa for athletes

4601

Ski instructors may now be granted either P-1 or H-2B visas (currently they are ineligible for a P-1).

P-1A visa is valid for 5 years with a maximum duration of 10 years (reflecting no change from current law), and is not subject to an annual numerical limit.

V visa for spouses and children of legal permanent residents

2309

Eligibility for V nonimmigrant visas expands from spouses and children of LPRs (under current law) to also include unmarried sons or daughters of U.S. citizens or of LPRs, and married sons or daughters of U.S. citizens who are 31 years old or younger:

- beneficiaries are eligible for work authorization (same as current law), and
- visa validity ends 30 days after a denial of an immigrant visa petition or adjustment of status application.

Eligibility expands to siblings of U.S. citizens and married sons or daughters of U.S. citizens who are older than 31. Such beneficiaries would:

- not be authorized to work;
- have admission limited to 60 days per fiscal year;
- cannot earn points for a merit-based visa while in this status.

Bureau of Immigration and Labor Market Research

4701

A new Bureau of Immigration and Labor Market Research is established “as an independent statistical agency within” USCIS.

The head of the bureau will be a commissioner, appointed by the president, by and with the advice and consent of the Senate.

Duties of the commissioner are:

1. To devise and publish a methodology in the Federal Register (and provide an opportunity for public comment) regarding the calculation of the number of W-1 nonimmigrant visas (W-1 visas are newly created by S.744; see discussion of § 4702 below).
2. To determine and to publish in the Federal Register the annual change to the numerical limitation for the new W-1 visa program.
3. With respect to the W-1 visa program, to supplement the recruitment methods employers may use to attract U.S. workers and current nonimmigrant aliens.
4. With respect to the W-1 visa program, to devise a methodology subject to publication in the Federal Register (and an opportunity for public comment) to designate shortage occupations in Occupational Information Network Database (O*NET) Job Zone 1, 2, and 3 occupations.
 - Such methodology must designate Alaskan seafood processing in Zones 1, 2, and 3 as shortage occupations.
5. With respect to the W-1 visa program, to designate shortage occupations in any Zone 1, 2, or 3 occupation, and publish such occupations in the Federal Register.
 - Alaskan seafood processing in Zones 1, 2, and 3 must be designated as shortage occupations.
6. With respect to the W-1 visa program, to conduct a survey once every 3 months of the unemployment rate of Zone 1, 2, and 3 occupations that are construction occupations in each metropolitan statistical area (MSA).
7. To study and report to Congress on employment-based immigrant and nonimmigrant visa programs in the U.S. and to make annual recommendations to improve such programs.
8. To carry out any functions required to perform the duties described in (1) through (7).

The employees of the bureau shall have the expertise necessary to identify labor shortages in the U.S. and make recommendations to the commissioner on the impact of immigrant and nonimmigrant aliens on labor markets in the U.S.; including expertise in the areas of economics, labor markets, demographics and methods of recruitment of U.S. workers.

The Secretary of Commerce, the Director of the Bureau of the Census, the Secretary of Labor, and the Commissioner of the Bureau of Labor Statistics shall provide data to the

commissioner; conduct appropriate surveys; and assist the commissioner in preparing recommendations.

.....
\$20 million is appropriated from U.S. Treasury to establish the bureau.
.....

Fees from the new W-1 visa program shall be used to establish and fund the bureau, and the Secretary may establish other fees for the sole purpose of funding the W-1 visa program, including the bureau, that are related to the hiring of alien workers.

New W-1 nonimmigrant visa category for nonagricultural occupations

4702

A new W-1 visa category is created for workers having a foreign residence who will come to the U.S. temporarily to perform services or labor for a “registered” nonagricultural employer in a “registered” position.

.....
A new W-2 visa category is created for accompanying spouses and children of W-1 visa beneficiaries.

New W-1 nonimmigrant visa: admission

4703

W-1 nonimmigrants must be “hired by a registered employer in a registered position in a location that is not an excluded geographic location.”

.....
Spouses and minor children of W-1 beneficiaries and admitted with W-2 visas may be employed in the U.S. during the period of admission of the principal W-1 beneficiary and will be provided with an employment authorization document or other appropriate work permit.
.....

A W-1 applicant must be “certified”, provided that the applicant:

- is not inadmissible under the INA;
- passes a criminal background check;
- agrees to accept only registered positions in the U.S.; and
- meets other criteria as established by the DHS.

.....
W-1 nonimmigrants must report to initial place of employment in a registered position not later than 14 days after admission to the U.S.
.....

W-1 visa status is valid for initial period of 3 years and may be renewed for additional 3-year periods. (No maximum limit of 3-year periods is specified.)
.....

A W-1 beneficiary must not be unemployed for more than 60 days at a time, and must depart the U.S. if unable to secure new employment in that time.

New W-1 nonimmigrant visa: registered employers

Employers who wish to hire W-1 nonimmigrants must apply to DHS to become a registered employer. The application must include:

- documentation to establish that the employer is a bona-fide employer;
- the employer's federal tax ID number; and
- the number of W-1 nonimmigrants the employer estimates it will employ annually.

.....

If fraud is suspected, DHS may refer an application to the Fraud Detection and National Security Directorate of USCIS.

.....

The employer application will be denied if after notice and opportunity for a hearing, it is determined that the employer:

- submitted an application that knowingly misrepresented a material fact, made a fraudulent statement, or failed to comply with the terms of such attestations;
- failed to cooperate in the audit process;
- had been convicted of a trafficking offense;
- had within 2 years prior to the date of the application:
 - committed any hazardous occupation orders violation resulting in injury or death under the child labor provisions;
 - been assessed a civil money penalty for any repeated or willful violation of minimum wage provisions; or
 - incurred a civil money penalty for any willful violation of overtime provisions;
- had within 2 years prior to the date of application received a final adjudication for a willful violation or repeated serious violations involving injury or death:
 - under § 5 of the Occupational Health and Safety (OSH) Act of 1970;
 - of any standard, rule, or order promulgated pursuant to § 6 of the OSH Act of 1970; or
 - of a plan approved under § 18 of the OSH Act of 1970.

.....

If DHS denies an employer's application, the employer will remain ineligible to become a registered employer for a length of time to be determined by DHS, but the period of ineligibility will last no more than 3 years.

- However any employer convicted of any human trafficking offense under state or territorial law shall be permanently ineligible to be a registered employer.

.....

Approved applications for registered employers are valid for renewable 3-year terms.

.....

Employer will pay a fee (in an amount to be determined later) for the initial application and application for renewal.

Employer must submit an annual report that demonstrates the employer has provided the wages and working conditions the employer agreed to provide to its employees.

A registered employer may not place, outsource, lease, or otherwise contract for the services or placement of a W-1 nonimmigrant employee with another employer if more than 15 percent of the employer's employees are W-1 nonimmigrants.

New W-1 nonimmigrant visa: registered positions

4703

Registered employers must apply to DHS to designate a position as a "registered" position for a W-1 nonimmigrant. In the application, the employer-applicant must attest to the following:

- the number of full-time equivalent employees of the employer;
- the occupational category, as classified by DOL, for which the registered position is sought;
- whether the occupation for which the registered position is sought is a shortage occupation;
- paying the required wage level, which will be the greater of:
 - the actual wage level paid by the employer to other employees with similar experience and qualifications for the position; or
 - the prevailing wage level for the occupational classification of the position in the MSA of the employment, as determined by the Secretary, based on the best information available at the time of filing the application.
- that the working conditions of W-1 nonimmigrants will not adversely affect the working conditions of other workers employed in similar positions;
- that the employer has carried out the required recruiting activities; that there is no qualified U.S. worker who has applied for the position and who is ready, willing, and able to fill the position;
- that there is no strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the W-1 nonimmigrant will be employed (if such strike, lockout, or work stoppage occurs following submission of the application, the employer will provide notification in accordance with all applicable regulations); and
- that the employer has not laid off and will not lay off a U.S. worker during the period beginning 90 days prior to and ending 90 days after the date the employer files an application, unless the employer has notified such U.S. worker of the

position and documented the legitimate reasons that such U.S. worker is not qualified or available for the position.

- A U.S. worker is not considered to be “laid off” for the purposes of this provision, if at the time such worker’s employment is terminated, the worker is not employed in the same occupation and in the same MSA where the registered position is located.

The prevailing wage for a registered position is determined by:

- a controlling collective bargaining agreement (CBA) or federal contract wage, if applicable;
- if there is no applicable wage CBA or federal contract wage, the wage level commensurate with the experience, training, and supervision required for the job based on Bureau of Labor Statistics (BLS) data; or
- if no BLS-determined wage is available, a legitimate and recent private survey of the wages paid for such positions in the MSA.

The term for a registered position begins on the date of approval and ends on the earlier of the date the employer’s status as a registered employer is terminated; 3 years after the date of such approval; or upon proper termination of the registered position by the employer.

A registry of approved registered positions for which DHS has issued a permit will be created and be accessible on a website.

- State workforce agencies (SWA) shall be linked to the registry and provide access to it through the website maintained by the SWA.
- Each position will be available for viewing on the registry as long as it is validly registered.
- The registry will indicate if each registered position is filled or unfilled.
- If a W-1 nonimmigrant’s employment in a registered position ends, the registry must post the position for 10 calendar days, noting that it is unfilled (unless the job is filled by a U.S. worker before the end of the 10-day period).

An occupation is eligible to be a registered position if it is an O*NET Job Zone 1, Zone 2, or Zone 3 occupation and is not an “excluded” occupation.

- An occupation is excluded if the Occupational Outlook Handbook published by BLS (or a similar successor publication) classifies the occupation as requiring a bachelor’s degree or higher level of education; or if the occupation is in the field of computer operation, computer programming, or computer repair.
-

DOL shall publish the eligible occupations on an ongoing basis on a publicly available website.

If a W-1 nonimmigrant's employment in a registered position ends, the employer may fill that vacancy by hiring a U.S. worker; or after the 10-calendar day posting period ends, by hiring a W-1 nonimmigrant; or a "certified alien."

When a W-1 nonimmigrant commences employment in a registered position for a registered employer, the employer shall pay a registration fee in an amount determined by the Secretary (to fund the operation of the W visa program), as well as an additional fee (to fund operation of the bureau), as follows:

- a fee of \$1,750 if the employer is a small business (defined as 25 or fewer full-time equivalent employees) and more than 50 percent but less than 75 percent of the employees are not U.S. workers;
- a fee of \$3,500 if the employer is a small business and more than 75 percent of the employees of the registered employer are not U.S. workers; or
- a fee of \$3,500 if the employer is not a small business and more than 15 percent but less than 30 percent of the employees are not U.S. workers.

A registered employer may not be required to pay additional registration fees other than what is required in S. 744 if the employer is a small business.

DHS may not approve an application for a registered position if the employer is not a small business and 30 percent or more of the employees are not U.S. workers.

No application for a registered position filed by a registered employer for an eligible occupation may be approved if the position is located in an MSA that has an unemployment rate that is more than 8.5 percent as reported in the most recent month preceding the date that the application is submitted, unless:

- the commissioner has identified the eligible occupation as a shortage occupation; or
- DHS approves the registered position under the special allocation provisions.

New W-1 nonimmigrant visa: recruitment of workers for W-1 visa jobs

A position may not be a registered position unless the registered employer advertises the position for 30 days, including the wage range, location, and proposed start date:

- on the Internet website maintained by the DOL for the purpose of such advertising;
- with the SWA where the position will be located; and

4703

- except as provided for in certain situations, carries out not less than 3 of the described recruiting activities.
- The 30-day periods required on DOL and SWA websites may occur at the same time.

Required recruiting activities for a position shall consist of any combination of the following as defined by DHS:

- advertising such position at job fairs;
- advertising such position on the employer's external website;
- advertising such position on job search websites
- advertising such position using presentations or postings at vocational, career technical schools, community colleges, high schools, or other educational or training sites;
- posting such position with trade associations;
- utilizing a search firm to seek applicants for such position;
- advertising such position through recruitment programs with placement offices at vocational schools, career technical schools, community colleges, high schools, or other educational or training sites;
- advertising such position through advertising or postings with local libraries, journals, or newspapers;
- seeking a candidate for such position through an employee referral program with incentives;
- advertising such position on radio or television;
- advertising such position through advertising, postings, or presentations with newspapers, websites, job fairs, or community events targeted to constituencies designed to increase employee diversity;
- advertising such position through career day presentations at local high schools or community organizations;
- providing in-house training;
- providing third-party training;
- advertising such position through recruitment, educational, or other cooperative programs offered by the employer and a local economic development authority;
- advertising such position twice in the Sunday advertisements in the primary daily circulation newspaper in the area; and/or
- any other recruitment activities determined to be appropriate to be added by the commissioner of the bureau.

***New W-1 nonimmigrant visa:
annual numerical
limit***

Except for additional specially allocated registered positions, the maximum number of registered positions that may be admitted as W-1 nonimmigrants is 20,000 in the first year the program is established, 35,000 in the second year, 55,000 in the third year, and 75,000 in the fourth year.

After the fourth year, the annual limit will be equal to the sum of the sum of the number of registered positions available for the preceding year; and the product of the number of registered positions available for the preceding year; multiplied by an index that is the sum of the following calculated amounts and assigned weights – i.e., will be equal to (number of registered positions the preceding year) + (number of registered positions the preceding year X the sum of the 4-part index below):

- the number of registered positions that registered employers applied to have approved for the preceding year minus the number of registered positions approved for the preceding year; divided by the number of registered positions approved for the preceding year (20 percent weight);
- the number of registered positions the commissioner recommends be available for the current year minus the number of registered positions available for the preceding year; divided by the number of registered positions available for the preceding year (20 percent weight);
- the number of unemployed U.S. workers for the preceding year minus the number of unemployed U.S. workers for the current year; divided by the number of unemployed U.S. workers for the preceding year (30 percent weight); and
- the number of job openings as set out in the Job Openings and Labor Turnover Survey (JOLTS) of the BLS for the current year minus such number of job openings for the preceding year; divided by the number of such job openings for the preceding year (30 percent weight).

The number of registered positions calculated under this formula for a 12-month period may not be less than 20,000 nor more than 200,000.

Every year 50 percent of registered positions are allocated for the first 6 months of the year and the remaining 50 percent are allocated for the following 6 months.

- During the second, third, and fourth months of each 6-month period, one-third of the number of registered positions allocated for such period shall be approved only for a registered employer that is a small business.
- Any such registered positions not approved for small businesses during these months shall be available for any registered employer during the last 2 months of the 6-month period.

No more than 33 percent of the registered positions made available for a year may be granted to perform work in a construction occupation.

- The number of registered positions granted to perform work in a construction occupation may not exceed 15,000 in any year and 7,500 for any 6-month period.

.....

A registered employer may not hire a certified alien for a registered position to perform work in a construction occupation if the unemployment rate for construction occupations in the corresponding occupational job zone in that MSA is more than 8.5 percent.

- The unemployment rate shall be determined using the most recent survey taken by the bureau; or if a survey by the bureau is not available, using a recent and legitimate private survey.

.....

In addition to the number of registered positions made under the formula described, DHS shall make available for the year an additional number of registered positions for shortage occupations in a particular MSA.

.....

In addition to the number of registered positions made under the formula or for shortage occupations, DHS also has the authority to make an additional number of special allocations of registered positions for the year available to specific registered employers if:

- the maximum number of registered positions available have been approved for the year and none remains available; or
- a registered employer is located in an MSA that has an unemployment rate that is more than 8.5 percent as reported in the most recent month preceding the date that the application is submitted.

.....

Hiring a W-1 nonimmigrant for a special allocation position requires an employer to conduct additional recruitment of U.S. workers and to pay a higher prevailing wage.

- The registered employer must have carried out at least 7 of the recruiting activities listed in the section.
 - If an employer hires a W-1 nonimmigrant who is not an initial W-1 nonimmigrant entering the U.S. for initial employment, the employer must conduct only 3 of the recruitment activities listed in the section.
 - Any registered employer registering any position under the special allocation authority must post the position, including the wage range, location, and initial date of employment, for not less than 30 days on the website maintained by DOL and with the SWA of the state where the position will be located.
 - An initial W-1 nonimmigrant entering the U.S. for initial employment pursuant to a special allocation position may not be paid less than the greater of the Level 4 wage set out in the Foreign Labor Certification Data Center Online Wage Library (or similar successor website) maintained by DOL for such occupation in
-

the MSA or the mean of the highest two-thirds of wages surveyed for the occupation in the MSA.

- Employers are not required to pay the higher wage level to workers who are already in W-1 nonimmigrant status.

.....
Each registered position made available for a year under a special allocation shall reduce by one the number of registered positions made available under the normal W-1 visa cap for the following year or the earliest possible year for which a registered position is available. Additional allocations of positions made for “Animal Production Subsectors” shall not be reduced by any registered position made available under a special allocation.
.....

In addition to the number of registered positions made available for a year, DHS shall make additional registered positions available for the year for occupations designated by DOL as “Animal Production Subsectors.” The numerical limitation for such additional registered positions shall be no more than 10 percent of the annual numerical limit.

New W-1 nonimmigrant visa: workers’ rights

4703

A W-1 nonimmigrant may terminate employment with a registered employer for any reason and seek and accept employment with another registered employer in any other registered position within the terms and conditions of the nonimmigrant’s visa.
.....

A registered employer may promote a W-1 nonimmigrant if the W-1 nonimmigrant has been employed with that employer for at least 12 months. Such a promotion shall not increase the total number of registered positions available to that employer.
.....

A W-1 nonimmigrant shall not be denied any right or any remedy under federal, state, or local labor or employment law that would be applicable to a U.S. worker in a similar position because of the alien’s status as a nonimmigrant worker.
.....

A W-1 nonimmigrant may not be required to waive any substantive rights or protections under this Act.
.....

A W-1 nonimmigrant is prohibited from being treated as an independent contractor under any federal or state law:

- no person, including an employer or labor contractor and any persons who are affiliated with or contract with an employer or labor contractor, may treat a W-1 nonimmigrant as an independent contractor;
- however, this may not be construed to prevent registered employers who operate as independent contractors from employing W-1 nonimmigrants.

.....
Fees related to the hiring of a W-1 nonimmigrant worker required to be paid by the employer may not be deducted from the wages or other compensation paid to a W-1 nonimmigrant.
.....

The cost of round trip transportation from a W-1 nonimmigrant's home to the location of a registered position and the cost of obtaining a foreign passport are not required to be paid by the employer.

An employer shall comply with all applicable federal, state, and local tax laws with respect to each W-1 nonimmigrant employed. (It is not yet clear which taxes will be applicable to W-1 nonimmigrants and which ones will not.)

It shall be unlawful for an employer of a W-1 nonimmigrant to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner discriminate against an employee or former employee because the employee or former employee:

- discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this section; or
- cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this section.

New W-1 nonimmigrant visa: complaints, enforcement, and penalties

4703

DHS shall establish a process for the receipt, investigation, and disposition of complaints by an aggrieved applicant, employee, or nonimmigrant (or a person acting on behalf of such applicant, employee, or nonimmigrant) with respect to:

- the failure of a registered employer to meet a condition; or
 - the layoff or nonhiring of a U.S. worker.
-

DHS will promulgate regulations for the receipt, investigation, and disposition of complaints by an aggrieved W-1 nonimmigrant.

- No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed no later than 6 months after the date of such violation.
 - DHS shall conduct an investigation under this subsection if there is reasonable basis to believe that a violation of this section has occurred.
 - No later than 30 days after a complaint is filed, DHS shall determine if there is reasonable cause to find such a violation.
 - No later than 60 days after DHS makes a determination of reasonable basis, DHS shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with § 556 of title 5, U.S. Code.
 - No later than 60 days after the date of a hearing under this paragraph, DHS shall make a finding on the matter.
-

A complainant who prevails in an action under this subsection with respect to a claim related to wages or compensation for employment shall be entitled to an award of reasonable attorney's fees and costs.

A complainant who files a frivolous complaint for an improper purpose under this subsection shall be liable for the reasonable attorney's fees and costs of the person named in the complaint.

DHS may bring an action in any court of competent jurisdiction:

- to seek remedial action, including injunctive relief;
 - to recover the damages; or
 - to ensure compliance with provisions on retaliation and discrimination.
-

The rights and remedies provided to W-1 nonimmigrants are in addition to any other contractual or statutory rights and remedies of workers, and are not intended to alter or affect such rights and remedies.

If after notice and an opportunity for a hearing, DHS finds a violation, DHS may impose administrative remedies and penalties, including:

- back wages;
 - benefits; and
 - civil monetary penalties.
-

DHS may impose, as a civil penalty:

- a fine of no more than \$2,000 per violation per affected worker and \$4,000 per violation per affected worker for each subsequent violation;
 - if the violation was willful, a fine of no more than \$5,000 per violation per affected worker; and
 - if the violation was willful and if in the course of such violation a U.S. worker was harmed, a fine of no more than \$25,000 per violation per affected worker; or
 - for knowingly failing to materially comply with the terms of representations made in petitions, applications, certifications, or attestations under this section:
 - a fine of no more than \$4,000 per aggrieved worker; and
 - upon the occasion of a third offense of failure to comply with representations, a fine of no more than \$5,000 per affected worker and designation as an ineligible employer, recruiter, or broker for purposes of any immigrant or nonimmigrant program.
-

Any person or employer who knowingly misrepresents the number of full-time equivalent employees they employ or the number of their employees who are U.S. workers for

the purpose of reducing a fee or circumventing the annual cap shall be fined up to \$25,000 or imprisoned no more than one year, or both.

DHS shall monitor the movement of W-1 nonimmigrants in registered positions through the E-Verify system; and a new electronic monitoring system.

- DHS, through USCIS, shall implement a new electronic monitoring system to monitor the presence and employment of W-1 nonimmigrants, including a requirement that registered employers update the system when W-1 nonimmigrants start and end employment in registered positions.
- The new system shall be modeled on the Student and Exchange Visitor Information System (SEVIS) and SEVIS II tracking system of U.S. Immigration and Customs Enforcement.
- The new system shall interact with the DOL job registry to ensure that DHS designates and updates approved registered positions as being filled or unfilled.

New X nonimmigrant visa for investors and entrepreneurs

4801

A new “INVEST” visa program (X visa) is created for a “qualified entrepreneur” who:

- in the preceding 3 years before applying for an X visa has been 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 or combination thereof, and has made a qualified investment or combination of investments of no less than \$100,000 in the applicant’s U.S. business entity; or
- in the preceding 3 years before applying for an X visa, has a U.S. business entity that created no fewer than 3 qualified jobs and during the 2-year period before the application has generated no less than \$250,000 in annual revenue from business conducted in the U.S.

X visas will be valid for renewable 3-year terms.

Renewal of an X visa requires:

- qualified investments of no less than \$250,000 in total; or
- creation of no fewer than 3 qualified jobs and no less than \$250,000 in annual revenue in the past 2 years from business conducted in the U.S.

The Department of Commerce may grant a waiver of renewal requirements for one year at a time if substantial progress is made in meeting requirements and if the renewal is economically beneficial to the U.S.

There is a \$1,000 fee for X visas that is to be deposited in Comprehensive Immigration Reform Trust Fund.

Immigrant visa categories

The legislation outlines major reforms to the existing employment-based (EB) and family-based (FB) immigrant visa programs that grant legal permanent resident (LPR) status. It would exempt many existing employment based subcategories from annual numerical limits and change the share of total visas allotted to major categories. It would also create two new “merit-based” immigrant visa programs One has a corresponding point system. The other is intended to eventually clear the existing and future backlog of EB and FB visas, and serve as the program for eligible applicants who wish to transition from Registered Provisional Immigrant status to LPR status. Two immigrant visa categories would be eliminated: the Diversity Visa “lottery” and the fourth FB preference for adult brothers and sisters of U.S. citizens. The definition of “immediate relative” would be amended to include the spouses and children of LPRs.

Issue	Substance	Bill Section
<p><i>Establishment of new “merit-based” Track 1: Tier 1 and Tier 2</i></p>	<p>A new merit-based point system, known as Track 1, with two tiers (Tier 1 and Tier 2) is created to allocate employment-based immigrant visas (granting LPR status) to applicants who satisfy requirements.</p> <p>Applicants for merit-based immigrant visas under Track 1 may “self-petition”, meaning applicants do not require that a U.S. employer petition on their behalf.</p> <p>Applicants for merit-based immigrant visas under Track 1 do not have to be employed by a U.S. employer or have a job offer from a U.S. employer.</p> <p>The initial annual allocation of visas is set at 120,000, with an eventual maximum limit (cap) of 250,000.</p> <p>Annual increases are made as follows:</p> <ul style="list-style-type: none"> ▪ if the level of visas is less than 75 percent of the number of applicants in a fiscal year, the cap will increase by 5 percent for the next fiscal year; and ▪ if the level of visas is equal to or more than 75 percent of visas in a fiscal year, the cap will remain the same the next fiscal year, minus any amount added for the recapture of unused visas from the previous year. <p>There will not be an annual increase if in the previous year the annual average unemployment rate for workers 18 years or older was more than 8.5 percent.</p> <p>Unused visas from a fiscal year are allocated for use the following fiscal year.</p> <p>In fiscal years (FY) 2015 through 2017, all merit-based Track 1 immigrant visas are available for skilled workers, professionals, and other workers employed in nonseasonal unskilled labor, as described in current law at INA § 203(b)(3) – (i.e., those listed in the EB-3 cat-</p>	<p>2301</p>

egory, the majority of which are for skilled workers with at least a college degree, and the allocated visas in this Track will be in addition to those in the EB-3 category).

Beginning in FY 2018 Track 1 operates with two tiers (Tier 1 and Tier 2). 50 percent of visas will be allocated to applicants with the highest number of points in Tier 1 (generally, to applicants in professional occupations requiring at least a college degree) and 50 percent to applicants with the highest number of points in Tier 2 (for occupations that do not require a college degree).

Unused visas from Tier 1 and Tier 2 are recaptured and available the following fiscal year:

- two-thirds of unused Tier 1 visas are reserved for Tier 1, and the remaining one-third may be allocated to either Tier 1 or 2; and
- two-thirds of unused Tier 2 visas are reserved for Tier 2, and the remaining one-third may be allocated to either Tier 1 or 2.

Points in Tier 1 are allocated according to the applicant's:

- level of educational attainment;
- employment experience in the U.S.;
- current job or the existence of a job offer in a field related to the applicant's education;
- entrepreneurship (defined as an applicant who is an entrepreneur in business that employs at least 2 employees in an O*NET Job Zone 4 or 5 occupation).
- current job or the existence of a job offer in a "high-demand" Tier 1 occupation (defined as 1 of the 5 occupations for which the highest number of nonimmigrants in the H-1B, H-1B1, and H-1C programs were sought to be admitted by employers during the previous fiscal year);
- English language skills;
- age;
- country of origin (specifically, if the applicant's country of origin is one from which fewer than 50,000 nationals were lawfully admitted to permanent residence in the U.S. in the previous 5 years).

Points are also allocated if the applicant has a U.S. citizen sibling or is over 31 years of age and is the married son or married daughter of a U.S. citizen.

Points in Tier 2 are allocated according to the applicant's:

- employment experience in the U.S.;
- current job or the existence of a job offer in a "high-demand" Tier 2 occupation (defined as 1 of the 5 occupations for which the highest number of positions were

sought to become registered positions by employers in the W-1 visa program during the previous fiscal year) or in a Zone 1, 2, or 3 occupation;

- status as a primary caregiver;
- record of “exceptional employment”, as determined by DHS (determined by factors including promotions, longevity, changes in occupations from a lower Job Zone to a higher Job Zone, participated in safety training, and increases in pay);
- civic involvement;
- demonstrated proficiency and knowledge of the English language;
- age; and
- country of origin (specifically, if the applicant’s country of origin is one from which fewer than 50,000 nationals were lawfully admitted to permanent residence in the U.S. in the previous 5 years).

.....
See Appendix B, Tables 1 and 2 for a full list of categories and point values.
.....

The applicant must pay a \$1,500 fee.
.....

Persons in RPI status are not eligible to apply for Track 1.
.....

Persons with pending petitions in other immigrant categories may not simultaneously apply to Track 1.
.....

The Comptroller General must study the merit-based system for 7 years, and then submit a report to Congress on its findings no later than 7 years after enactment.
.....

Secretary of DHS may submit to Congress a proposal to modify the number of points allocated in the categories.

***Establishment
of new
“merit-based”
Track 2***

A new system will allocate immigrant visas (granting LPR status) to applicants who satisfy certain requirements.
.....

Applicants for immigrant visas under Track 2 may “self-petition”, meaning applicants do not require that a U.S. employer petition on their behalf.
.....

Applicants for Track 2 merit-based immigrant visas do not have to be employed by a U.S. employer or have a job offer from a U.S. employer.
.....

After October 1, 2014, the following categories of applicants are eligible to apply for visas in Track 2:

- a beneficiary of a petition for an employment-based or family-based immigrant visa if the visa has not been issued within five years and if the petition was filed prior to enactment;
-

2302

- a beneficiary of a petition for a married son or married daughter of a U.S. citizen, or for the brother or sister of a U.S. citizen, if the visa has not been issued within 5 years and was filed after enactment; or
- an individual not admitted to the U.S. in the new W visa program; and who has been lawfully present in the U.S. in a status that allows for continuous employment authorization for no less than 10 years.

.....

Employment-based Track 2 allocation of visas:

- For FY 2015–2021, the number of visas each year is equal to one-seventh of the number of employment-based petitions filed prior to enactment that have been pending for at least 5 years.

.....

Family-based Track 2 allocation of visas:

- Visa petitions for status as the spouse or child of an LPR are converted to petitions for status as “immediate relatives” (the immediate relative category is not subject to an annual numerical limit).
- For FY 2015–2021 the number of visas will be one-seventh of the number of family-based petitions that have been pending for 5 years and filed prior to enactment, minus the number of spouses and children of LPRs (which are converted to the “immediate relative” category on the date of enactment).
- In FY 2022, visas shall be allocated in a number equal to one-half the number of beneficiaries of petitions in immigrant categories for married children of U.S. citizens and siblings of adult U.S. citizens, whose visas had not been issued by October 1, 2021.
- In FY 2023, visas shall be allocated in a number equal to one-half the number of beneficiaries of petitions in immigrant categories for married children of U.S. citizens and siblings of adult U.S. citizens, whose visas had not been issued by October 1, 2022.
- Family-based petitions filed before enactment and not issued within 5 years shall be issued without per-country limits and according to preference in INA § 203(a).

.....

Beginning in FY 2029, individuals eligible for adjustment of status in Track 2 who were not admitted to the U.S. in the new W visa program and were lawfully present in the U.S. in a status that allows for continuous employment authorization for no less than 10 years, must now be lawfully present in an employment authorized status for 20 years prior to filing an application for adjustment of status.

*Diversity visa
program
repealed*

.....

Beginning October 1, 2014, the Diversity Visa (DV) program is repealed.

.....

2303

Under the current DV program, 55,000 immigrant visas are allocated annually by lottery to alien applicants from countries with low rates of immigration to the U.S.

- At present, the annual limit of 55,000 is temporarily reduced by 5,000 by the Nicaraguan and Central American Relief Act, P.L. 105-100 (1997).

.....
DV beneficiaries selected in FY 2013 or FY 2014 remain eligible.

Employment-based immigrant visas: levels and recapture

2304

The following new immigrant visa levels take effect the first day of the first fiscal year after enactment:

- Employment-based (EB) visas in existing preference categories in each fiscal year after FY 2015 are equal to 140,000 plus unused family-based visas from previous fiscal year.
- Employment-based visas in FY 2015 are equal to 140,000 plus unused family-based visas from the previous fiscal year and the number of unused employment-based visas from FY 1992 to 2013, as of the day before the date of the enactment.

Family-based immigrant visas: levels and recapture

2304

The following new immigrant visa levels take effect the first day of the first fiscal year after enactment.

- Family-based visas in each fiscal year after FY 2015 are equal to 480,000 minus the number of visas granted in the immediate relative category, and unused employment-based visas from the previous fiscal year.
- Family-based visas in FY 2015 are equal to 480,000 minus the number of visas granted in the immediate relative category, and unused employment-based visas from the previous fiscal year, and unused family-based visas from FY 1992 to 2013.

.....
The total may not be fewer than 226,000, except that beginning on the date that is 18 months after the date of the enactment, the total may not be less than 161,000.

Family-based immigrant visas: redefinition of “immediate relative” classification

2305

Under current law, an “immediate relative” for purposes of family-based immigration “means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age.” An “immediate relative” is not subject to annual numerical limits on permanent resident visas.

.....
This section of S. 744 keeps the current definition of immediate relative but reclassifies and adds other categories of aliens who shall now be considered immediate relatives and not subject to annual numerical limits on permanent resident visas:

- a child (under 21 years old) or spouse of an alien lawfully admitted for permanent residence; and
- a child (under 21 years old) or spouse of an alien lawfully admitted for permanent residence who is accompanying or following to join the alien; as well as a child or a spouse of the accompanying alien.

Work authorization for VAWA self-petitioners

Self-petitioners under the Violence Against Women Act (VAWA) are eligible for work authorization on the earlier of:

2305

- the date their petition has been approved; or
- a date determined by DHS that is no later than 180 days after filing the petition.

Employment and family-based immigrant visas: numerical limits on individual foreign states

The employment-based per-country immigrant visa limit of 7 percent of total employment-based visas (under current law) is repealed (there is no limit under S. 744).

2306

The family-based per-country visa limit of 7 percent of total family-based visas (under current law) is increased to 15 percent of the family-based visa total.

These changes take effect one year after the date of enactment.

Family-based immigrant visas: reforms to preference allocations

Annual limits are raised in certain family-based immigrant visa categories:

2307

- The annual limit on permanent resident visas for adult (21 years of age or older) unmarried sons and unmarried daughters of U.S. citizens is raised from 23,400 to maximum of 56,530 (or 35 percent of worldwide level).
- The annual limit on permanent resident visas for adult married sons or married daughters of U.S. citizens, who are 31 years of age or younger at the time of filing is a maximum of 40,250 (or 25 percent of worldwide level). (Under current law the limit is 23,400 and applies to all married sons or daughters, S. 744 caps the age at 31).
- The annual limit of 26,220 permanent resident visas for unmarried sons and daughters of LPRs is changed to a maximum of 40 percent of worldwide levels, plus any visas not used for the unmarried sons and daughters of U.S. citizens.

The fourth family-based preference category, for adult (21 years of age or older) brothers and sisters of U.S. citizens, is eliminated (under current law the annual limit is 65,000).

Employment-based immigrant visas: reforms to preference allocations

Certain existing employment-based immigrant visa categories (including new subcategories created in this section) are now exempt from annual numerical limits (under current law, they would be subject to annual limits based on the appropriate corresponding employment-based preference category).

Exemptions from numerical limits apply to:

- derivative beneficiaries (spouses and children) of employment-based immigrants;
- aliens with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim;
- aliens who are outstanding professors and researchers;
- aliens who are multinational executives and managers;
- aliens who have earned a doctorate degree from an institution of higher education in the U.S. or the foreign equivalent (a newly created category);
- alien physicians who have completed the foreign residency requirements under § 212(e) or obtained a waiver of these requirements or an exemption requested by an interested state agency or by an interested federal agency under § 214(l), including those alien physicians who completed such service before the date of the enactment of S. 744.

A new employment-based immigrant visa subcategory is created within the EB-2 category for aliens possessing a master's or higher degree in a field of science, technology, engineering, or mathematics (STEM). This new STEM subcategory is exempt from annual numerical limits and exempt from the permanent labor certification requirement (certification is normally required in EB-2 and conducted by DOL).

- To qualify for a STEM immigrant visa, the alien applicant must have:
 - earned the degree from a U.S. institution of higher education in a STEM field that is included in the Department of Education's Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences and support services, engineering, mathematics and statistics, biological and biomedical sciences, and physical sciences;
 - an offer of employment from a U.S. employer in a field related to such degree; and
 - earned the qualifying graduate degree during the 5-year period immediately before the initial filing date of the petition.
- For the purposes of this section, a "U.S. institution of higher education" means:
 - an institution described in § 101(a) of the Higher Education Act of 1965 or a proprietary institution of higher education (as defined in § 102(b) of such act);
 - an institution:

- classified by the Carnegie Foundation for the Advancement of Teaching on January 1, 2012, as a doctorate-granting university with a very high or high level of research activity; or
- classified by the National Science Foundation after the date of enactment of this subparagraph, pursuant to an application by the institution, as having equivalent research activity to those institutions that had been classified by the Carnegie Foundation as being doctorate-granting universities with a very high or high level of research activity; and
- is accredited by an accrediting body that is itself accredited either by the Department of Education or by the Council for Higher Education Accreditation.

.....

The second employment-based preference category (EB-2) is renamed from “Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability” to “Aliens who are members of professions holding advanced degrees or prospective employees of national security facilities.”

.....

EB-2 is also amended to now include:

- alien physicians holding foreign medical degrees that have been deemed sufficient for acceptance by an accredited U.S. medical residency or fellowship program (current law permits alien physicians working in shortage areas or veterans facilities); and
- prospective employees working in a research capacity for federal national security, science, and technology laboratories, centers, and agencies, if they have been lawfully present in the U.S. for 2 years prior to employment (unless DHS waives the presence requirement at the employer’s request).

.....

The annual numerical limit of 140,000 employment-based visas under current law remains in place, subject to the following changes:

- The first employment-based preference category (EB-1) will no longer be subject to the annual numerical limit. Under current law, the EB-1 cap is 28.6 percent (40,040) of all employment-based visas.
 - The numerical limit in the EB-2 category is increased from 28.6 percent of all employment-based visas (40,040) to 40 percent (56,000).
 - The numerical limit in the EB-3 category for “Skilled workers, professionals, and other workers” is increased from 28.6 percent of all employment-based visas (40,040) to 40 percent (56,000).
 - The numerical limit in the EB-4 category for “Certain Special Immigrants” is increased from 7.1 percent of all employment-based visas (9,940) to 10 percent (14,000).
-

- The numerical limit in the EB-5 category for “Employment Creation” is increased from 7.1 percent of all employment-based visas (9,940) to 10 percent (14,000).

.....

The current annual limit of 10,000 EB-3 category visas for workers performing year-round “unskilled labor” for which U.S. workers are unavailable, is repealed.

Employment-based immigrant visas: premium processing for petitions

DHS shall establish and collect:

- a new fee for premium processing of employment-based immigrant petitions; and
- a new fee for premium processing of an administrative appeal of any decision on a permanent employment-based immigrant petition.

4234

Employment-based immigrant visas: increased portability for beneficiaries

A new subsection increases job portability for beneficiaries of approved employment-based immigrant petitions:

- Even if an employer withdraws an approved petition in either the EB-1, EB-2, or EB-3 category, the petition shall remain valid with respect to a new job if:
 - the beneficiary changes jobs or employers after the petition is approved; and
 - the new job is in the same or a similar occupational classification as the job for which the petition was approved.
- The employer’s legal obligations with respect to the petition terminates at the time the beneficiary changes jobs or employers.

4237

.....

DOL must develop a new mechanism to provide the beneficiary of an EB immigrant petition or a prospective employer with sufficient information to determine whether a new position or job is in the same or similar occupation as the job for which the petition was approved.

.....

Under a new rule, an alien (and any eligible dependents) who has filed a petition for immigrant status may concurrently, or at any time thereafter, file an application with DHS for adjustment of status if the immigrant petition is pending or has been approved, regardless of whether an immigrant visa is immediately available at the time the application is filed. (Under current law the applicant must have a visa available before petitioning for adjustment of status.)

- If a visa is not immediately available at the time an application is filed, the beneficiary of the application must pay a supplemental fee of \$500, which shall be deposited in a newly established STEM Education and Training Account. The fee shall not be collected from any dependent accompanying or following to join the beneficiary.

- An application filed pursuant to this section may not be approved until the date on which an immigrant visa becomes available.

Employment-based immigrant visas: new “Invest” immigrant visa

4802

A new sixth employment-based preference category (EB-6) is created with an annual numerical limit of 10,000. This “Immigrant Invest Visa” is for aliens meeting the requirements to be considered a “qualified entrepreneur”. A “qualified entrepreneur” must:

- have a significant ownership interest in a U.S. business entity;
- be employed in a senior executive position of such U.S. business entity;
- submit a business plan to USCIS; and
- have had a substantial role in the founding or early-stage growth and development of such U.S. business entity.

.....
 The following are additional requirements for an Immigrant Invest visa if the applicant is a qualified entrepreneur:

- The alien has maintained valid nonimmigrant status in the U.S. for at least 2 years; and
 - during the 3-year period ending on the date the alien files an initial petition:
 - the alien has a significant ownership in a U.S. business entity that has created no fewer than 5 qualified jobs; and has received a qualified investment or combination of qualified investments of not less than \$500,000; or
 - the alien has a significant ownership interest in a U.S. business entity that has created no fewer than 5 qualified jobs; and generated no less than \$750,000 in annual revenue within the U.S. in the two years prior to filing; and no more than 2 other aliens have received nonimmigrant status under this section on the basis of an alien’s ownership of such U.S. business entity.
 - The alien has maintained valid nonimmigrant status in the U.S. for at least 3 years prior to the date of filing an application for such status;
 - The alien holds an advanced degree in a STEM field; and during the 3-year period ending on the date the alien files an initial petition:
 - the alien has a significant ownership interest in a U.S. business entity that has created no fewer than 4 qualified jobs; and has received a qualified investment or combination of qualified investments of not less than \$500,000 in total to the alien’s U.S. business entity; or
 - the alien has a significant ownership interest in a U.S. business entity that has created no fewer than 3 qualified jobs; and during the 2-year period ending on such date has generated not less than \$500,000 in annual revenue within the
-

U.S.; and no more than 3 other aliens have received nonimmigrant status under this section on the basis of an alien's ownership of such U.S. business entity.

.....
A "qualified job" is defined as a full-time position of a U.S. business entity that is owned by a qualified entrepreneur, if:

- the business is located in the U.S.;
- the position has been filled for at least 2 years by an individual who is not the qualified entrepreneur or the spouse, son, or daughter of the qualified entrepreneur; and
- the position pays a wage that is not less than 250 percent of the federal minimum wage.

Employment-based immigrant visas: EB-5 Regional Center program

The EB-5 Regional Center program (currently at § 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note)) has permanent statutory authority under this section.

.....
DHS must establish a new preapproval process for the EB-5 program.

.....
The director of USCIS must establish new sanctions (including fines, suspension, and debarment) for violation of program rules.

4804

Employment-based immigrant visas: EB-5 reforms

The annual limit of visas set aside for EB-5 "targeted employment areas" increases to 5,000, from 3,000 under current law.

.....
The minimum EB-5 investment required is automatically adjusted by linking it to the percentage change in the Consumer Price Index.

4806

Employment-based immigrant visas: Conrad State 30 program for foreign physicians

The Conrad State 30 program becomes permanent by striking the sunset provision (set for September 30, 2015, under current law).

2401

Employment-based immigrant visas: employment

The date when alien physicians in the Conrad waiver program in health care shortage areas may begin employment is clarified as:

2403

*protections
for physicians*

- 90 days after receiving a waiver of the 2-year foreign residence requirement;
- 90 days after completing graduate medical education or training under a program approved pursuant to INA § 212(j)(1), or
- 90 days after receiving nonimmigrant status or employment authorization,
 - provided that the alien or the alien's employer petitions for such nonimmigrant status or employment authorization within 90 days of completing graduate medical education or training, and
 - the alien agrees to continue to work for a total of not less than 3 years in any status authorized for such employment under this subsection.

.....

There is a new rule for alien physicians who pursued graduate medical education or training in the J-1 visa program (e.g., as a medical resident) and who then apply for a Conrad waiver of the INA § 212(e) foreign residence requirement to work as a physician in a particular state but whose waiver is denied because that state has reached the maximum number of waivers for the year. Under this section, alien physicians with denied waivers will have their nonimmigrant status extended for 6 months if they seek a Conrad waiver to work for an employer in a different state that has not yet requested the maximum number of waivers.

- The physician-petitioner will be authorized to work for the subsequent employer on the date the new waiver application is filed with the state until DHS either denies the waiver or issues employment authorization pursuant to approval of the waiver.

.....

A new rule outlines contractual terms that must be included in employment agreements between alien physicians granted Conrad waivers and health facility or health care organizations. The employment agreements must now:

- specify the maximum number of on-call hours per week (which may be a monthly average) that the alien will be expected to be available and the compensation the alien will receive for on-call time;
- specify whether the contracting facility or organization will pay for the alien's malpractice insurance premiums, including whether the employer will provide malpractice insurance and, if so, the amount of such insurance that will be provided;
- describe all of the work locations where the alien will work and a statement that the contracting facility or organization will not add additional work locations without the approval of the federal agency or state agency that requested the waiver; and
- not include a noncompete provision.

.....

A new rule allows greater flexibility for alien physicians on Conrad waivers seeking to switch employers. If such an alien's employment relationship with a health facility or health care organization terminates during the required 3-year service period, the alien:

- has 120 days, beginning on the date of such termination of employment, to submit to DHS an application or petition to begin employment with another contracting health facility or health care organization in a geographic area or areas which are designated by Health and Human Services as having a shortage of health care professionals;
- shall be considered to be maintaining lawful status in an authorized stay during the 120-day period; and
- shall not be considered to be fulfilling the required 3-year term of service during the 120-day period.

Employment-based immigrant visas: allotment of Conrad 30 waivers

2404

All states shall be allotted a total of 35 waivers of the 2-year residency requirement (increased from 30 under current law) in the Conrad State 30 program for doctors who have received graduate medical training in J-1 nonimmigrant status, if 90 percent of the waivers available to the states receiving at least 5 waivers were used in the previous fiscal year.

- When this allocation increase has occurred, all states shall be allotted an additional 5 waivers for each subsequent fiscal year if 90 percent of the waivers available to the states receiving at least 5 waivers were used in the previous fiscal year.
- If the states are allotted 45 or more waivers for a fiscal year, the states will only receive an additional increase of 5 waivers the following fiscal year if 95 percent of the waivers available to the states receiving at least one waiver were used in the previous fiscal year.

Any increase in allotments shall be maintained indefinitely, unless in a fiscal year, the total number of such waivers granted is 5 percent lower than in the last year in which there was an increase, in which case:

- the number of waivers allotted shall be decreased by 5 for all states beginning in the next fiscal year; and
- each additional 5 percent decrease in such waivers granted from the last year in which there was an increase in the allotment, shall result in an additional decrease of 5 waivers allotted for all states, provided that the number of waivers allotted for all states does not drop below 30.

Employment-based immigrant visas: Non-Minister Religious Worker program

2320

The sunset provision for the Special Immigrant Non-Minister Religious Worker program is eliminated (set for September 30, 2015, under current law).

Jobs for Youth

These sections of the legislation would create a new temporary “Youth Jobs Fund” in the U.S. Treasury to provide summer and year-round employment opportunities to low-income youth in the United States. The program would be funded by a \$10 application surcharge on certain nonimmigrant and employment-based immigrant visa categories. The program would principally be administered by the U.S. Department of Labor, which would disburse funds to qualifying states.

Issue	Substance	Bill Section
<p><i>Establishment of Youth Jobs Fund</i></p>	<p>\$1.5 billion is paid into the new “Youth Jobs Fund” of the U.S. Treasury in fiscal year (FY) 2014 to provide summer and year-round employment opportunities to low-income youth.</p> <p>Funds are available to DOL until December 31, 2014, and shall be available for expenditure by grantees (including subgrantees) until September 30, 2015.</p>	<p>5102</p>
<p><i>Summer employment and year-round employment opportunities for low-income youth</i></p>	<p>DOL shall allocate funds from the Youth Jobs Fund to each state that has a modification to a state plan, approved under § 112 of the Workforce Investment Act of 1998, for providing summer employment and year-round employment opportunities to low-income youth.</p> <p>DOL will issue guidance on submitting plans.</p> <p>The funds made available shall be used to provide summer employment opportunities for low-income youth, with direct linkages to academic and occupational learning, and may be used to provide supportive services, such as transportation or child care that youths may need to participate in the opportunities; and to provide year-round employment opportunities, which may be combined with other activities authorized under § 129 of the Workforce Investment Act of 1998.</p> <p>When administering funds, priority will be given to employment opportunities that:</p> <ul style="list-style-type: none"> ▪ are in emerging or in-demand occupations in the local workforce investment area; or ▪ are in the public or nonprofit sector and meet community needs; and ▪ link participants in year-round employment opportunities to training and educational activities that will provide participants with an industry-recognized certificate or credential. 	<p>5103</p>
<p><i>Visa surcharge</i></p>	<p>DOL will collect a new surcharge of \$10 from any employer that submits an application for:</p>	<p>5105</p>

- an employment-based immigrant visa In the EB-3, EB-4, EB-5, or EB-6 preference categories; and
- a nonimmigrant visa in the C, H-1B, H-1C, H-2A, H-2B, O, P, R, and W visa programs.

DOL shall suspend the collection of the visa surcharge once a cumulative total of \$1.5 billion has been collected.

About the author

Daniel Costa is the director of immigration law and policy research at EPI and an attorney. His current areas of research include a wide range of labor migration issues, including the management of temporary foreign worker programs, both high- and less-skilled migration, and immigrant workers' rights. He has been quoted by numerous media outlets on the topic of immigration. He earned his B.A. from the University of California, Berkeley, and has law degrees from Syracuse and Georgetown.

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Appendix A: Abbreviations

AWPA	Migrant and Seasonal Agricultural Worker Protection Act
BCS	blue card status
BLS	Bureau of Labor Statistics
CBA	collective bargaining agreement
DAE	designated agricultural employer
DHS	U.S. Department of Homeland Security
DOL	U.S. Department of Labor
DOS	U.S. Department of State (State Department)
DV	Diversity Visa program
EAD	employment authorization document
EB	employment-based
FB	family-based
FICA	Federal Insurance Contributions Act (tax)
FLC	foreign labor contractor
FMCS	Federal Mediation and Conciliation Service
FUTA	Federal Unemployment Tax Act
FY	fiscal year
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
LCA	labor condition application
LPR	legal permanent resident
LSC	legal services corporation
MSA	Metropolitan Statistical Area
O*NET	Occupational Information Network
RPI	registered provisional immigrant
SEVIS	Student and Exchange Visitor Information System
SSA	Social Security Administration
STEM	science, technology, engineering, and math
SWA	state workforce agency
USC	United States citizen
USCIS	U.S. Citizenship and Immigration Services
USDA	U.S. Department of Agriculture
VAWA	Violence Against Women Act

Appendix B: Merit-based point values for Track 1

Appendix Table 1 – Track 1, Tier 1

TIER 1		
Appendix Table 1 – Track 1, Tier 1		
Criteria		Points
<i>Education (applicants with a bachelor's receive points but may only receive additional points either for a doctorate or master's degree)</i>	Doctorate (from U.S. institution of higher education or foreign equivalent)	15
	Master's (from U.S. institution of higher education or foreign equivalent)	10
	Bachelor's (from institution of higher education as defined in § 101(a) of the Higher Education Act of 1965)	5
<i>Employment Experience (no more than 20 points total)</i>	Each year the alien has been lawfully employed in an O*NET Job Zone 5 occupation	3/year
	Each year the alien has been lawfully employed in an O*NET Job Zone 4 occupation	2/year
<i>Full-time Employment or Job Offer in a Field Related to the Alien's Education</i>	In an O*NET Job Zone 5 occupation	10
	In an O*NET Job Zone 4 occupation	8
<i>Entrepreneurship</i>	Entrepreneur in a business that employs at least 2 employees in an O*NET Job Zone 4 or Zone 5 occupation	10
<i>High-Demand Occupation</i>	Employed full-time in the U.S. or has a job offer for full-time employment in a high-demand Tier 1 occupation ("high demand Tier 1 occupation" means 1 of 5 occupations for which the highest number of H-1B, H-1B1, and H-1C nonimmigrants were sought to be admitted by employers during the previous fiscal year)	10
<i>Civic Involvement</i>	Engaged in a significant amount of community service	2
<i>English Language</i>	TOEFL score of 80 or more (or an equivalent score on a similar test)	10
<i>Family of a U.S. Citizen</i>	Sibling or married son or daughter over 31 years of age	10
<i>Age</i>	Between 18-24 years old	8
	Between 25-32 years old	6
	Between 33-37 years old	4
<i>Country of Origin</i>	National of a country with fewer than 50,000 nationals admitted to LPR status in previous 5 years	5

Appendix Table 2 – Track 1, Tier 2

TIER 2		
Appendix Table 2 – Track 1, Tier 2		
Criteria		Points
<i>Employment Experience (no more than 20 points total)</i>	Each year of lawful employment in the U.S.	2/year
<i>Special Employment Criteria</i>	<p>Employed full-time in the U.S. or has a job offer for full-time employment in:</p> <ul style="list-style-type: none"> ■ a high demand Tier 2 occupation (“high demand Tier 2 occupation” means 1 of the 5 occupations for which highest number of positions were sought to become registered positions by employers under the new W visa during the previous fiscal year); or ■ An O*NET Job Zone 1, Zone 2, or Zone 3 occupation 	10
<i>Caregiver</i>	Is currently or has been a primary caregiver	10
<i>Exceptional Employment Record</i>	Factors include promotions, longevity, changes in occupations from lower to higher job zone, having participated in safety training, and pay increases	10
<i>Civic Involvement</i>	Demonstrated significant civic involvement	2
<i>English</i>	English proficiency, as determined by a standardized test designated by Secretary of Education	10
	English knowledge, as a determined by a standardized test designated by Secretary of Education	5
<i>Family of a U.S. Citizen</i>	Sibling or married son or daughter over 31 years of age	10
<i>Age</i>	Between 18-24 years old	8
	Between 25-32 years old	6
	Between 33-37 years old	4
<i>Country of Origin</i>	National of a country with fewer than 50,000 nationals admitted to LPR status in previous 5 years	5

Endnotes

1. For example, see Immigration Policy Center (2013), National Immigration Law Center (2013a), Alliance for Citizenship (2013), and American Immigration Lawyers Association (2013).
2. For a useful summary of reforms to the electronic employment verification system in S. 744's Title III, see National Immigration Law Center (2013b).
3. For example, see Murray (2013), Matthews (2013), Agricultural Workforce Coalition (2013), and USA Farmers (2013).

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