

# IMMIGRATION REFORM. IS IT REALLY COMING?

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Finally, there appears to be bipartisan support in moving towards real immigration reform. Whether bipartisan support is motivated by the economic and/or moral need to bring the more than 11 million undocumented immigrants “out of the shadows” or the politicians’ self interest to woo the Latino vote, Congress is expected to unfold its immigration reform proposition any day.

To that end, a bipartisan Senate committee was formed, comprised of four Democrats and four Republicans: Chuck Schumer (NY-D), Dick Durbin (IL-D), Bob Menendez (NJ-D), Michael Bennet (CO-D), John McCain (AZ-R), Lindsey Graham (SC-R), Marco Rubio (FL-R) and Jeff Flak (AZ-R). Thus far, the committee has put together a five point plan. Here are a few of the things we expect to be addressed:

## **Enforcement comes first, green cards second.**

The senators are expected to “demonstrate [their] commitment to securing our borders and combating visa overstays by requiring our proposed enforcement measures be complete before any immigrant on probationary status can earn a green card.” So, expect certain hallmarks to be set and met before truly going forward with reform. Interestingly, there have been more deportations under the current president than in previous years notwithstanding his “immigrant friendly” label.

## **There would be more border security -- and drones.**

As with the failed immigration reform bill of 2007, the proposed legislation will probably call for additional security measures along the border. Although the 2007 bill was largely portrayed as an “amnesty” bill, more than 300 pages of the 700+ pages covered security measures. Further, “amnesty” implies full forgiveness for entering the country without permission. In fact, the 2007 bill as well as this bill had fines incorporated into the framework – not full forgiveness.

Stronger border measures are expected to include drones, border patrol agents, and aerial surveillance. Although there is already an entry-exit system in place, it is not currently

used to notify the government of immigrants who overstay their permission to be here. This is expected to be added as well.

## **Employment verification would be increased.**

The voluntary E-verify program has been in place since 1997. All employers, by law, must complete the Form I-9. After the employee is hired, then the employer and employee are required to complete the I-9 form. If the employer chooses, the employer then enters this employee information into the E-Verify program. The employee’s information is compared to social security records and other government records and returns a result (“valid” or “compliance” required). Currently, more than 350,000 employers use this program across the nation. One criticism of the program is that it can produce “false-positives” and that can affect American jobs. Interestingly, about 20% of the new hires in the Social Security office required additional verification in 2010. 23,000 E Verify compliance letters were sent in the first half of 2012.

E-Verify cannot be used as a pre-screening tool. Nor can it be used on only “suspicious” cases. If an employer uses this program, it must be used on all employees or the employer risks a possible discrimination charge.

## **Pathway to citizenship.**

A bill which would include a pathway to citizenship for the estimated 11 million undocumented immigrants shows a willingness to look at the bigger picture. Citizenship will likely be accomplished in three phases: (1) provisionary, temporary status, (2) legal permanent residence, (3) citizenship. The timeline involved will likely take more than ten years.

The path appears to be an uphill path, but a path nonetheless. Individuals with probationary legal status under the new bill will likely go to the back of the line behind other prospective immigrants. They will also be required to pay taxes, learn English, and maintain employment history. Senators say they recognize many individuals have already applied and are “in line” waiting for their priority date to come current. The new

bill will likely try to avoid allowing this new category of applicants to step in front of those already in line. However, the current law is so antiquated that in some cases even immigrants who have married US citizen and have US children still are unable to apply for residency even though willing. Had they entered with permission, residence would be only a one year wait. On the opposite spectrum, sibling petitions can take up to 22 years depending on their country of birth. Although it is often said new applicants will be placed in the back of the line, exactly where to place this new group of applicants may be more complicated than that.

## **Immigrants waiting for status would not receive public benefits.**

Under the current framework, an immigrant who is under probationary status would not be eligible for federal benefits.

## **Other areas to be addressed.**

**Dream Act.** We hope there will be a special provision addressing the DREAM Act children who came to this country under the age of 16. Currently, these children can apply for certain benefits under the Deferred Action for Childhood Arrivals program implemented by President Obama last year.

**Employment based petitions.** Congress introduced a STEM Jobs Act in the House last year which was opposed by the White House because it wanted comprehensive reform and not a piecemeal solution. Also expected to be introduced is the tremendous backlog in the different visa categories (family and employment). Waiting periods of up to 22 years makes the current immigration system impractical and unusable.

I look forward to the unveiling of Congress’ plan. Hopefully Congress is moving towards a paperless system. Otherwise, I expect whole forests to be destroyed over this issue given the plethora of revisions, memos and articles already in evidence. One last thing, depending on the final bill, everything in the article is subject to change!

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