



Immigration Task Force

Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S.744) vs. Immigration Reform and Control Act of 1986

TOPIC	BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT OF 2013	IMMIGRATION REFORM AND CONTROL ACT OF 1986
<p>Requirements for legalization of non-agricultural unauthorized immigrants</p> <p>IRCA: Title II</p> <p>S.744: Title II Part A</p>	<p>Registered Provisional Immigrant (RPI) status</p> <p><i>Trigger:</i> DHS must submit Comprehensive Southern Border Security Strategy and Southern Border Fencing Strategy (see "Border Security") (Title I).</p> <p><i>Application window:</i> 12 months, DHS secretary may extend by an additional 12 months.</p> <p><i>Residence requirements:</i> Residence since December 31, 2011; continuous physical presence since then.</p> <ul style="list-style-type: none"> Some immigrants deported before December 31, 2011 may apply for RPI status: spouse or parent of US citizen or lawful permanent resident (green card), or a DREAMer. <p><i>Criminal limitations:</i> No legalization for those convicted of a felony, three misdemeanors, or an offense under foreign law.</p> <p><i>Other limitations:</i> Limits legalization for criminal, national security, public health, or other morality grounds.</p> <p><i>Privileges:</i> Travel abroad, employment permitted.</p> <p><i>Deportation:</i> Individuals with removal orders or in removal proceedings may apply.</p> <p><i>Fees:</i> \$500 penalty fee (except DREAMers), payment of outstanding tax assessments, application fees that cover implementation costs. Once status renewed after six years, additional \$500 penalty fee.</p> <p>Lawful Permanent Resident (Green Card) Status available after 10 years.</p> <p><i>Triggers:</i></p>	<p>Temporary Resident Status</p> <p><i>Triggers:</i> None.</p> <p><i>Application window:</i> 18 months.</p> <p><i>Residence requirements:</i> Entered before January 1, 1982; continuously resided unlawfully since then.</p> <p><i>Criminal limitations:</i> No legalization for those who have committed one felony or three misdemeanors.</p> <p><i>Other limitations:</i> No legalization for those who have taken part in political, religious, racial persecution.</p> <p><i>Privileges:</i> Travel abroad, employment permitted.</p> <p><i>Deportation:</i> Those apprehended before the end of the application period must have an opportunity to apply for legalization before deportation proceedings begin.</p> <p><i>Fees:</i> Attorney General granted discretion to charge application filing fees.</p> <p>Lawful Permanent Resident (Green Card) Status</p> <p><i>Triggers:</i> None.</p> <p><i>Residence:</i> Continuous residence since grant of temporary status.</p> <p><i>Criminal:</i> Same criminal requirements as for temporary.</p>





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- Border Security Strategy must be deployed and operational.
- Border Fencing Strategy must be substantially completed. There must be 700 total miles of pedestrian fencing (currently there are 352) with double fencing where deemed appropriate.
- Mandatory employment verification for all employers.
- Electronic exit system at air and sea ports of entry.
- All people waiting for family and employment green cards on date of enactment have had their priority date become current.
- Double the number of Border Patrol agents along the southern border up to at least 38,405.

Residence: Maintained continuous physical presence.

Work: Worked in the United States regularly (spouses and children may petition as derivatives).

Assimilation: Must demonstrate knowledge of Civics and English.

Fees: Back taxes paid in full, additional \$1,000 penalty fee.

Lawful Permanent Residents can apply for citizenship after 3 years

Additional DREAMer exceptions

Can become legal permanent residents after five years, eligible for citizenship immediately after becoming legal permanent residents.

Assimilation: For those 65 and younger, must either demonstrate understanding of English and knowledge of American history and government, *or* must demonstrate pursuit of a course of study in these subjects.

Other provisions

Attorney General may waive most grounds of exclusion to assure family unity or the national interest.

Requirements for legalization of agricultural immigrants

IRCA: Title III Part A

S.744: Title II Part B

Temporary status: Five years of temporary status.

Application window: Initial 1-year period, DHS secretary may extend by 18 months.

Work requirement: Must have performed at least 575 hours or 100 work days of agricultural labor during the 2-year period ending December 31, 2012.

Ongoing work requirement for permanent status: Must work 100 days of agricultural labor in at least five of the eight years after the date of enactment, and at least 150 days in at least three of the five years after the date of enactment (exceptions for extraordinary

Temporary status: No temporary status. Workers adjust directly to permanent status.

Application window: 18 months.

Work requirements: Must have performed at least 90 man-days of agricultural labor during the 12 month period ending May 1, 1986.

Ongoing work requirement: Newly admitted workers may be deported if they do not perform 60 man days of agricultural labor in each of the first two years. May not become naturalized unless they do so in each of the





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circumstances).

Other requirements: Payment of back taxes and \$400 fine. Cannot have been convicted of a serious crime. Must be otherwise admissible as an immigrant.

first five years.

Other requirements: Must be otherwise admissible as an immigrant.

Benefits for legalized immigrants

IRCA: Title II
S.744: Title II Part A

Initial restrictions: During RPI status, no eligibility for Federal means-tested benefits (as defined by 8 USC 1613). RPIs shall be treated as “not lawfully present” under the Affordable Care Act and shall not receive the premium assistance tax credit. Lawful permanent residents are considered to have completed the five-year period specified in 8 USC 1612-13.

Immediately allowed: Permits assistance through programs specified in 8 USC 1613(c)(2), including certain medical assistance, disaster and crisis relief, National School Lunch Act, Child Nutrition Act of 1966, titles IV and XIX of the Social Security Act, and a variety of job training and educational programs.

Initial restrictions: For five years after grant of permanent status, ineligible for federal financial assistance, Medicaid (with exceptions), and food stamps.

Immediately allowed: Permits assistance under National School Lunch Act; Child Nutrition Act of 1966; titles V, XVI, and XX of the Social Security Act; and a variety of job training and educational programs.

Non-immigrant visas (guest workers) for agriculture

IRCA: Title III Part A
S.744: Title II Part B

New guest worker program: Replaces current H-2A program with a portable, at will visa as well as a contract-based visa. Numerical cap begins at 112,333 and is adjusted at USDA secretary’s discretion. H-2A would sunset after replacement programs are operational. Spouses and children do not receive derivative status.

Portability: May seek employment with other employers, within certain limits.

US worker protections: Employers must attempt to recruit US workers through a Department of Labor registry and show proof that those recruitment attempts failed. May not displace US workers. Petitions cannot be approved if the job is open due to a strike or lock-out or if the employer or their state does not provide workers’ compensation at no cost to workers.

New guest worker program: Creates the H-2A visa for temporary agricultural workers. No numerical cap.

Portability: Bound to employer, cannot seek employment elsewhere.

US worker protections: Employers must certify that U.S. workers are unavailable and that U.S. workers’ wages, conditions would not be adversely affected. Petitions cannot be approved if the job is open due to a strike or lock-out, if the employer or their state does not provide workers’ compensation at no cost to workers, or if employer has not recruited in the region.

Non-immigrant visas (guest workers) for areas other than agriculture

High-skill visas

Expands H-1B cap from 65,000 plus 20,000 advanced degree holders, to a flexible cap of 115,000-180,000 plus 25,000 advanced degree holders. Based on the previous year’s demand, the cap may fluctuate by between 5,000 and 20,000 visas (up or down).

None





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IRCA: None
S.744: Title IV

Increases prevailing wage requirements for H-1B visa holders, mandates advertising job to American workers first.

Phases in maximum share of employees that may be on H-1B and L-1 visas. By FY2016, employers who are more than 50% H-1B and L-1 cannot apply for further visas.

Prohibits outplacement of L-1 and H-1B visa holders for dependent employers.

Low-skill W visa

Creates new W visa for low-skill workers with less than a bachelor's degree.

Employers register for slots/positions and conduct recruitment for the position. Workers apply for the slots through a database system.

Workers may transfer between employers and renew their visa for unlimited three year periods.

Employer registrations are limited for construction industry.

Family members are permitted to accept employment.

The minimum cap is 20,000 and the maximum is 200,000. The cap starts at 20,000 visas and would escalate to 75,000 in Year 4. In subsequent years, the cap would change based on a formula that accounts for visa demand, job openings, and unemployment.

Employers are permitted to register for slots above the annual quota if they are only planning transferring an existing W visa worker.

Contains wage and worker protection requirements.

Border security and enforcement (except employment)

IRCA: Title I Part B

S.744: Title I

Border assets: Appropriates \$4.5 billion (for the first 5 years after enactment) for Comprehensive Southern Border Security Strategy and \$8 billion (for the first 5 years after enactment) for Southern Border Fencing Strategy. DHS secretary must submit each within 180 days of enactment. Border security strategy to include surveillance, unmanned aerial systems, and \$30 billion for 19,200 additional border agents.

Border security goal: Sets goal of 90 percent effectiveness rate in a fiscal year for all southern border

Border assets: Mandates 50 percent increase in border patrol personnel in FYs 1987 and 1988 (compared to FY 1986 level).

Border security goal: None.

Additional provisions:

- Revises penalties for unlawful transportation of unauthorized aliens into the U.S.
- Creates approval process that owners of





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sectors. If not reached within 5 years, bipartisan commission has \$2 billion to implement further security measures.

Additional provisions:

- Additional 3,500 customs agents.
- National guard authorized to provide several types of assistance. Funds additional border patrol stations and bases. Increases Operation Stonegarden funding. Strengthens border patrol training, including on racial profiling.
- Authorizes funding to increase border crossing prosecutions in the Tucson sector to 210 per day. Authorizes funding to help states, localities incarcerate criminal unauthorized immigrants.
- Grants DHS access to all federal lands. Funds radio interoperability between law enforcement agencies.

railroad lines, international bridges, and toll roads can use as evidence they complied with their obligation to prevent illegal entries.

<p>Interior enforcement</p> <p>IRCA: Title I Part B</p> <p>S.744: Title III, Subtitle G</p>	<p>U visa expansion for whistleblowers.</p> <p>Immigration court expansion.</p> <p>Special program for street gangs in the US.</p>	<p>Increases funding for INS and Executive Office of Immigration Review. Authorizes funding for wage and hour enforcement.</p> <p>Requires INS to have consent or a warrant before entering a farm to interrogate persons to determine if undocumented aliens are present.</p>
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<p>Employment verification and employer sanctions</p> <p>IRCA: Title I Part A</p> <p>S.744: Title III Part A</p>	<p><i>Employment verification:</i> Mandates development of an employment verification system. E-Verify continues to operate until new system is developed. System phased in based on size of employer. Becomes mandatory for all employers “not later than 4 years after regulations are published implementing this subsection.” Tribal government employers have an additional year.</p> <p><i>Verification system development:</i> Employment verification system must include photographs and other DHS-determined identifying information. Institutes due process protections for workers wrongly rejected due to system errors.</p> <p><i>Employer sanctions:</i> Increases penalties both civil and criminal.</p> <p><i>Document and identity fraud:</i> Enables workers to “lock” social security numbers (SSN) to prevent fraudulent</p>	<p><i>Employment verification:</i> Employers must attest to having examined employee’s document evidencing identity and work authorization, and that such document “reasonably appears on its face to be genuine.” Worker must attest to his/her status in the U.S.</p> <p><i>Verification system development:</i> Directs HHS, SSA, AG, DOL to study feasibility of establishing a SSN verification system. Directs Attorney General to study creation of a telephone employment verification system.</p> <p><i>Employer sanctions:</i> Makes it unlawful to knowingly hire or employ unauthorized workers, penalties for violators. Requires GAO to monitor employer sanctions.</p>
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use. Enables parents to limit the use of their childrens' social security numbers. Enables workers to access own E-Verify history and alert officials to fraudulent use of their SSN.

Worker protections: Expands anti-discrimination provisions and worker protections.

Pre-empts most state and municipal law.

Document and identity fraud: Outlaws fraudulent use or manufacture of documents. Directs Comptroller General to investigate reducing SSN card counterfeiting. Does not authorize national IDs.

Worker protections: Outlaws employment discrimination based on national origin or citizenship status.

Legal permanent immigration

IRCA: Title III Part B

S.744: Title II Part C

Changes to visa categories ([more information](#)):

- Modifies and expands employment preference categories. Modifies and reduces family preference categories.
- Eliminates backlog for family and employment-based immigrants.
- Eliminates Diversity Visa Program.
- Creates a new merit based visa that fluctuates based on economic indicators.
- Recaptures unused immigrant visas from past fiscal years.
- Eliminates the Per Country Quota System.
- Permanently authorizes the Regional Center Pilot Program and modifies the EB-5 visa program.

Family relationships: Exempts family derivatives from the employment based quotas.

Changes to visa categories:

- Increased dependent territory quota from 600 to 5,000 visas.
- Authorized 5,000 additional visas for countries adversely impacted by 1965 immigration reforms. Diversity Visa Program.

Family relationships: Recognized the family relationship between illegitimate children and their natural fathers.

As of August 1, 2013.

IRCA based primarily on [THOMAS summary](#), with supplements from the [text of the statute](#).

S.744 based primarily on Gang of Eight-released [summary](#), plus a look at the Judiciary Committee [amendments](#) and supplements from the [text of the statute](#).

