

Info Alert

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Agricultural Workers Program Included in Immigration Reform Legislation

On April 17, Senators Chuck Schumer (D-N.Y.), Michael Bennet (D-Colo.), Dick Durbin (D-Ill.), Jeff Flake (R-Ariz.), Lindsey Graham (R-S.C.), Robert Mendez (D-N.J.), John McCain (R-Ariz.), and Marco Rubio (R-Fla.) introduced their long-anticipated comprehensive immigration reform legislation, [S. 744, *The Border Security, Economic Opportunity, and Immigration Modernization Act*](#).

The plan would create a 13-year path to citizenship for unauthorized immigrants, tighten border security, increase the number of visas for foreign workers, strengthen penalties against American companies that hire unauthorized workers, and provide a streamlined course to legal status for certain agricultural workers. The NCSL two-page summary of the full immigration bill can be found [here](#).

In regard to provisions for agricultural workers, Subtitle B – The Agricultural Worker Program, would restructure and replace the current H-2A visa system, which provides work visas for agricultural laborers. The Agricultural Worker Program would also create a process for temporary agricultural workers who are currently unauthorized to be in the United States to gain legal status through a new “blue card” temporary residency program.

Non-Immigrant Agricultural Worker Program

This program attempts to reform the current H-2A visa system with an at-will employment based visa (W-3) and a contract-based visa (W-2) to allow agricultural workers to work legally in the United States. These visas would be capped at 112,333 each year for the first five years with discretion to the U.S. Secretary of Agriculture to increase or decrease the ceiling after five years. A nonimmigrant agricultural worker may be admitted into the United States for an initial period of up to three years, with the visa lasting at least one year, and could renew their status for another three years. Additionally, the program would set a formula-based minimum wage for agricultural occupation categories.

Employers of non-immigrant agricultural workers would have to register with the U.S. Department of Agriculture, provide housing or a housing allowance, and be required to use E-verify for worker verification.

Blue Card Status

This new immigration status program would allow temporary workers and their families that can prove they have “performed agricultural employment” for at least 100 days prior to Dec. 31, 2012 to be eligible for “blue card status.” Blue card status would provide legal temporary U.S. residency, eligibility

for employment, and allow the holder to travel outside of the U.S. but would not allow the holder to receive any federal public benefits.

Additionally, during the application process for blue card status the applicant may not be deported, unless they commit a crime or become ineligible for the status. An employer can employ the applicant without fear of penalty. The blue card status expires after eight years.

Green Card Status

As part of the new immigration legislation, blue card status workers (along with their families) will become lawfully eligible for green card status (permanent residency) if they have performed at least 100 work days of agricultural employment each year for five years, within eight years of the enactment of the act, or they have performed 150 work days of agricultural employment each year of three years, within five years of enactment of the act. The applicant must settle all federal tax liability and pay a \$400 fine before becoming eligible. Under current law, green card status holders are granted authorization to live and work in the United States on a permanent basis, and this legislation does not attempt to change that categorization.

The full bill has been referred to the Senate Judiciary Committee, which is currently scheduled to hold hearings on the draft on April 19 and April 22.

If you have any questions or would like further information on the agricultural provisions within the immigration legislation please contact [Ben Husch](#) (202-624-7779) or [Melanie Condon](#) (202-624-3597).

For further information on the complete bill, along with links to the NCSL press statement and NCSL's immigration policy see [NCSL's Initial Overview of "The Border Security, Economic Opportunity, and Immigration Modernization Act"](#) page (additional in-depth analysis to come). For questions on the complete immigration legislation please contact [Sheri Steisel](#) (202-624-8693) and [Susan Frederick](#) (202-624-3566).