

REMAKING THE US GREEN CARD SYSTEM:

Legal Immigration under the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013

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THE ISSUE: The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, the sweeping immigration legislation approved by the Senate Judiciary Committee on May 21, 2013 and expected to be considered by the full Senate in June 2013, would touch virtually every aspect of the US immigration system. Significant attention has focused on the legalization and border security provisions of the legislation. This issue brief examines how the Senate bill (S.744) would reshape the legal immigration system, through its admission policies, creation of a new merit-based visa stream, and relationship with temporary visa programs. The brief examines the balance between family- and employment-based immigration and the creation and dissolution of visa programs, as well as offers some estimates of future flows.

I. Introduction: How Would Permanent Immigration Change Under S.744?

If enacted, the Senate's comprehensive immigration reform bill, the *Border Security, Economic Opportunity, and Immigration Modernization Act (S.744)*, would represent the most significant restructuring of the US legal immigration system since 1965. It would make major changes to the ways in which prospective immigrants become eligible for visas, as well as the total numbers and distribution among different streams of immigration.

Most of the debate surrounding the Senate bill approved by the Senate Judiciary Committee on May 21, 2013 has focused on its approach to legalization of the unauthorized population, changes in temporary high-skilled visa programs (especially H-1B), and border security and immigration enforcement. This brief provides an overview of the legal immigration architecture the legislation would also establish, focusing primarily on permanent visas (or green cards). The following are among the most notable changes:

- Despite assertions that the proposed legislation would expand skills-based immigration at the expense of family, the new visa system would maintain a strong emphasis on family unification. It would treat lawful permanent residents (LPRs) the same as citizens by lifting numerical limits for the entry of their spouses and minor children. The number of permanent visas issued on the basis of family ties would increase and enable faster reunification of nuclear families. At the same time, because of growth in other immigration streams, family immigration would make up a smaller share of total permanent immigration than in the past.

- Immigration on the basis of skills and employment would receive significantly greater emphasis, through an expanded employment-based visa pool and a new “merit-based” visa to be awarded with a points test that would prioritize US employment and work experience.
- The large increase in skills-based green cards would likely reduce waiting times for many applicants already in the country on temporary work visas — rebalancing the system away from temporary and toward more permanent employment-based immigration, especially for those applying in newly uncapped, high-skill categories.
- While employer needs would drive both employment-based and merit-based systems, workers would gain much greater flexibility to petition for their own green cards. Most would require a job offer or significant US experience. However, the bill also permits PhD holders from US or foreign schools in any field to apply for green cards without an offer of employment and subject to no numerical limit.
- Low- and middle-skilled workers also would be major beneficiaries of expanded work visas, both temporary (the W visa systems for agricultural and nonagricultural workers) and especially permanent (employment-based and low-skilled merit-based). In a significant departure from current policy, the legislation would allow these workers to come to the United States to fill year-round, longer-term (rather than strictly temporary or seasonal) positions and ultimately to be eligible to apply for permanent residence.

The diversity visa program that admits 50,000 people per year from countries with low levels of immigration to the United States would be eliminated. Reforms to the temporary visa system seek to offset this change by making temporary work visas (with eligibility to adjust to permanent residence) more open to nationals of countries that have not traditionally sent

high levels of immigration to the United States.

II. Estimating Future Flows

The exact size and characteristics of immigration under the Senate bill are difficult to predict with accuracy. The shape of the future immigration system would depend in large part on how employers, individuals, and families respond to the new laws, and some of these responses are easier to anticipate than others. Precise numerical estimates are particularly difficult, not least because several visa categories would be uncapped and thus vary over time with evolving demand.¹

Where possible, this brief provides rough estimates of permanent immigration flows under S.744, based on an analysis of past visa usage data and several assumptions about the provisions of the bill (see Table 1). Some assumptions may overstate future flows in certain categories, while others understate them; we discuss these concerns below.

The estimates are for the year 2018, the first year in which the new “merit-based” system would be operational at its minimum level of 120,000 green cards. Over a period of 15 years or more, the number would likely grow to its maximum limit of 250,000. The numbers also do not include green cards issued through one-time legalization and backlog reduction programs (see Box 1).

The purpose of these figures is to provide an initial assessment of the ways the legislation can be expected to change the character and strategic direction of the US immigration system. The total magnitude of future immigration flows is too uncertain to forecast with confidence at this time.

This analysis focuses on permanent visas, not temporary visas such as the H-1B and W programs. Temporary visas provide the initial entry ticket for most employment-based immigrants, and face separate numerical limits. Workers who enter on a temporary status are

Box 1. Legalization and Backlog Reduction

This brief focuses on the changes the proposed Senate legislation would bring about in the permanent legal immigration system. It does not address visas issued under Track 2 of the merit-based visa system. This track is designed primarily to adjust legalizing immigrants in registered provisional immigrant (RPI) status to permanent resident status as well as provide green cards to those currently waiting in visa backlogs.

The number of green cards that would eventually be issued to these two groups is difficult to quantify. It depends on several factors, including the share of the estimated 11 million unauthorized immigrants who obtain RPI status, complete the 10-year pathway to permanent residence eligibility, and meet its English language and employment requirements (including not spending more than 60 days out of work). It is also not known what share of the estimated 4.3 million applicants in the family visa backlog would eventually pursue their applications and be approved. Finally, the number of green cards issued under Track 2 would depend on the extent to which these groups overlap — that is, how many of the pending green-card applications are for individuals currently in the United States without legal status and are thus counted more than once in the data.

captured in the permanent flows only if and when they receive green cards.

A. Assumptions Behind the Numerical Estimates of Future Legal Immigration

Our estimates on family-based immigration rely on the following assumptions:

- All capped family categories will be fully subscribed.
- The number of immediate relatives of US citizens would grow at the same annual rate of 3 percent per year as it has done since 1986.² (Even if this number does not grow at all, family immigration would still increase modestly under the proposed legislation). This growth would occur regardless of whether the Senate legislation is enacted.
- An estimated 95,000 to 140,000 spouses and children of LPRs would come in annually, a range based on current backlog data plus estimated additional growth in proportion to the growing number of other LPRs.³ (Under the current system, spouses and children of LPRs are limited to 87,934 green cards annually.)

The estimates on employment-based and merit-based immigration rely on the following assumptions:

- The Senate bill does not specify how dependents of merit-based visa beneficiaries would receive green cards and if they would count against numerical limits. (Other green-card categories allow spouses and minor children to be included on principal applicants' petitions.) The estimates below provide a range: the lower bound assumes that dependents count against the cap; the upper bound assumes they do not and that principal applicants would bring an average of 1.18 dependents per applicant — the same ratio as observed in the employment-based visa category in 2012.⁴
- The ratio of spouses and children to employment-based principal applicants would also be approximately 1.18. In practice, this ratio may decrease as the visa program brings in younger applicants due to exemptions for recent US STEM degree graduates and a shorter wait for green cards.
- All capped categories would be fully subscribed, except for entrepreneurs. The process for obtaining entrepre-

neur visas is relatively selective, and it seems likely that this category, which in principle allows 10,000 visas to be issued (plus uncapped spouses/children) would remain undersubscribed. As a result, we do not estimate the number likely to be issued.⁵

- The number of “priority workers” in the most highly skilled category of the employment-based immigration system, currently known as EB-1,⁶ would remain the same as in 2012 (in practice this number would likely decline as applicants choose “easier” routes such as the advanced US STEM degree option); the number of uncapped advanced STEM degree graduates would not

exceed the number of such degrees currently issued to international students at US institutions;⁷ and the number of foreign physicians would be similar to current issuances of H-1B visas to physicians and surgeons.⁸

- We do not attempt to estimate the number of PhD holders from US or foreign institutions.

For humanitarian migration, the estimates assume no changes to fiscal year (FY) 2012 numbers. In practice, numbers can vary substantially over time, most notably depending on the annual presidential determination of humanitarian needs and US resettlement capacity/funding.

Table 1. Estimated Green Card Issuances, Excluding Legalization and Backlog Clearance, under the Proposed Senate Legislation

	2012	2018
Family-Based		
Immediate Relatives of Citizens	478,780	570,000 ^a
Unmarried Children/Spouses of LPRs	77,748	95,000-140,000 ^b
Unmarried Sons and Daughters (21 or over) of Citizens	20,660	56,350 ^c
Unmarried Sons and Daughters (21 or over) of LPRs	21,961	64,400 ^c
Married Sons and Daughters of Citizens	21,752	40,250 ^c
Siblings of Citizens	59,898	0
Total Family <i>Share of All Green Cards</i>	681,000 (66%)	826,000-872,000 (49-54%)
Employment and Merit-Based		
Merit-Based Visa		
Principal Applicants	0	55,000-120,000 ^d
Spouses and Children of Merit-Based Principals	0	65,000-142,000 ^d
Capped Employment-Based Categories		
Advanced Degree and Exceptional Ability	24,719	56,000 ^c
Skilled Workers, Professionals, and “Other” Workers ⁹	17,689	56,000 ^c
Certain Special Immigrants	4,878	14,000 ^c
Employment Creation	2,295	14,000 ^c

<i>Uncapped Employment-Based Categories</i>		
Priority Workers: Extraordinary Ability, Professors, Multinational Executives	16,286	16,000 ^e
Advanced STEM Degree holder	0	40,000 ^e
PhD Holder	0	No estimate possible ^f
Physicians	0	3,000 ^e
Immigrant Entrepreneurs	0	No estimate possible
Family of Employment-Based Principals	78,080	235,000 ^e
Total Employment and Merit-Based Share of All Green Cards	144,000 (14%)	554,000-696,000 (35-41%)
<i>Humanitarian</i>		
Refugees/Asylees Adjusting Status	150,614	151,000 ^g
Other	15,900	15,900 ^g
Total Humanitarian Share of All Green Cards	167,000 (16%)	167,000 (10-11%)
<i>Diversity</i>		
Diversity Visa Share of All Green Cards	40,320 (4%)	0 (0%)
Total	1,032,000	1,547,000- 1,735,000

Notes: Totals may not sum due to rounding.

^a Assumes 3 percent growth in immediate relatives of US citizens per year from 2012 onwards, equal to the average annual growth experienced since 1986.

^b Lower bound calculated as the LPR spouse/child backlog is divided by the waiting time for F-2A immigrants as of November 2012; the upper bound is equal to the lower bound plus additional spouses/children in proportion to the 2012-18 increase in all other LPR inflows, assuming the same ratio of LPR spouses to total non-F2A LPR flows (7.2 percent) as observed over the past decade. Backlog data from the US Department of State, *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2012* (Washington, DC: Department of State, 2013), www.travel.state.gov/pdf/WaitingListItem.pdf.

^c Estimates assume that all capped categories except entrepreneurs fill to capacity.

^d Upper bound assumes spouses and minor children of merit-based applicants receive uncapped visas; lower bound assumes they count against the 120,000 cap; both assume 1.18 dependents per principal applicant.

^e Detailed assumptions for uncapped employment-based visas discussed on pages 3-4.

^f Because the PhD route is so open ended (see discussion below), past data do not provide a good indication of how many might choose to apply.

^g For humanitarian migration, estimates assume no changes to FY 2012 numbers.

Sources: Department of Homeland Security, *Yearbook of Immigration Statistics*, various years, www.dhs.gov/yearbook-immigration-statistics; Senate Judiciary Committee, *Border Security, Economic Opportunity, and Immigration Modernization Act of 2013* as approved by the committee on May 21, 2013, www.judiciary.senate.gov/legislation/immigration/MDM13735.pdf.

I. Family-Based Immigration

Despite a perception that the Senate bill expands work-related immigration at the expense of family admissions, the number of visas issued to family members would increase between 2012 and 2018. The spouses and minor children of LPRs — who currently wait approximately two years in green-card backlogs — would no longer be capped. Like the immediate relatives of US citizens, they would now wait only as long as it takes to process their visas (approximately six to 12 months). Numerical limits would increase for adult children, who would be permitted to live and work in the United States on a temporary V visa while awaiting a green card.¹⁰ Meanwhile, eligibility for US citizens' siblings and married children over 31 is removed. These individuals are instead allocated additional points in the merit-based visa system described below.

Taken together, these changes can be expected to keep future backlogs and waiting times under control, because of both narrower eligibility and higher ceilings for capped family members. Indeed, the 2.5 million siblings currently waiting for visas, according to the State Department, make up 60 percent of the entire family backlog and are responsible for almost two-thirds of its growth over the past decade.¹¹ Waiting times exceed a decade for all sibling applicants and two decades for applicants from the Philippines.¹²

The new system would allow those who have already filed immigrant visa petitions in the sibling category to receive their visas, but would eliminate the category for prospective applicants 18 months after enactment. As a result, by 2018, noncitizens would no longer be able to file for permanent residence based solely on being the sibling of a US citizen. Instead, siblings of US citizens would be allocated additional points toward meeting the criteria for a visa through the merit-based system — a process which will offer a much faster route to a green card for certain siblings who are also able to earn additional points based on other criteria such as US employment and English proficiency.

The proposed immigration system would thus retain a strong emphasis on family-based immigration, both numerically and through shorter wait times. However, because other immigration streams grow, the share of green cards based on family ties would decline. Our estimates suggest that this share would fall from 66 percent of green cards in 2012 to 49-54 percent in the early years of the new system (see Table 1). However, if family members of *employment-based* applicants — who have traditionally been included in the employment-based statistics — are included in the family-based immigration calculus, the decline is minimal, from 74 percent of all green cards to between 71 and 73 percent (depending on assumptions about whether spouses and children of merit-based applicants are subject to the same 120,000 cap).¹³

2. Employment-Based and Merit-Based Immigration

Most of the growth in immigration under the new system comes from skills-based green cards — a restructured employment-based visa system and a new “merit-based” visa system that uses a points test to select applicants. The United States currently has a low share of immigrants selected on the basis of their skills: 14 percent of all visas in 2012 were issued in employment-based categories, and only 6 percent went to principal applicants (the rest were for spouses and children of employment-based principal applicants) (see Table 1).

Under the Senate bill, we estimate that this share would rise to 16-19 percent of all green cards for skills-based principal applicants (35 to 41 percent if their family members are included in the calculation.) This would bring the United States roughly in line with the United Kingdom's skills-based share of immigration from beyond the European Union,¹⁴ but would still fall well short of other major immigrant destinations such as Canada and Australia, where employment-based principal applicants make up 26 percent and 33 percent of permanent immigration, respectively.¹⁵ As the merit-based system grows over time, the share of skills-based immigration in the United States would likely rise further.

a) *Employment-Based Immigration*

The US employment-based visa system would be restructured in several ways under S.744.

First, at the high-skill level, the number of H-1B nonimmigrant visas for foreign professionals would increase from 85,000 to 135,000 per year initially, with the potential to expand to a maximum of 205,000 over time.¹⁶ The larger expansion of employment-based visas takes place in the green-card system, however, which over the past two decades has become a major bottleneck, creating long delays for workers seeking to adjust from temporary to permanent status (as is often the case with H-1B workers, for example).

Several employment-based green-card categories would no longer be subject to numerical limits. As mentioned earlier, the largest of these is the spouses and minor children of principal applicants, followed by advanced US STEM degree holders and the current “first preference” (highest-skilled) applicants.¹⁷ Because these categories are uncapped, likely admissions are inherently uncertain. We estimate that total admissions in the employment- and merit-based categories combined (including spouses and children of principal applicants) could increase almost four- or even fivefold, from approximately 140,000 to 554,000-696,000 per year.

By expanding green card numbers, these changes should be expected to reduce wait times for many applicants. For example, advanced degree holders from China and India (who currently wait for EB-2 visas for 5 and 8.75 years, respectively, usually within the United States on temporary work visas)¹⁸ would receive green cards immediately if they have a US STEM degree and a job within five years of graduation, and with a shorter waiting time if they do not.

The extent to which the reforms would reduce waits for employment-based visas requiring a bachelor’s degree or less are more uncertain, since the larger H-1B program and the newly introduced W visa (discussed below) would also increase the size of the applicant pool. However, because the expansion in the number

of green cards is greater than the expansion in the temporary visa system and temporary visa-holders will not all choose or be eligible to apply for permanent residence, average waiting times could decrease substantially. If this is the case, the legislation would represent a significant rebalancing away from temporary toward permanent visas. Indeed, some individuals would be able to move directly to a green card without holding temporary status first (most notably, international students with advanced US STEM degrees).

Second, the Senate bill would dramatically expand options for low- and middle-skilled foreign workers to fill year-round, longer-term employment and ultimately apply for permanent residence. Under the current system, low-skilled immigration has been almost exclusively temporary and short-term (less than one year) — limitations that are thought to have been a significant factor underlying high levels of illegal immigration over recent decades. The proposed legislation reshapes this system in two ways.

First, it creates W temporary work visas for low- and middle-skilled workers that would allow employers to fill longer-term, nonseasonal positions with low-skilled temporary or guest workers in both agricultural and nonagricultural subsectors. The number of nonagricultural workers would initially be small (22,000 per year), but could increase over time to a maximum of 220,000.¹⁹ Agricultural workers would be subject to an initial cap of 112,333 per year.

Second, the bill would dramatically increase the number of permanent visas for which these workers can eventually apply. Workers performing unskilled labor (the category referred to as “other workers” in Table 1) are currently capped at 5,000 green cards per year. They would now compete on an equal footing with bachelor’s degree holders and those with intermediate levels of qualifications for 56,000 or more visas. This number could easily exceed 56,000 in practice, since any unused visas in the (now-expanded) higher-skilled categories can “roll down” the skill spectrum of visa categories. When combined with 50 percent of merit-based visas made available to individuals

at the low- and middle-skill levels (see below), this change represents a significant shift in US policy away from a system that has been strictly temporary at the low-skilled level to one that provides for some return or circular migration but also allows significant numbers to qualify to stay permanently.

Third, the proposed legislation provides much more scope for immigrants to petition for their own green cards without an employer sponsor. This gives individual workers more flexibility and control over their immigration status.²⁰ A number of worker categories would now have that opportunity:

- Outstanding professors and researchers, as well as multinational managers and executives would be able to apply for their own visas but would need to be employed or have a full-time job offer.
- Immigrant entrepreneurs would receive greater latitude to petition for their own visas and seek permanent residence if they create a successful business.
- Immigrants applying through the merit-based points system would not require employer sponsors, although many would likely be employed in the United States because the system heavily favors US employment and experience among its criteria.
- Graduates of PhD programs in any field awarded in any country could self-petition for green cards, without a job offer or numerical limits.²¹

The US immigration system has traditionally relied on employer sponsorship as a guarantee that applicants have needed job skills. This policy also minimizes the “brain waste” that is so common in systems that admit workers without employment lined up.²² Such a policy would remain in place for the first three of these applicant groups as they would require either current employment, a job offer, or substantial US work experience.

The PhD substream does not require a job offer

or employment experience. Quality control could, therefore, become a significant problem. An individual with no US job offer or work experience is not necessarily employable, even if he or she holds a PhD. Experience from Canada, Australia, the United Kingdom, and the US diversity visa, suggests that admitting highly educated immigrants without the filter of employer selection opens the door to skills waste and high unemployment — the proverbial story of the physician working as a cab driver.²³

Moreover, the quality of educational institutions varies widely, as does labor-market demand for the graduates they produce. The Senate bill provides little scope for the Department of Homeland Security (DHS) to restrict the program to high-quality institutions. This comparatively unregulated category thus creates substantial risk of “diploma mills” in the United States and abroad — institutions that attract students with the prospect of a route to permanent residence in the United States rather than the quality of education they offer.

b) The Merit-Based Visa System

The merit-based visa has two tracks. The first track is a points-tested system that admits individuals who are ranked highest against a set of criteria heavily weighted toward job skills and work experience in the United States. Half of these visas are aimed at workers in high-skilled jobs (“tier 1”) and half at the low- and middle-skill levels (“tier 2”). The second track is a one-time allocation of visas for legalizing immigrants who are eligible to adjust from registered provisional immigrant (RPI) status to permanent residence and for beneficiaries of visa backlog clearance under other provisions of the Senate bill that are not considered in this brief (see Box 1).

The profile of immigrants who would be admitted under the points-based system is somewhat uncertain. Since the highest-score individuals would qualify for green cards, the threshold for success would depend on the size and characteristics of the applicant pools in both the low- and high-skilled tiers. (See Appendix.) In general, the following dynamics are likely:

- For individuals already in the country on temporary work visas, the merit-based system would create additional options for permanent residence outside of the established employer-sponsored routes. This would likely have two main effects. First, it would benefit immigrants whose employers are reluctant to sponsor them (for example because they still have significant time remaining on their temporary visas, because of high costs, or because they are not successful employees). Second, it would provide both workers and employers an alternative to the employer-sponsored “skilled workers, professionals, and other workers” category (the less-skilled substream of the employment-based visa system, currently known as EB-3), should a new backlog emerge in that category.
- Because half the visas are reserved for low- and middle-skilled workers, the merit-based system, together with the changes to employer-sponsored visas discussed earlier, would further facilitate long-term, legal immigration for low- and middle-skilled workers — a significant departure from current practice that strongly favors high-skill visas and offers only temporary visas to low-skilled immigrants.²⁴
- Both tiers of the points system place heavy weight on US job offers and work experience — in other words, workers who have demonstrated that they have relevant US employment skills. This weighting would advantage people already in the country on temporary work visas, such as the H-1B or the newly created W visa. People coming directly from abroad, especially if they have no job offer, would generally find it difficult to earn the same number of points as workers in the United States on temporary status. The ease with which they could qualify would thus depend to a large extent on how many of the slots would be already taken up by workers applying from within the country.
- The points system is designed to advantage applicants who can no longer apply under the sibling and adult children family and diversity visa streams with a modest number of points (equal to approximately 10 percent and 5 percent of the total points available, respectively).²⁵ Additional points for these applicants mean they would need fewer of the human-capital attributes to qualify. However, country of origin or family ties in the United States would be insufficient to entirely offset a lack of US work experience or job offer. Thus, their prospects of success would be greatly increased by coming to the United States first on temporary work visas.
- Finally, there is no minimum points floor or pass mark. As a result, the number of people who would be eligible to apply for the visas worldwide could be very high. If oversubscribed by at least one-third, the number of visas available would increase by 5 percent each year (unless unemployment exceeds 8.5 percent) — up to a maximum of 250,000 green cards after 15 or more years. The estimates in Table 1 show the merit-based visa at its lowest level, which represents a projected 8-16 percent of the total.²⁶

c) Diversity Visa

The diversity visa — a program that admits 50,000 people per year from countries with low levels of immigration to the United States — would be eliminated under the proposed legislation. As outlined above, immigrants from these underrepresented countries would receive a small additional points allocation under the merit-based visa system. In addition, two other changes in the temporary visa system may increase national-origin diversity of those coming to the country for employment.

First, the newly created W visa for low- and middle-skilled workers would be open to all nationalities, while the current low-skilled temporary visa system has a prescribed list

of eligible countries (the list excludes almost all African countries, for example). Second, an amendment supported by the Congressional Black Caucus (one of the main proponents of retaining the diversity visa, a significant entry route for immigrants from sub-Saharan Africa) would create a new set of temporary visas for middle- and high-skilled immigrants from certain African and Caribbean countries.²⁷ If these new temporary visas bring in more diverse cohorts of immigrants, this diversity can be expected to be reflected, over time, in the permanent employment- and merit-based visas systems.

III. Conclusions

The *Border Security, Economic Opportunity, and Immigration Modernization Act* addresses some of the most important failures in the current legal immigration system with innovations that reflect lessons learned from past experience in the United States, as well as in other countries.

The new policies would reduce backlogs and waiting times for both family- and skills-based immigration. The new system envisaged would provide more flexibility for workers (both to move between employers and to apply for permanent residence if they meet the criteria), and for the first time allow employers to sponsor low- and middle-skilled workers for longer-term employment. The merit-based stream reflects lessons learned from other countries that have used points-based systems insofar as it seeks to prioritize the admission of workers with US employment and experience.

At the same time, the Senate legislation raises many questions regarding the feasibility and flexibility of some of its key provisions. For example, the points test may be difficult to adjust over time as new circumstances and experiences develop. Some of the provisions are also

ill-considered, most notably the open-ended program for admitting PhD graduates with no guarantee that their skills are needed or that they can find employment. Finally, the bill substantially expands low- and middle-skilled immigration to meet labor market demand more effectively, discouraging illegal immigration. However, the legislation is almost silent on immigrant integration and the support some of these immigrants and the communities in which they settle may need to ensure their success.

Looking to the future, the Senate legislation opens the door to a more flexible, strategic immigration system that learns from its own successes and failures. Increased requirements for federal agencies to collect and report data would accompany the establishment of a Bureau of Immigration and Labor Market Research. This bureau would have a broad

mandate to provide data on employment-based immigrants admitted under the new system and evaluate their impacts (in addition to the narrower function of recommending changes in numerical limits for the W visa in response to changing economic conditions). Shifts as fundamental as those the bill envisions promise unexpected and sometimes unintended changes. Such new information would be crucial to informing the many adjustments that would likely be needed in the future.

The Senate legislation opens the door to a more flexible, strategic immigration system that learns from its own successes and failures.

Appendix. Merit-Based Points Tracks

Table A-1. Senate Bill Tier 1 Points Test

Criteria	Points awarded...	...for characteristics
Education	<i>Max of 15 points:</i> 15 points 10 points	Doctorate degree Master's degree
US bachelor's degree	5 points	
Work experience in United States	<i>Max of 20 points:</i> 3 points/year 2 points/year	<i>If the job requires:</i> More than bachelor's Bachelor's
Job or job offer related to education	<i>Max 10 points:</i> 10 points 8 points	<i>If job requires:</i> More than bachelor's Bachelor's
High-demand job or job offer	10 points	One of 5 occupations in which most H-1Bs filed in previous year
Entrepreneurship	10 points	Employs 2+ people in jobs requiring bachelor's or more
Civic involvement	2 points	
English language	10 points	Scores 80 or more on TOEFL or other English language test
Family ties	10 points	US citizen's sibling or married son/daughter over 31
Age	8 points 6 points 4 points	18-24 25-32 33-37
Country of origin	5 points	Underrepresented country of origin

Source: Senate Judiciary Committee, *Border Security, Economic Opportunity, and Immigration Modernization Act of 2013* as approved by the committee on May 21, 2013.

Table A-2. Senate Bill Tier 2 Points Test

	Points awarded...	...for characteristics
US employment experience	<i>Maximum 20 points:</i> 2 points/year	
Job offer or job in United States	<i>Max 10 points:</i> 10 points 10 points	High-demand tier 2 occupation (5 occupations with most W visas) Low- or middle-skilled occupation
Is primary caregiver	10 points	
Employment record	10 points	Has experienced increases in pay, responsibility, etc.
Civic involvement	2 points	
English language	<i>Max 10 points:</i> 10 points 5 points	<i>Demonstrate:</i> “English proficiency” English “knowledge”
Family ties	10 points	US citizen’s sibling or married son/daughter over 31
Age	8 points 6 points 4 points	Age 18-24 Age 25-32 Age 33-37
Country of origin	5 points	Underrepresented country of origin

Source: Senate Judiciary Committee, *Border Security, Economic Opportunity, and Immigration Modernization Act of 2013* as approved by the committee on May 21, 2013

Endnotes

- 1 The legislation removes numerical limits for the spouses and minor children of lawful permanent residents, for example, as well as for several categories of employment-based immigrants and their family members.
- 2 Department of Homeland Security (DHS), *Yearbook of Immigration Statistics*, various years, www.dhs.gov/yearbook-immigration-statistics.
- 3 See note under Table 1 for details of this calculation. Note that in practice, some lawful permanent resident (LPR) spouse/child petitioners naturalize while their family members are waiting in line; they then move to the US citizen immediate relative category where visas are immediately available. This would happen less often. As a result, there might be somewhat lower numbers of US citizen immediate relatives and somewhat more LPR immediate relatives than we estimate. However, when adding the two categories together, this should have no net effect on the number of family visas.
- 4 DHS, *Yearbook of Immigration Statistics 2012* (Washington, DC: DHS, 2013), www.dhs.gov/yearbook-immigration-statistics.
- 5 At the time of writing, the Senate bill remains ambiguous as to whether the 10,000 visa limit for entrepreneurs is expected to be part of the 140,000 other employment-based categories. We assume for the purposes of this analysis that it is not.
- 6 This includes those with “extraordinary ability,” defined as immigrants who have achieved “sustained national or international acclaim” in their field; “outstanding professors and researchers;” and “multinational managers and executives.”
- 7 Likely flows under these uncapped categories are particularly difficult to quantify based on past data, because they would begin to respond to demand rather than statutory limits. For example, approximately 40,000 individuals per year currently receive advanced STEM degrees from US universities. Not all these graduates are from institutions with enough research activity to qualify under the legislation, and others would not be able to find a job after graduation. On the other hand, more students would probably apply to study these subjects if it eases the path to a US green card. Most recent data from 2009. National Science Foundation, *Science and Engineering Indicators 2012*, www.nsf.gov/statistics/seind12/.
- 8 Using fiscal year (FY) 2011 data, US Citizenship and Immigration Services (USCIS), *Characteristics of H-1B Specialty Occupation Workers* (Washington, DC: USCIS, 2012), www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/H-1B/h1b-fy-11-characteristics.pdf. Note that this number could be considerably higher, depending on the regulations implementing this section of the legislation.
- 9 “Skilled workers” are defined as those performing labor that requires at least two years of training or experience; “professionals” as those who hold a bachelor’s degree and are members of the professions; and “other workers” as those performing unskilled labor. “Other workers” are limited to 5,000 visas per year within this category.
- 10 These individuals are divided into three preference categories: unmarried adult children of citizens, unmarried adult children of LPRs, and married adult children of citizens.
- 11 The F4 (sibling) backlog has grown from approximately 1,200,000 in 2002 to 2,500,000 in 2012. Data provided in correspondence with official from US Department of State.
- 12 State Department, “Visa Bulletin for April 2013,” www.travel.state.gov/visa/bulletin/bulletin_5900.html.
- 13 Authors’ calculations from Table 1. The family share is higher when family members count against the cap, since this reduces the number of visas available for principal applicants.
- 14 Data for principal applicants only are not available for the United Kingdom, but the total including family members of principal applicants was 34 percent of non-European Union immigrants in 2009. EU immigrants, who do not require visas to work in the United Kingdom, report work as their main motivation for migration in a majority of cases.
- 15 Canadian data are for 2011 from Citizenship and Immigration Canada (CIC), “Facts and figures 2011 – Immigration Overview: Permanent and temporary residents,” www.cic.gc.ca/english/resources/statistics/facts2011/permanent/02.asp; Australian data are for 2010-11, Department of Immigration and Citizenship (DIAC), *Population Flows: Immigration Aspects 2010-2011 Edition*, www.immi.gov.au/media/publications/statistics/popflows2010-11/.
- 16 These increases are accompanied by major reforms to wage requirements for employers — especially those who have 15 percent or more of their workforce on temporary visas — and new incentives for employers to sponsor their temporary workers for permanent residence. Other changes to the H-1B system include the introduction of new obligations for employers to seek US workers before petitioning for a foreign worker’s visa, and greater labor protections for H-1B workers themselves, most notably the ability to move more easily between employers.
- 17 As mentioned earlier, this includes those with “extraordinary ability;” outstanding professors and researchers; and multinational managers and executives.
- 18 Note that the Senate bill also eliminates employment-based limits on the share of visas that can go to any one country, a move that benefits Chinese and Indian beneficiaries in particular.

- 19 Ten percent of these visas are reserved for meat processing and related subsectors. The W program would operate alongside the seasonal H-2B program for nonagricultural workers, which would continue to exist.
- 20 The current US immigration system relies heavily on employer sponsorship for all but the most highly skilled — the elite group of individuals who can demonstrate “extraordinary ability” in their field.
- 21 Another category, “alien physicians” could also self-petition without a job offer. It is not clear how much discretion USCIS would have to define this category in a more selective way, for example, by requiring a medical residency for which placements are limited and highly competitive, or by requiring applicants to pass US medical licensing examinations.
- 22 This phenomenon can include low employment rates, low penetration into high-skilled jobs or jobs aligned with workers’ qualifications, and low earnings. For details, see Demetrios G. Papademetriou and Madeleine Sumption, *Rethinking Points Systems and Employer-Selected Immigration* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/rethinkingpointssystem.pdf; and Jeanne Batalova and Michael Fix, *Uneven Progress: The Employment Pathways of Skilled Immigrants in the United States* (Washington, DC: Migration Policy Institute, 2008), www.migrationpolicy.org/pubs/brain-wasteoct08.pdf.
- 23 For Australia and Canada, see further discussion in Papademetriou and Sumption, *Rethinking Points Systems*; for the United Kingdom, see Home Office, *Points-based System Tier 1: An Operational Assessment* (London: Home Office, 2010), www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/statistics/pbs-tier-1/pbs-tier-1.pdf?view=Binary; for the US diversity visa, see Batalova and Fix, *Uneven Progress*.
- 24 With the exception of 5,000 green cards currently available to unskilled laborers.
- 25 Married sons and daughters over 31 years of age; siblings of US citizens; and immigrants from underrepresented countries of origin (who currently qualify for the diversity visa).
- 26 Again, this calculation depends on whether spouses and children of principal applicants are subject to the same numerical limit.
- 27 Irish nationals would also receive additional visas under this section of the bill.

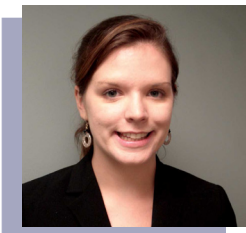
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