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# Immigration Legislation and Issues in the 113<sup>th</sup> Congress

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November 4, 2014

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R43320

## Summary

Immigration reform was an active legislative issue in the first session of the 113<sup>th</sup> Congress. The Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), a comprehensive immigration reform bill that includes provisions on border security, interior enforcement, employment eligibility verification and worksite enforcement, legalization of unauthorized aliens, immigrant visas, nonimmigrant visas, and humanitarian admissions. For its part, the House took a different approach to immigration reform. Rather than considering a single comprehensive bill, the House acted on a set of immigration bills that address border security, interior enforcement, employment eligibility verification and worksite enforcement, and nonimmigrant and immigrant visas. House committees reported or ordered to be reported the following immigration bills: Border Security Results Act of 2013 (H.R. 1417); Strengthen and Fortify Enforcement (SAFE) Act (H.R. 2278); Legal Workforce Act (H.R. 1772); Agricultural Guestworker (AG) Act (H.R. 1773); and Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas (SKILLS Visa) Act (H.R. 2131).

Beyond their work on immigration reform legislation, the House and Senate acted on other immigration-related bills. Among these measures, the 113<sup>th</sup> Congress passed the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4), which includes provisions on noncitizen victims of domestic abuse or certain other crimes and on victims of human trafficking. Other immigration issues addressed in enacted measures include Iraqi and Afghan special immigrants (P.L. 113-42, P.L. 113-66, P.L. 113-76, P.L. 113-160), refugees (P.L. 113-6, P.L. 113-76), temporary nonagricultural workers (P.L. 113-76, P.L. 113-164), international adoption (P.L. 113-74), and alien inadmissibility (P.L. 113-100).

Several bills passed one house of Congress, but not the other. In addition to the comprehensive immigration reform bill (S. 744), the Senate passed measures dealing with border security personnel compensation (S. 1691), the application of immigration law in the Commonwealth of the Northern Mariana Islands (CNMI) (S. 1237), and the visa waiver program (S. 2673). House-passed measures address, among other issues, border security and unaccompanied alien children (UAC) arriving in the United States (H.R. 5230), human trafficking (H.R. 3530, H.R. 3610, H.R. 5135), prosecutorial discretion (H.R. 2217, H.R. 5272), and the visa waiver program (H.R. 938).

This report discusses these and other immigration-related issues that received legislative action or have been of significant congressional interest in the 113<sup>th</sup> Congress. While the report covers S. 744, as passed by the Senate, a more complete treatment of that bill can be found in CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*. For the most part, DHS appropriations are not covered in this report; FY2014 appropriations are addressed in CRS Report R43147, *Department of Homeland Security: FY2014 Appropriations*.

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## Introduction

Immigration reform was a key issue in the first session of the 113<sup>th</sup> Congress. The Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), a comprehensive immigration reform bill that includes provisions on border security, interior enforcement, employment eligibility verification and worksite enforcement, legalization of unauthorized aliens, immigrant visas, nonimmigrant visas, and humanitarian admissions.<sup>1</sup> Taking a different approach to immigration reform, the House acted on a set of immigration bills that separately address many of the same areas of immigration policy. House Committees reported or ordered to be reported immigration bills on border security (H.R. 1417); interior enforcement (H.R. 2278); employment eligibility verification and worksite enforcement (H.R. 1772); and immigrant and nonimmigrant visas (H.R. 2131, H.R. 1773).

The House and Senate also acted on other pieces of immigration-related legislation. Among these, the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) includes provisions on noncitizen victims of domestic abuse or certain other crimes and on victims of human trafficking. The trafficking provisions address the care and custody of unaccompanied alien children (UAC), among other issues. Additionally, in response to the recent surge in arrivals of unaccompanied minors from Central America, the House-passed supplemental appropriations bill for 2014 (H.R. 5230) contains UAC-related provisions, including language that would change the procedures for screening and processing unaccompanied alien children who arrive at the U.S. border from certain countries. Many other UAC-related bills were introduced in the 113<sup>th</sup> Congress but have not seen legislative action.<sup>2</sup>

In addition to P.L. 113-4, the 113<sup>th</sup> Congress enacted multiple immigration-related bills. Enacted appropriations measures (P.L. 113-6, P.L. 113-76, and P.L. 113-164) variously include policy provisions on temporary nonagricultural workers, refugees, and special immigrants, among other immigration-related issues. P.L. 113-42, P.L. 113-66, and P.L. 113-160 also contain provisions on special immigrants. P.L. 113-74 concerns international adoption. P.L. 113-100 concerns inadmissibility to the United States. This report discusses these and other immigration-related issues that received legislative action or have been of significant congressional interest in the 113<sup>th</sup> Congress.<sup>3</sup>

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<sup>1</sup> For a summary of the major provisions of S. 744, see CRS Report R43099, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Short Summary of Senate-Passed S. 744*, by Ruth Ellen Wasem; for a fuller discussion of the major provisions of S. 744, see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*, by Ruth Ellen Wasem.

<sup>2</sup> For further discussion of issues related to unaccompanied children, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*; CRS Report R43734, *Unaccompanied Alien Children: Demographics in Brief*; CRS Report R43623, *Unaccompanied Alien Children—Legal Issues: Answers to Frequently Asked Questions*; CRS Report R43664, *Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief*; CRS Report R43702, *Unaccompanied Children from Central America: Foreign Policy Considerations*.

<sup>3</sup> DHS appropriations, for the most part, are not covered here. See CRS Report R43147, *Department of Homeland Security: FY2014 Appropriations*.

## Border Security

The Department of Homeland Security (DHS) is charged with protecting U.S. borders from weapons of mass destruction, terrorists, smugglers, and unauthorized aliens. Border security involves securing the many means by which people and things can enter the country. Operationally, this means controlling the official ports of entry (POE) through which legitimate travelers and commerce enter the country, and patrolling the nation's land and maritime borders to prevent illegal entries.

DHS's U.S. Customs and Border Protection (CBP) protects 7,000 miles of U.S. international land borders with Mexico and Canada and 95,000 miles of coastal shoreline. At ports of entry, the CBP Office of Field Operations (OFO) is responsible for conducting immigration, customs, and agricultural inspections of travelers seeking admission to the United States. Between POEs, CBP's U.S. Border Patrol (USBP) is responsible for enforcing immigration law and other federal laws along the border and for preventing unlawful entries into the United States. According to USBP data, apprehensions of unauthorized migrants have declined since FY2005, reaching a 40-year low in FY2011. Although apprehensions remain at historically low levels, there have been increases since FY2011, driven by increased apprehensions of Central American families and unaccompanied alien children (UAC) at the Southwest border (see "Unaccompanied Alien Children").<sup>4</sup>

Border security has been an important issue for the last several Congresses. In recent years, some Members of Congress have proposed to strengthen border security as part of a "comprehensive immigration reform" bill, while others have argued that Congress should not consider other immigration reforms until the border has been secured. Debate in the 113<sup>th</sup> Congress focused primarily on border security strategy and metrics; border personnel, equipment, and infrastructure; improvements to the entry-exit system for tracking aliens' travel into and out of the United States; and DHS's access to federal lands and authority to waive certain federal laws.

### Border Security Strategy and Metrics

DHS, CBP, OFO, and USBP all have published strategic plans, but they have not laid out a comprehensive operational strategy for securing U.S. borders or published clear metrics for measuring and evaluating border security.<sup>5</sup> The absence of such a strategy and metrics arguably has contributed to disagreements about the existing level of border security.

S. 744, as passed by the Senate, would require DHS to develop a pair of planning documents: a Comprehensive Southern Border Security Strategy and a Southern Border Fencing Strategy.<sup>6</sup> The bill includes a detailed list of surveillance equipment and other assets to be deployed in each

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<sup>4</sup> For data on Southwest border apprehensions, see CRS Report R43523, *Apprehensions of Unauthorized Migrants along the Southwest Border: Fact Sheet*; for a discussion of unaccompanied child arrivals, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

<sup>5</sup> For further discussion of border security strategies, see CRS Report R42969, *Border Security: Understanding Threats at U.S. Borders*; for further discussion of border security metrics, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*.

<sup>6</sup> See CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

Border Patrol sector along the southern border as required elements of the Comprehensive Security Strategy. It also requires that the Fencing Strategy describe plans to deploy 700 miles of southern border pedestrian fencing (up from about 352 miles of pedestrian fencing and 299 miles of vehicle barriers today). In general, the submission and implementation of the two southern border strategies are among the “triggers” that S. 744 would establish as preconditions for DHS to begin processing legalization applications for certain unauthorized aliens and to begin adjusting the status of such aliens under the bill.<sup>7</sup>

The goal of the Comprehensive Security Strategy would be to achieve and maintain “effective control” of all Border Patrol sectors along the southern border. Effective control would be defined to include “persistent surveillance” and at least a 90% “effectiveness rate.”<sup>8</sup> The bill would require DHS to report to Congress biannually on implementation of the Comprehensive Security Strategy, with such reports to include sector-level effectiveness rates and information about alien recidivism (i.e., repeat apprehensions). If the DHS Secretary cannot certify that DHS has achieved effective control of all southern border sectors for at least one fiscal year within five years of the bill’s passage, S. 744 would require that additional border security recommendations be issued by a Southern Border Security Commission to be composed of the governors or gubernatorial appointees from each of the southern border states (and Nevada), along with congressional and presidential appointees.

The Border Security Results Act of 2013 (H.R. 1417), as reported by the House Homeland Security Committee, would likewise require DHS to develop a Strategy to Secure the Border. H.R. 1417 differs from S. 744 in that H.R. 1417 does not describe specific assets or miles of fencing to be included in its strategy. Instead, the House bill includes an extensive list of considerations to be taken into account in the development of the strategy; and it requires that the strategy be designed to allow DHS to gain and maintain operational control of the border within deadlines established by the bill. Operational control is defined in the House bill to include at least a 90% effectiveness rate with respect to illegal border crossing as well as a “significant reduction in the movement of illegal drugs and other contraband through such areas.”<sup>9</sup> H.R. 1417 also describes a more comprehensive set of border metrics than those identified in S. 744, including measures of illegal migration, recidivism, and drug seizures between ports of entry; measures of immigration and drug enforcement as well as crossing times at ports of entry; and immigration and drug enforcement data for maritime borders. The bill would require DHS to collaborate with outside partners in the development and review of these metrics; and it would require DHS and the Government Accountability Office (GAO) to submit regular reports to Congress indicating whether operational control of the southern border has been achieved and maintained.

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<sup>7</sup> These triggers are described in S. 744 §3(c). For a fuller discussion, see *Ibid.*

<sup>8</sup> S. 744 §3(a)(3). The “effectiveness rate” would be statutorily defined in a similar manner to the way the term is currently used internally by USBP: the sum of alien apprehensions and turn-backs divided by total estimated illegal entries. S. 744 §3(a)(4). Also see U.S. Government Accountability Office, *Border Patrol: Key Elements of Strategic Plan Not Yet in Place to Inform Border Security Status and Resource Needs*, GAO-13-25, December 2012.

<sup>9</sup> H.R. 1417 §3(o)(8).

## **Border Security Personnel, Equipment, and Infrastructure**

Across a variety of indicators, the United States has substantially expanded border enforcement resources over the last three decades. Particularly since 2001, such increases have included border security personnel, fencing and infrastructure, and surveillance technology.<sup>10</sup>

Senate-passed S. 744 would authorize additional increases in each of these areas.<sup>11</sup> Under the bill, DHS would be required to more than double the number of Border Patrol agents deployed to the southern border (to 38,405, up from 18,462 in FY2013); to increase the number of CBP officers and CBP flight hours; and to deploy the specific surveillance equipment, fencing, and infrastructure assets described in the bill's border strategies (see "Border Security Strategies and Metrics"). S. 744 also would direct DHS to continuously deploy unmanned aircraft, along with other surveillance equipment, to ensure surveillance of border areas 24 hours a day, with necessary funding authorized for FY2014–FY2018. And it would support recent CBP efforts to increase the proportion of border crossers subject to criminal prosecutions and other "high consequence" enforcement outcomes by setting aside funding to triple the number of border crossing prosecutions in the Border Patrol's Tucson sector, which has accounted for the largest number of illegal crossings in recent years. The bill would support these increases with about \$45 billion in direct spending on border enforcement over a 5-10 year period.<sup>12</sup>

The House-passed supplemental appropriations bill for 2014 (H.R. 5230) would appropriate, or otherwise make available, funds for the deployment of National Guard units and personnel to the southern border to provide support for border operations, particularly in high-traffic areas experiencing substantial crossings by unaccompanied alien children.

With respect to border security personnel compensation, S. 1691, as passed by the Senate, would create a new system for determining overtime compensation for Border Patrol agents. According to the Senate report that accompanies the bill, S. 1691 would update the Border Patrol pay system "to reflect the number of hours those agents regularly work and the way in which those hours are scheduled."<sup>13</sup>

## **Entry-Exit System**

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Div. C), as amended, requires DHS to maintain an automated, biometric entry-exit system that collects a record of every alien arriving to and departing from the United States. The Office of Biometric Identity Management (OBIM), formerly known as the United States Visitor and Immigration Status Indicator Technology (US-VISIT) program, is responsible for collecting and storing these data and for providing entry-exit information to other components within DHS and to other federal agencies. The entry-exit system has been a subject of ongoing congressional attention

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<sup>10</sup> See CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*.

<sup>11</sup> For a fuller discussion see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

<sup>12</sup> Direct spending does not require additional legislative action to go into effect, in contrast with authorizations for discretionary spending, which require separate appropriations bills to go into effect.

<sup>13</sup> U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Border Patrol Agent Pay Reform Act*, report to accompany S. 1691, 113<sup>th</sup> Congress, 2d sess., S.Rept. 113-248, p. 1.

because—in spite of the mandate—DHS collects only biographic data (i.e., it does not collect biometric data) from certain visitors entering the United States, and it does not collect *any* data from certain visitors leaving the United States.<sup>14</sup>

Border security and immigration legislation considered in the 113<sup>th</sup> Congress would reiterate the entry-exit mandate, with a particular focus on further development of the exit tracking system. In the House, committee-reported H.R. 1417 would require DHS, within 180 days of the bill's enactment, to submit a plan to Congress to implement immediately a biometric exit system at U.S. ports of entry, or to submit alternative plans that would achieve the same level of security within two years if DHS determines that a biometric exit system is not feasible. And the Strengthen and Fortify Enforcement (SAFE) Act (H.R. 2278), as ordered to be reported by the House Judiciary Committee, would require that DHS establish a biometric entry-exit system within two years of the bill's enactment.

Senate-passed S. 744 would impose a new exit-tracking requirement by making air and sea carriers responsible for collecting machine-readable passport data and other travel information from departing passengers, and for transmitting such data to DHS. (Air and sea carriers currently submit passenger manifest data to DHS.) DHS also would be required, within two years of enactment, to establish a biometric exit system at the 10 U.S. airports with the greatest volume of international travel. Following a report to Congress, DHS would be required to expand biometric data collection to 30 airports and to develop a plan for such data collection at major land and sea ports. S. 744 would further require that DHS ensure that “reasonably available enforcement resources are employed” to locate and remove visa overstays identified by the entry-exit system,<sup>15</sup> and that at least 90% of people who enter the United States after the bill's enactment and who overstay their visas by more than 180 days are placed in removal proceedings or otherwise have their cases resolved.

## **Access to Federal Lands and DHS Waiver Authority**

### *Access to Federal Lands*

More than 40% of the southern border abuts federal and tribal lands overseen by the Department of Agriculture (USDA) or the Department of the Interior (DOI), including some areas that have been identified as “high-risk areas” for marijuana smuggling and illegal migration.<sup>16</sup> DHS is not the lead law enforcement agency on USDA and DOI lands, but the three departments have signed Memoranda of Understanding (MOUs) concerning information sharing with respect to border security and DHS access to these lands. Some Members of Congress have argued that DHS

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<sup>14</sup> Biometric data include fingerprints and digital photographs, and may be used to confirm an individual's identity against previously recorded biometric data (i.e., by matching fingerprints); biographic data include names, birthdates, and other identifying information and can be connected to an individual's case history and immigration records, but cannot confirm the identity of arriving and departing passengers. In general, visitors traveling by air or sea are required to provide biometric data at ports of entry, and carriers provide DHS with biographic data (based on passenger lists) upon their exit. For further discussion of the entry-exit system, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*.

<sup>15</sup> S. 744 §3303(c).

<sup>16</sup> See CRS Report R42346, *Federal Land Ownership: Overview and Data*; also see U.S. Government Accountability Office, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177, November 2010, p. 15.

should have more complete access to public lands for law enforcement purposes, though Border Patrol officials have testified that existing MOUs allow USBP to carry out its border security mission.<sup>17</sup>

Legislation considered in the 113<sup>th</sup> Congress would broaden DHS authority on such lands. Senate-passed S. 744 would require USDA and DOI to provide CBP personnel with immediate access to federal lands within Arizona for certain security activities. CBP would be required to conduct its activities, to the maximum extent possible, in a manner that the DHS Secretary determines will best protect natural and cultural resources when acting on federal lands and to prepare an environmental impact statement in connection with its enforcement efforts. More broadly, both House-passed H.R. 5230 and H.R. 2278, as ordered to be reported by the House Judiciary Committee, would give DHS immediate access to USDA and DOI lands within 100 miles of international land borders; and it would explicitly prohibit USDA or DOI from impeding or restricting CBP's border security activities on such lands.

### ***DHS Waiver Authority***

In general, federal agencies are required to review the potential impact of proposed projects on natural and cultural resources prior to committing resources to a project.<sup>18</sup> These environmental and other review requirements may delay the construction of certain border infrastructure; but existing law grants DHS broad authority to waive legal requirements that might delay construction of border barriers.<sup>19</sup>

Senate-passed S. 744 would grant the DHS Secretary authority to waive any law, as the Secretary deems necessary, to ensure expeditious construction of barriers, roads, and other infrastructure to secure the southern border. This provision potentially applies to a broader range of border infrastructure projects than the waiver authority in current law, but only applies to projects along the southern border.<sup>20</sup> The waiver authority would terminate upon certification by DHS that the bill's border fencing and border security strategies have been substantially implemented (see "Border Security Strategy and Metrics"). Both House-passed H.R. 5230 and H.R. 2278, as ordered to be reported by the House Judiciary Committee, would also exempt application of specific laws (previously waived by the Secretary of DHS in 2008 with respect to certain border construction projects) to CBP border construction projects on all federal lands under DOI and USDA jurisdiction within 100 miles of U.S. international land borders.<sup>21</sup>

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<sup>17</sup> See for example, U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *The Border: Are Environmental Laws and Regulation Impeding Security and Harming the Environment?*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., April 15, 2011.

<sup>18</sup> See, among other laws, the National Environmental Policy Act of 1969 (42 U.S.C. §§4321 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. §§1531 *et seq.*), and the National Historic Preservation Act (16 U.S.C. §§470 *et seq.*).

<sup>19</sup> See archived CRS Report RL33659, *Border Security: Barriers Along the U.S. International Border*.

<sup>20</sup> See CRS Legal Sidebar WSLG536, *Proposed Waiver Authority for Border Construction Is Not New, But Is It Improved?*

<sup>21</sup> U.S. Department of Homeland Security, "Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended," *73 Federal Register* 19077-19078, April 8, 2008.

## Interior Enforcement

In addition to establishing a comprehensive set of rules governing the admission, continued presence, and departure of foreign nationals, the Immigration and Nationality Act (INA)<sup>22</sup> establishes an enforcement regime to deter violations of federal immigration law. Some violations are subject to civil monetary penalties; other violations may be subject to criminal fines and imprisonment; and still others, if committed by an alien, may be grounds for denying the alien admission into the country, removing the alien from the United States, or making the alien ineligible for certain immigration benefits or relief from removal.

Legislative proposals in the 113<sup>th</sup> Congress, including H.R. 2278, as ordered to be reported by the House Judiciary Committee, and Senate-passed S. 744, would modify the INA's enforcement provisions applicable to persons found within the United States ("interior enforcement" provisions). Both bills would heighten criminal penalties associated with violations of federal immigration law and establish new grounds for inadmissibility and deportability. The bills differ in several important ways, however, with H.R. 2278 generally imposing more significant penalties for immigration-related violations and more stringent requirements relating to the detention and removal of aliens than S. 744. H.R. 2278 also contains provisions encouraging states and localities to play a more active role in immigration enforcement.

## Criminal Sanctions

S. 744 and H.R. 2278 would make numerous changes to existing immigration-related criminal offenses. Among other things,<sup>23</sup> both bills would amend existing criminal statutes concerning passport and immigration-related document fraud, along with the criminal prohibitions on the smuggling and harboring of unauthorized aliens. In each case, the modifications would generally involve widening the scope of proscribed conduct and heightening the available criminal penalties,<sup>24</sup> at least when certain aggravating circumstances exist.

Both bills would revise the criminal statutes addressing unlawful entry by an alien<sup>25</sup> and unlawful reentry of an alien in violation of an outstanding order of removal,<sup>26</sup> including by increasing available penalties in certain circumstances. H.R. 2278 would expand the scope of the unlawful entry and reentry statutes to expressly cover illegal border crossings, regardless of whether a crossing occurred while the alien was under surveillance by immigration authorities. S. 744 would establish a new criminal offense for hindering or obstructing the apprehension of aliens unlawfully entering the United States. S. 744 would also eliminate current criminal penalties associated with *attempting* to unlawfully enter the country. In addition, the Senate bill would

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<sup>22</sup> Act of June 27, 1952, ch. 477; 66 Stat. 163; codified as amended at 8 U.S.C. §1101 et seq. The INA is the basis of current immigration law.

<sup>23</sup> For more extensive discussion of modifications made by the bills, including changes not discussed here, see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*, and CRS Report R43192, *Immigration Enforcement: Major Provisions in H.R. 2278, the Strengthen and Fortify Enforcement Act (SAFE Act)*.

<sup>24</sup> For background on existing criminal offenses, see CRS Legal Sidebar CRS Report WSLG563, *An Overview of Immigration-Related Crimes*.

<sup>25</sup> INA §275

<sup>26</sup> INA §276

provide an affirmative defense to an alien criminally charged with unlawful reentry into the country in violation of an outstanding removal order, if the alien had been removed from the country while a minor, and would exempt from criminal liability certain reentry offenses that involve the provision of emergency humanitarian assistance.

H.R. 2278 would make unlawful alien presence a criminal offense. Specifically, the bill would make it a crime for an alien to either (1) knowingly violate the terms of his admission or parole or (2) otherwise knowingly be unlawfully present in the country for any period of time. Criminal liability would not attach to periods of unlawful presence as a minor or generally to unauthorized aliens with bona fide pending asylum applications, battered women or children, or victims of severe forms of trafficking.

## **Inadmissibility, Deportability, and Relief from Removal**

The INA provides that aliens who engage in specified activities, including various forms of criminal conduct and activities posing a threat to U.S. security (e.g., terrorism), are generally barred from admission and subject to removal.<sup>27</sup> Some forms of conduct may also make an alien ineligible for many forms of relief from removal (e.g., asylum). The most significant immigration consequences typically attach to aliens convicted of any offense defined as an “aggravated felony” by the INA.<sup>28</sup>

Both S. 744 and H.R. 2278 would add new grounds for alien inadmissibility and/or deportability.<sup>29</sup> For example, both bills include provisions making aliens who commit certain fraud-related offenses or who are involved with criminal street gangs inadmissible or deportable; and modify the grounds of inadmissibility to cover crimes of domestic violence, child abuse, stalking, and violation of protection orders (all of which are already grounds for deportability). Both bills contain provisions concerning the removability of aliens convicted of multiple driving under the influence (DUI) offenses. S. 744 would add or expand existing grounds of inadmissibility relating to the withholding of information for biometric screening and severe human rights violations. H.R. 2278 would amend the grounds of inadmissibility to expressly cover aggravated felony convictions (already a ground for deportability) and additional firearms offenses. Both H.R. 2278 and S. 744 would authorize immigration authorities, in certain circumstances, to consider evidence that is extrinsic to the conviction record when determining whether an alien engaged in conduct making him or her removable under specified grounds.

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<sup>27</sup> See CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, and CRS Report RL32480, *Immigration Consequences of Criminal Activity*.

<sup>28</sup> INA §101(a)(43) provides a list of crimes deemed to be aggravated felonies for immigration purposes, a list that Congress has repeatedly expanded over the years to cover additional crimes. The definition is not limited to offenses punishable as felonies (i.e., punishable by at least a year and a day imprisonment); certain misdemeanors are also defined as aggravated felonies for INA purposes. See generally CRS Legal Sidebar CRS Report WSLG454, *Will Immigration Reform Legislation Revisit the Definition of “Aggravated Felony”?* and archived CRS Report RL32480, *Immigration Consequences of Criminal Activity*.

<sup>29</sup> The grounds of inadmissibility generally apply to aliens who have not been lawfully admitted into the United States, including (1) aliens outside the United States who seek to obtain a visa or admission at a port of entry; (2) aliens within the United States who seek to adjust their status to that of an LPR; and (3) aliens who entered the United States unlawfully. The grounds for deportability, in contrast, apply to aliens who were lawfully admitted into the United States.

Both bills would also make changes to the INA's definition of aggravated felony, with H.R. 2278 making the more substantial modifications. Among other things, the House bill would designate as aggravated felonies, criminal convictions for unlawful entry, presence, or reentry, as long as the length of imprisonment for the offense is at least a year. Both H.R. 2278 and S. 744 would also designate DUI convictions as aggravated felonies in certain circumstances.

S. 744 would increase immigration authorities' discretion to waive certain grounds of inadmissibility. Among other things, it would give immigration judges discretion to not order certain aliens in removal proceedings to be removed, deported, or excluded if the judge determines that such actions would be against the public interest, would create a hardship to the alien's U.S. citizen or permanent resident immediate relatives, or if the alien appears eligible for naturalization. This waiver would not be available to individuals who are inadmissible or deportable based on certain criminal and national security grounds. The Secretary of DHS would have similar discretion to waive grounds of inadmissibility.

H.R. 2278 would modify the immigration consequences for some types of criminal activity. For example, it would prohibit refugees and asylees who have committed aggravated felonies from obtaining legal permanent residence. It would make aliens who are removable due to involvement with criminal street gangs or who are described in the terrorism-related grounds for inadmissibility or removal, ineligible for many forms of relief from removal. H.R. 2278 also would make streamlined removal proceedings potentially applicable to a broader category of criminal aliens. House-passed H.R. 5230 would make ineligible for asylum those aliens believed to have committed, prior to their arrival in the United States, a drug-related offense punishable by more than one year's imprisonment.

P.L. 113-100 directs the President to deny admission to a person seeking to enter the United States as a representative to the United Nations if it is determined that the person has engaged in terrorist activity against the United States or its allies. This provision may be waived if the President deems it to be in the national security interests of the United States.

The House-passed defense authorization bill for 2015 (H.R. 4435) and the competing Senate version that was reported by the Senate Committee on Armed Services (S. 2410) contain provisions that would limit the application of the INA's terrorism-related provisions to the Kurdistan Democratic Party and the Patriotic Union of Kurdistan.

## **Detention of Aliens**

Under the INA, individual aliens placed in removal proceedings are potentially subject to detention, but could also be released on parole or bond.<sup>30</sup> Certain categories of aliens, however, are subject to mandatory detention during removal proceedings.<sup>31</sup> The INA also contains provisions concerning the detention of aliens ordered removed until such time as their removal may be effectuated.

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<sup>30</sup> For discussion of detention policy and practices, see CRS Report RL32369, *Immigration-Related Detention*.

<sup>31</sup> Several courts have interpreted provisions of the INA requiring the mandatory detention of certain categories of aliens as having implicit temporal limitations, in order to avoid resolving constitutional questions that would be raised if the INA were construed to permit the prolonged or indefinite detention of aliens. See CRS Legal Sidebar CRS Report WSLG524, *How "Mandatory" Is the Mandatory Detention of Certain Aliens in Removal Proceedings?*

S. 744 contains provisions that appear intended to reduce the number of aliens held in DHS custody throughout removal proceedings. For example, under S. 744, except in the cases of certain terrorists and criminal aliens, detention would be required only if the Secretary of DHS demonstrates that no conditions, including the use of alternatives to detention that maintain custody over the alien, would reasonably assure the appearance of the alien at immigration proceedings and the safety of any other person. The bill would also generally require determinations by immigration judges as to whether an alien's continued detention is warranted. For aliens not eligible for bail or to be released on recognizance, another provision of S. 744 would require DHS to establish a secure alternatives program offering a "continuum of supervision mechanisms and options."<sup>32</sup> Most aliens, including many who are subject to mandatory detention, would potentially be eligible for the secure alternatives program.

H.R. 2278, in contrast, would seek to augment immigration authorities' ability to detain aliens identified for removal until their removal may be effectuated. Some provisions seek to ensure that certain categories of aliens—particularly those involved in criminal activity or deemed to pose a threat to the community—remain detained throughout the removal process and until removed. Other provisions of the bill would make unlawfully present aliens convicted of one or more DUI offenses and aliens removable on account of involvement with criminal street gangs subject to mandatory detention during removal. Other provisions would establish detention requirements that are more generally applicable to any alien placed in removal proceedings or ordered removed.

## **Prosecutorial or Enforcement Discretion**

The Obama Administration has issued several documents that provide guidance regarding the exercise of prosecutorial discretion in immigration enforcement activities. In so doing, it has emphasized that the exercise of discretion in individual cases is appropriate to "ensure that agency resources are focused on our enforcement priorities, including individuals who pose a threat to public safety, are recent border crossers, or repeatedly violate our immigration laws."<sup>33</sup> The Administration has also claimed that the exercise of such discretion can promote humanitarian interests. Others, however, have suggested that the Administration's prosecutorial discretion policies are tantamount to "amnesty," and that the Deferred Action for Childhood Arrivals (DACA) initiative,<sup>34</sup> in particular, contravenes certain provisions of the INA.<sup>35</sup>

H.R. 2278, as ordered to be reported by the House Judiciary Committee, contains provisions that would respond to the Obama Administration's initiatives, apparently with the intent of foreclosing certain exercises of prosecutorial discretion and promoting more vigorous enforcement of federal immigration law. The bill would require annual reports on exercises of prosecutorial discretion. It would also bar DHS from finalizing, implementing, administering, or enforcing recent guidance regarding prosecutorial discretion, including DACA. A similar restriction is contained in the

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<sup>32</sup> S. 744 §3715.

<sup>33</sup> Gary Mead, Executive Associate Director, ICE, et al., *Applicability of Prosecutorial Discretion Memoranda to Certain Family Relationships*, Oct. 5, 2012, reproduced in 89 *Interpreter Releases* 1966-67 (Oct. 15, 2012).

<sup>34</sup> Under the DACA initiative, certain individuals who were brought to the United States as children and meet other criteria can be considered for temporary administrative relief from removal for two years, subject to renewal. See CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*.

<sup>35</sup> For further discussion of prosecutorial discretion in immigration enforcement, see CRS Report R42924, *Prosecutorial Discretion in Immigration Enforcement: Legal Issues*.

House-passed version of H.R. 2217, the Department of Homeland Security Appropriations Act, 2014. House-passed H.R. 5272 would bar federal funds from being used to consider any new or previously adjudicated DACA application; authorize deferred action for any class of unlawfully present aliens; or provide work authorization to any alien not lawfully admitted into the country who is not in lawful immigration status on the bill's date of enactment.

As previously discussed, S. 744 would provide statutory authorization to DHS and immigration judges to exercise discretion in a broader range of cases involving removable aliens (see "Inadmissibility, Deportability, and Relief from Removal").

## **State and Local Involvement in Immigration Enforcement**

The role that states and localities play in enforcing federal immigration law has been a topic of significant interest in recent years.<sup>36</sup> Some states and localities, concerned about what they perceive as inadequate federal enforcement of immigration law, have sought to independently enforce federal law, as well as to penalize conduct that may facilitate the presence of unauthorized aliens within their jurisdiction. Other states and localities, in contrast, have proscribed activities (e.g., sharing information, honoring federal requests to hold aliens) that could assist in federal immigration enforcement because they maintain that the federal government has been too aggressive in removing aliens who are not criminals and have ties to the community.

At least until 2012, there had been considerable debate regarding the ability of states and local officers to independently act to enforce federal immigration law, or to impose criminal sanctions upon activities that facilitate unauthorized immigration, separate and apart from any sanctions imposed under federal law. In its decision in the case of *Arizona v. United States*, however, the Supreme Court found that existing federal law contemplates states and localities having a limited role in immigration enforcement.<sup>37</sup> The Court indicated that states' ability to criminally sanction immigration-related activities is limited, even when these sanctions mirror those of the federal government. The Court also ruled that states generally cannot arrest aliens on the basis of suspected removability except with express federal statutory authorization or pursuant to the request, approval, or instruction of federal immigration authorities.

H.R. 2278 includes several provisions that seem intended to override aspects of the Supreme Court's ruling in *Arizona* and provide states and localities with express statutory authorization to engage in immigration enforcement activities. Among other things, H.R. 2278 would authorize states and localities to arrest and transfer removable aliens to federal immigration authorities' custody and permit states and localities to impose their own criminal penalties for conduct constituting a criminal offense under federal immigration law. Other provisions would require greater information sharing by federal, state, and local authorities for immigration purposes; encourage the continuation and expansion of cooperative arrangements with states or localities on immigration enforcement matters, including through written agreements under INA Section

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<sup>36</sup> See, generally, CRS Report R41423, *Authority of State and Local Police to Enforce Federal Immigration Law*; CRS Report R41991, *State and Local Restrictions on Employing Unauthorized Aliens*; and CRS Report R42719, *Arizona v. United States: A Limited Role for States in Immigration Enforcement*.

<sup>37</sup> *Arizona v. United States*, 132 S. Ct. 2492, \_\_\_ U.S. \_\_\_ (2012). For further discussion, see CRS Report R42719, *Arizona v. United States: A Limited Role for States in Immigration Enforcement*.

287(g),<sup>38</sup> and require that DHS consider assuming custody of removable aliens in state or local custody if requested to do so. The bill would also condition certain federal funding for states and localities upon their cooperation in enforcing federal immigration law.

## **Employment Eligibility Verification and Worksite Enforcement**

Employment eligibility verification and worksite enforcement (one component of interior enforcement) are widely viewed as essential elements of a strategy to reduce unauthorized immigration. Under Section 274A of the INA, it is unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. Employers are further required to participate in a paper-based (I-9) employment eligibility verification system in which they examine documents presented by new hires to verify identity and work eligibility, and to complete and retain I-9 verification forms. Employers violating prohibitions on unlawful employment may be subject to civil and/or criminal penalties. Enforcement of these provisions, termed “worksite enforcement,” is the responsibility of DHS’s U.S. Immigration and Customs Enforcement (ICE).

While all employers must meet the I-9 requirements, they may also elect to participate in the E-Verify electronic employment eligibility verification system.<sup>39</sup> E-Verify is administered by DHS’s U.S. Citizenship and Immigration Services (USCIS). Participants in E-Verify electronically verify new hires’ employment authorization through Social Security Administration (SSA) and, if necessary, DHS databases.<sup>40</sup> E-Verify is a temporary program, currently authorized through September 30, 2015.

Several bills on electronic employment eligibility verification have been introduced in the 113<sup>th</sup> Congress.<sup>41</sup> Two measures have seen legislative action. The House Judiciary Committee has ordered to be reported the Legal Workforce Act (H.R. 1772). S. 744, as passed by the Senate, includes provisions on employment eligibility verification and worksite enforcement in Title III. Both bills would amend the INA to permanently authorize a new electronic verification system modeled on E-Verify. Under both bills, an employer, after reviewing employee documents evidencing identity and employment authorization and completing a verification form with the employee, would seek confirmation of the employee-provided information through the electronic verification system.

The new electronic verification system proposed in H.R. 1772 would be mandatory for all employers in cases of hiring, recruitment, and referral. The verification requirements with respect to hiring would be phased in by employer size, with the largest employers (those with 10,000 or

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<sup>38</sup> INA §287(g) authorizes the Secretary of DHS to enter written agreements that enable specially trained state or local officers to perform specific functions relative to the investigation, apprehension, or detention of aliens, during a predetermined time frame and under federal supervision. For further discussion, see CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*.

<sup>39</sup> While E-Verify is primarily a voluntary program, there are some mandatory participants. See CRS Report R40446, *Electronic Employment Eligibility Verification*.

<sup>40</sup> For additional information on E-Verify, see *Ibid.*

<sup>41</sup> See, for example, S. 202, H.R. 478, and H.R. 502, as introduced in the 113<sup>th</sup> Congress.

more employees) required to participate six months after the date of enactment and the smallest employers (those with less than 20 employees) required to participate two years after the date of enactment. The requirements with respect to recruitment and referral would apply one year after the date of enactment. The bill also would provide for mandatory reverification of workers with temporary work authorization, which would be phased in on the same schedule as the verification requirements for hiring. Special provisions would apply to agriculture; the hiring, recruitment and referral, and reverification provisions would not apply to agricultural workers until two years after the date of enactment. Prior to these phase-in dates, existing requirements to use E-Verify would remain in effect.

H.R. 1772 would require or permit electronic verification in ways not currently allowed under E-Verify. Employers could conduct electronic verification after making an offer of employment but before hiring, and could condition a job offer on final verification under the system. Verification of previously hired individuals would be mandatory in some cases (such as, federal, state, and local government employees). DHS could authorize or direct a critical infrastructure employer to use the system to the extent DHS determines is necessary for critical infrastructure protection. In addition, employers could verify current employees on a voluntary basis.

H.R. 1772 would significantly increase existing civil and criminal penalties for violations of the revised INA Section 274A prohibitions on unauthorized employment and for violations of requirements to conduct verification. It would establish as violations of the prohibition on unauthorized employment, the failure to seek electronic verification as required or the knowing provision of false information to the electronic system. H.R. 1772 would provide for the blocking of social security numbers from use in the verification system in cases of misuse and in other specified circumstances. It also would enable individuals to limit use of their social security numbers or other information for verification purposes.

In addition, H.R. 1772 includes language to expressly preempt any state or local law that relates to the hiring, employment, or verification of the employment eligibility of unauthorized aliens. At the same time, a state or locality could exercise its authority over business licensing and similar laws as a penalty for failure to use the verification system and a state, at its own expense, could enforce the revised INA Section 274A provisions, under specified terms. The bill also would require DHS to establish an office to receive complaints from state and local agencies about potential violations.

Among its other provisions, H.R. 1772 would direct DHS to establish an Identity Authentication Employment Eligibility Pilot Program, which would “provide for identity authentication and employment eligibility verification with respect to enrolled new employees.”<sup>42</sup> The Senate bill, as discussed below, would mandate the use of an identity authentication mechanism.

Like H.R. 1772, Senate-passed S. 744 would amend the INA to authorize a new Electronic Verification System (EVS) modeled on E-Verify, through which employers would seek confirmation of employee-provided information. Employers also would be required to use a new identity authentication mechanism to be developed by DHS to verify the identity of each individual an employer seeks to hire. For certain documents, the mechanism would consist of a

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<sup>42</sup> H.R. 1772 §12.

“photo tool” to enable an employer to compare the photograph on a document provided by an individual to the original image on that same document.<sup>43</sup>

Under S. 744, the EVS would be mandatory for all employers in cases of hiring, recruitment, and referral for a fee. Employers also would have to reverify the employment authorized status of individuals with temporary work authorization. As under H.R. 1772, the verification requirements would be phased in, but on a different timetable. All federal agencies would be required to participate in the EVS on the earlier of the date of enactment, to the extent each agency is required to participate in E-Verify and as already implemented, or 90 days after the date of enactment. Federal contractors would be required to participate in the EVS in accordance with current regulatory requirements to participate in E-Verify. Beginning one year after implementing regulations are published,<sup>44</sup> DHS could direct any employer involved in critical infrastructure to participate in the EVS to the extent the Secretary determines such participation would assist in critical infrastructure protection; these employers could be required to participate in the EVS with respect to newly hired employees as well as current workers.

The phase-in of the EVS participation requirements for other employers with respect to newly hired employees and employees with expiring employment authorization documents would begin no later than two years after the publication of implementing regulations (for employers with more than 5,000 employees) and would end no later than five years after the publication of implementing regulations (for the last group, tribal government employers). Agricultural employers would be required to participate in the EVS no later than four years after regulations are published.<sup>45</sup>

DHS would be directed to develop procedures to provide individuals with direct access to their case histories in the EVS, and to notify them of queries and EVS responses. S. 744 would establish processes for an individual to seek administrative review and judicial review of a final nonconfirmation. The bill would enable individuals to limit the use of their social security numbers or other information for verification purposes. In addition, S. 744 would provide for regular privacy and accuracy audits and civil rights assessments of the EVS.

With respect to enforcement, S. 744 would direct DHS to establish procedures for the filing and investigation of unlawful employment-related complaints by individuals and entities. Like H.R. 1772, the Senate bill would significantly increase existing civil and criminal penalties for violations of the revised INA Section 274A prohibitions on unauthorized employment and for violations of requirements to conduct verification. An employer who hires a worker without using the electronic system when required to do so would be presumed to have violated the Section 274A prohibitions on unauthorized employment. Among the new penalties S. 744 would create, DHS would be authorized to establish an “enhanced civil penalty” in cases in which an employer both fails to use the EVS and violates a federal, state, or local law on the payment of wages, work hours, or workplace health and safety.

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<sup>43</sup> USCIS currently makes such a photo tool available through the E-Verify system for certain identity documents. Under S. 744, DHS would be required to develop another mechanism for documents not covered by the photo tool.

<sup>44</sup> These regulations would have to be published not later than one year after the date of enactment.

<sup>45</sup> DHS could require an employer that is found to have engaged in a pattern or practice of violations of U.S. immigration laws to verify its current employees through the EVS.

Like H.R. 1772, S. 744 includes language to expressly preempt any state or local law that relates to the hiring, employment, or verification of the employment eligibility of unauthorized aliens, though a state may exercise its authority over business licensing or similar laws to impose penalties for failure to use the federal employment verification system. Unlike H.R. 1772, however, it does not make provision for state enforcement of the INA Section 274A provisions on unauthorized employment.<sup>46</sup>

## Visa Security

The Department of State (DOS) and DHS both play key roles in administering the law and policies on the admission of aliens to the United States. All foreign nationals seeking visas (see “Temporary Admissions,” “Permanent Admissions”) must undergo admissibility reviews performed by DOS consular officers abroad. These reviews are intended to ensure that applicants are not ineligible for admission to the United States under the grounds for inadmissibility spelled out in INA Section 212. These criteria include health-related grounds, criminal history, security and terrorist concerns, public charge (e.g., indigence), and previous immigration offenses.<sup>47</sup>

Consular officers use the Consular Consolidated Database (CCD) to screen visa applicants. Records of all visa applications are now automated in the CCD, with some records dating back to the mid-1990s. Since February 2001, the CCD has stored photographs of all visa applicants in electronic form, and the CCD has stored 10-finger scans since 2007. In addition to indicating the outcome of any prior visa application and comments by consular officers, the system links to other security databases to flag problems that may have an impact on the issuance of the visa.

Although DOS’s Consular Affairs is responsible for issuing visas, DHS agencies perform related functions.<sup>48</sup> There was discussion of assigning all visa issuance responsibilities to DHS when the department was being created, but the Homeland Security Act of 2002 (HSA, P.L. 107-296) drew on compromise language stating that DHS would issue regulations regarding visa issuances, and that DOS would continue to issue visas. The question of which agency should take the lead in visa issuances continues to be debated.

Along these lines, Title IV of H.R. 2278, as ordered to be reported by the House Committee on the Judiciary, would give the Secretary of Homeland Security “exclusive authority to issue regulations, establish policy, and administer and enforce the provisions of the [INA] and all other immigration or nationality laws relating to the functions of consular officers of the United States in connection with the granting and refusal of a visa.” The bill would broaden the exception to the confidentiality requirement relating to the sharing of information with foreign governments, including by allowing such sharing for purposes of “determining a person’s deportability or eligibility for a visa, admission, or other immigration benefit,” or any other instance when “the Secretary of State determines that it is in the national interest.”<sup>49</sup> H.R. 2278 would narrow DOS’s

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<sup>46</sup> For further discussion of the compliance and penalty provisions in S. 744, see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

<sup>47</sup> See CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*.

<sup>48</sup> For example, USCIS approves immigrant petitions, ICE operates the Visa Security Program in selected U.S. embassies abroad, and CBP inspects all people who enter the United States.

<sup>49</sup> H.R. 2278 §§405, 402. H.R. 2278 would also eliminate language in INA §222(f) providing that the sharing of visa or permit-related information with foreign governments shall be “on the basis of reciprocity.”

authority to waive personal interviews for visa applicants and would add national security and “high risk of degradation of visa program integrity” as reasons for requiring a personal interview.<sup>50</sup> The legislation would also give consular officers the authority *not* to interview visa applicants deemed to be ineligible for the visas they are seeking. In addition, H.R. 2278 would give DHS the authority to refuse or revoke any visa to any alien or class of aliens if the Secretary determines that such refusal or revocation is necessary or advisable in the security interests of the United States.<sup>51</sup>

Some in Congress have been particularly interested in the Visa Security Program (VSP), which the ICE Office of International Affairs (OIA) operates in certain high-risk consular posts. As described by DHS, the VSP sends ICE special agents with expertise in immigration law and counterterrorism to foreign consulates, where they perform visa security activities that complement the DOS visa screening process. According to DHS, the VSP provides law enforcement resources not available to consular officers. One of the major tasks for VSP agents is to screen visa applicants to determine their risk profiles. GAO, however, released an evaluation of the VSP that identified several shortcomings. In addition to noting that tensions exist between consular officials and VSP agents, GAO was especially concerned about the lack of standard operating procedures for VSP agents across the various posts. Most importantly, perhaps, GAO stated that ICE has not expanded the VSP to key high-risk posts despite well-publicized plans to do so.<sup>52</sup>

H.R. 2278 would seek to expand the VSP by requiring DHS to conduct an on-site review of all visa applications and supporting documentation before adjudication, at the top 30 visa-issuing posts designated jointly by the Secretaries of State and Homeland Security as high-risk posts. It further would call for expedited clearance and placement of DHS personnel at overseas embassies and consular posts.

## Temporary Admissions

Nonimmigrants—such as tourists, foreign students, diplomats, temporary workers, cultural exchange participants, or intracompany business personnel—are admitted to the United States for a specific purpose and a temporary period of time. Nonimmigrants are required to leave the country when their visas expire, though certain classes of nonimmigrants are “dual intent,” meaning that they may maintain nonimmigrant status while, at the same time, seeking to adjust to lawful permanent resident (LPR) status<sup>53</sup> if they otherwise qualify. Current law describes 24 major nonimmigrant visa categories, and over 70 specific types of nonimmigrant visas, which are

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<sup>50</sup> H.R. 2278 §403.

<sup>51</sup> This new authority for DHS would supplement INA §221(i), which provides that after a visa has been issued, the consular officer and the Secretary of State have discretion to revoke the visa at any time. For further discussion, see CRS Report R43192, *Immigration Enforcement: Major Provisions in H.R. 2278, the Strengthen and Fortify Enforcement Act (SAFE Act)*.

<sup>52</sup> U.S. Government Accountability Office, *Border Security: DHS's Visa Security Program Needs to Improve Performance Evaluation and Better Address Visa Risk Worldwide*, GAO-11-315, March 31, 2011.

<sup>53</sup> Lawful permanent residents, also known as immigrants and green card holders, are noncitizens who are legally authorized to reside permanently in the United States.

often referred to by the letter that denotes their section in the statute, such as H-2A agricultural workers, F-1 foreign students, or J-1 cultural exchange visitors.<sup>54</sup>

## **High-Skilled Temporary Workers**

The 113<sup>th</sup> Congress considered legislation that would make extensive revisions to nonimmigrant categories for professional specialty workers (H-1B visas), intra-company transferees (L visas), and other skilled temporary workers. S. 744, as passed by the Senate, and the Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas Act (SKILLS Visa Act; H.R. 2131), as ordered to be reported by the House Committee on the Judiciary, would substantially revise these visa categories.

### **H-1B Professional Specialty Workers**

Current law makes H-1B visas available for professional specialty workers. H-1B visas are good for three years, renewable once; and they are “dual intent,” meaning aliens on H-1B visas may seek LPR status while maintaining H-1B status in the United States. Current law generally limits annual H-1B admissions to 65,000, but most H-1B workers are admitted outside the cap because they are returning workers and are, therefore, exempt from the cap or they work for universities and nonprofit research facilities that are exempt from the cap.

Employers seeking to hire an H-1B worker must attest that the employer will pay the nonimmigrant the greater of the actual wages paid to other employees in the same job or the prevailing wages for that occupation; working conditions for the nonimmigrant will not adversely affect U.S. workers; and there is no applicable strike or lockout. The employer must provide a copy of the labor attestation to representatives of the bargaining unit where applicable, or must post the labor attestation in conspicuous locations at the work site. Prospective H-1B nonimmigrants must demonstrate to USCIS that they have the requisite education and work experience for the posted positions.<sup>55</sup>

Both S. 744 and H.R. 2131 would seek to address perceived H-1B shortages by increasing the annual numerical limits. S. 744 would replace the 65,000 per year cap on new H-1B admissions with a flexible cap that would range from a floor of 115,000 to a ceiling of 180,000 annually, with a “market-based” mechanism to increase or decrease the cap based on demand during the previous year (i.e., whether and how quickly the previous year’s limit was reached). Under S. 744, up to 25,000 visas would be exempted from the cap for foreign nationals with graduate degrees in a science, technology, engineering, or mathematics (STEM) field. H.R. 2131 would raise the cap to 155,000 and would include an additional 40,000 H-1B visas for STEM graduates with masters’ or doctoral degrees. Both bills would permit spouses of H-1B workers to work.

S. 744 would seek to protect U.S. workers by modifying H-1B application requirements and procedures for investigating H-1B complaints. The bill would amend the H-1B labor certification process to revise wage requirements based on Department of Labor (DOL) surveys, and would require employers to advertise for U.S. workers on a DOL website. S. 744 also would broaden

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<sup>54</sup> See CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*.

<sup>55</sup> For a fuller discussion of H-1B visas, see CRS Report R42530, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees*.

DOL's authority to investigate alleged employer violations, would require DOL to conduct annual compliance audits of certain employers, and would increase DOL reporting requirements and information sharing between DOL and USCIS. Both S. 744 and H.R. 2131 would revise the prevailing wage schedules. H.R. 2131 would give DOL subpoena powers in an attempt to assure employer compliance with the H-1B rules.

## **L Visa Intra-Company Transferees**

Current law permits certain workers to enter the United States on nonimmigrant L visas as intracompany transferees. The L visa is designed for executives, managers, and employees with specialized knowledge of a firm's products. It permits multinational firms to transfer top-level personnel to their locations in the United States for up to five to seven years.<sup>56</sup> Some Members of Congress have raised concerns that the L visa may result in displacement of U.S. workers employed in those positions. L workers are often comparable in skills and occupations to H-1B workers, but the L visa is not subject to the labor market attestation requirements the law sets for hiring H-1B workers. These concerns have been raised, in particular, with respect to certain outsourcing and information technology firms that employ L workers as subcontractors within the United States.

S. 744 would add prohibitions on the outsourcing and outplacement of L employees. Employers seeking to bring an L visa worker to the United States to open a new office would face special application requirements. DHS would be required to work with DOS to verify the existence of multinational companies petitioning for the L workers. With respect to compliance, DHS would be authorized to investigate and adjudicate alleged employer violations of L visa program requirements for up to 24 months after the alleged violation; and DOL would be required to conduct annual compliance audits of certain employers.

H.R. 2131 would add new labor market conditions to the INA pertaining to L petitions. The bill would require employers of certain L workers who will be working a cumulative period of six months over a three-year period to pay either the actual wage paid to similarly employed workers or the prevailing wage, whichever is higher. Under H.R. 2131, the employer would have to provide working conditions that will not adversely affect working conditions of similarly employed workers.

## **Other Skilled and Professional Workers**

Current law includes two nonimmigrant visa categories similar to H-1B visas for temporary professional workers from specific countries: North American Free Trade Agreement (NAFTA) TN visas for Canadian and Mexican temporary professional workers, and E-3 treaty professional visas for Australians. Among the related provisions in legislation that received action in the 113<sup>th</sup> Congress, S. 744 would create a new category for specialty workers from countries with whom the United States has signed a free trade agreement. H.R. 2131 would extend the required \$500 fee for H-1B visa and L visa fraud detection and prevention programs to employers of TN, E-3, and certain H-1B workers.

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<sup>56</sup> For a fuller discussion, see CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*.

Several other employment-based nonimmigrant visas are intended to attract outstanding individuals, entrepreneurs, professionals, and high-skilled workers. Among these visas is the O visa for persons with outstanding and extraordinary ability. S. 744 and H.R. 2131 would add visa portability for foreign nationals on O-1 visas, enabling them to change employers, and would add flexibility to the requirements for being admitted on an O-1 visa based on achievement in motion picture or television production.

S. 744 would significantly amend the E-1 and E-2 visa categories for treaty traders and treaty investors from countries with whom the United States has signed a treaty of commerce and navigation.<sup>57</sup> Although more than 70 countries are eligible for these visas, the United States no longer enters into treaties of commerce and navigation. Among other changes, S. 744 would allow E visas to be issued to citizens of countries where there is a bilateral investment treaty or a free trade agreement.<sup>58</sup> In addition, the Senate bill would create a new nonimmigrant X visa for qualified entrepreneurs whose U.S. business entities meet certain requirements regarding attracting investment, or generating revenues and creating jobs. None of the House bills that have seen committee action contain similar provisions, but H.R. 2131 would create a pathway for E-2s to become LPRs (see “Investor Visas”).<sup>59</sup>

## **Lower-Skilled Temporary Workers**

Under current law, lower-skilled temporary workers (sometimes referred to as guest workers) can enter the United States on H-2A agricultural worker visas and H-2B nonagricultural worker visas to perform temporary or seasonal work. Bringing in an H-2A or H-2B worker is a multi-agency, multi-step process. Among the required steps, employers must apply to the Department of Labor for a certification that there are not sufficient U.S. workers who are qualified and available to perform the work; and that the employment of foreign workers will not adversely affect the wages and working conditions of U.S. workers who are similarly employed. Before filing such a labor certification application with DOL, prospective H-2A and H-2B employers must attempt to recruit U.S. workers. As part of the labor certification process, employers must offer and provide required wages and benefits to guest workers and similarly employed U.S. workers.<sup>60</sup> Senate and House bills that have received action in the 113<sup>th</sup> Congress variously contain provisions on lower-skilled temporary workers.

### **Agricultural Guest Workers**

S. 744, as passed by the Senate, and the Agricultural Guest Worker Act, or the AG Act (H.R. 1773), as ordered to be reported by the House Judiciary Committee, would establish new temporary agricultural worker visas. S. 744 would establish new W-3 and W-4 nonimmigrant visas for agricultural workers, and H.R. 1773 would create a new H-2C nonimmigrant agricultural worker visa.

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<sup>57</sup> E-1 visas are for treaty traders and the E-2 are for treaty investors. For more on the E category, see CRS Report RL33844, *Foreign Investor Visas: Policies and Issues*.

<sup>58</sup> Free trade agreements are not considered treaties of commerce and navigation.

<sup>59</sup> For further discussion of proposed changes in S. 744 to these and other nonimmigrant categories, see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

<sup>60</sup> See CRS Report R42434, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*.

While the new agricultural worker visas proposed in the Senate and the House measures differ, they share some similarities that distinguish them from the existing H-2A visa. Both the Senate and the House bills would sunset the H-2A visa program. Among the new features of the Senate-proposed and the House-proposed replacement agricultural worker visa programs, these visas, unlike the H-2A visa, would not be limited to temporary or seasonal agricultural work and would not require prospective employers to apply for DOL labor certification or to meet all existing certification requirements. Both new programs also would provide for at-will employment by agricultural workers. In addition, both the Senate and the House agricultural worker proposals include provisions to enable certain unauthorized aliens to obtain legal temporary or permanent immigration status.<sup>61</sup>

### **Nonagricultural Guest Workers**

S. 744, as passed by the Senate, would make changes to the H-2B visa. Current law permits the admission of H-2B visa holders to perform temporary, non-agricultural work when sufficient qualified U.S. workers are not available. H-2B visas are subject to a statutory cap of 66,000 visas per year. S. 744 would provide for the admission of additional H-2B workers outside the statutory cap, while also imposing additional requirements on H-2B employers. Among these provisions, S. 744 would renew an H-2B returning worker exemption from the annual cap that was in effect in FY2005-FY2007 and provide that H-2B nonimmigrants counted toward the H-2B cap for FY2013 would not be counted again for FY2014 through FY2018.

In addition to revising the H-2B visa, S. 744 would create a new W-1 visa for nonagricultural temporary workers and a new W-2 visa for the spouses and children of such workers. Unlike the H-2B visa, the W-1 visa would not be limited to temporary or seasonal work and would not require prospective employers to apply for DOL labor certification. More generally, the W-1 visa would be subject to a different set of requirements than the H-2B visa. W-1 nonimmigrants would be admitted to work in registered positions, which would be limited to lower-skilled occupations and generally to metropolitan areas where the unemployment rate is 8.5% or less. The number of positions would range from 20,000 to 200,000 per year, to be determined as specified in S. 744. Additional positions could be created for shortage occupations and as special allocations for certain employers who meet specified recruitment requirements. W-2 nonimmigrants also would be authorized to work in the United States.<sup>62</sup>

An H-2B provision was enacted as part of the Consolidated Appropriations Act, 2014 (P.L. 113-76). It allows an employer in the seafood industry with an approved H-2B petition to bring in H-2B workers at any time during the 120-day period beginning on the employer's stated date of need for workers, without filing another petition. This provision, which was initially in effect until September 30, 2014, has been extended until December 11, 2014, by the Continuing Appropriations Resolution, 2015 (P.L. 113-164 §140).

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<sup>61</sup> See CRS Report R43161, *Agricultural Guest Workers: Legislative Activity in the 113<sup>th</sup> Congress*.

<sup>62</sup> See CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

## Other Temporary Admissions

The 113<sup>th</sup> Congress also considered changes to the temporary visa categories for foreign visitors to the United States and foreign students.

### Tourists

There has been long-standing interest in Congress in promoting international tourism to the United States. S. 744 would allow Canadians over age 55 entering on B tourist visas who own or have rented property in the United States to be admitted for a period not to exceed 240 days. Currently, the maximum admission time on a B visa is 180 days.<sup>63</sup> S. 744 would also create a new nonimmigrant visa category (Y) for those over 55 years of age who own property in the United States.<sup>64</sup> Similar provisions are contained in the Jobs Originated through Launching Travel (JOLT) Act of 2013 (H.R. 1354).

### *Visa Waiver Program*

The Visa Waiver Program (VWP) allows nationals from certain countries to enter the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consulate abroad.<sup>65</sup> Aliens entering under the VWP must get approval from the Electronic System for Travel Authorization (ESTA), a web-based system that checks the alien's information against relevant law enforcement and security databases, before they can board a plane to the United States. To qualify for the VWP, the INA specifies that a country must offer reciprocal privileges to U.S. citizens; have had a nonimmigrant refusal rate<sup>66</sup> of less than 3% for the previous year; issue their nationals machine-readable passports that incorporate biometric identifiers (see "Entry-Exit System"); certify that it is developing a program to issue tamper-resistant, machine-readable visa documents that incorporate biometric identifiers which are verifiable at the country's port of entry; and not compromise the law enforcement or security interests of the United States by its inclusion in the program.

Senate-passed S. 744 would make several changes to the VWP, including authorizing the Secretary of DHS, in consultation with the Secretary of State, to designate a country as a VWP country if the country's nonimmigrant refusal rate and/or nonimmigrant overstay rate<sup>67</sup> was less than 3% in the previous fiscal year.<sup>68</sup> As indicated above, only the refusal rate is currently used in deciding whether a country should be in the VWP. S. 744 would also allow the Secretary of DHS

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<sup>63</sup> The length of stay may be extended for an additional 180 days.

<sup>64</sup> For more on this category, see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

<sup>65</sup> As of October 2014, there are 38 countries that are eligible to participate in the VWP. For more on the VWP, see CRS Report RL32221, *Visa Waiver Program*.

<sup>66</sup> The nonimmigrant refusal rate is the number of people from the country who were refused a B tourist visa in the previous year and who could not overcome the denial, divided by the total number of people from the country who applied for a B visa in the previous year.

<sup>67</sup> The nonimmigrant overstay rate is the number of people from the country on B visas who did not leave the United States when their term of admittance ended during the previous year, divided by the total number of people from that country who were admitted on B visas and were supposed to leave the United States during the previous year.

<sup>68</sup> For more details on the provisions in S. 744 regarding the VWP, see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

to waive the refusal rate requirement if certain conditions are met.<sup>69</sup> In addition, the bill would revise the current probationary period and procedures for terminating a country's participation in the VWP if that country fails to comply with any of the program's requirements.<sup>70</sup>

In 2009, Congress created the Corporation for Travel Promotion (called Brand USA), a public-private entity to promote U.S. tourism that is funded by a \$10 travel promotion fee levied against ESTA applicants.<sup>71</sup> By statute, the travel promotion fee expires at the end of FY2015. H.R. 4450, as passed by the House, would extend the travel promotion fee through FY2020.

H.R. 938, as passed by the House, and S. 2673, as passed by the Senate, would declare that it is U.S. policy to admit Israel to the VWP when Israel satisfies—and for as long as Israel continues to satisfy—the program's statutory requirements.

## **Students**

The most common nonimmigrant visa for foreign students is the F visa. It is for international students pursuing an education at an “established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program.”<sup>72</sup> Both S. 744, as passed by the Senate, and H.R. 2131, as ordered to be reported by the House Judiciary Committee, would make changes to the F visa category. S. 744 would allow aliens on F visas who are seeking a bachelor's or graduate degree to have dual intent; thus, they could seek LPR status while maintaining F status. H.R. 2131 would allow dual intent only for aliens on F visas who are seeking a bachelor's or graduate degree in a STEM field. S. 744 also would increase the accreditation requirements for schools accepting F students, and would remove the 12 month time limit for foreign students on F visas who are attending public secondary schools.

H.R. 5401, as ordered to be reported by the House Judiciary Committee, would terminate the nonimmigrant status of any Libyan national, or any other foreign national acting on behalf of a Libyan entity, engaging in aviation maintenance, flight operations, or nuclear-related studies or training. In addition, the bill would prohibit these foreign nationals from transferring schools, extending their period of stay, obtaining employment or practical training authorization, reinstating their student status, or changing their nonimmigrant status.

## ***Student and Exchange Visitor Information System (SEVIS)***

Congress first mandated a foreign student and exchange visitor tracking system in 1996, and Congress expanded the system's requirements for an electronic tracking system after the September 11, 2001, terrorist attacks.<sup>73</sup> This monitoring system, known as the Student and

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<sup>69</sup> For additional information, see *Ibid.* and CRS Report RL32221, *Visa Waiver Program*.

<sup>70</sup> The VWP provisions in S. 744 are almost identical to those in H.R. 1354.

<sup>71</sup> BrandUSA was established by the Travel Promotion Act of 2009 (P.L. 111-145). For more on Brand USA, see CRS Report R43463, *U.S. Travel and Tourism: Industry Trends and Policy Issues for Congress*. The total ESTA fee is \$14, which includes \$4 to cover the costs of administering ESTA and \$10 for the travel promotion fee.

<sup>72</sup> INA §101(a)(15)(F).

<sup>73</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208), USA Patriot Act of 2001 (P.L. 107-56), and Enhanced Border Security and Visa Reform Act of 2002 (P.L. 107-173). For more on the history of SEVIS, see archived CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student* (continued...)

Exchange Visitor Information System (SEVIS), became operational in 2003, and is administered by ICE's Student and Exchange Visitor Program (SEVP). ICE is developing a new system, known as SEVIS II, in an effort to address limitations in the current SEVIS system. In addition, SEVP certifies schools as being eligible to accept foreign students.

S. 744, as passed by the Senate, and H.R. 2278, as ordered to be reported by the House Judiciary Committee, both contain several provisions related to SEVP and SEVIS.<sup>74</sup> Among other provisions, both S. 744 and H.R. 2278 would change accreditation requirements for academic institutions and flight schools accepting foreign students, and require periodic background checks for those accessing SEVIS. Both bills would make changes to the law to try to accelerate the process of withdrawing a school's certification to prevent problematic institutions from accepting foreign students. Both bills would also increase penalties for fraud related to visa documents committed by the owner or certain employees of SEVP-certified schools, and prohibit individuals convicted of such fraud from holding a position of authority at any school that accepts foreign students. In addition, S. 744 would require DHS to implement a real-time transmission of data from SEVIS to CBP databases. This interoperability would have to be completed within 120 days of enactment or the DHS Secretary would be required to suspend the issuance of foreign student (F and M) visas.

## **Cultural Exchange Visitors**

The J-1 visa is for individuals participating in cultural exchange programs and encompasses a variety of different, often work-related, programs, the largest of which is the summer work/travel program.<sup>75</sup> S. 744 would impose a fee on program sponsors (employers) for each nonimmigrant entering as part of a summer work/travel exchange. In addition, S. 744 would make eligible for a J visa, aliens who are coming to the United States to perform specialized work that requires proficiency in languages spoken in countries with less than 5,000 permanent admissions in the previous year.

## **Permanent Admissions**

Immigrants are persons admitted as legal permanent residents of the United States. Under current law, permanent admissions are subject to a complex set of numerical limits and preference categories that give priority for admission on the basis of family relationships, employment, and geographic diversity of sending countries. These limits include an annual flexible worldwide cap of 675,000 immigrants, plus certain humanitarian admissions. The INA specifies that each year, countries are held to a numerical limit of 7% of the worldwide level of U.S. immigrant admissions, known as per-country limits. The pool of people who are eligible to immigrate to the United States as LPRs each year typically exceeds the worldwide level set by U.S. immigration

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(...continued)

*and Exchange Visitor Information System (SEVIS).*

<sup>74</sup> For more on these provisions, see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

<sup>75</sup> The J visa category includes professors and research scholars, students, foreign medical graduates, teachers, interns, summer workers, camp counselors, and au pairs who are participating in an approved exchange visitor program. For additional information on the summer work/travel program, see CRS Report R42434, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*.

law, and as a consequence millions of prospective LPRs with approved petitions must wait to receive a numerically limited visa (commonly referred to as the “backlog” or “queue”). The immediate relatives of U.S. citizens are admitted outside of the numerical limits and are the flexible component of the worldwide cap.<sup>76</sup>

S. 744, as passed by the Senate, and H.R. 2131, as ordered to be reported by the House Committee on the Judiciary, would revise the numerical limits on legal permanent immigration and would alter the system that allocates the visas. Both bills would eliminate the per-country ceiling for employment-based preferences, and would increase the per-country ceiling for family-based preferences from 7% to 15%. Both bills would also make substantial changes to the allocation of visas to family-based and employment-based LPRs and would modify rules for investor visas.

## **Family-Based Immigration**

To qualify as a family-based LPR under current law, a foreign national must be the spouse or minor child of a U.S. citizen; the parent, adult child, or sibling of an adult U.S. citizen; or the spouse or unmarried child of a lawful permanent resident. At least 226,000, and no more than 480,000, family preference LPRs are admitted each year within four different preference categories: (1) adult unmarried children of U.S. citizens; (2) spouses, minor children, and adult unmarried children of LPRs; (3) adult married children of U.S. citizens; and (4) siblings of adult U.S. citizens. Foreign nationals who are immediate relatives of U.S. citizens (spouses, minor children, or parents) are not subject to numerical caps and may be admitted in unlimited numbers.<sup>77</sup>

S. 744, as passed by the Senate, includes three sets of provisions that would substantially affect family-based admissions.<sup>78</sup> First, the bill would introduce two “Merit-Based” systems for allocating visas, the second of which would reduce and possibly eliminate the current family-based visa queue of persons with approved immigration petitions, currently estimated at 4.3 million. As discussed more fully below, the Merit-Based Track Two system would allocate LPR visas to family-preference petitioners in the visa queue who had filed before the date of enactment of S. 744. The allocation would occur at a rate of 1/7 of all such pending petitioners per year over the seven years from FY2015 through FY2021. During FY2022-FY2023, visas would be issued to family-preference petitioners filing for up to 18 months after the date of enactment, with half of such petitioners receiving visas in each year (see “Merit-Based Track Two”).

In a second set of provisions, S. 744 would alter the number of family-based categories and the applicable numerical limits. It would reclassify spouses and minor unmarried children of LPRs as immediate relatives, making them exempt from family-preference numerical limits. The bill would then reallocate family-preference visas in two stages. In the first stage, during the first 18 months after enactment, family-preference visas would be allocated as follows: (1) adult unmarried children of U.S. citizens would be capped at 20% of the worldwide limit for family-

<sup>76</sup> See CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

<sup>77</sup> For information on the current family-based preference categories and visa allocations, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

<sup>78</sup> See CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

preference immigrants; (2) adult unmarried children of LPRs would be capped at 20% of the worldwide limit, plus unused visas from the first category; (3) adult married children of U.S. citizens would be capped at 20% of the worldwide limit, plus unused visas from the first two categories; and (4) siblings of U.S. citizens would be capped at 40% of the worldwide limit, plus unused visas from the first three categories.

In the second stage, beginning 18 months after enactment, S. 744 would eliminate the fourth preference category for adult siblings of U.S. citizens and would change the third preference category for adult married children. Under the revised system, family-preference visas would be allocated, as follows: (1) adult unmarried children of U.S. citizens could not exceed 35% of the worldwide level; (2) adult unmarried children of LPRs could not exceed 40% of the worldwide level; and (3) adult married children (31 years of age or younger) of U.S. citizens could not exceed 25% of the worldwide level.

A third set of provisions in S. 744 would make nonimmigrant V visas available to all persons with approved petitions pending within a family preference category. Such visas would allow the adult unmarried children of U.S. citizens and LPRs, as well as U.S. citizens' adult married children who are age 31 or younger, to reside in the United States until their visas become available. They would also be granted work authorization during that period.

## **Employment-Based Immigration**

The current employment-based LPR visa system consists of five numerically limited preference categories.<sup>79</sup> To qualify within one of these categories, a foreign national must be a person of extraordinary or exceptional ability in a specified area; an employee whom a U.S. employer has received approval from the Department of Labor to hire; an investor who will start a business that creates at least 10 new jobs; or someone who meets the narrow definition of the “special immigrant” category.<sup>80</sup> The INA currently allocates 140,000 admissions annually for employment-preference immigrants.

S. 744, as passed by the Senate, would make substantial changes to the employment-based system.<sup>81</sup> Foremost, the bill would exempt from the numerical limits on employment-based LPRs the following:

- derivatives (i.e., accompanying immediate family members) of employment-based LPRs;
- persons of extraordinary ability in the arts, sciences, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers (the current first preference employment-based category);

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<sup>79</sup> For a list of current preference categories, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

<sup>80</sup> Special immigrants include ministers of religion, religious workers, and certain employees of the U.S. government abroad, among other groups.

<sup>81</sup> For a more detailed discussion of these changes, see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

- persons who earned a doctorate degree from an institution of higher education in the United States or an equivalent foreign institution; or persons who earned a graduate degree in a science, technology, engineering, or math (STEM) field from a U.S. institution within the five-year period before the petition filing date and who have a U.S. offer of employment in the related field; and
- foreign national physicians who have completed foreign residence requirements.

In addition to establishing exemptions from numerical limits, the Senate bill would amend existing employment-based preference categories and would change certain procedures for admitting employment-based immigrants. For example, S. 744 would amend the first preference category (described above) to include aliens who are members of the professions holding advanced degrees who have a U.S. job offer (subject to certain requirements), including alien physicians accepted to a U.S. residency or fellowship program, or prospective employees of national security facilities. The second preference category would consist of advanced degree holders and generally would be allocated 40% of the 140,000 employment-based visa total. S. 744 also would change the allocation for the third preference employment-based category (i.e., skilled workers with at least two years training, professionals with baccalaureate degrees, and unskilled workers in occupations in which U.S. workers are in short supply) from 28.6% to 40% of the worldwide level and would repeal the existing cap of 10,000 on unskilled workers within that 40%.

Rather than shift certain visa categories outside numerical limits as in S. 744, H.R. 2131, as ordered to be reported, would eliminate the family-based fourth preference category for siblings of U.S. citizens (see “Family-Based Immigration”) and the diversity visa lottery (see “Diversity Visas”), and would reallocate these visas to increase the total number of employment-based LPR visas to 235,000 per year. The bill would provide up to 55,000 visas for foreign STEM graduates of U.S. universities. Foreign graduates who have a medical, dental, or veterinary degree, or who have completed their medical, dental, or veterinary residency at a U.S. university, would also be eligible. H.R. 2131 would require the STEM graduates to have completed 85% of their education while being physically present in the United States. Any LPR visas not used by STEM doctorates would be available for those with master’s degrees in STEM fields from a U.S. university. In addition, H.R. 2131 would increase to 55,040 each, the number of visas available for immigrants in professions with advanced degrees and persons of exceptional ability, and the number of visas available for skilled workers and professionals with bachelor’s degrees. It would not alter the existing cap of 10,000 on unskilled workers.

## **Investor Visas**

The fifth preference category under the current employment-based admissions system is for foreign investors (LPR investors). The basic purpose of the LPR investor visa, commonly referred to as the EB-5 visa, is to benefit the U.S. economy, primarily through employment creation and an influx of foreign capital into the United States. EB-5 visas are designated for individuals wishing to develop a new commercial enterprise in the United States. The INA stipulates that for an investor to qualify for an EB-5 visa, the investor must invest \$1 million into the enterprise. The investor receives conditional LPR status, and after two years if USCIS determines that the investor has invested the money, created 10 jobs, and the business is still operational, the conditional status is removed. In 1992, the Regional Center Pilot Program was authorized under the EB-5 visa category to provide a coordinated focus for foreign investment

toward specific geographic regions. The majority of EB-5 immigrant investors come through the pilot program.

S. 744, as passed by the Senate, and H.R. 2131, as ordered to be reported by the House Judiciary Committee, would make changes to the existing EB-5 program. Both bills would adjust the required amount of capital by the Consumer Price Index for Urban Consumers (CPI-U),<sup>82</sup> and provide procedures for allowing the Secretary of DHS to extend the alien's conditional LPR status if the alien is close to meeting the requirements to have the conditional status removed. Both S. 744 and H.R. 2131 would make the regional center pilot program permanent, and would generally make persons found liable for certain civil, or convicted of certain criminal, offenses ineligible to be involved as an owner, or in management or promotion of, a regional center. Both bills also include procedures for terminating a regional center designation as well as requirements related to ensuring that regional centers comply with securities laws.

In addition to making changes to the existing EB-5 visa category, H.R. 2131 and S. 744 would create new employment-based preference categories for investors, allowing foreign nationals under certain circumstances to receive investment money from qualified investors. Each bill would make a total of about 10,000 new visas available per year under the new categories. The bills contain similar but not identical requirements regarding the amount of money that must be invested and raised, and the number of jobs that must be created within the first three years after investment to have the conditional status removed. S. 744 also includes separate requirements for those who have degrees in a STEM field from a U.S. college or university. In addition, H.R. 2131 would allow E-2 treaty investor visa holders (see "Other Skilled and Professional Workers") to adjust to LPR status under one of the new categories if they meet certain conditions.

## **Diversity Visas**

The purpose of the diversity immigrant visa lottery, as the name suggests, is to encourage legal immigration from countries other than the major sending countries of current immigrants to the United States. The diversity lottery currently makes 50,000 visas available annually to natives of countries that accounted for fewer than 50,000 immigrant admissions in total over the preceding five years.<sup>83</sup>

Some critics of the diversity visa warn that it is vulnerable to fraud and misuse. They argue that the diversity lottery should be eliminated and its visas used for backlog reduction in other visa categories. Supporters of the diversity visa, however, argue that the diversity visa provides "new seed" immigrants for an immigration system weighted disproportionately toward family-based immigrants from a handful of countries. Both S. 744, as passed by the Senate, and H.R. 2131, as ordered to be reported by the House Committee on the Judiciary, would repeal the diversity visa lottery; however, S. 744 would enable those who received diversity visas for FY2013 and FY2014 to be eligible to obtain LPR status.

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<sup>82</sup> The CPI-U is a measure that examines the weighted average of prices of selected consumer goods and services, such as transportation, food, and medical care.

<sup>83</sup> See CRS Report R41747, *Diversity Immigrant Visa Lottery Issues*.

## **New Admissions Systems**

S. 744, as passed by the Senate, would augment the current preference system of LPR admissions based upon close family relationships and certified employment offers (see preceding “Family-Based Immigration” and “Employment-Based Immigration”) with two new pathways. Labeled in the legislation as “Merit-Based” systems, these pathways would enable immigration that is not necessarily dependent on sponsors in the United States and not allocated to achieve country of origin diversity. One system would be designed as a point system to admit aliens based on their employment skills, and the other would be designed to expedite the admission of certain people in the existing visa backlog.

### **Merit-Based Track One**

The proposed Merit-Based Track One visa in Senate-passed S. 744 would admit 120,000 to 250,000 LPRs annually, with the annual flow based upon a sliding formula that would depend on demand for the visa in the previous year. If the average annual unemployment rate in the previous fiscal year was greater than 8.5%, the level would not be increased. Unused visas from past years would be recaptured.

During each of the years FY2015 through FY2017, Track One visas would be made available to foreign nationals who meet existing criteria for the employment-based third preference category for professional, skilled shortage, and unskilled shortage workers. In FY2018 and subsequent years, visas would be allocated as follows:

- 50% would be allocated to Tier 1 based upon factors including education (college plus), employment experience, high-demand occupation, entrepreneurship, relative youth, English language ability, familial relationship to a U.S. citizen, country of origin diversity, and civic engagement.
- 50% would be allocated to Tier 2 based upon factors including employment experience, employment in high-demand occupations that require little to medium preparation (high school diploma or GED), experience as primary caregiver, relative youth, English language ability, familial relationship to a U.S. citizen, country of origin diversity, and civic engagement.

### **Merit-Based Track Two**

S. 744, as passed by the Senate, would create a second Merit System (Track Two) with 4 components. The first component would consist of employment preference petitioners who filed before enactment of S. 744 and whose petitions were pending (i.e., were in the visa queue or backlog) for at least five years on the date of enactment. The second would consist of family-preference petitioners who filed before enactment and whose petitions were pending (i.e., were in the visa queue or backlog) for at least five years. The third component would consist of persons filing third or fourth preference family petitions<sup>84</sup> during the first 18 months after the date of enactment (i.e., before the bill’s final changes to the family-preference categories become effective; see “Family-Based Immigration”) and whose visas are not issued during the first five

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<sup>84</sup> The existing third preference family-based category is for adult married children of U.S. citizens; the fourth preference family-based category is for siblings of adult U.S. citizens.

years after the bill's date of enactment. The fourth would consist of individuals who have been in a legally present status that allows for employment authorization for 10 years, a category apparently designed to describe unauthorized aliens who would be granted a new registered provisional immigrant status under separate provisions of the bill (see "Legalization of Unauthorized Aliens").

Under S. 744, the first two components of the Merit-Based Track Two system would function as current backlog reduction, as visas would be issued to 1/7 of the petitioners in these two categories, ordered by filing date, during each year from FY2015 through FY2021, regardless of country of origin or other numerical limits. During FY2022-FY2023, Merit-Based Track Two visas would be issued to petitioners filing after the date of enactment under the current family-based third and fourth preference categories, with one half of such filers receiving visas in each of these years (ordered by filing date). These visas would thus accommodate certain family petitioners who no longer would be eligible following the implementation of reforms to the family preference system in S. 744 (see "Family-Based Immigration" "Family-Based Immigration").

Ten years after enactment of S. 744 (i.e., beginning in FY2024), the Merit-Based Track Two system would become a pathway for individuals granted legal temporary registered provisional immigrant status under the bill to adjust to LPR status (see below). Beginning in FY2029, aliens would be required to have been lawfully present in an "employment authorized status" for 20 years prior to filing for LPR status under Track Two. The bill expressly waives the unlawful presence ground of inadmissibility for Track Two adjustments of status.

## Legalization of Unauthorized Aliens

How to address the unauthorized alien population in the United States is a key and controversial issue in comprehensive immigration reform. There is a fundamental split between those who want to grant legal status to unauthorized aliens in the United States and those who want unauthorized aliens to leave the country.<sup>85</sup> S. 744, as passed by the Senate, proposes to establish legalization programs for certain unauthorized aliens in the United States. The implementation of certain enforcement provisions under Section 3 of S. 744 would serve as pre-conditions for the bill's legalization provisions (see "Border Security Strategy and Metrics").

A general legalization program would initially grant registered provisional immigrant (RPI) status, a new legal temporary status, to unauthorized aliens who have been continuously physically present in the United States since December 31, 2011, and meet other requirements. Dependent spouses and children of these aliens could be classified as RPI dependents if they have maintained continuous physical presence in the United States since December 31, 2012, and meet the other RPI eligibility requirements. RPIs could subsequently apply to adjust to LPR status, subject to specified requirements; there would be a special pathway to LPR status for RPIs who entered the country as children and satisfy criteria under the DREAM Act provisions in S. 744.<sup>86</sup>

<sup>85</sup> Among those supportive of granting legal status to unauthorized aliens, there are further splits between those who support granting legal status to the majority of unauthorized aliens and those who favor legalizing only selected groups.

<sup>86</sup> The DREAM Act, which stands for the Development, Relief, and Education for Alien Minors Act, refers broadly to legislation introduced regularly in Congress to enable certain unauthorized aliens in the United States to obtain legal permanent resident status. For information on the DREAM Act provisions in S. 744, see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

RPIs who are not eligible for the DREAM Act pathway would have to adjust to LPR status under the new Merit-Based Track Two system of permanent admissions that S. 744 would separately establish (see “Merit-Based Track Two”).

A separate legalization program would grant Blue Card status, another new legal temporary status, to eligible agricultural workers, who could subsequently apply to adjust to LPR status. The general and agricultural legalization programs and the DREAM Act pathway would each be subject to a different set of requirements, which would variously include employment/education, penalty fees, and payment of federal income taxes. The time frames for eligibility for LPR status also vary under the general and agricultural legalization programs and the DREAM Act pathway.<sup>87</sup>

The House has not acted on any legislation to establish a general legalization program for unauthorized aliens. A bill (H.R. 1773) that was ordered to be reported by the House Judiciary Committee, however, would enable certain unauthorized aliens to obtain legal temporary status. H.R. 1773 would establish a new H-2C visa for temporary agricultural workers (see “Agricultural Guest Workers”). The bill includes provisions to permit aliens who were unlawfully present in the United States on April 25, 2013, the day before the bill’s date of introduction, to obtain legal temporary status as H-2C agricultural workers. The bill would not provide any special pathway to LPR status for H-2C workers.<sup>88</sup>

## Naturalization

A number of bills in the 113<sup>th</sup> Congress contain provisions amending naturalization, including S. 744, as passed by the Senate, and H.R. 2278, as ordered to be reported by the House Judiciary Committee.<sup>89</sup> Generally, S. 744 would expedite and streamline naturalization, while H.R. 2278 would restrict naturalization. S. 744 would streamline and waive naturalization requirements for certain categories of LPRs, including for certain elderly or physically/mentally disabled applicants, employees of certain national security facilities, and widows of U.S. citizen spouses. In addition, other provisions in S. 744 would (1) treat U.S. service members who have received combat awards as having satisfied certain naturalization requirements, including good moral character, English/civics knowledge, and honorable service/discharge; (2) develop and expand programs for immigrant integration and naturalization education, outreach, and ceremonies; (3) exempt certain LPRs, who were lawfully present and eligible for work authorization for at least 10 years before becoming LPRs, from the usual residence/physical presence in LPR status required for naturalization;<sup>90</sup> (4) treat admission and periods in registered provisional immigrant status for Dream Act beneficiaries as satisfying admission and periods in LPR status required for naturalization;<sup>91</sup> and (5) amend automatic naturalization for a child born abroad to require physical presence after a lawful admission, instead of residence as an LPR, and to include a

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<sup>87</sup> See *Ibid.*

<sup>88</sup> See CRS Report R43161, *Agricultural Guest Workers: Legislative Activity in the 113<sup>th</sup> Congress*.

<sup>89</sup> Other bills include, for example, H.R. 932, S. 296, and S. 645.

<sup>90</sup> This provision would cover eligible aliens granted registered provisional immigrant status under S. 744 and would enable them to naturalize after three years in LPR status, subject to applicable requirements. See CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

<sup>91</sup> However, such DREAM Act beneficiaries could not apply for naturalization while in RPI status unless applying for military-service-based naturalization pursuant to INA §§328 and 329. See *Ibid.*

person who no longer has legal status nor is physically present in the United States if s/he would have satisfied amended requirements had they been in effect when the person was originally lawfully admitted.

H.R. 2278, among other things, would (1) bar aliens involved in many terrorism or crime-related activities from satisfying the naturalization requirement for good moral character; (2) clarify that the list of conduct identified in the INA as barring a finding of good moral character is not exhaustive, and that when considering whether an applicant possesses good moral character, immigration authorities may consider that applicant's conduct at any time; (3) bar the naturalization of any alien determined by the Secretary of DHS to have been at any time described in the security-related grounds of deportability or inadmissibility; (4) bar consideration or approval of naturalization applications while proceedings are pending that could result in the applicant's removal, loss of LPR status, or denaturalization; (5) limit judicial review of naturalization delays and denials; (6) purport to authorize the Attorney General to denaturalize persons who have engaged in specified conduct involving terrorism or support for terrorism, the receipt of military training from a terrorist organization, or activities committed with the purpose of overthrowing or opposing the U.S. government through violence or other unlawful means; and (7) strengthen immigration consequences for unlawful procurement of naturalization.<sup>92</sup>

## Refugee Status and Asylum

The United States has long held to the general principle that it will not return a foreign national to a country where his or her life or freedom would be threatened. This principle is embodied in several provisions of the INA, most notably in provisions defining refugees and asylees. Refugees are persons outside their home country who are unable or unwilling to return because of persecution or a well-founded fear of persecution on account of their (1) race, (2) religion, (3) nationality, (4) membership in a particular social group, or (5) political opinion; under certain conditions, refugees may be persons within their home country who are persecuted or have a well-founded fear of persecution on one of these grounds. Refugees are processed and admitted to the United States from abroad.<sup>93</sup>

Foreign nationals may claim asylum in the United States if they demonstrate a well-founded fear that if returned home, they will be persecuted based upon one of the five grounds enumerated above. They may apply for asylum affirmatively with USCIS after arrival into the country, or they may seek asylum defensively before an immigration judge during removal proceedings.<sup>94</sup>

S. 744, as passed by the Senate, would increase the flexibility of the INA asylum and refugee provisions in several ways. For example, S. 744 would repeal a current provision that requires asylum claims to be filed within one year of an alien's arrival in the United States, and would provide for the reconsideration of certain asylum claims that were denied because of the failure to file within one year. Under certain circumstances, a U.S. asylum officer would be authorized to

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<sup>92</sup> See CRS Report R43192, *Immigration Enforcement: Major Provisions in H.R. 2278, the Strengthen and Fortify Enforcement Act (SAFE Act)*.

<sup>93</sup> See CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

<sup>94</sup> See CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy*. For a discussion of asylum policies applicable to unaccompanied children, see CRS Report R43664, *Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief*.

grant asylum to an alien found to have a credible fear of persecution based on an interview during expedited removal rather than referring the alien to an immigration judge. The bill also would authorize the spouse or child of a refugee or asylee who is admitted to the United States to bring his or her own accompanying child in the same status.

S. 744 would establish requirements for overseas refugee adjudications, including the right to legal counsel (not at government expense), a written record of the decision, and administrative review of a denial. Other refugee-related provisions would authorize the President, based on a recommendation by DOS, to designate certain groups of aliens on the basis of humanitarian concerns or national interest, and thereby facilitate the admission of group members as refugees. In addition, a new category of “stateless persons” would be defined, and such persons would be permitted to apply for conditional lawful status under certain conditions, and to adjust to LPR status after one year under the employment-based preference category for special immigrants.

At the same time, S. 744 includes provisions that would tighten refugee and asylum laws for national security purposes. Specifically, an alien granted refugee status or asylum who returns to his or her country of nationality or habitual residence would have that refugee or asylee status terminated unless the DHS Secretary determines that the alien returned for good cause, or another exception applies. S. 744 also would expand law enforcement and national security checks during the refugee and asylum application process. (See “Inadmissibility, Deportability, and Relief from Removal” for a related discussion.)

## **Lautenberg Amendment**

Special legislative provisions facilitate relief for certain refugee groups. The “Lautenberg amendment,” first enacted in 1989, required the Attorney General (now the Secretary of DHS) to designate categories of former Soviet and Indochinese nationals for whom less evidence would be needed to prove refugee status, and provided for adjustment to LPR status for certain former Soviet and Indochinese nationals denied refugee status. P.L. 108-199 amended the Lautenberg amendment to add a new provision, known as the “Specter amendment,” to direct the Attorney General to establish categories of Iranian religious minorities who may qualify for refugee status under the Lautenberg amendment’s reduced evidentiary standard. The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6) extended the Lautenberg amendment through FY2013. The amendment subsequently lapsed but was re-enacted as part of P.L. 113-76 for the remainder of FY2014. Language to extend the amendment through FY2015 is included in House-reported and Senate-reported FY2015 Department of State, Foreign Operations, and Related Programs Appropriations bills (H.R. 5013, S. 2499).

## **Immigration Provisions of the Violence Against Women Act**

Foreign national spouses of U.S. citizens and LPRs can acquire legal status through the family-based immigration provisions of the INA. In general, they must be sponsored by their U.S. citizen or LPR spouses and meet the requirements for LPR status.<sup>95</sup> The INA also includes provisions to

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<sup>95</sup> INA §204.

assist foreign national victims of domestic abuse and allow them to self-petition for LPR status independently of their U.S. citizen or LPR relatives.<sup>96</sup> These provisions, which were initially enacted in the Immigration Act of 1990 (P.L. 101-649) and the Violence Against Women Act (VAWA) of 1994 (P.L. 103-322, Title IV), have been periodically reauthorized. The 2000 reauthorization (VAWA 2000), part of the larger Victims of Trafficking and Violence Protection Act (TVPA, P.L. 106-386), created the nonimmigrant U visa for foreign national victims of certain crimes—including domestic abuse—who assist law enforcement to investigate and prosecute such crimes. Successful petitioners for such a visa are classified as U nonimmigrants for up to four years. Program authorizations in VAWA expired in 2011. Efforts to reauthorize the VAWA programs in the 113<sup>th</sup> Congress culminated in the enactment of Violence Against Women Reauthorization Act of 2013 (P.L. 113-4).

Among its immigration-related provisions, P.L. 113-4 includes “stalking” in the definition of criminal activity covered under the U visa. It extends VAWA coverage to “derivative” children who are included in their parents’ petitions and whose parents die during the petition process. It exempts VAWA self-petitioners, U visa petitioners, and battered foreign nationals from being classified as inadmissible for LPR status if their financial circumstances raise concerns over their becoming potential public charges. It protects U visa petitioners under age 21 and derivative children of adult U visa petitioners from aging out of eligibility if they reach age 21 after filing a U visa petition. The law also includes a provision that allows DHS to share VAWA petition information with other government agencies for national security purposes.

P.L. 113-4 includes additional protections for foreign nationals who intend to marry U.S. citizens and LPRs. These provisions require increased disclosure about U.S. citizen and LPR sponsors and more stringent restrictions for international marriage brokers. The law requires DHS to provide foreign nationals with information about inconsistent self-disclosures by sponsors regarding past domestic abuse and to conduct more extensive background checks on each U.S. citizen who petitions on behalf of an alien fiancé/fiancée to provide the latter with additional information about potentially abusive relationships. It prohibits international marriage brokers from marketing information about foreign nationals under age 18 and requires more extensive record-keeping of age-related documentation. It expands federal criminal penalties for specified marriage broker and other VAWA violations.

S. 744, as passed by the Senate, also includes several VAWA-related provisions. It would expand the number of U visas from 10,000 to 18,000 annually. It would grant aging-out protection, deferred status eligibility (to allow spouses and children of nonimmigrant visa holders to receive independent immigration status), and work authorization eligibility to any derivative child on a VAWA petition. It would provide financial relief to VAWA petitioners by requiring that DHS grant them work authorization no later than six months following the petition filing date. It would allow VAWA applicants to adjust to LPR status without being subject to the family-based immigration numerical limits. Finally, S. 744 would permit battered immigrants access to public housing.

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<sup>96</sup> For more information, see CRS Report R42477, *Immigration Provisions of the Violence Against Women Act (VAWA)*.

## Trafficking Victims Protection Act

It is a crime to engage in trafficking in persons (TIP) for the purposes of commercial exploitation. TIP involves violations of labor, public health, and human rights standards. The 2000 TVPA created a new visa category for victims of severe forms of trafficking (T visa).<sup>97</sup> The 2000 act and subsequent reauthorizations also created several grant programs to aid trafficking victims and to train law enforcement to combat TIP. P.L. 113-4 modifies some of the grant programs under the TVPA,<sup>98</sup> expands reporting requirements, creates new criminal penalties for trafficking offenses, modifies the criteria for T visas, and reauthorizes appropriations for FY2014 through FY2017.<sup>99</sup>

P.L. 113-4 makes it a criminal offense to knowingly destroy, or for a period of more than 48 hours, conceal, remove, confiscate, or possess, another person's passport or immigration or personal identification documents in the course of committing or attempting to commit the offense of fraud in foreign labor contracting or alien smuggling, and allows for civil remedies for personal injuries caused during the commission of most criminal trafficking offenses.

P.L. 113-4 makes the adult or minor children of a beneficiary of derivative T status eligible for T status if it is determined that such a person faces a present danger of retaliation as a result of the trafficking victim's cooperation with law enforcement. In addition, P.L. 113-4 amends the grant program for state and local law enforcement's anti-trafficking programs that focus on U.S. citizen victims,<sup>100</sup> so that the grants can also be used for anti-trafficking programs for noncitizen victims.

Several other bills in the 113<sup>th</sup> Congress would further amend the TVPA.<sup>101</sup> H.R. 3610, as passed by the House, would amend the TVPA to require that, beginning in FY2017, the Secretary of the Department of Health and Human Services (HHS) award grants for a national communication system to help victims of severe forms of trafficking communicate with service providers. The bill would also require the Attorney General to collect and tabulate data on mandatory restitution orders (the TVPA requires the court to order restitution—to be paid by the defendant to the victim—for any crime of peonage, slavery, or trafficking in persons). H.R. 3530, as passed by the House, would authorize the Attorney General to award grants to an eligible entity<sup>102</sup> to develop, improve, or expand domestic child human trafficking deterrence programs designed to aid victims while investigating and prosecuting the trafficking offenses. H.R. 5135, as passed by the House, would require the Interagency Task Force to Monitor and Combat Trafficking to produce a report on preventing child trafficking, and would clarify that services for trafficking victims can include housing.

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<sup>97</sup> To be eligible for T status, with certain exceptions regarding the age and the mental health of the victim, the victim is required to cooperate with law enforcement.

<sup>98</sup> These include grant programs for victims' services and law enforcement anti-trafficking activities.

<sup>99</sup> For background information and a full discussion of the trafficking-related provisions in P.L. 113-4, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*.

<sup>100</sup> This grant program was created in P.L. 109-164, §204.

<sup>101</sup> For a discussion of human trafficking legislation, see CRS Report R43555, *Domestic Human Trafficking Legislation in the 113<sup>th</sup> Congress*.

<sup>102</sup> An eligible entity would be a state or unit of local government that meets specified criteria.

## Unaccompanied Alien Children

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA, P.L. 110-457) contained provisions creating procedures for screening unaccompanied alien children (UAC) from contiguous countries, and for the care, custody, processing, and repatriation of all UAC.<sup>103</sup> P.L. 113-4 amends and expands the TVPRA provisions dealing with the care and custody of unaccompanied minors. The act specifies that the DHS Secretary should consider placing in the least restrictive setting any unaccompanied alien child who turns 18 while in HHS custody.<sup>104</sup> The act also requires the DHS Secretary to create a pilot program at a limited number of immigration detention sites to provide independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children. In addition, P.L. 113-4 specifies that children who receive U status and are in the custody of HHS are eligible for programs and services to the same extent as refugees, and that the federal government will reimburse states for foster care provided to these children.

As mentioned under “Border Security,” there has been a large increase in the number of UAC apprehended along the Southwest border in recent years, which has led Congress to evaluate the procedures and processes related to UAC. Division B of H.R. 5230, as passed by the House, would amend the TVPRA and the INA to change the procedures for screening and processing unaccompanied alien children who arrive at the U.S. border from certain countries.<sup>105</sup> H.R. 5230 also would require the HHS Office of Refugee Resettlement (ORR) to perform a biometric criminal history check as part of the suitability assessment to place an unaccompanied child with a family member or sponsor in the United States and would bar the placement of such children with sex offenders or human traffickers.<sup>106</sup>

## Other Issues and Legislation

### U.S. Territories

Most inhabited U.S. territories, including Puerto Rico, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands (CNMI), are defined by the INA as included in the definition of “United States” for the purpose of federal immigration laws. The notable exception is American Samoa (including Swain’s Island), which has its own *sui generis*

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<sup>103</sup> UAC are defined in statute as children who lack lawful immigration status in the United States, are under the age of 18, and are without a parent or legal guardian in the United States or for whom no parent or legal guardian in the United States is available to provide care and physical custody (6 U.S.C. §279(g)(2)). For more on the issue of unaccompanied alien children, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*, and CRS Report R43623, *Unaccompanied Alien Children—Legal Issues: Answers to Frequently Asked Questions*.

<sup>104</sup> Unaccompanied alien children are placed in HHS custody. Unaccompanied alien children who turn 18 while in HHS custody are transferred to ICE custody.

<sup>105</sup> Additionally, House-passed H.R. 5230 includes provisions on assistance to Central American countries for repatriation and reintegration programs. The bill would condition funding for such programs on a country’s cooperation in efforts to reduce illegal migration to the United States.

<sup>106</sup> Unaccompanied alien children who are apprehended by CBP or ICE and who either are ineligible for, or do not accept, voluntarily return are placed in ORR custody. ORR arranges to house the child in one of its shelters or in a foster care situation, or most commonly, to reunite the child with a family member. See CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

immigration system and whose native residents are non-citizen U.S. nationals under the INA. American Samoans who move to the United States, as this term is defined in the INA, are eligible for expedited naturalization. In the 113<sup>th</sup> Congress, several bills would establish specific accommodations for the circumstances and immigration needs of the CNMI.

Title VII of P.L. 110-229 made the INA applicable to the CNMI, a U.S. territory in the Pacific. Previously, in accordance with an agreement known as the Covenant<sup>107</sup> that sets forth the relationship between the CNMI and the United States, the territory had not been subject to U.S. immigration law. Among other provisions, P.L. 110-229 established a transition period for implementing the INA in the CNMI that began on November 28, 2009, and is scheduled to end on December 31, 2014. This law aimed, in particular, to provide federal regulation and oversight of the admission of foreign workers to the territory, including by establishing a CNMI-only transitional worker visa. It also provided for a CNMI-only investor visa for persons who previously had investor permits under the territorial system. Aliens who were not eligible for the transitional foreign worker or investor visas or other visas under federal immigration laws were able to remain in the CNMI on entry permits issued under the former territorial immigration laws until the earlier of the original permit expiration date or November 28, 2011.<sup>108</sup>

S. 1237, as passed by the Senate, and H.R. 4296, as ordered to be reported by the House Natural Resources Committee, would extend the transition period for implementing the INA in the CNMI until December 31, 2019. S. 744, as passed by the Senate, would resolve the status of certain long-term foreign residents of the CNMI who were unable to otherwise acquire LPR status under the federal system.<sup>109</sup> It would authorize admission of these various long-term foreign residents, subject to certain requirements, as immigrants to the CNMI only, and provide a path for most of these CNMI-only residents to adjust later to regular LPR status.

## **Iraqi Special Immigrant Visa Program**

The Iraqi special immigrant visa program, which was established by Section 1244 of P.L. 110-181 and subsequently amended by P.L. 110-242, makes Iraqi nationals eligible for special immigrant status if they were employed by or on behalf of the U.S. government in Iraq for not less than one year during a specified period; provided documented valuable service to the U.S. government; and have experienced “an ongoing serious threat as a consequence of the alien’s employment by the United States government.” This program had been capped at 5,000 principal aliens

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<sup>107</sup> The Covenant To Establish a Commonwealth of the Northern Mariana Islands In Political Union with the United States of America, codified at 48 U.S.C. §1801 note.

<sup>108</sup> In the fall of 2011, USCIS announced that certain groups of permit holders would be eligible for parole beyond the final permit expiration date, including (1) long-term foreign residents of the CNMI, namely immediate relatives of U.S. citizens and certain persons born in the CNMI who did not receive U.S. citizenship (also their spouses and unmarried children under 21 years old); (2) caregivers of U.S. citizens or LPRs with critical medical or special needs; (3) transitional workers’ dependents turning 18 within one year; and (4) beneficiaries of certain pending nonimmigrant worker petitions. Parole would be granted on a case-by-case, discretionary basis and would permit recipients to stay lawfully in the CNMI. Parole is a form of immigration relief that does not constitute formal admission into the United States but permits an alien to come to and/or stay in the United States temporarily for humanitarian or public interest reasons. USCIS guidelines for parole benefitting these groups are available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=4d3314dd2b635210VgnVCM100000082ca60aRCRD&vgnnextchannel=4d3314dd2b635210VgnVCM100000082ca60aRCRD>.

<sup>109</sup> For background information on these residents, see archived CRS Report R42036, *Immigration Legislation and Issues in the 112<sup>th</sup> Congress*.

(excluding spouses and children) for each of fiscal years 2008 through 2012 and allowed for unused visa numbers to be carried forward from one year to the next through FY2013. P.L. 113-42 amended the numerical limitations provisions to extend the Iraqi special immigrant visa program and provide additional visas. It set the total number of principal aliens who could be provided special immigrant status under the program for the first three months of FY2014 at the sum of the number of aliens with pending applications on September 30, 2013, plus 2,000. Initial applications for new cases (subject to the 2,000 limit) had to be submitted to the DOS Chief of Mission in Iraq by December 31, 2013. The National Defense Authorization Act for Fiscal Year, 2014 (P.L. 113-66) rewrites the extension language in P.L. 113-42 to provide for the issuance of no more than 2,500 visas to principal applicants after January 1, 2014, and to extend the application deadline to September 30, 2014.<sup>110</sup>

## **Afghan Special Immigrant Visa Program**

P.L. 111-8 established a special immigrant program for Afghans modeled on the Iraqi program (see “Iraqi Special Immigrant Visa Program”). Under the program, Afghan nationals are eligible for special immigrant status if they were employed by or on behalf of the U.S. government in Afghanistan for not less than one year during a specified period; provided documented valuable service to the U.S. government; and have experienced “an ongoing serious threat as a consequence of the alien’s employment by the United States government.” The Afghan special immigrant program was originally capped at 1,500 principal aliens annually for FY2009 through FY2013, with a provision to carry forward any unused numbers from one fiscal year to the next.

In the 113<sup>th</sup> Congress, P.L. 113-76 amended the Afghan program’s numerical limitation provisions to provide for the granting of special immigrant visas to up to 3,000 principal aliens for FY2014 and to provide for the carry forward and use of any unused balance through the end of FY2015. This law required that principal aliens file an application with the Chief of Mission in Afghanistan by September 30, 2014. P.L. 113-160 further amends the numerical limitations provisions under the Afghan program to provide that an additional 1,000 principal aliens may be granted special immigrant status by December 31, 2014. The new language requires that principal aliens apply to the Chief of Mission no later than the same December 31, 2014, date.<sup>111</sup>

House-passed H.R. 4435 and Senate-reported S. 2410 would make additional changes to the Afghan special immigrant program. H.R. 4435 would replace the numerical limitations language enacted in P.L. 113-160 with new language to provide up to 1,075 Afghan special immigrant visas for FY2015 (in addition to any unused numbers from FY2014). Under this bill, principal aliens would need to apply to the Chief of Mission by September 30, 2015. S. 2410, as reported by the Senate Armed Services Committee, would provide that for each of FY2014 and FY2015, up to 4,000 principal aliens could be granted special immigrant visas, with any unused balance carried forward and available through December 31, 2016. Principal aliens would need to apply to the Chief of Mission by December 31, 2015. S. 2410 also would expand eligibility for the Afghan special immigrant program. In addition to aliens employed in Afghanistan by or on behalf of the U.S. government, the eligible population would include aliens employed in Afghanistan by or on behalf of an organization closely associated with the U.S. mission in Afghanistan that has

<sup>110</sup> See CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

<sup>111</sup> See *Ibid*.

received U.S. government funding through an official contract, award, grant, or cooperative agreement.

## **Other Legislation Receiving Action**

### **International Adoptions**

The Accuracy for Adoptees Act (P.L. 113-74) amends Section 320 of the INA regarding the citizenship of adopted foreign-born children by requiring that all federal documents issued or amended, including a certificate of citizenship, reflect the child's name and date of birth, as shown on state vital records following the adoption or readoption in that state.

### **ICE Public Advocate**

In 2012, ICE created the Public Advocate Office “to assist individuals and representatives who have concerns about ICE operations and policies in the field.”<sup>112</sup> The office was created in response to critiques that the agency was unresponsive to the complaints of those who were detained or investigated. However, some contend that the program is not productive and is not a proper use of ICE resources.<sup>113</sup> P.L. 113-6, the FY2013 Consolidated and Further Continuing Appropriations Act, stated that no funds under the act could be used to fund the position of Public Advocate within ICE. Nonetheless, some argue that the position of Public Advocate was simply renamed Deputy Assistant Director of Custody Programs and Community Outreach, and that the functions of the disbanded Public Advocate Office are currently being performed under the umbrella of “community outreach.”<sup>114</sup> H.R. 3732, as ordered to be reported by the House Judiciary Committee, would prohibit federal funds from being used to provide funding for the following positions within ICE: Public Advocate; Deputy Assistant Director of Custody Programs and Community Outreach; or any other position with similar functions.

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<sup>112</sup> Department of Homeland Security, *Teleconference Recap: A Conversation with U.S. Immigration and Customs Enforcement (ICE) Public Advocate*, Washington, DC, March 28, 2012, <http://www.dhs.gov/teleconference-recap-conversation-us-immigration-and-customs-enforcement-ice-public-advocate>.

<sup>113</sup> See, for example, Stephen Dinan, “Senate Democrats Join Push to Cut Obama’s Illegal Immigrant Advocate,” *The Washington Times*, March 12, 2013, <http://www.washingtontimes.com/news/2013/mar/12/senate-spending-bill-includes-elimination-of-new-i/?page=all>.

<sup>114</sup> See §2 of H.R. 3732.

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