

# National Foundation for American Policy

---

January 14, 2014

Contact: Stuart Anderson, 703-351-5042, [press@nfap.com](mailto:press@nfap.com)

## **New Research: House and Senate Could Be Positioned for Agreement on Legalization of the Unauthorized Immigrants**

**Arlington, Va.** – While a potential House approach on legalization would allow fewer unauthorized immigrants to gain lawful permanent residence than Senate bill S. 744, it could form the basis for an agreement on immigration reform, according to a new analysis by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group. A potential House approach is likely to result in green cards going primarily to those unauthorized immigrants with the strongest connection to the United States and least likely to leave voluntarily – unauthorized immigrants who came here as children and adults with U.S.-born children or U.S. citizen spouses, the study finds.

“Legalization of the unauthorized immigrant population can be a key element in a political compromise to fix major flaws in America’s immigration system,” said the report’s author Stuart Anderson, executive director, National Foundation for American Policy, and former head of policy and counselor to the Commissioner of the INS (August 2001 to January 2003) under President George W. Bush. “Without legalization, it is unlikely the United States will see any major changes in immigration law on low skill or high skill visas and green cards, or enforcement measures sought by many members of Congress.”

The report, “A Path to an Agreement?: Analyzing House and Senate Plans for Legalizing the Unauthorized Immigrant Population,” is available at [www.nfap.com](http://www.nfap.com).

The study focused on legalization that permits individuals to become lawful permanent residents (green card holders). Sometimes called a “path to citizenship,” in reality, the issue is whether unauthorized immigrants will be granted the ability to achieve lawful permanent residence, also known as a “green card.” That status would allow individuals to stay in the United States permanently (barring committing certain criminal offenses) and, typically after 5 years (if they choose) to apply for citizenship (and receive it if they meet the standards).

Even if Congress allows unauthorized immigrants to apply for a status that could result in a green card, it is likely a large number of individuals will either be found ineligible, be unaware of their eligibility or choose not to avail themselves of the opportunity. That was the experience in 1986. In addition to those who did not come forward at all, about 12 percent of those who applied for legal temporary status under the 1986 law did not complete the process to gain a green card.

The Congressional Budget Office (CBO) estimated that under S. 744, approximately 8 million out of an estimated 11.5 million unauthorized immigrants would obtain legal status and receive permanent residence. CBO concluded this would be accomplished in the Senate bill by separate paths or programs for “Dream Act” young people (1.5 million), agricultural workers (1.5 million), and the remainder of those eligible and who step forward (5 million). This last group would first become Registered Provisional Immigrants and obtain permanent residence after 10 to 12 years upon meeting certain conditions, including fines.

A chief Republican objection to the Senate approach to legalization is that S. 744 establishes a “special” path (or paths) to green cards, rather than *utilizing categories within the legal*

*immigration system.* Rep. Bob Goodlatte (R-VA), chairman of the House Judiciary Committee, has publicly discussed a two-stage approach to legalization: 1) unauthorized immigrants would be provided legal status, which would remove the specter of deportation and allow lawful employment and travel outside the country, and 2) such individuals could gain permanent residence (green cards) if they were sponsored and immigrated through a family or employment category.

The study found the potential House approach could permit an estimated 4.4 million to 6.5 million unauthorized immigrants to gain lawful permanent residence. That is compared to potentially 8 million in the Senate-passed bill, according to CBO. Requiring individuals to be sponsored for immigration within 6 years of a bill becoming law, as some have discussed, would likely reduce the number of unauthorized immigrants gaining green cards under a House approach to a range of 2.7 million to 4.1 million.

That House estimate includes green cards for young adults brought here as children in unlawful status (providing green cards for 800,000 to 1.5 million people), allowing unauthorized immigrants to be sponsored by their U.S.-born children as the parents of U.S. citizens (3.1 million to 4.4 million individuals), permitting U.S. citizens and lawful permanent residents to petition for unauthorized immigrant spouses (420,000 to 600,000) and other unauthorized immigrants to utilize the Other Workers category (40,000 to 45,000 over 20 years).

One cannot be sure what any limitations would look like in a House bill without legislative language, which means the estimates noted above should be understood with that caveat. Moreover, these numbers do not include potentially 2 to 5 million people who, if they came forward and did not have disqualifying criminal convictions, could be allowed to stay in the United States in lawful status, theoretically for the rest of their lives, but without obtaining a green card because they did not fit into a legal immigration category.

**Unauthorized Immigrants Who Could Gain Permanent Residence Under Potential House Approach**

<b>IMMIGRATION CATEGORY</b>	<b>ESTIMATED RANGE OF ELIGIBLE UNAUTHORIZED IMMIGRANTS WHO COULD GAIN GREEN CARDS</b>
<b>Parents of U.S.-Born Children</b>	3.1 million to 4.4 million
<b>Spouses of U.S. Citizen or Lawful Permanent Resident Spouses</b>	420,000 to 600,000
<b>Individuals Brought to U.S. as Children (i.e., Dream Act)</b>	800,000 to 1.5 million*
<b>Other Workers Category</b>	40,000 to 45,000
<b>TOTAL</b>	<b>4.4 million to 6.5 million</b>

Source: National Foundation for American Policy analysis of data from the Pew Research Center, U.S. Department of Homeland Security and Congressional Budget Office. Analysis assumes bars to immigrating from outside the country or adjusting to lawful permanent residence status inside the country are waived. The ranges incorporate the CBO estimate that only 70 percent of eligible individuals might receive green cards. A 20-year-period for immigrating from date of legislation is assumed. A limit of 5,000 a year in the Other Workers category for 20 years is assumed, although if the 5,000 limitation is raised that total could increase. The Other Workers category is likely to be significantly oversubscribed, which means even an assumption of only 70 percent of eligible immigrants receiving green cards would not affect the estimate. Potential overlap exists in eligibility for parents of U.S.-born children and spouses of U.S. citizen or lawful permanent resident spouses. \*The estimate for DREAM Act individuals is already a net figure derived from the CBO analysis of S. 744 but places a range down to 800,000 to account for potentially different criteria in the House version and the number of applicants to date for the DACA program.

**CBO Analysis of S. 744**

<b>METHOD OF RECEIVING PERMANENT RESIDENCE</b>	<b>NUMBER OF UNAUTHORIZED IMMIGRANTS RECEIVING PERMANENT RESIDENCE UNDER S. 744</b>
<b>Individuals Brought to U.S. as Children (i.e., Dream Act)</b>	1.5 million*
<b>Registered Provisional Immigrants Who Gain Permanent Residence Via New Merit Track</b>	5 million
<b>Agricultural Workers</b>	1.5 million
<b>TOTAL</b>	<b>8 million</b>

Source: Congressional Budget Office analysis of S. 744. \*Based on DACA numbers, this estimate may be too high.

“If the debate becomes less about whether to provide legal status and lawful permanent residence to unauthorized immigrants but rather how to do so and how many people should be eligible, then the opportunity for an agreement between the House and Senate becomes more likely,” said Anderson.

The vast majority of unauthorized immigrants have been in the country approximately a decade or more, according to the Department of Homeland Security (9.9 million out of 11.5 million arrived in 2004 or earlier). As a result, millions have children born in the United States who are U.S. citizens (based on their birth in the United States). Given the natural human desire to be with one’s family, the existence of so many children of unauthorized immigrants in the United States means it is unlikely such immigrants would leave the country voluntarily or remain out of the country even if deported.

As a practical matter, removing current impediments to legal immigration is necessary for legalization to proceed under immigration reform. Bars to adjusting to permanent residence inside the country – and bars to reentering after leaving the country once in unlawful status – have resulted in many unauthorized immigrants choosing to stay in the country in unlawful status, rather than risking travel abroad.

Once provided legal status, the most likely category into which unauthorized immigrants would be sponsored for permanent residence is the parents of U.S. citizens. The parents, spouses and children (below age 21) of U.S. citizens are considered “immediate relatives.”

An advantage of unauthorized immigrants being sponsored through the immediate relatives category is Congress would not need to increase the quota to accommodate such individuals, since there is no annual limit on the number of immediate relatives of U.S. citizens. An estimated 4.4 million unauthorized adult immigrants had U.S.-born children (under 18) in March 2011, according to the Pew Research Center. That means there are approximately 4.4 million unauthorized immigrants with U.S. citizen children who, at age 21, could sponsor them as the immediate relatives (parents) of U.S. citizens.

That number would fall to 3.1 million if one assumed the Congressional Budget Office estimate in the Senate bill was correct and only 70 percent of those potentially eligible to receive permanent residence would ultimately receive green cards. While some may be concerned at the long potential wait time for parents of U.S.-born children, who must reach age 21 before sponsoring a parent, S. 744, which was praised by immigration advocates, contains a 10 to 12 year path to a green card incorporated into its structure.

This NFAP analysis estimates that between 420,000 and 600,000 unauthorized immigrants could gain permanent residence through a lawfully present spouse who is either a U.S. citizen (who can sponsor them as an immediate relative) or a lawful permanent resident (who can sponsor them in a family preference category).

The key shortcoming with employer sponsorship as part of a legalization process is that under current immigrant law only 5,000 individuals, including their dependents, can be sponsored each year in the "Other Workers" category, the study noted. For that reason it is likely only about 40,000 to 45,000 workers who are unauthorized immigrants could expect to gain green cards via the Other Workers category over a 20-year period. Unauthorized immigrant family members of the workers are included in the 5,000 per year quota.

Rep. Eric Cantor (R-VA) and Rep. Goodlatte have discussed a separate legalization method for individuals who were brought into the country unlawfully by their parents. The Congressional Budget Office estimated approximately 1.5 million "DREAM Act" young people would gain permanent residence under Senate bill S. 744. Today, that 1.5 million estimate from CBO appears too high, based on the lower than expected number of applications for the Obama Administration's Deferred Action for Childhood Arrival (DACA), which provides two years of legal status (renewable) and contains similar eligibility requirements to the Senate's "DREAM Act" provision in S. 744. Given the experience of DACA and the potential for tighter eligibility criteria in a House bill, a range of 800,000 to 1.5 million under a potential "KIDS Act," the name being cited in the press for Rep. Cantor's legislation, appears more likely.

Another potential status that could be granted individuals is a legal status that does not provide lawful permanent residence, but prevents individuals from being deported and allows them to work legally in the United States and to travel abroad and re-enter the country. (This would be similar to Temporary Protected Status but of longer duration and with greater travel flexibility.) If such a status were open-ended, then it would differ from lawful permanent residence in primarily two ways: 1) Individuals in such a status could not apply to become U.S. citizens, and 2) Individuals could not petition for family members. About 40 percent of the 2.7 million who received lawful permanent residence under the Immigration Reform and Control Act of 1986 applied for and became citizens.

The lack of legal work visas and enhanced border enforcement that largely ended circular migration are two primary factors in increasing the unauthorized immigrant population from about 3.5 million in the early 1990s to about 11.5 million today.

Decades of experience tells us the primary reason for illegal immigration is not a lack of personnel at the border but the lack of legal means to enter the United States to work at lower-skilled jobs, according to the NFAP analysis. Moreover, low quotas for high-skill visas and green cards hamper U.S. competitiveness. And some members of Congress seek enforcement enhancements to current law. None of these reforms is likely to become law without a legislative plan on legalization considered fair and realistic by members of both parties.

#### **About the National Foundation for American Policy**

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, former U.S. Senator and Energy Secretary Spencer Abraham and other prominent individuals. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at [www.nfap.com](http://www.nfap.com).

2111 Wilson Blvd., Suite 700, Arlington, VA 22201  
phone: (703) 351-5042 fax: (703) 351-9292 [www.nfap.com](http://www.nfap.com)