

**A PATH TO AN AGREEMENT?: ANALYZING HOUSE
AND SENATE PLANS FOR LEGALIZING THE
UNAUTHORIZED IMMIGRANT POPULATION**

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EXECUTIVE SUMMARY

Legalization of the unauthorized immigrant population can be a key element in a political compromise to fix major flaws in America's immigration system. 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. This analysis shows that while a potential House approach 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. 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 term “path to citizenship” has entered into the lexicon of immigration reform even though it is a misnomer. 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).

The focus of this paper is legalization that permits individuals to become lawful permanent residents (green card holders). The paper does not discuss immigration enforcement measures, sometimes called “triggers,” that could be paired with a legalization effort. It is important to remember that 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.¹

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 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

¹ Betsy Cooper and Kevin O'Neil, *Lessons From The Immigration Reform and Control Act of 1986*, Migration Policy Institute, August 2005.

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group would first become Registered Provisional Immigrants and obtain permanent residence after 10 to 12 years upon meeting certain conditions, including fines.²

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. However, Senate-passed bill S. 744 may not be the only way to address the legalization of unauthorized immigrants. Could an approach by Rep. Bob Goodlatte (R-VA), chairman of the House Judiciary Committee, produce an acceptable alternative to the Senate bill?

Rep. Goodlatte 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 analysis 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.

The 4.4 million to 6.5 million estimate of the potential House approach 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,

² Congressional Budget Office Cost Estimate of S. 744, Congressional Budget Office, June 18, 2013. According to the report, “CBO estimates that approximately 8 million of the unauthorized residents already in the country would obtain legal status if S. 744 was enacted.” Therefore, and as used throughout this paper, 8 million is the upper bound estimate of how many unauthorized immigrants would obtain lawful permanent residence under S. 744. CBO does not make explicit its methodology, including, for example, the impact of deaths and emigration out of the United States, but one could interpret CBO’s lowest estimate of unauthorized immigrants who would receive lawful permanent residence under S. 744 as 5.7 million (1.4 million agricultural workers, 420,000 Dream Act young people, and 3.9 million others).

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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.

Such a status would prevent individuals from being deported and allow 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.³

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. 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.

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).⁴ As a result, millions have children born in the United States who are U.S. citizens (based on their birth in the United States).⁵ 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.

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.

³ "Unauthorized Immigrants: How Pew Research Counts Them and What We Know About Them," Pew Research Center, April 17, 2013.

⁴ Michael Hoefer, Nancy Rytina, and Bryan C. Baker, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011*, Office of Immigration Statistics, Department of Homeland Security, 2012.

⁵ Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Research Center, April 14, 2009. Pew estimates there were 4 million U.S.-born children (under 18) of unauthorized immigrants as of 2008.

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An estimated 4.4 million unauthorized adult immigrants had U.S.-born children (under 18) in March 2011, according to the Pew Research Center.⁶ 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.⁷ 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 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.⁸ 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. If Congress were to increase that 5,000 limit, including by no longer counting the dependents of employer-sponsored immigrants against the annual limit, it would be a positive reform for employers wishing to retain valued employees and provide a realistic path to a green card for both the newly legalized and those who enter the country legally through temporary work visas. Increasing the 5,000 limit in the Others Worker category to 30,000 and not counting dependents would potentially permit up to an additional 500,000 individuals, once granted legal status, to gain green cards under the Other Workers category. House members have not discussed a separate legalization/green card process for agricultural workers, which is a feature of S. 744.

⁶ Unpublished estimates obtained from Jeffrey S. Passel as part of the the Pew Research Center’s Hispanic Trends Project. Based on estimates published in December 2012 in Jeffrey S. Passel and D’Ver Cohn, *Unauthorized Immigrants: 11.1 Million in 2011*, Pew Research Center, Hispanic Trends Project, December 6, 2012.

⁷ Good estimates are not available on the number of unauthorized immigrants with U.S.-born children over age 18 as of March 2011.

⁸ According to the State Department Visa Bulletin: “Employment Third Preference Other Workers Category: Section 203(e) of the Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.”

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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 could gain permanent residence under Senate bill S. 744.⁹ 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.¹⁰

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. 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. That is because for many lawmakers, their primary interest in immigration reform is to legalize the status of those in the country illegally. They view it as important to allow long-term residents and young people brought here by their families the chance to share in the American Dream.

The solution is to capitalize on the energy for legalization of the undocumented population to help solve the most important problems facing our nation’s immigration system, which include the lack of work visas, which contributes to illegal immigration and immigrant border deaths, and the need to provide more temporary visas and green cards to attract and retain talented individuals from around the world. The analysis that follows provides estimates of Senate and House legalization approaches and points to potential paths for an agreement.

⁹ Congressional Budget Office Cost Estimate of S. 744, Congressional Budget Office, June 18, 2013. See footnote 2.

¹⁰ No legislative language on the “KIDS Act” has been released publicly.

ADJUSTMENT OF STATUS AND THE 3 AND 10 YEAR BARS

If unauthorized immigrants are to gain legal status and potentially lawful permanent residence, then Congress will need to change (or waive) provisions of current law to make that possible. Congress has made it exceedingly difficult for an individual who violates U.S. immigration law to later obtain permanent resident status, even if he or she is otherwise eligible for such status, notes Lynden Melmed, partner, Berry Appleman & Leiden, and former general counsel of U.S. Citizenship and Immigration Services (USCIS).¹¹ Section 245(a) provides that the Secretary of Homeland Security may only grant permanent resident status to an individual in the U.S. if the applicant was “inspected and admitted or paroled in the United States.”¹² The intent of this provision is to penalize immigrants who circumvent land, sea and air ports of entry. Even if an individual is married to or is a parent of a U.S. citizen, entry without inspection will bar them from obtaining a green card from within the U.S.¹³

Melmed points out even if an individual enters the United States correctly, he or she may be barred from obtaining a green card if the individual fails to maintain immigration status or works without authorization. Section 245(c) provides that an individual is ineligible to adjust status if he or she continues in or accepts unauthorized employment prior to filing the adjustment of status application, is in unlawful immigration status on the date of filing the adjustment of status application, or fails to maintain status since entry into the United States.¹⁴

The individual’s path to legal status is only marginally improved if he or she pursues the green card from outside the United States. In 1996, Congress changed immigration law to make those in the country without legal status subject to bars to admissibility if they leave the United States and seek to reenter the country. These are known as the “3 and 10 year bars” and are designed to prevent the reentry of immigration violators. INA Section 212(a)(9)(B)(i) states that an alien who “has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien’s departure or removal from the United States, is inadmissible.”¹⁵ If the individual has been “unlawfully present” for “more than 180 days but less than 1

¹¹ Interview with Lynden Melmed via email.

¹² Section 245(a) states that an individual who was inspected and admitted or paroled may not adjust status if the person is inadmissible. Section 212(a)(6)(A) of the INA provides that “[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the [Secretary of Homeland Security], is inadmissible.” These two provisions also work together to bar an undocumented immigrant who enters without inspection or parole from adjusting status to that of a permanent resident.

¹³ Courts are split on whether an alien granted Temporary Protected Status who entered without inspection may adjust status. See *Flores v. USCIS*, No. 12-3549 (6th Cir. June 4, 2013). Additionally, on November 15, 2013, USCIS issued policy guidance stating that the agency would “Parole in Place” undocumented immigrants with ties to the military. At this time, the administration has indicated that it will not extend such treatment to other classes of undocumented immigrants, and it remains an open question whether expansion of the policy would withstand legal challenge, according to Melmed.

¹⁴ Section 245(k) excuses minor violations for employment-based immigrants, provided the violation does not exceed 180 days.

¹⁵ INA Section 212(a)(9)(B)(i).

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year,” he or she would be barred from admission to the United States for three years.¹⁶ A waiver of this ground of inadmissibility is only available if the individual can establish extreme hardship to a U.S. citizen or permanent resident spouse or parent.

“Taken together, the restrictions on adjustment of status and the 3 and 10 year bars make it impossible for the majority of immigrants who violate U.S. immigration law from later immigrating through legal channels,” explains Melmed. “Most immigration attorneys consider the 3 and 10 year bars to have been particularly problematic as they have encouraged individuals to remain in the U.S. for fear that they will be unable to return on any type of visa.”¹⁷

UNDERSTANDING THE CURRENT LEGAL IMMIGRATION SYSTEM

An examination of current law illustrates both the limits and opportunities within the current legal immigration system to address the issue of legalization. In 2012, 1,031,631 people immigrated legally to the United States, according to the Department of Homeland Security.¹⁸ Nearly half (46 percent or 478,780) were classified as the “immediate relatives of U.S. Citizens” – spouses, children (under 21 years old), and parents. As noted earlier, an important feature of the immediate relatives category is that individuals qualifying as immediate relatives receive green cards (permanent residence) without quota. In other words, Congress does not set an annual limit on the number of spouses, children or parents of U.S. citizens who can receive green cards each year.

Table 1
Immediate Relatives

IMMEDIATE RELATIVES CATEGORY	ANNUAL LIMIT
Spouses and Children under 21 of U.S. Citizens	No Annual Limit
Parents of U.S. Citizens	No Annual Limit

Source: U.S. Department of State.

In the family-sponsored preference categories, the annual limit is 23,400 for “unmarried sons and daughters (21 or older) of U.S. citizens”; 87,934 a year for the “spouses and minor children of lawful permanent residents”; 26,266 a year for the “unmarried adult children of lawful permanent residents”; 23,400 for the “married sons and daughters of U.S. citizens”; and 65,000 for the “brothers and sisters of U.S. citizens.”

¹⁶ Ibid. A waiver is available in situations where there is “extreme hardship” to a U.S. citizen or permanent resident spouse or parent but it is not easy to obtain.

¹⁷ Interview with Lynden Melmed.

¹⁸ *2012 Yearbook of Immigration Statistics*, Office of Immigration Statistics, Department of Homeland Security, 2013.

**Table 2
Family Preference Categories**

FAMILY PREFERENCE CATEGORY	ANNUAL LIMIT
Unmarried Adult Children of U.S. Citizens (1st Preference)	23,400 per year
Spouses and Minor Children of Permanent Residents (2nd Preference – A); Unmarried Adult Children of Permanent Residents (2nd Pref. - B)	114,200 per year
Married Adult Children of U.S. Citizens (3rd Preference)	23,400 per year
Siblings of U.S. Citizens (4th Preference)	65,000 per year

Source: U.S. Department of State.

The annual limit for employment-based immigrants is 140,000. In both the family and employment preference categories there are per country limits that restrict the proportion of immigrants from an individual country. In the family categories, this affects immigrants from Mexico and the Philippines the most, while immigrants from India and China are most affected by the per country limit in the employment-based categories.¹⁹ The remainder of those who receive lawful permanent resident status in a year include Diversity visa lottery winners and those who fall into the refugee and asylee categories or become lawful permanent residents utilizing a mix of past laws and less-publicized statutes.

**Table 3
Employment-Based Categories**

EMPLOYMENT-BASED PREFERENCE CATEGORY	ANNUAL LIMIT (140,000, including dependents)
First	28.6 percent (plus unused 4 th and 5 th preference)
Second	28.6 percent (plus unused 1 st preference)
Third - Skilled Workers, Professionals (Other Workers)	28.6 percent (plus unused 2 nd and 3 rd preference)
Other Workers (lower-skilled, part of third preference)	No more than 10,000, but has been 5,000 since 1997 NACARA legislation
Fourth (Certain Religious Workers)	7.1 percent
Fifth (Employment Creation/Investor Visas)	7.1 percent

Source: U.S. Department of State.

¹⁹ In recent years, per country limits in the employment-based preferences have also affected the Philippines.

WHAT TO DO ABOUT THE POPULATION OF UNAUTHORIZED IMMIGRANTS?

A consensus has emerged that the U.S. government will not deport the approximately 11.5 million people in the country without legal status. Moreover, in light of the extensive family ties developed in the United States over the years, including U.S.-born children, it is unlikely a significant portion of this 11.5 million population would leave voluntarily or not attempt to return if deported. It is also clear that virtually no significant reform of any aspect of immigration law is likely to take place without addressing the situation of the unauthorized immigrant population. Yet there remains disagreement on whether and how to address this issue. In short, the question remains: What should Congress do?

In May 2013, the U.S. Senate passed a bill that would legalize the undocumented immigrant population through a number of methods, primarily by permitting many of those without legal status to pay a fine and become Registered Provisional Immigrants. It would create special avenues for these individuals to gain permanent residence and, if they choose, apply for U.S. citizenship years later.

House Republicans, in particular, have argued those in the country illegally should not have a “special path” to a green card or citizenship. The alternative, as discussed by Judiciary Committee Chair Bob Goodlatte, would be to remove the threat of deportation from those here illegally but to allow such individuals to immigrate only through the legal immigration system.

In September 2013, NBC Latino reported:

Speaking at a GOP Conference Hispanic Heritage Month event, Rep. Bob Goodlatte, said children of immigrants not legally in the U.S. could find their way to citizenship by serving in the military, through education and working in specific fields.

“For children brought here illegally by parents, I wouldn’t give them a special pathway to citizenship, I would give them an earned pathway to citizenship,” Goodlatte said.

Everyone else could use routes that already exist in law: sponsorship by a family member, including a U.S. citizen spouse, or sponsorship by an employer.

Using those methods won’t result in all of the 11 million people in the country illegally getting citizenship, but “will be a major solution to the problem if you were able to be legally present in the United States, able to work anywhere you wanted, able to own your own business, able to pay your taxes, travel to your home country and back or any other country you wanted to travel to,” said Goodlatte.

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Goodlatte, who previously worked as an immigration attorney, said providing legal status would “help our country solve a very serious problem of not knowing who is here and under what circumstances they are in the U.S. It would eliminate the fear factor that’s involved,” he said.²⁰

How many people could gain lawful permanent resident status (a green card) under the Goodlatte approach? Without legislative language it is difficult to estimate with precision. However, it is possible a reasonable number of those in the country in unlawful status could eventually gain a green card under the approach. Here is why:

First, inherent in the approach is eliminating or waiving the “3 and 10 year bars” and related impediments that now prevent unauthorized immigrants from immigrating through the legal immigration system. This could be accompanied by a fine or fee, notes immigration attorney Greg Siskind.²¹ Every unauthorized immigrant covered would, in Rep. Goodlatte’s words, “be legally present in the United States, able to work anywhere you wanted . . . [and] travel to your home country . . .” Once unauthorized immigrants are “legally present” they could immigrate through the legal immigration system if they fit into a category.

Second, once able to immigrate legally by the removal of current legal impediments a large number of unauthorized immigrants could be sponsored by their spouses or U.S. citizen children.

Third, Rep. Goodlatte, Rep. Cantor and others have discussed providing an opportunity for the children of unauthorized immigrants brought to America as minors to receive green cards if they completed certain obligations, such as in education or military service. The Congressional Budget office estimated 1.5 million unauthorized immigrants could achieve lawful permanent residence under the “DREAM Act” provisions of S. 744, which, if accurate, would account for nearly 20 percent of those who would receive permanent residence under S. 744, according to CBO. Moreover, once those individuals reach the age of 21 and become U.S. citizens they also could sponsor their parents for immigration as the immediate relatives of U.S. citizens if legislation permits it.

Fourth, any unauthorized immigrant who is married to a U.S. citizen or lawful permanent resident (either today or in the future) would be able to immigrate as the spouse of a U.S. citizen or lawful permanent resident. While estimates vary on how many unauthorized immigrants have a spouse who could sponsor them for immigration, immigration attorneys say many clients in unlawful status have a U.S. citizen or lawful permanent resident spouse.

Fifth, the advantage of individuals being sponsored as the spouses or parents of U.S. citizens is that the immediate relatives category has no quota. In other words, Congress would not need to legislate new quotas in

²⁰ Suzanne Gamboa, “House Republican leader lays out citizenship possibility for immigrants,” NBCLatino, September 19, 2013. Emphasis added.

²¹ Interview with Greg Siskind via email.

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either of those categories or establish a new immigration category. The existing immediate relatives category would work for those with U.S. citizen sponsors.

WHAT DO THE NUMBERS LOOK LIKE?

How many unauthorized immigrants could gain lawful permanent residence by utilizing the legal immigration system under the Goodlatte/House Republican approach? An important caveat is no legislative text exists to analyze, which makes any calculations uncertain. Moreover, by its nature information on unauthorized immigrants is incomplete. However, it is possible to provide estimates based on the available information about unauthorized immigrants and their children and the workings of the legal immigration system. The estimates assume individuals are granted a legal status that permits them to lawfully immigrate outside the country or adjust their status inside the United States. (See section on adjustment of status and the “3 and 10 year bars.”)

**Table 4
Unauthorized Immigrants Who Could Gain Permanent Residence Under Potential House Approach**

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

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.

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Parents of U.S. Citizens: The Pew Research Center estimated that 4.4 million unauthorized adult immigrants had U.S.-born children (under 18) as of March 2011.²² Good information is not available on the number of unauthorized adult immigrants with children 18 or older as of that date.²³ Therefore, for the purposes of these estimates, it is reasonable to assume today 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.

The Congressional Budget Office estimated that approximately 30 percent of unauthorized immigrants (3.5 million of 11.5 million) would either be ineligible, not come forward, or fail to meet the conditions to receive green cards under Senate bill S. 744. Utilizing the same ratio as CBO would reduce the 4.4 million figure to 3.1 million unauthorized immigrants who could expect to obtain green cards if sponsored by their U.S.-born child. Note, however, depending on when a child was born, it could take several years before such a child turned age 21 and became eligible to petition for a parent.

Spouses of U.S. Citizens and Lawful Permanent Residents: Individuals without U.S.-born children could also gain lawful permanent residence (once bars to immigration are removed for unauthorized immigrants) if they have a spouse who is a U.S. citizen or a lawful permanent resident. There is no hard data on the number of unauthorized immigrants who have lawfully present spouses. We can only make inferences based on available information. Immigration attorneys who were interviewed estimate 10 percent of their adult unauthorized immigrant clients have lawfully present spouses who could sponsor them for immigration.²⁴ According to the Department of Homeland Security, today approximately 10 million unauthorized immigrants are 18 years or older. If 10 percent have lawfully present spouses, then that would give an estimated figure of 1 million. There would be overlap between the estimates of unauthorized immigrants with a U.S.-born child and such immigrants with a lawfully present spouse, which would likely reduce that figure down to about 600,000. Reducing that 600,000 by the same percentage as the Congressional Budget Office estimates of S. 744 (i.e., 70 percent of those eligible would receive green cards) would reduce the estimate of unauthorized immigrants sponsored by lawfully present spouses to about 420,000.

²² Unpublished estimates obtained from Jeffrey S. Passel as part of the the Pew Research Center's Hispanic Trends Project. Based on estimates published in December 2012 in Jeffrey S. Passel and D'Ver Cohn, *Unauthorized Immigrants: 11.1 Million in 2011*, Pew Research Center, Hispanic Trends Project, December 6, 2012.

²³ Additional U.S.-born children 18 or older as of March 2011 would increase the estimate of unauthorized adult immigrant parents who could be sponsored by their U.S.-born children.

²⁴ Single people without children may not be as likely to seek legal advice about immigration, which means it is possible estimates from attorneys may overstate how many people within the unauthorized immigrant population could be sponsored through the legal immigration system.

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This range is confirmed by the results of a Latino Decisions/NALEO/America's Voice Education Fund survey of Latino unauthorized immigrants conducted in March 2013.²⁵ That survey found about 57 percent of Latino unauthorized immigrants were married, and 29 percent of those individuals had a U.S. citizen or lawful permanent resident spouse. The survey also found about half of those married had U.S.-born children. That would mean approximately 800,000 unauthorized immigrants have a U.S. citizen or lawful permanent resident spouse but do not have a U.S.-born child. However, since the survey did not distinguish between those with lawfully present spouses and those without such spouses in asking about U.S.-born children, it is likely that 800,000 figure is on the high end. That is because those with U.S. citizen or lawful permanent resident spouses are much more likely to have U.S.-born children than other unauthorized immigrants.

Employer Sponsorship: Unmarried individuals without U.S.-born children or childless couples in which both spouses are unauthorized immigrants may be unable to fit into a family sponsorship category. However, such individuals potentially could gain lawful permanent residence through the "Other Workers" employment-based immigration category. That category is currently limited to 5,000 per year. Moreover, there is an existing backlog of two to four years, with new individuals applying each year. In addition, dependents are counted toward the annual employment-based green card quota, which means we should not expect more than 2,500 workers a year out of the 5,000 allotment. Taking into account the existing backlog, that means one should not expect more than 40,000 to 45,000 unauthorized immigrants to gain lawful permanent residence via the Other Workers category (barring a change in the numerical limit by Congress) over 20 years. Not raising the "Other Workers" category above the current 5,000 a year would likely result in significant backlogs and unrealistic wait times for currently unauthorized immigrants who are granted legal status but do not fit into a family sponsorship category. Increasing the 5,000 limit in the Others Worker category to 30,000 and not counting dependents would potentially permit up to an additional 500,000 individuals, once granted legal status, to gain green cards under the Other Workers category.²⁶

DREAM Act Young People: If the House were to pass a measure on "Dreamers" similar to the one in S. 744, then 1.5 million unauthorized immigrants could receive permanent residence, according to the Congressional Budget Office. However, given the number of people who have applied for the Obama Administration's deferred action program, it is possible CBO overestimated by the number of individuals who could gain lawful permanent residence under the "Dream Act" provisions of S. 744.

The Obama Administration's Deferred Action for Childhood Arrival (DACA), which provides two years of legal status (renewable), contains similar eligibility requirements to the Senate's "DREAM Act" provision in S. 744. But

²⁵ Latino Decisions/NALEO/America's Voice Education Fund survey of Latino Unauthorized Immigrants, March 2013. 400 person national telephone poll of Latino undocumented immigration, with a margin of error +/- 4.9.

²⁶ Estimate over a 20-year period.

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as of August 31, 2013, only 567,500 people had applied under DACA, with the majority of the applications received in 2012, when the program was first announced.²⁷ The Migration Policy Institute estimated about 1.1 million people would be eligible for temporary legal status under DACA, while the Pew Research Center estimated up to 950,000 were immediately eligible and another 770,000 “were potentially eligible in the future should their circumstances change.”²⁸ Based on the DACA numbers and likelihood of somewhat tighter eligibility requirements in potential House legislation, a range of 800,000 to 1.5 million appears more likely in a House version of the DREAM Act.

A 6-Year Limit?: Press reports indicate some Republicans may be interested in a provision requiring unauthorized individuals to be sponsored for immigration within 6 years of a bill becoming law. If there is a restriction on how soon after being granted legal status an individual must qualify for an immigrant visa, then that would restrict the number of individuals who could gain lawful permanent residence. For example, anyone with a U.S.-born child who is under 21 when the time period for petitioning for a legalized immigrant elapsed would not be able to petition for his or her parents.

If one assumes the date is 6 years from 2014, then that would mean to petition for a parent, a U.S.-born child must turn 21 by the end of 2020 – meaning the child needed to have been born by 1999. Estimating from Pew Research Center data one can conclude approximately 2 million unauthorized immigrants have children who were born in the United States in 1999 or earlier.²⁹ Imposing a time limit of 6 years would be less likely to affect the number of unauthorized immigrants with a U.S. citizen or lawful permanent resident spouse who would be sponsored for permanent residence, or those sponsored by an employer. Still, requiring unauthorized immigrants, once legalized, to be petitioned for within 6 years is likely to result in a much smaller pool of individuals able to gain lawful permanent residence. It is also unclear what would happen to individuals unable to apply for green cards within 6 years.

A requirement to apply for permanent residence within 6 years is less likely to affect those who were brought to America as children, but it could prevent them from becoming citizens before the deadline and sponsoring their parents. However, according to Pew, 400,000 unauthorized immigrant children have U.S.-born siblings, which means the U.S.-born children could petition for their parents.³⁰ That means the number of parents who would gain

²⁷ Kirk Semple, “Advocates Struggle to Reach Immigrants Eligible for Deferred Action,” *New York Times*, December 8, 2013.

²⁸ *Ibid.*, Mark Hugo Lopez, “If they could, how many unauthorized immigrants would become U.S. Citizens?,” Pew Research Center, June 27, 2013.

²⁹ Passel and Cohn, February 1, 2011. Using the CBO 70% estimate would reduce the range to 1.4 million to 2 million.

³⁰ Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrants: Length of Residency, Patterns of Parenthood*, Pew Research Center, December 1, 2011.

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lawful permanent residence through children brought here in unauthorized status may not be as large as some speculate.

THE SENATE APPROACH

How does the potential House approach on legalization compare to Senate-passed S. 744? According to the Congressional Budget Office, approximately 8 million individuals would legalize their immigration status and obtain permanent residence (a “green card”) under S. 744. Restrictions on eligibility, fees, the length of the process and reluctance to come forward would result in approximately 3.5 million of the estimated 11.5 million undocumented population failing to become lawful permanent residents under the Senate bill. If the CBO overestimated the number of people who would gain lawful permanent residence under the “DREAM Act” provisions in S. 744, which appears to be the case, then the 8 million figure could be closer to 7.2 million.

CBO estimated the 8 million who could gain green cards would be divided into three categories:

- 1.5 million individuals who came to America under the age of 16, the so-called “Dream Act” beneficiaries;
- 1.5 million farm workers who would meet the requirement to gain permanent residence; and
- 5 million individuals who fit into neither of the above groups but who would acquire permanent residence under the bill through the Registered Provisional Immigrant process and the merit-based system S. 744 establishes.

Table 5
CBO Analysis of S. 744

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

Source: Congressional Budget Office analysis of S. 744. *Based on DACA numbers, this estimate may be too high. See footnote 2.

The Congressional Budget Office explains how legalization would work under Senate bill S. 744:

Registered Provisional Immigrants (RPIs) – Unauthorized residents would be eligible to become Registered Provisional Immigrants (a new legal status that would allow them to work in a country) if they met specified requirements and were continuously present in the United States from December 31, 2011, through the date they obtain such status. Spouses and dependents of those residents who were continuously present in the country as of December 2012 also could become RPIs. Individuals would

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need to renew their work authorization with DHS after three years and reapply for RPI status after six years. Individuals petitioning for that status generally would be required to pay a \$1,000 penalty in installments over six years, in addition to a processing fee. (Unauthorized residents who are under age 21 or who are 21 or older but were younger than 16 when they entered the country would not have to pay the penalty, and DHS would have some discretion to waive the penalty in other cases as well.) There would be no additional penalty to renew RPI status.

In general, RPIs could adjust to LPR status through the Merit Track 2 category after being in RPI status for 10 years (and conditional on DHS certifying that it has met various requirements related to border security). In order to adjust to LPR status, an RPI generally would have to document continuous employment or meet an income threshold as those terms are defined in the bill; however, the employment requirement could also be met by enrollment in an educational institution, and dependents would not be required to meet those criteria. Upon adjustment to LPR status, they would pay an additional \$1,000 penalty (also payable in installments over time) and another processing fee.

Unauthorized Residents Who Entered the Country as Children – Some of the unauthorized residents who would qualify for RPI status would be able to adjust to LPR status or to naturalize more quickly. Specifically, unauthorized residents who were under the age of 16 when they entered the country would be able to naturalize after enlisting in the military or to adjust to LPR status after five years in RPI status if they met certain educational requirements. They would not have to pay the \$1,000 penalty.

Agricultural Workers – Unauthorized residents (and some former legal workers who have since left the United States) who could document past work in agriculture would be able to register as agricultural workers and receive a “blue card” granting them legal status. Blue cards would remain valid until eight years after regulations implementing the program were issued and would not be renewable. Most individuals petitioning for the new status would have to pay a \$100 penalty. Residents with blue-card status could begin to transition to LPR status five years after enactment, if they met additional work requirements and paid an additional \$400 fine.³¹

CONCLUSION: RECONCILING THE HOUSE AND SENATE ON LEGALIZATION

An agreement on legalization of unauthorized immigrants would pave the way for reforms to the current legal immigration system. Important reforms to address key problems in the legal immigration system would:

- 1) Increase the employment-based green card quota beyond the current 140,000 a year limit, count only principals toward the quota, eliminate the per country limit for employment-based immigrants and exempt from the annual limit foreign nationals with a master’s degree or higher from a U.S. university in a science, technology, engineering or math (STEM) field.
- 2) Increase the annual H-1B visa cap and expand current exemptions from the cap for highly skilled foreign nationals.
- 3) Establish a visa category for immigrant entrepreneurs.
- 4) Create a temporary visa category for agriculture that is far easier to use than the current H-2A category.
- 5) Establish a temporary work visa category that will allow full-year (as opposed to seasonal) work in the jobs typically held by unauthorized immigrants in fields like construction and hospitality.

³¹ Congressional Budget Office.

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- 6) Expand the current Other Workers category well beyond the current 5,000 a year and no longer count dependents toward the overall annual quota.
- 7) Allow certain agricultural workers to be sponsored in the Other Workers category.
- 8) Move the spouses and children of lawful permanent residents to the immediate relatives category.

Senate bill S. 744 would allow more unauthorized immigrants (potentially 8 million total according to CBO) to gain lawful permanent residence than a potential House approach. That includes a House approach that would provide legal status to unauthorized immigrants and permit them to gain lawful permanent residence only through the legal immigration system (with the exception of young people brought here unlawfully as children). S. 744 would also likely permit individuals to gain permanent residence in a shorter time period. Does that mean advocates for legalization should reject the potential House approach?

Dismissing out of hand a House proposal on legalization because it is less generous than S. 744 would likely be a mistake. A House approach that includes green cards for young adults brought here as children in unlawful status (800,000 to 1.5 million green cards), allows 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), permits 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) would permit an estimated 4.4 million to 6.5 million unauthorized immigrants to gain lawful permanent residence. Requiring individuals to be sponsored for immigration within 6 years of a bill becoming law would likely reduce the number of unauthorized immigrants gaining green cards to a range of 2.7 million to 4.1 million.

Without legislative language, it is uncertain what limitations there would be in a House bill, which means any estimates must contain that caveat. Moreover, we do not know if other changes to the legal immigration system will be forthcoming from the House, such as expanding the opportunity for employer sponsorship of lower skilled workers, including agricultural workers.

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. Such an agreement can pave the way for visas for lower-skilled workers to reduce illegal immigration, and add green cards and temporary visas for employment-based immigrants to help retain talent in America and make other reforms important to the country's immigration system.

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Immigrant advocates have expressed skepticism about House intentions on legalizing the unauthorized immigrant population. The lack of a formal proposal or legislative language has fueled that skepticism. On the other hand, some conservatives wonder if any proposal short of offering green cards to all those in the country in unlawful status will satisfy advocates. Is there a way to craft a proposal that would allow many (but not all) of those in the country illegally to immigrate through the legal immigration system? Can it be accomplished in a way that would gain a political consensus by focusing on those with the strongest family ties and be considered fair and reasonable? The evidence indicates it may be possible.

ABOUT THE AUTHOR

Stuart Anderson is Executive Director of the National Foundation for American Policy, a non-profit, non-partisan public policy research organization in Arlington, Va. Stuart served as Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service from August 2001 to January 2003. He spent four and a half years on Capitol Hill on the Senate Immigration Subcommittee, first for Senator Spencer Abraham and then as Staff Director of the subcommittee for Senator Sam Brownback. Prior to that, Stuart was Director of Trade and Immigration Studies at the Cato Institute in Washington, D.C., where he produced reports on the military contributions of immigrants and the role of immigrants in high technology. He has an M.A. from Georgetown University and a B.A. in Political Science from Drew University. Stuart has published articles in the *Wall Street Journal*, *New York Times*, *Los Angeles Times*, and other publications. He is the author of the book *Immigration* (Greenwood, 2010).

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