



## **Immigration Provisions—Build Back Better Act**

- Immigration reform has long been a key priority for the Democratic caucus. The House Judiciary provisions for the Build Back Better Act—which include temporary protections and work permits for certain individuals as well as improvements to green card processing—reflect that commitment.
- Section 60001 of the rules committee print—which provides a temporary reprieve from removal and work authorization—is our best chance of success to pass meaningful relief for a portion of the undocumented population.
- **Why are we moving forward with this provision?**
  - It will significantly benefit the American public by driving economic growth;
  - It has a substantial budgetary impact that far outweighs the temporary nature of the protections offered;
  - It has not been determined to be subject to a point of order by the Senate Parliamentarian; and
  - It will change the lives of millions of individuals by protecting them from removal and giving them the ability to work.

### **Section 60001. Protections and Work Permits—Background**

- The protections provided in section 60001 are tied to a provision in the Immigration and Nationality Act (INA § 212(d)(5)) that gives the Secretary of Homeland Security the discretion to allow people to enter or remain in the United States “for urgent humanitarian reasons or significant public benefit.”
- Section 60001 gives the Secretary of Homeland Security the authority to grant temporary protection under section 212(d)(5) to those who entered the United States prior to January 1, 2011, if they pass a background check to the satisfaction of the Secretary and are not inadmissible to the United States on criminal, national security, or other grounds.
- Individuals who are granted such protections will also receive employment authorization.
- This provision only applies to individuals who have set down roots here—those who have lived and worked in service to our country and our communities for more than 10 years.
- Estimates indicate that 7 million individuals could be eligible for relief under section 60001. Critically, this includes:
  - 1.6 million Dreamers;

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- 360,000 TPS recipients; and
- 3.6 million essential workers, including 1 million farm workers.

### **Bars to Eligibility for Protections and Work Permits**

- Individuals are ineligible for relief if the Secretary of Homeland Security makes certain findings tied to the existing grounds of inadmissibility in the INA, including:
  - There are “reasonable grounds to believe” the applicant is a risk to national security, including that they will engage in any “unlawful activity” (INA § 212(a)(3)(A)(ii)).
  - The applicant has certain criminal convictions, including a single misdemeanor involving the intent to injure, to permanently steal or damage property, or to deceive or defraud that resulted in a sentence of more than 6 months.
  - The applicant has any 2 such misdemeanors regardless of sentence.
  - The applicant has a conviction for a controlled substance offense or there is reason to believe the applicant is a trafficker in controlled substances.
  - The applicant is ineligible for citizenship.
  - The applicant has voted unlawfully in an election.
- The Secretary also has significant **discretion to deny relief** to any individual if they fail to pass a background check “to the satisfaction of” the Secretary.

### **Protections and Work Permits is Not “Amnesty”**

- Republicans are quick to disparage any immigration legislation as amnesty. This legislation provides an opportunity for certain undocumented individuals to receive **temporary protection** from removal and a work permit.
- The benefits under section 60001 will not be available beyond September 30, 2031.
- Further, these benefits are not just handed out to anyone—As noted above, all applicants must pass criminal background checks and screening procedures and will be denied relief if they pose a threat to public safety or national security or are inadmissible under specified grounds.
- No matter how many times Republicans say it, this provision is **not** amnesty.

### **Senate Parliamentarian Ruling on Immigration**

- After the Judiciary Committee markup, the Senate Parliamentarian ruled that the reported language (section 245B) would be subject to a point of order on the Senate floor.
- The Parliamentarian’s opinion was based in part on her view that section 245B was a new immigration policy that created a new pathway to *permanent* resident status for *specifically defined* classes of individuals.

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- This new language addresses those concerns and represents our best chance for success moving forward.
  - The new provision relies on existing statutory authority (it does **not** create a new program); and
  - The benefits provided—
    - are temporary in nature (the provision sunsets on Sept. 30, 2031); and
    - are not limited to specifically defined classes of individuals.
- As many of our nation’s top economists have confirmed, the economic benefits of immigration are substantial and uncontroverted. We are confident that the budgetary effects of this new provision substantially outweigh the policy implications and we anticipate a ruling from the Parliamentarian on this provision in the near future.

### **Other Immigration Provisions**

The Judiciary Committee provisions also include legislative changes that will help family-based immigrants contribute to their communities and the economy more swiftly and help U.S. companies attract and retain highly skilled workers. This will further strengthen our economy, our competitive advantage, and our position as a global leader in innovation.

#### *Visa Recapture*

- According to the most recent data from the Department of State, there are currently about **4 million** individuals waiting in the family-sponsored immigrant visa backlog and nearly **1 million** individuals waiting in the employment-based immigrant visa backlog.
- **Sec. 60002** amends the INA to prevent future loss of unused employment-based visas and ensure that they roll over to the family-based categories in subsequent years as Congress intended. This section also recaptures unused immigrant visas from 1992 through 2021 and would result in the recapture of—
  - Approximately **222,000** unused family-sponsored visas; and
  - Approximately **157,000** employment-based visas.
- **Sec. 60002** would also allow an estimated 40,000 individuals who were selected for the diversity visa lottery and completed certain steps but were unable to finalize the process or enter the United States due to various executive orders or COVID-related office closures and restrictions, to reapply for such visas.

#### *Enhancements to Green Card Processing*

- **Sec. 60003** allows an individual who is in the United States and eligible for adjustment to LPR status but for the lack of an available visa number to apply for adjustment, upon paying a fee. This will allow individuals to receive work authorization while they wait for a visa number to

become available and will prevent dependent children from aging out of eligibility for LPR status.

- **Sec. 60003** also allows immigrants who are in the United States to receive an exemption from the numerical limits on immigrant visas and adjust their status to LPR if their immigrant visa petition has been approved for 2 years and they pay a supplemental fee.

### *Supplemental Fees*

- **Sec. 60004** establishes additional supplemental fees attached to applications and petitions for immigration benefits, including certain entry documents.

### *Funding for U.S. Citizenship and Immigration Services*

- **Sec. 60005** appropriates **\$2.8 billion** to U.S. Citizenship and Immigration Services in fiscal year 2022, to remain available until expended, for purposes of adjudicating application described in sections 60001 and 60003 and to reduce case processing backlogs.

## **Economic Benefits of the Immigration Provisions in Build Back Better**

- Immigrants are innovators, job creators, and consumers with enormous spending power that drives our economy and creates employment opportunities for all Americans.
- Recent data from the Bureau of Labor Statistics indicates that there are [10.4 million jobs currently available in the United States](#). Millions more will be created through the Build Back Better Act and the Bipartisan Infrastructure bill.
- According to Fwd.us, undocumented immigrants who are provided temporary protections and work authorization would increase their contributions to the national economy by **\$17 billion** annually and **increase their annual tax contributions by \$10 billion**.
- When authorized to work, immigrants have increased bargaining power and are better able to match their skills to their jobs. These benefits flow to U.S. citizens who would also see positive impacts, including increased wages and productivity.
- When people make more money, they pay more in taxes and they spend more, which creates more jobs and more opportunities to contribute to the economy.
- Although our economy is emerging in the wake of the COVID-19 pandemic, the immigration provisions in the Build Back Better Act will accelerate our economic recovery. By adding workers to the U.S. labor force, supply chain problems will be alleviated, and we will have ample resources to repair and expand our national infrastructure.
- The investments in this legislative package will also help ensure the solvency of critical social safety net programs, help reverse the effects of America's aging crisis, and increase state and local tax revenues by billions of dollars annually.

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