Among the proposed bill’s many provisions, the establishment of pathways to citizenship for undocumented immigrants has perhaps attracted the most scrutiny. Assailed by some conservatives as an “amnesty” measure, S.744 creates three parallel paths to citizenship for undocumented immigrants. (A chart at the end of this blog post provides a visual representation of these paths.) The first path is for agricultural workers who have satisfied certain minimum work requirements. These agricultural workers will be able to apply for a “blue card,” a new temporary legal status; after holding a blue card for 5 years, they can apply for lawful permanent residency, commonly referred to as a “green card.”

Youths who arrived in the United States before the age of 16 have access to an accelerated legalization program similar to the path previously set forth in the “DREAM Act.” If a youth entered the United States as a minor, managed to earn a high school diploma or a GED degree, and went on to complete two years of college or 4 years of military service, then he or she could be eligible to apply for permanent residency in as few as five years. After receiving permanent resident status, the applicant would be immediately eligible to apply for citizenship.

The path to citizenship will be longer and more arduous for those who are neither agricultural workers nor childhood arrivals, i.e. the majority of the estimated 11 million 3

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1 The work requirements are 575 hours, or 100 work days completed in the two-year period ending December 31st, 2012 (Sec. 2211, S.744).
2 The “DREAM Act” stands for the “Development, Relief, and Education for Alien Minors Act.” The Act was originally introduced by Senators Dick Durbin and Orrin Hatch in 2001. It has been frequently reintroduced since then, most recently in 2011, but has never passed both chambers of Congress. In 2012, President Obama implemented the Deferred Action for Childhood Arrivals (DACA) program, which targeted the same population. For an overview of the DREAM Act’s legislative history, see http://www.law.uh.edu/ihelg/documents/Statute-Table/Three.html.

The total number of undocumented aliens in the U.S. is estimated to be above 11 million. http://www.migrationinformation.org/USfocus/display.cfm?id=886.
undocumented immigrants currently residing in the United States. These immigrants must first apply for and be granted “Registered Provisional Immigrant,” or “RPI,” status before they can apply for a green card. RPI status is a new temporary legal status created by S.744 that allows for work authorization and paves the road for adjustment to long term permanent status.

This post will analyze the requirements for RPI status, including length of employment, income level, and the fees and penalties involved. It will also examine bars to eligibility, wait-time to citizenship, and benefits available to immigrants during the process.

I. Requirements for initial application for RPI status

To be eligible for Registered Provisional Immigrant status, the applicant must:

a. Be physically present in the United States at the time of application;

b. Have maintained continuous physical presence in the United States since December 31st, 2011, and continue to do so until granted RPI status; and

c. Show proof that he or she has paid all back taxes owed to the federal government.

In addition to the eligibility criteria, the applicant must also be wary of certain preconditions that might disqualify them from gaining RPI status.

II. Bars to Eligibility

Undocumented immigrants are automatically ineligible for the RPI path if they:

a. Have committed a felony, an aggravated felony, or three or more misdemeanors;

b. Engaged in unlawful voting;

c. Are suspected of terrorist activities; or

d. Are inadmissible under the current provisions of the Immigration and Nationality Act, the main source of U.S. immigration law.

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4 According to the text of the amended INA §245B(b)(2)(B)(ii) in §2101(a) of S.744, “an alien who departed from the United States after December 31, 2011 will not be considered to have failed to maintain continuous presence in the United States if the alien’s absences from the United States are brief, casual, and innocent whether or not such absences were authorized by the Secretary.”

5 A State or local offense based on the applicant’s immigration status would not count as a felony for the purposes of RPI applications. Amended §245B(b)(3)(A)(i)(I) in §2101(a) of S.744.

6 Minor traffic offenses and State and local offenses based on immigration status do not count. Multiple misdemeanor convictions for the same incident count as one misdemeanor for the purposes of this section. Amended §245B(b)(3)(A)(i)(III).
When first applying for RPI status, and also upon renewal, the applicant must pass extensive background checks to screen for any information that the applicant is or could be considered a threat to national security.

III. Length of wait-time

Undocumented immigrants awarded RPI status would have to wait a minimum of 13 years to apply for citizenship.  

− **Renewal of Registered Provisional Immigrant (RPI) status:**

  The first step on this path to citizenship is a grant of RPI status, which lasts for 6 years and can be renewed for additional 6-year terms. Individuals with RPI status can only apply for a green card after being an RPI for a minimum of 10 years. Therefore, at least one renewal of RPI status will be necessary. After three years in permanent resident status, an RPI can apply for citizenship.

− **“End of the line” provision:**

  Under S.744, undocumented immigrants on the RPI path are automatically placed at the “end of the line,” meaning they will only receive permanent residency status after all immigrant visa applications submitted prior to the enactment of the bill are processed. This provision was enacted to ensure that no undocumented immigrant receives status before immigrants who have already been “waiting in line.”

  S.744 includes provisions to facilitate clearing the massive backlogs in processing certain categories of immigrant visas, within the 7 year period from 2015 to 2021.

  Any delay in processing the backlogged visa applications will result in a delay of the date by which RPI applicants will be able to apply for permanent residency.

− **“Triggers”:**

  S.744 ties legalization of undocumented immigrants to border security. Under the bill, the Department of Homeland Security may not begin processing applications for RPI status until new border security-enhancing programs have been implemented. In addition, RPI applications for permanent residency cannot be

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7 Several inadmissibility grounds don’t apply for RPI application purposes, see amended §245(b)(3)(A)(ii). Both the misdemeanor clause and the inadmissibility clause can be waived under the DHS Secretary’s discretion for humanitarian purposes, to ensure family unity, or if it is otherwise in the public interest to do so. Waiver clause, amended §245B(b)(3)(B).


9 Merit-based track two, S.744 §2302.
processed until the border security programs meet certain performance criteria. These criteria, already a focus of the original version of S.744, were further expanded upon by the Hoeven-Corker amendment that was added to the bill on Wednesday, and which will be the subject of the third part of this blog series.

IV. Employment and Income Requirements

To renew RPI status, immigrants must fulfill certain employment and income requirements, including proof of continuous employment, with gaps not exceeding 60 days; or proof of average income or resources not less than 100% of the federal poverty level throughout the RPI period.

To qualify for a green card, an RPI must satisfy similar requirements; an RPI must demonstrate continuous employment with gaps not exceeding 60 days and income as not less than 125% of the federal poverty level ($24,413 for a family of three under the 2013 Federal Poverty Guidelines\(^\text{10}\)). That is to say, if the breadwinner in a struggling family loses his or her job and can’t find a new job that pays more than $24,000 a year within two months, the entire family could become ineligible for legal permanent resident status.

While the bill makes exceptions based on age and disabilities, and provides for the possibility of substituting employment with education or attendance in vocational training programs, any financial hardship that the immigrant suffers is likely to be compounded by the threat of losing their temporary legal status and lawful ability to work.

V. Fees and Penalties

On the path to RPI status and eventually to citizenship, the immigrant must pay several rounds of fees and penalties. Aside from paying all back taxes owed to the federal government, a precondition for the initial RPI application, immigrants must also:

a. Pay a $1,000 penalty on top of the RPI application fee (amount to be determined), when initially applying for RPI status as well as upon renewal of RPI status; and

b. Pay an additional $1,000 penalty plus application fee when obtaining permanent resident status.

The Hoeven-Corker amendment also authorizes the Secretary of Homeland Security to mandate an additional surcharge on “every immigrant and nonimmigrant petition” filed with DHS in order to fund the border security enhancements contained in the bill.\(^\text{11}\)


\(^{11}\) Sec. 6 (a)(2)(C) of the Hoeven-Corker amendment (which contains the entirety of the underlying bill). http://www.corker.senate.gov/public/_cache/files/82791a4a-4793-4513-b14c-4039d8cef578/Immigration_Bill_with_Hoeven-Corker_Amendment_Incorporated.pdf.
Although the surcharge provision is not likely to be a significant source of revenue for DHS,\textsuperscript{12} it nevertheless adds to the applicants’ already substantial financial burden.

Added together, the fees and fines that the immigrant will have to pay to get a green card (not including any attorneys fees) will very likely exceed $3,000. Fortunately, thanks in part to an amendment proposed by Senator Hirono of Hawaii\textsuperscript{13}, it will be possible to pay the full amount of the $1,000 penalties in installments.

VI. Social Safety Net and Benefits

Immigrants with Registered Provisional Immigrant status will be subject to the rules applicable to individuals not lawfully present under the relevant sections of the Affordable Care Act, and will therefore be unable to access federal means-tested public benefits such as Medicaid and food stamps, regardless of their need.

The Hoeven-Corker amendment goes further in denying undocumented immigrants benefits by preventing the Department of Health and Human Services from granting waivers to states allowing the use of Temporary Assistance for Needy Families (TANF) dollars to give cash assistance benefits to people in RPI status.

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It is clear from the text of S.744 that far from a sweeping “amnesty” measure, the path to citizenship it offers is carefully designed to select for only the most law-abiding and self-supporting immigrants. Even then, these immigrants must pay heavy fines, endure decade-long waits, and sit by while government agencies catch up on the backlog before they can obtain citizenship.

Despite all of its limitations, however, S.744 still represents what is possibly the most realistic opportunity for millions of undocumented to walk out of the shadows. While the bill has passed the Senate with a strong bipartisan majority, the pathways to citizenship that it provides are still at risk of being modified or removed altogether in the House, where many conservatives oppose the Senate’s approach to comprehensive immigration reform.


Path to citizenship, visualized. Courtesy of Ritchie King of Quartz.