



SENATE COMMITTEE BEGINS MARKUP OF COMPREHENSIVE IMMIGRATION REFORM BILL

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On May 9 and 14, 2013, the Senate Judiciary Committee began marking up S. 744, the "Border Security, Economic Opportunity and Immigration Modernization Act of 2013," which is comprehensive immigration reform legislation developed by the "Gang of Eight" bipartisan group of senators and introduced on April 17. The Gang of Eight includes Sens. Marco Rubio (R-Fla.); John McCain (R-Ariz.); Lindsey Graham (R-SC); Jeff Flake (R-Ariz.); Chuck Schumer (D-NY); Robert Menendez (D-NJ); Michael Bennet (D-Colo.); and Richard Durbin (D-Ill.)

Among other things, the bill would offer a pathway to legalization for an estimated 11 million undocumented persons, introduce a new W visa for lower-skilled immigrants, and clear up the backlogs in the employment and family preferences. It also would create a startup visa for entrepreneurs. Future measures to be considered in the markup sessions include an increase in visas for both high- and low-skilled workers.

The May 9 markup of the 844-page bill included a 7_-hour hearing during which the committee considered more than 32 proposed changes, mainly related to border security. The committee rejected such proposals as building 700 miles of double-layer fencing along the southern border. Twenty-one amendments were adopted; eight of the successful amendments were by Republicans and 13 by Democrats. Among other things, the adopted amendments require that the U.S. government apprehend 90 percent of those attempting to cross the southwest border without authorization. Some Republican senators wanted to tie border control measures to allowing undocumented persons to attain legal status. However, a related amendment by Sen. Charles Grassley (R-Iowa) was defeated.

Day 2 of the markup on May 14 focused on temporary visas. The senators approved 15 of the 29 amendments considered. Among other things, they adopted an amendment to make nationals of countries benefiting from the African Growth and Opportunity Act and the Caribbean Basin Economic Recovery Act eligible for E nonimmigrant visas, and rejected an amendment to limit the number of legal immigrants to 33 million over 10 years. Amendments were adopted to require a pilot program to conduct interviews for certain nonimmigrant visa applicants using secure remote conferencing technology, and to increase the labor certification fee from \$500 to \$1,000 and use the money to fund STEM (science, technology, engineering, and mathematics) education and training in the United States. The committee also passed an amendment to require that data from the Student and Exchange Visitor Information System be transmitted to U.S. Customs and Border Protection databases used by officers at ports of entry. An amendment to increase the H-1B visa cap to 325,000 after fiscal year 2013 was defeated.

A primary concern is how the bill would deal with the shortage of H-1B visa numbers. For FY 2014, which begins on October 1, 2013, the H-1B cap was reached on April 5, 2013. S. 744 would increase the H-1B cap, but this increase would be accompanied by changes to the H-1B and L visa programs that may make it more difficult to obtain H-1B and L visas quickly. For example, in exchange for an increase in H-1B visas to 110,000 with further adjustments using a market-based formula, the bill would significantly restrict access to the H-1B visa for all employers, as well as L-1 visas for some employers. The bill also would increase the period within which a complaint may be brought against an H-1B employer, from 12 to 24 months.

Subsequent markup dates are scheduled for May 16 and 20, and additional dates will be added as needed. Committee Chairman Patrick Leahy (D-Vt.) said that up to 300 amendments are expected. He said he hoped that debating the amendments would not become a delay tactic. The process is expected to take weeks, and Sen. Leahy said he wants to send the bill to the full Senate in June.

The *New York Times* published an editorial on April 21, 2013, arguing that although the bill needs some improvements, it would make the United States more hospitable to skilled immigrants while toughening rules to prevent abuse of temporary work visas.

The first amendment to the bill was the "Sponsors Amendment,"

<http://www.judiciary.senate.gov/legislation/MDM13313.pdf>. A document showing changes to the bill as introduced is available at <http://www.judiciary.senate.gov/legislation/EAS13500toMDM13313redline.pdf>. The original text of the bill is available at <http://www.judiciary.senate.gov/legislation/immigration/EAS13500.pdf>. A live webcast of the May 9 markup is available at <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=fd14634f4ddf1ce4be238de7c9cb97c0>. The *New York Times* editorial is available at http://www.nytimes.com/2013/04/22/opinion/visa-reforms-for-skilled-workers.html?_r=0. The list of amendments and their outcome in the markups is available at <http://www.judiciary.senate.gov/>.