Outline of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013

Border Security

A. Goal for Border Security

We will establish the following "goal" for border security--to achieve and maintain effective control in high risk border sectors along the Southern border. This will be done in two ways:

1) Persistent surveillance in High Risk Sectors along the Southern Border; and

2) An Effectiveness Rate of 90% in a fiscal year for all High Risk Sectors along the Southern Border

"Effectiveness Rate" definition — The number of apprehensions and turn backs in a specific sector divided by the total number of illegal entries.

"High Risk Border Sector" — Border sectors where apprehensions are above 30,000 individuals per year.

B. Border Security Fund and Border Fencing Fund

- 180 days after the date of the enactment of the bill, the Secretary shall submit a strategy, to be known as the "Comprehensive Southern Border Security Strategy," for achieving and maintaining effective control in all high risk border sectors along the Southern border.
- Our bill will appropriate $3 billion to implement this strategy. This money will be used for acquiring, among other things:
    - Surveillance and detection capabilities developed or used by the Department of Defense;
    - Additional Border Patrol agents and Customs and Border Protection officers at and between ports of entry along the Southern border;
    - Fixed, mobile, and agent portable surveillance systems; and
    - Unmanned aerial systems and fixed-wing aircraft and necessary and qualified staff and equipment to fully utilize such systems.
- 180 days after the date of the enactment of the bill, the Secretary shall establish a strategy, to be known as the "Southern Border Fencing Strategy," to identify where fencing, including double-layer fencing, infrastructure, and technology should be deployed along the Southern border.
    - Our bill will appropriate $1.5 billion to implement this strategy.

C. Border Security Triggers

1. Trigger to Initial Adjustment of Status

No immigrant in undocumented status may be adjusted to "Registered Provision Immigrant" (RPI) legal status until the Secretary has submitted to Congress the Notice of Commencement upon completion of each of the Comprehensive Southern Border Security Strategy and the Southern Border Fencing Strategy

2. Trigger to Adjustment of Status from Registered Provisional Immigrant Status to Lawful Permanent Resident Status

Except for immigrants who are eligible for the DREAM Act and the Agricultural legalization, aliens in RPI status shall not be eligible to adjust to Lawful Permanent Resident status until the Secretary of Homeland Security submits a written certification to the President and the Congress, based on analysis by and in consultation with the Comptroller General, that each of the following measures has been achieved:

- the Comprehensive Southern Border Security Strategy has been submitted to Congress and is substantially deployed and substantially operational;
- the Southern Border Fencing Strategy has been submitted to Congress, implemented, and is substantially completed;
- the Secretary has implemented a mandatory employment verification system to be used by all employers to prevent unauthorized workers from obtaining employment in the United States; and
- the Secretary is using an electronic exit system at air and sea ports of entry that operates by collecting machine-readable visa or passport information from air and vessel carriers.

D. Process for Creating Border Security Accountability

- If an Effectiveness Rate of 90% or higher for all High Risk border sectors is reached during the first 5 years after the bill is enacted—the "Border Security Goal" has been achieved.

- If an Effectiveness Rate of 90% or higher for all High Risk border sectors has not been reached during the first 5 years of the bill, a "Southern Border Security Commission" shall be established.

- The Border Commission will be a bipartisan commission composed of the four border state governors (or their appointees) and border security experts appointed by the

President and by the Majority and Minority Leaders in the U.S. Senate and the U.S. House of Representatives.

- The Border Commission shall issue a "Report and Recommendation" that specifically recommends the manpower, technology, and resources it believes is necessary to achieve a 90% border effectiveness rate in all high risk border sectors.

- The bill will appropriate up to $2 billion for DHS to implement the recommendations on manpower, technology, and infrastructure made by the Border Commission.

- This $2 billion will not become available for expenditure until the issuance of the Commission's Report and Recommendations. If this money is not necessary because the 90 percent efficiency rating has been met, the appropriation will expire and the funds will be available for other immigration enforcement uses as recommended by the U.S. Senate and House Appropriations Committees.

- If the "Border Commission" has not issued a Report and Recommendation within the required 180 days, the appropriation will transfer to DHS for its use in creating and implementing a new "Southern Border Security Plan" designed to achieve a 90% border effectiveness rate in all high risk border sectors.

E. Additional Border Security Resources

- **Provide funding for 3,500 additional Customs agents (OFO Officers) nationwide**
- **Provide Authorization for the National Guard to be deployed to the Southwest border** for the following purposes:

(1) to construct fencing, including double-layer and triple-layer fencing;

(2) to increase ground-based mobile surveillance systems;

(3) to deploy additional unarmed, unmanned aerial systems and manned aircraft sufficient to maintain continuous surveillance of the Southern Border;

(4) to deploy and provide capability for radio communications interoperability between U.S. Customs and Border Protection and State, local, and tribal law enforcement agencies;

(5) to construct checkpoints along the Southern border to bridge the gap to long-term permanent checkpoints; and

(6) to provide assistance to U.S. Customs and Border Protection, particularly in rural, high-trafficked areas, as designated by the Commissioner of U.S. Customs and Border Protection.

- **Authorize and fund border crossing prosecutions** and related court costs in the Tucson Sector at a level sufficient to increase the average number of prosecutions from 70 a day to 210 a day ($50 million from the $3 billion Border Security Fund).
- **Provide increased funding for Operation Stonegarden** to assist state and local law enforcement to help prevent illegal activity along the border.
- **Provide additional funding for additional border patrol stations and forward operating bases** to interdict individuals entering the United States unlawfully immediately after such individuals cross the Southern border and to provide full operational support in rural, high-trafficked areas.
- **Allow Homeland Security Officials to Access all Federal Lands** in order to capture drug traffickers, human smugglers, and other unlawful actors attempting to cross through federally protected lands.
- **Provide funding for vital radio communications and interoperability** between Customs and Border Patrol and state, local, and tribal law enforcement to assist in apprehension efforts along the border.
- **Reauthorize the State Criminal Alien Assistance Program (SCAAP)** to reimburse state and local law enforcement for the cost of incarcerating criminal undocumented immigrants.
- **Authorization the deployment of Department of Defense border radar equipment** as deemed necessary by the DHS Secretary.
- **Strengthen prohibitions on inappropriate uses of force and racial profiling** and require periodic training of all CBP personnel on these prohibitions.
- Establish a Department of Homeland Security Border Oversight Taskforce of community representatives appointed by the President to interact with DHS regarding border security.
- Allow the CIS Ombudsman to serve on ICE and CBP issues.
- Improved training for Border Patrol and DHS oversight provisions.

Legalization and Legal Immigration

I. Adjustment of Status to Registered Provisional Immigrant Status

- Individuals in unlawful status may apply to adjust their status to the legal status of Registered Provisional Immigrant Status.

- Eligibility Criteria:

  - Residence in the United States prior to December 31, 2011 and maintenance of continuous physical presence since then.

- Paid a $500 penalty fee (except for DREAM Act eligible students), and assessed taxes, per adult applicant in addition to all applicable fees required to pay for the cost of processing the application.

- Ineligible if:
    - Convicted of an aggravated felony;
    - Convicted of a felony;
    - Convicted of 3 or more misdemeanors;
    - Convicted of an offense under foreign law;
    - Unlawfully Voted; and
    - Inadmissible for Criminal, National Security, Public Health, or other morality grounds.

- Spouses and children of people in RPI status can be petitioned for as derivatives of the principal applicant (but must be in the United States at the time).

- Immigrants in RPI status can work for any employer and travel outside of the United States

- Individuals outside of the United States who were previously here before December 31, 2011 and were deported for non-criminal reasons can apply to re-enter the United States in RPI status if they are the spouse, of or parent of a child who is, United States citizen or lawful permanent resident; or are a childhood arrival who is eligible for the DREAM Act.

- The Application period will be for 1 year with the possibility of extension by the Secretary for an additional 1 year.

- Individuals with removal orders will be permitted to apply as will aliens currently in removal proceedings.

- RPI status shall last for a 6-year term that is renewable if the immigrant does not commit any acts that would render the alien deportable. Another $500 penalty fee is applicable at this time.

- The Secretary may collect a processing fee from individuals who register for RPI status in an amount that is sufficient to recover all of the costs of implementing the registration program.

- An individual who has been granted RPI status is not eligible for any Federal means-tested public benefit (as such term is defined in section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613)).

- An individual who adjusts from registered provisional immigrant status to lawful permanent residence shall be deemed, as of the date of such adjustment, to have completed the five-year period specified in 8 USC 1612 and 1613.

- A noncitizen granted registered provisional immigrant status under this section shall be considered lawfully present in the United States for all purposes, while such noncitizen remains in such status, except that the noncitizen
    - is not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986; and
    - shall be subject to the rules applicable to individuals not lawfully present that are set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071).

- After 10 years, aliens in RPI status may adjust to Lawful Permanent Resident Status through the same Merit Based System everyone else must use to earn a green card (described below) if the following things have occurred:
    - The alien maintained continuous physical presence
    - They paid all taxes owed during the period that they are in status as an RPI
    - They worked in the United States regularly;
    - And demonstrated knowledge of Civics and English
    - All people currently waiting for family and employment green cards as of the date of enactment have had their priority date become current.
    - A $1,000 penalty fee is rendered

- People in DREAM Act Status and the Agricultural Program can get their green cards in 5 years and DREAM Act kids will be eligible for citizenship immediately after they get their green cards.

Legal Immigration

- The bill eliminates the backlog for family and employment-based immigrants (see below discussion of merit-based system).
- Currently, there are four preference categories based on family relationships and 480,000 visas are allocated to family. Under the new system there will be two family preference categories and they will cover unmarried adult children; married adult children who file before age 31, and unmarried adult children of lawful permanent residents. We are expanding the current V visa to include those with family relationships.
- The bill repeals the availability of immigrant visas for siblings of U.S. citizens once 18 months have elapsed since the date of enactment.
- The bill amends the definition of "immediate relative" to include a child or spouse of an alien admitted for lawful permanent residence, and the child or spouse of an alien who is accompanying or following to join the child, parent or spouse of a U.S. citizen or lawful permanent resident.
- The bill amends the existing category for married sons and daughters of citizens of the United States to bar anyone from entering who is over 30 years of age.
- The bill repeals the Diversity Visa Program. Aliens who were or are selected for diversity immigrant visas for fiscal years 2013 or 2014 will be eligible to receive them.

- On the employment green card categories, the bill exempts the following categories from the annual numerical limits on employment-based immigrants: derivative beneficiaries of employment-based immigrants; aliens of extraordinary ability in the sciences, arts, education, business or athletics; outstanding professors and researchers; multinational executives and managers; doctoral degree holders in STEM field; and physicians who have completed the foreign residency requirements or have received a waiver.
- The bill then allocates 40 percent of the worldwide level of employment-based visas to : 1) members of the professions holding advanced degrees or their equivalent whose services are sought in the sciences, arts, professions, or business by an employer in the United States (including certain aliens with foreign medical degrees) and 2) aliens who have earned a master's degree or higher in a field of science, technology, engineering or mathematics from an accredited U.S. institution of higher education and have an offer of employment in a related field and the qualifying degree was earned in the five years immediately before the petition was filed.
- The bill increases the percentage of employment visas for skilled workers, professionals, and other professionals to 40 percent, maintains the percentage of employment visas for certain special immigrants to 10 percent and maintains visas for those who foster employment creation to 10 percent.
- The bill creates a startup visa for foreign entrepreneurs who seek to emigrate to the United States to startup their own companies.
- **Merit Based Visa:** The merit based visa, created in the fifth year after enactment, awards points to individuals based on their education, employment, length of residence in the US and other considerations. Those individuals with the most points earn the visas. Those who access the merit based pathway to earn their visa are expected to be talented individuals, individuals in our worker programs and individuals with family here. 120,000 visas will be available per year based on merit. The number would increase by 5% per year if demand exceeds supply in any year where unemployment is under 8.5%. There will be a maximum cap of 250,000 visas.
- Under one component of this merit based system the Secretary will allocate merit-based immigrant visas beginning on October 1, 2014 for employment-based visas that have been pending for three years, family-based petitions that were filed prior to enactment and have been pending for five years, long-term alien workers and other merit based immigrant workers.
- Long –term alien workers and other merit based immigrant workers includes those who have been lawfully present in the United States for not less than ten years and who are not admitted as a W visa under section 101(a)(15)(W) of the Act.
- Between fiscal years 2015 and 2021, the Secretary shall allocate a seventh of the total number of those with employment based visas that have been pending on the date of enactment. Petitions for spouses and children of permanent residents who are accorded status under the INA are automatically converted to petitions to accord status as immediate relatives. Between fiscal years 2015 and 2021, the Secretary shall follow a specific formula to allocate visas to those with family based petitions pending on the date of enactment and subject to some restrictions visas should be authorized in the order petitions were filed. In fiscal year 2022, the Secretary of State shall allocate visas to half the number of those that filed family based petitions after the date of enactment and had not had a visa issued by

October 2021. In fiscal year 2023, the visas should be allocated to the other half of those that filed family based petitions after the date of enactment and who had not had a visa issued by October 2021. Visas allocated for these family based petitions will be issued based on the order in which petitions were filed.

Employment Verification

1. Mandatory, Enhanced E-Verify: All employers will be required to use the E-Verify system over a 5-year phase-in period. Employers with more than 5,000 employees will be phased in within 2 years. More than 500 employees will be phased in within 3 years. All employers, including agricultural employers, will be phased in within 4 years.

2. Photo matching: As part of the E-Verify system, every non-citizen will be required to show their "biometric work authorization card," or their "biometric green card."

   These photographs will be stored in the E-Verify system. In order for the non-citizen to be cleared for a job, the picture on the card presented by the employee to the employer will have to exactly match the identical picture the employer has on the E-Verify system. The employer must certify that the photograph presented in person matches the identical photograph in the system.

   a. Passports - For U.S. citizens with passports, the picture on the passport presented by the employee will have to match the identical picture the employer has on the E-Verify system. A driver's license can be used, so long as the citizen's state has agreed to submit a photo to E-Verify.

   b. Agreements with State DMVs – The DHS Secretary shall create and administer a grant program to reimburse States that provide the Secretary access to driver's license information as needed to confirm that a driver's license presented under subsection (c)(1)(C)(i) confirms the identity of the subject of the System determination, and that a driver's license matches the State's records; and such assistance as the Secretary may request in order to resolve further action notices or nonconfirmations relating to such information. $250 million will be appropriated to carry out this subparagraph.

   c. Additional security measure for those without photos: The Secretary shall develop specific and effective additional security measures to adequately verify the identity of individuals whose identities may not be verified using the photo tool described above. Such additional security measures shall: 1) be kept up-to-date with technological advances; and 2) provide a means of identity authentication in a manner that provides a high level of certainty as to the identities of such individuals, using immigration and identifying information maintained by the Commissioner of Social Security or the Secretary that may include review of identity documents or background screening verification techniques using publicly available information.

3. To provide additional security, USCIS will also have a system in place with the capacity to:

   a. Allow employees to "lock" their Social Security number in the E-Verify system so that their number cannot be used by another individual. The number can be unlocked every time the individual seeks new employment and then locked again afterward.

b. Investigate whether Social Security numbers are being improperly used multiple times. USCIS can run scans to determine if a Social Security number is being used too many times within a short time period or if it is being improperly used in multiple geographic locations. If fraud is detected, USCIS can either launch an investigation or temporarily lock the Social Security number. If no fraud is found, the number will be unlocked. If it is found, the perpetrator can be caught.

c. Allow all employees to check their own E-Verify history. Individuals will therefore know if their social security number has been improperly used and can alert officials.

4. Due process requirements are established so that legal workers are not prevented from working due to errors in the system or because of employer negligence or misconduct.

Temporary Visas

H-1B Visa Reform

- We will raise the base cap of 65,000 to 110,000 (we amend the current 20,000 exemption for U.S. advanced degree holders to be a 25,000 exemption for advanced degree graduates in science, technology, engineering, and mathematics from U.S. Schools).

- In future years, the cap can go as high as 180,000. The cap will increase/decrease in the following way:

    a. It will be based on two factors plugged into one formula known as the "High Skilled Jobs Demand Index" (with each factor weighed at 50%):

        i. The percentage by which cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year exceeds/fails to meet the cap (50%)
        ii. The inverse of the percentage increase/decrease between the previous fiscal year and the current fiscal year in the number of unemployed persons in the "management, professional, and related occupations category" of BLS data (50%).

    b. The most the cap can increase/decrease by each year is 10,000 visas.

- We prevent H-1B workers from undercutting the wages paid to American workers by requiring employers to pay significantly higher wages for H-1B workers than under current law (and to first advertise the jobs to American workers at this higher wage before hiring an H-1B worker).

- We will provide spouses of H-1B workers with work authorization if the sending country of the worker provides reciprocal treatment to spouses of U.S. workers.

- We will establish a 60-day transition period for H-1B workers to change jobs.

- We will provide dual intent visas for all students who come here on bachelor's degree programs or above.

- We crack down on abusers of the H-1B system by requiring "H-1B dependent employers" to pay significantly higher wages and fees than normal users of the program.

  - If the employer has 50 or more employees, and more than 30% but less than 50% are H-1B or L-1 employees (who do not have a green card petition pending), the employer must pay a $5,000 fee per additional worker in either of these two statuses.

  - If the employer has 50 or more employees, and more than 50% are H-1B or L-1 employees (who do not have a green card petition pending), the employer must pay a $10,000 fee per additional worker in either of these two statuses.

  - We will also crack down on the use of the H-1B and L visas to outsource American jobs by prohibiting companies whose U.S. workforce largely consists of foreign guestworkers from obtaining additional H-1B and L visas.

  - In Fiscal Year 2014, companies will be banned from bringing in any additional workers if more than 75% of their workers are H-1B or L-1 employees.

  - In Fiscal Year 2015, the ban applies to companies if more than 65% of their workforce are H-1B and L-1 workers. In Fiscal Year 2016, the ban moves to 50%

- We require recruiting of American workers prior to hiring an H-1B nonimmigrant. The Secretary of Labor must establish a searchable website for posting H1B positions. The site must be operational and online within 90 days of the passage of the new law. We require employers to post a detailed job opening on the Department of Labor's website for at least 30 calendar days before hiring an H1B applicant to fill that position.

- We bar employers from recruiting or giving preference to H-1B or OPT workers over American workers.

- We establish significant new authorities and penalties to prevent, detect, and deter fraud and abuse of the H-1B and L-1 visa systems by fraudulent employers.

W-Visa Program For Lower-Skilled Workers

- We create a new nonimmigrant classification known as the W-Visa. The W visa holder is an alien having a foreign residence who will come to the US to perform services or labor for a registered employer in a registered position. The spouse and minor children of the W visa holder will be allowed to accompany or follow to join and will be given work authorization for the same period of admission the W nonimmigrant is allowed to be here.

- We establish an independent statistical agency called the Bureau of Immigration and Labor Market Research (Bureau) headed by a commissioner that will be placed within US Citizenship and Immigration Services in the Department of Homeland Security. The Commissioner shall be appointed by the President with the advice and consent of the Senate.

- The Bureau will devise a methodology to determine the annual change to the cap for W nonimmigrants; supplement the recruitment methods employers use to attract W nonimmigrants; devise and publish a methodology to designate shortage occupations by job zone; conduct a survey every 3 months of the unemployment rate of construction workers and the impact on such workers; study and report to Congress on employment-based and immigrant and nonimmigrant visa programs; make annual recommendations to improve such programs; and carry out any functions necessary to accomplish the abovementioned duties.

- The Commissioner shall establish a methodology to designate shortage occupations and the methodology will allow an employer to ask the Commissioner if a particular occupation in a particular area is a shortage occupation.

- The employees of the Bureau shall have the expertise to identify US labor shortages in the US and make recommendations to the Commissioner on the impact of immigrant and nonimmigrant aliens on US labor markets.

- At the request of the Commissioner, the Secretary of Commerce, the Director of the Bureau of the Census, the Secretary of Labor and the Commissioner of the Bureau of Labor Statistics shall provide data to the Commissioner, conduct appropriate surveys, and assist the Commissioner in preparing recommendations.

- The Director of USCIS shall submit a budget to Congress that the Bureau will need to carry out its duties and the US Comptroller General shall submit to Congress an audit of the budget.

- Twenty million dollars are appropriated from the Treasury to establish the Bureau. Fees collected from those employers participating in this program shall also be used to establish and fund the Bureau. The Secretary may also establish other fees related to the hiring of alien workers and use such fees to fund the Bureau.

- The new Bureau will serve four main functions: play a role in determining the numbers for the annual cap of the new worker visa, declare shortage occupations, expand the list of real-world recruitment methods registered employers may use in order to ensure the choices provided employers do not become outdated. The new Bureau will also report on every aspect of the employment immigration system and make yearly recommendations and reports to Congress on how to reform these programs to make them work best for the American economy.

- A certified alien is eligible to be admitted to the US as a W nonimmigrant if hired by a registered employer for employment in a registered position in a location that is not an excluded geographic location.

- The spouse and minor children of the W visa holder may be admitted to the US for the same period and will be given work authorization. The W nonimmigrant will apply to the Secretary of State at a US embassy or consulate in a foreign country to be a certified alien. To be eligible, he or she cannot be inadmissible, has to pass a criminal background check, agree to accept only registered positions in the US and meet any other criteria as established by the Secretary. He or she shall report to his or her initial employment no later than 14 days after first admitted to the US.

- A certified alien may be granted W nonimmigrant status for an initial period of three years and may renew his or her status for additional three year periods. He or she may not be unemployed for more than 60 consecutive days and must depart the US if he or she is unable to obtain employment. W-visa holders can travel outside the US and be readmitted to the US but cannot be readmitted for longer than the remaining time left in their original visa.

Registered employers.

- An employer seeking to be a registered employer shall submit an application to the Secretary with appropriate documentation to demonstrate it is a bona fide employer with the estimated number of W nonimmigrants they will seek to employ each year, anticipated dates of employment and a description of the type of work. The Secretary may refer to the Secretary of Labor an employer application if there is evidence of fraud for potential investigation. The Secretary of Labor may audit any of these applications.

Ineligible Employers.

- No employer may be approved to be a registered employer if the Secretary determines after notice and an opportunity for a hearing, that the employer has knowingly misrepresented a material fact, knowingly made a fraudulent statement, or knowingly failed to comply with the terms of such attestations; or failed to cooperate in the audit process in accordance with the regulations promulgated by the Secretary.

- No employer may be approved to become a registered employer if within three years prior to the date of application, they committed any hazardous occupation orders violations resulting in injury or death under the child labor provisions contained in section 12; been assessed a civil money penalty for any repeated or willful violation of the minimum wage provisions of section 6; or been assessed a civil money penalty for

any repeated or willful violation of the overtime provisions of section 7 (other than a repeated violation that is self reported) of the Fair Labor Standards Act of 1938 and any applicable regulation.

- No employer may be approved to become a registered employer if within three years prior to the date of application, they received a citation for a willful violation or repeated serious violation involving injury or death of section 5 of the Occupational Safety and Health Act of 1970 (OSHA).

- An employer described above will be ineligible to be a registered employer for a period determined by the Secretary but no more than three years. An employer who has been convicted of any offense involving slave labor or any conspiracy to commit such offense, or any human trafficking offense shall be permanently ineligible to become a registered employer.

Term of registration.

- The Secretary shall approve applications to become registered employers for a term of three years. An employer may submit an application to renew the employer's status as a registered employer for additional three year periods. At the time an employer's application is approved, such employer shall pay a fee in an amount determined by the Secretary to be sufficient to cover the costs of the registry of such employers. Each registered employer shall submit to the Secretary an annual report that demonstrates that the employer has provided the wages and working conditions that the registered employer agreed to provide its employees.

Registered positions.

- Each registered employer shall submit to the Secretary an application to designate a position for which the employer is seeking a W nonimmigrant as a registered position. Each application will describe each such position and include an attestation of the following: the number of employees of the employer; the occupational category, as classified by the Secretary of Labor, for which the registered position is sought; and whether the occupation is a shortage occupation.

Wages:

- The wages to be paid which will be either the actual wage paid by the employer to other employees with similar experience and qualification or the prevailing wage level for the occupational classification in the geographic metropolitan statistical area whichever is higher.

- The attestation will also attest that the working conditions will not adversely affect the working conditions of other workers employed in similar positions and that the employer has carried out the required recruiting activities and there is no qualified US worker who

has applied for the position who is ready, willing and able to fill such position pursuant to the requirements outlined here.

- The attestation will also attest that there is not a strike, lockout or work stoppage or labor dispute in the area where the W nonimmigrant will be employed. The employer also has to attest that he or she has not laid off and will not lay off a US worker during the period beginning 90 days prior to and ending 90 days after the date the employer designates the registered position for which the W visa holder is sought unless the employer has notified such US worker of the position and documented the legitimate reasons that such US worker is not qualified or available for the position.

- The Secretary shall provide each registered employer whose application is approved with a permit that includes the number and description of such employer's approved registered positions. The approval of a registered position is for a term that begins on the date of such approval and ends the earlier of either the date the employer's status as a registered employer is terminated or three years after the date of such approval or upon proper termination of the registered position by the employer.

Requirements.

- *Recruitment*. Each registered position shall be for a position in an eligible occupation. A position may not be registered unless the registered employer advertises the position for 30 days, including the wage, range, location and proposed start date; on the Internet website maintained by the Secretary of Labor, and with the workforce agency of the State where the position will be located, and carries out not less than three of the additional recruiting activities described in this section or any other recruitment activities determined to be appropriate as added by the Commissioner.

- *Eligible and ineligible occupations.* An occupation is an eligible occupation if it is a zone one, two or three occupation as defined in this section. An occupation may be ineligible to be considered as a registered position if it requires a bachelor's degree or higher or is an occupation that requires the W to perform work as a computer operator, programmer or repairer. The Secretary of Labor shall publish the eligible occupations an on-going basis on a publically available website.

- If a W nonimmigrant terminates employment in a registered position or is terminated from such employment by the registered employer, such employer may fill the vacancy by hiring a certified alien, a W nonimmigrant, a US worker or an alien who has filed a petition for a visa.

- Except as described below, a registered position shall be approved by the Secretary for three years. A registered position shall continue to be a registered position at the end of three years if the W nonimmigrant hired for such position has a pending petition for immigrant status filed by the registered employer. Such registered positions will terminate either on the date the petition is approved or denied or on the date of the W employee's termination of employment with the registered employer.

- *Employer fees*. The employer will pay a registration fee to be determined by the Secretary when the employer's application for the registered position is approved. The fees collected will be used to carry out this program. A registered employer will pay an additional fee for each approved registered position measured by a specific formula that considers the size of the business and the proportion of non US workers in the registered employee positions. These fees will be used to fund the operations of the new Bureau of Immigration and Labor Market Research described above.

- Registered employers may not be required to pay an additional fee if they are a small business with twenty five or fewer employees. No registered positions will be approved for employers who are not small businesses and where thirty percent or more of the employees are not US workers.

- No W nonimmigrants may be hired for an eligible occupation in a metropolitan statistical area that has an unemployment rate that is more than eight and a half percent unless the Commissioner identifies the occupation as a shortage occupation or the Secretary approves the position under the safety valve described below.

The Cap.

- Beginning April 1, 2015, unless the Secretary of Homeland Security extends the start date, the cap for W visas will be split into two six month segments in a year. The annual cap on the maximum number of registered positions that may be approved each year are limited for the first four years. 20,000 for the first year; 35,000 the second year; 55,000 the third year and 75,000 the fourth year. For each year after the fourth year, the annual cap will be calculated according to a statistical formula that takes the following four factors into consideration: the rate of change in the number of new job openings in the economy; the inverse rate of change in the number of unemployed US workers; the percentage change the Bureau recommends the annual cap should increase or decrease; and the percentage difference between the number of W-visas requested in the prior fiscal year compared to the cap in the prior fiscal year.

- In addition to the number of registered positions made available for a given year, the Commissioner may make available an additional number of registered positions for shortage occupations in a particular geographical area. The Bureau's recommendations for determining annual cap recommendations will be subject to notice and comment and formal rule making.

The Safety Valve.

- The Secretary has the authority to make additional registered positions available for a specific registered employer if the annual cap for registered positions has been reached and none remain available for allocation. He may also make additional positions available if that registered employer is located in an area that has an unemployment rate greater than 8.5% or if the registered employer has carried out no less than seven of the described recruiting activities and posts the position for no less than thirty day on the Secretary of Labor's internet website and with the State workforce agency where the position will be located.

- A W nonimmigrant hired to perform an eligible occupation pursuant to a special allocation of registered positions may not be paid less than the greater amount of either the level 4 wage set in the Foreign Labor Certification Data Center Online Wage Library or the mean of the highest two-thirds of wages surveyed for such occupation in that metropolitan statistical area.

- A registered position made available for a year under this paragraph shall require the deduction of a visa number available under the regular W-visa cap in the subsequent year or the earliest possible year for which a visa becomes available again under the cap.

- Fifty percent of the total number of registered positions will be made available during the first six months of the year. The rest will be used during the second six month period.

- For the first month of each six month period, a registered position may not be created in an occupation that is not a shortage occupation unless the Commissioner has not designated any shortage occupations that year. During the second, third and fourth months of each six month period, one-third of the number of registered positions allocated for such period shall be approved only for a registered employer that is a small business. Any remaining registered positions not allocated to small businesses will be made available for any registered employer during the last two months of each six month period.

- No more than thirty-three percent of the registered positions available per year may be granted to perform work in a construction occupation. The number of registered positions granted to construction occupations may not exceed 15,000 per year or 7,500 for any six month period. A registered employer may not hire a certified alien for a registered position to perform work in a construction occupation if the unemployment rate for construction occupations in the corresponding occupational job zone was more than eight and a half percent. The unemployment rate will be determined by using the most recent survey taken by the Bureau or if no survey is available, by a recent, legitimate privately conducted survey.

- *Portability and Promotion.* A W nonimmigrant who is admitted to the US by a registered employer may terminate such employment for any reason and seek and accept employment with another registered employer in any other registered position within the terms and conditions of the W nonimmigrant visa. A registered employer who has applied for a registered position in a shortage occupation may promote the W nonimmigrant to a registered position in an occupation that is not a shortage occupation if such employee has been employed with that employer for no less than twelve months. Such a promotion will not increase the number of registered positions for that employer.

- *Prohibitions on Outplacement.* A registered employer may not place, outsource, lease or otherwise contract for the services or placement of a W nonimmigrant employee with another employer if more than fifteen percent of the employees of the registered employer are W nonimmigrants.

- *Waiver of rights prohibited.* A W nonimmigrant shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a US worker employed in a similar position with the employer because of the alien's status as a W. A W may not be required to waive any rights or protections under this Act.

- *Prohibition on treatment as independent contractors.* A W nonimmigrant is prohibited from being treated as an independent contractor under any Federal or State law and no person including an employer or labor contractor and any affiliated persons may treat the W as an independent contractor. However, registered employers who operate as independent contractors may hire W nonimmigrants.

- *Use of Fees.* A fee related to the hiring of a W nonimmigrant required to be paid by an employer under this Act shall be paid by the employer and may not be deducted from the wages or other compensation paid to a W nonimmigrant. The employer is not responsible for the W nonimmigrant's cost of round trip transportation from a certified alien's home to the location of the registered position and the cost of obtaining a foreign passport. An employer shall comply with all applicable Federal, State and local tax laws with respect to each W nonimmigrant employed by the employer. Fees collected in this section shall be used to carry out the W nonimmigrant program and to fund the Bureau if any funds remain.

- *Whistleblower Protections.* It is unlawful for an employer of a W nonimmigrant to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner discriminate against an employee or former employee because the employee or former employee discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this section or cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this section.

- *Complaint process and Enforcement.* The Secretary shall establish a process for the receipt, investigation and disposition of complaints with respect to the failure of a registered employer to meet a condition of this section or the lay off or non-hiring of a US worker. The Secretary shall promulgate regulations for the receipt, investigation and disposition of complaints by an aggrieved W nonimmigrant respecting a violation of this section. No investigation or hearing shall be conducted on a complaint concerning a violation unless the complaint was filed within six months of the violation. The Secretary shall determine within 30 days of the filing of the complaint if there is reasonable cause to conduct an investigation and if there is a reasonable basis to believe that a violation of this section has occurred. If the Secretary decides there is a reasonable basis, she shall issue notice to the interested parties and offer an opportunity for a hearing on the complaint within 60 days. After the hearing, the Secretary has 60 days to make a finding on the matter awarding reasonable attorneys fees and costs to the prevailing party.

- The Agricultural Job Opportunity, Benefits, and Security Act (AgJOBS) would allow current undocumented farm workers to obtain legal status through an Agricultural Card Program. Undocumented farm workers who have made a substantial prior commitment to agricultural work in the United States would be eligible for an Agricultural Card.
- Agricultural workers who fulfill future Agricultural Card work requirements in U.S. agriculture, show that they have paid all taxes, have not been convicted of any serious crime, and pay a $400 fine are eligible to adjust to legal permanent resident status. Spouses and minor children would receive derivative status.
- A new agricultural guest worker visa program would be established to ensure an adequate agricultural workforce. A portable, at-will employment based visa (W-3 visa) and a contract-based visa (W-2 visa) would replace the current H-2A program. The H-2A program would sunset after the new guest worker visa program is operational.