Insight

# Examining the Latest Immigration Reform Legislation

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Executive Summary

- As part of President Biden's larger immigration reform plan, the House passed two immigration bills last week, the Dream and Promise Act and the Farm Workforce Modernization Act.
- Both bills offer a path to legalization for certain groups of immigrants by creating new categories and reforming old ones.
- While the bills offer some promise for those hoping for immigration reform, a broader reform toward a more skills-based immigration system would offer greater help to the economy as a whole.

## Introduction

Last week, the House passed two immigration bills – The Dream and Promise Act of 2021 and The Farm Workforce Modernization Act – roughly along party lines. These bills represent two components of the Biden Administration's larger immigration reform; the decision to move them separately reflects a legislative strategy. While the two bills would make needed progress on overhauling the U.S. immigration system, a broader reform toward more skills-based immigration would offer greater help to the economy as a whole. As such, Congress should act to change the core criteria for granting visas. Below is an overview of the House-passed immigration bills.

## The Dream and Promise Act of 2021

The Dream and Promise Act of 2021 seeks to provide those brought to the United States illegally as children (known as Dreamers), Temporary Protected Status (TPS) holders, and

Deferred Enforced Departure (DED) individuals with protection from deportation and a path to eventual citizenship if they meet certain requirements. If the Act were to pass, it would mean 2.3 million Dreamers, a combined 400,000 TPS holders and individuals with DED, and 170,000 "Legal Dreamers," or those whose have aged out of their parents' visas, would have a pathway to citizenship in the United States.

The Act has a major focus on the Dreamers, creating a new status called "conditional permanent residency" that would protect them from deportation, allow them to work legally in the United States, and permit them to travel outside of the country for up to 10 years. During these 10 years, Dreamers could apply for legal status or "lawful permanent residency" once certain requirements are met. The Act also includes additional provisions that impact Dreamers such as streamlined procedures, the waiver of certain inadmissibility bars, and access to federal financial aid.

After the Dreamers, the Act addresses TPS holders and individuals with DED. The Act protects these immigrants from deportation and would allow them to adjust their status to "lawful permanent residency" once certain requirements are met. Eligible individuals are TPS holders from El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Syria, and Yemen, and those with DED from Liberia.

The Farm Workforce Modernization Act of 2021

The Farm Workforce Modernization Act of 2021 focuses on reforming the process by which immigrants can migrate to the United States to work in agriculture. The Act has three major provisions: creating a pathway to legalization for current undocumented immigrants working in agricultural jobs with an eventual option to become permanent citizens; reforming the existing H-2A visa program; and requiring all agriculture employers to implement a reformed E-Verify program to make sure all workers are accounted for.

The Act would create a new temporary worker visa program called Certified Agricultural Worker (CAW) and establish the eligibility requirements for undocumented agricultural workers. CAW visas could be renewed every five and a half years and the number of visas is uncapped. After either eight years of CAW status or four years of CAW status and 10 years of past agriculture work, immigrants could apply for a green card. Under a CAW visa, employers and dependents have more protections, but CAW workers would not be eligible for public benefits, tax benefits, or health care subsidies.

Along with creating the new visa category, the Act would also create major reform to the H-2A visa program, the existing temporary agricultural worker program. Due to the nature of the current program, employers must petition for a number of H-2A visas. The Act makes

it so that employers' application processes are more efficient, and it would also phase out the Adverse Effect Wage Rate, the current way of setting wages for H-2A employees. The Act would also create better housing, transportation, and subsistence arrangements and wage protections for workers. In fact, workers would be guaranteed paid labor for at least 75 percent of the workdays in their contract. The Act would also create a new temporary option for H-2A recipients to work year-round, rather than seasonably, by creating three-year H-2A visas with an additional cap of 20,000 per year and, in addition, would allow an annual assurance of 40,000 employment-based green cards for H-2A recipients.

Finally, this Act would create a more efficient E-Verify system and require all employers of immigrant agriculture workers to use the system. The new E-Verify system would be aimed at identifying unauthorized workers, and employers could be penalized up to $25,000 for not using the system.

Prospects for Reform

The House's passage of The Dream and Promise Act of 2021 and The Farm Workforce Modernization Act offers a glimmer of hope to those pushing for legislation reforming immigration in the United States. With both bills offering different groups of immigrants opportunities for permanent citizenship in the United States, Congress must find a way to balance the effects of each bill in a bipartisan fashion. Legalization is fundamentally a tradeoff between establishing a level playing field in the labor market and the potential increased incentives for illegal immigration into the United States; different people evaluate that tradeoff differently, making it difficult to pass individual reforms in isolation.

A potentially attractive part of immigration reform is the possibility for pro-growth changes in the core system for granting visas. The two bills would likely have a brighter future in the Senate if they were part of an overall commitment that included moving toward a more skills-based immigration system. The American Action Forum has proposed a reform to the legal immigration system based on the economics of a more productive labor force, greater entrepreneurship, improved labor market skills, and the ability to offset the demographically driven decline in the labor force. As the United States comes out of the COVID-19 related recession, it may be a good time for Congress to focus on immigration reform that can be a powerful force for economic growth.