Insight

Immigration Provisions in Build Back Better

ISABEL SOTO, WHITNEY APPEL, MAYA SHANAHAN | NOVEMBER 10, 2021

Executive Summary

- Immigration reform advocates continue to attempt to include provisions legalizing undocumented immigrants in the reconciliation legislation. The Congressional Budget Office's cost estimate found that the original provisions would increase the federal deficit by more than $120 billion over the next decade — nevertheless the provisions were rejected by the Senate parliamentarian as not being primarily budgetary in nature.
- The proposals have been successively revised, however, and now focus on giving work authorization to undocumented immigrants, recapturing employment- and family-based visas, and establishing supplemental fees. These proposals do not result in citizenship and, thus, have significantly less budgetary impact.
- These reforms are unlikely to satisfy the Senate parliamentarian for inclusion in the reconciliation bill; legislators interested in significant and sustainable immigration reform should address more than illegal immigrants and work to improve the existing system with an emphasis on economic growth—and must do so through regular order.

Introduction

On Tuesday, November 2, the Congressional Budget Office (CBO) released a cost estimate of the House Democrats' earliest version (referred to herein as "Plan A") of the immigration provisions to be included in the Build Back Better (BBB) reconciliation bill. CBO found that Plan A would increase the federal deficit by around $120 billion over 10 years. The provisions were not approved for reconciliation by the Senate parliamentarian, however, which led House Democrats to propose a revised set of provisions ("Plan B"), which the parliamentarian also rejected. The latest round of provisions ("Plan C") is less ambitious,

and largely focus on allowing up to 10 years of work authorization for undocumented immigrants and increasing the number of individuals who can come to the United States (specifically on employment- and family-based visas). Thus, as the process has continued, the nature of the reforms has become more modest, and their budgetary impact has diminished. Nevertheless, it seems unlikely that Plan C will be approved for inclusion in the reconciliation bill.

While immigration reform is unlikely to be included in reconciliation, and rightly so, it is worth understanding the substance at each stage of the proposed reforms. Despite the high price tag for House Democrats' Plan A, it would only have made modest steps toward improving U.S. immigration policy. While it would have constituted a sweeping legalization of undocumented immigrants, it would not have addressed either the core visa-granting criteria or border issues, both of which contribute to the large number of immigrants present illegally in the United States. With the successive Plans B and C, these core deficiencies remained, while the legalization provisions became less effective.

In this short piece, we discuss first the reconciliation process that constrains the nature of the legislation and then turn to the immigration policy details.

The Budget Reconciliation Process

Budget reconciliation is a powerful legislative tool that allows lawmakers to pass legislation with a simple majority. Nevertheless, the process has its limitations. Congress must pass a budget resolution prior to the reconciliation process, the process can only be invoked a limited number of times under that budget resolution, and the "Byrd Rule" limits the scope of reconciliation to strictly budgetary matters. With these parameters in view, the Senate parliamentarian's role is to advise Senators about whether proposed legislative provisions are appropriate for this specific procedure. In this case, the Senate parliamentarian did not find House Democrats' first two immigration proposals "budgetary in nature." The parliamentarian has not yet ruled on the Plan C immigration provisions, but most observers do not expect them to receive a favorable ruling.

The Policy and Costs of House Democrats' Plan A & B

The Plan A provisions would have granted citizenship to around 11 million undocumented immigrants including Dreamers (those who arrived illegally in the United States before the age of 16 and have continuously lived there since the enactment of the bill in 2007), essential workers during the COVID-19 pandemic, Temporary Protected Status holders (those from designated countries in political and economic turmoil), and undocumented farmworkers. It would have made more visas available based on employment, family, and

diversity status. It also would have designated a significant amount of money to reducing visa backlogs and hiring more immigration judges, as well as for additional technology and security at the southern border.

Plan A was rejected in September for violating the "Byrd Rule" and therefore removed from the bill. Notably, the CBO estimated that these immigration provisions would have cost the U.S. government about $124 billion over 10 years and more than $500 billion over the next two decades.

These projections show that beyond violating the "Byrd Rule," the Plan A provisions also violate the reconciliation instructions laid out by the Senate Budget Committee's FY 2022 budget resolution, which would have capped the deficit for these provisions at about $107 billion over 10 years. Why would these provisions cost the federal government so much over the next two decades? CBO predicted that the majority of the immigrants who would be legalized through these provisions would be using federal social safety net programs – mainly Medicaid, Medicare, and Social Security.

With Plan A scrapped, House Democrats moved on to Plan B, which would have updated the immigration registry date from 1972 to 2010, granting those who entered the country illegally before 2010 amnesty the ability to apply for a green card. This attempt was also rejected by the Senate Parliamentarian for violating the Byrd Rule. Therefore, House Democrats moved on to Plan C.

The Latest Round of Immigration Provisions in the Build Back Better Act

House Democrats' Plan C immigration provisions do not contain a pathway to citizenship for undocumented immigrants and instead offer a "parole" process that would waive immigration requirements for five years with the chance to extend for another five years for those who immigrated before January 2011. This set of provisions would target roughly seven million undocumented immigrants currently in the United States, including the Dreamers and certain classes of essential workers during the pandemic.

Plan C also includes provisions related to visa restrictions that were imposed by the Trump Administration. The 2017–2021 period saw several changes to immigration policy including travel restrictions from specific countries, closing immigration courts, limiting border travel, and suspending routine visa services. These Plan C immigration provisions are intended to "recapture" immigrant visas that went unused during this period by allowing immigrants who were denied visas between 2017-2021 – whether due to executive orders or COVID-19 restrictions – the ability to reapply for those visas after the bill's enactment.

Additionally, the bill would permit certain visa holders to receive an exemption to national

or worldwide numerical limits on visas and have their status adjusted to that of a lawful permanent resident by the Secretary of Homeland Security, provided they meet certain criteria. The criteria for those seeking an exemption to visa limits includes both beneficiaries of family-based visas and employment-based visas and requires the individual seeking the exemption to pay a fine ranging from $2,500 to $50,000. This particular provision is set to expire in 2031. Further details about fees charged to visa applications are included in the bill, with one section establishing new supplemental fees.

Finally, the bill would appropriate $2.8 billion to U.S. Citizenship and Immigration Services 2022 for the purposes of increasing the department's capacity to process applications and reduce current backlogs.

Future of Immigration Policy Options

While maintaining an operational visa system is important, there have been few attempts to fix longstanding problems with the immigration system at large. Spending nearly $3 billion to increase capacity of application processing is only addressing the consequences and not the root problems of a broken immigration system. Recapturing unused employment visas could help with some of the labor shortages in the United States, specifically in highly technical fields, and could be particularly beneficial to economic growth. Simply increasing the number of individuals who can enter and work in the United States, however, does little to fix an overburdened, broken system or address illegal immigration.

The Plan C provisions are unlikely to be included in final reconciliation legislation given that the parliamentarian has already rejected previous attempts and, in general, these provisions are not budgetary in nature. So far, the immigration provisions related and unrelated to the budgetary process have merely been band-aid fixes that neither address border security nor focus on reaping the actual benefits that immigration can provide.

Rather than increasing the number of visas granted under the current system, the Biden Administration should focus on creating a functional and beneficial immigration system. The American Action Forum has proposed changes to the current system that prioritize economic growth, human capital, skills, and entrepreneurship, which could serve as a blueprint for positive, productive changes to the immigration system.

Conclusion

House Democrats have proposed a series of reforms to U.S. immigration policy. The original proposal ("Plan A") would increase the federal deficit by around $120 billion over 10 years but was not approved for reconciliation by the Senate parliamentarian. The plans that followed were less ambitious, and largely focus on allowing work authorization for up to 10

years for undocumented immigrants and increasing the number of individuals who can come to the United States (specifically on employment- and family-based visas). In response to Plan A being deemed in violation of the Byrd Rule, the proposals that followed became more modest. Even so, the current immigration provisions in Plan C still possess the problems of the original Plan A provisions, they do little to reform the immigration system and rather focus on recapturing previously unused visas and sweeping legalization of undocumented immigrants. A more fruitful reform would address legalization, border issues, and visa-granting criteria in a single legislative vehicle that is debated and finalized in regular order.