

*The following was published in Law360's Employment and Public Policy wires.*

## **What To Expect From Proposed Immigration Bill**

*--By Sarah Buffett and Amanda Carrano, [Moore & Van Allen PLLC](#)*

Law360, New York (June 05, 2013, 12:59 PM ET) -- On April 16, 2013, the bipartisan group of senators known as the “Gang of Eight” introduced in the [U.S. Senate](#) the first comprehensive immigration reform legislation in more than 20 years. The Border Security, Economic Opportunity and Immigration Modernization Act of 2013 (BSEOIMA) is over 800 pages long and contains a lot of novel immigration ideas, as well as tweaks to the existing system. But what is the bottom line?

For starters, there will be more H-1B visa numbers. The tradeoff, though, for more H-1B visa numbers is that they will cost more to acquire; U.S. businesses will have to pay H-1B workers much higher wages than they currently do, and there will be a pre-filing U.S. recruitment requirement if the bill passes as currently written.

The bill also includes a provision that allows for market escalators to increase the numbers in a given year to a maximum of 180,000 numbers if the national unemployment remains below a threshold of 8.5 percent. Businesses highly dependent on H-1B workers (mostly foreign-owned, such as Tata and Infosys) will have to pay a lot more money for H-1B visas and may eventually become ineligible to participate in the program, freeing up H-1B numbers for other U.S. businesses.

Next, the bill diligently attempts to eliminate the current green card backlogs by putting the highly educated into an expedited process. Those with degrees in science, technology, engineering or math (STEM) will benefit the most from this change by having their own place in the green card line.

In addition, more immigrant visa numbers will be allocated to those with degrees in technical and sought-after fields. Now whether all STEM degree holders or just those with an advanced degree in a STEM field will be put into this expedited process is yet to be seen as the bill is unclear as to that distinction.

One thing is certain, though: Those with the highest level of education (doctoral degree holders) will benefit the most from the proposed changes since they will be exempted completely from the annual numerical limits on employment-based immigrant visas.

Creation of a few new nonimmigrant classifications is also in the bill. The W visa is being created to answer the demand for lower-skilled workers in hard-to-fill positions. U.S. businesses will have to register and demonstrate need, and the occupation must be one in which there is a designated labor shortage.

The W visa will be capped every year at a number to be determined by the Bureau of

Immigration and Labor Market Research. On the flip side, the bill creates a new entrepreneur visa for foreign nationals heading their own startup. The new entrepreneur visa should make the high-tech corridor very happy.

One of the less novel ideas of the bill is creating a point-based immigrant visa scheme. The rest of the civilized world has already been using a similar system for years, but the U.S. has previously never attempted to allocate immigrant visas based on a system of metrics. These merit-based immigrant visas will go to those with the most education, longest employment, U.S. residency and the like.

The exact methodology for assessing points will likely be broken down into some sort of formula before the Congressional wrangling ends. If this piece of the bill passes as written, then the point scheme would be available to all five years after enactment of the bill and to certain employment visas pending for three years as early as fiscal year 2014.

The employment verification system (E-Verify) also gets tougher in the new bill. Every employer in the U.S., regardless of size, will be required to register and be an E-Verify employer. Implementation is staggered based on company size with the largest companies having to enroll first, but all employers must be using the system within five years after enactment of the bill.

The “new” E-Verify program will also have greater security measures to protect personal identity information to cut down on social security number misuse. For the first time, people will be able to log into the E-Verify system, confirm their information and “lock” their social security number so that it cannot be used by anyone else.

As for family-based applications, the BSEOIMA eliminates sponsorship eligibility for brothers and sisters of U.S. citizens and caps the age of eligibility for married children of U.S. citizens and permanent residents at 31. However, it does treat spouses of permanent residents in such a way that they no longer have to wait for several years before they too can receive a green card. They become “immediate relatives” and are exempted out of the annual numerical limits.

Finally, the bill has several border security “triggers” that must be met before many changes can take place. Among them is a requirement of a 90-percent effectiveness rate (capture of people illegally entering the country) for all “high risk” border sectors.

A commission will be set up to identify areas of deficiency in our current border controls and oversee the new security requirements. Additional funding would also be provided for more technology and border patrol officers.

What’s the biggest takeaway though from all of this? The final bill may not look anything like the current proposal. The bill will be openly debated on the Senate floor and will go through one, if not several, amendment processes before it’s finally passed and then taken up by the House.

The first such set of amendments was proposed recently. After a lot of Congressional tweaking and toying, the ultimate result may be a system that is not so dissimilar to the one we have now.

Different groups are lobbying for specific changes, but ideally, the bill passed will greatly resemble the proposed bill.

The availability of H-1B visas for U.S. businesses will increase, the high-tech sector will finally have a visa option for entrepreneurs, and U.S. businesses will be able to hire lower-skilled workers year-round to fill high-demand jobs.

The most educated and highly skilled foreign nationals will get their green cards faster, and those who have been subject to immigrant visa number backlogs and waiting the longest time in the legal immigration process will be awarded points toward getting a green card sooner.

*[Sarah Buffett](#) is a member at Moore & Van Allen's Charlotte, N.C., office. In her international, corporate and immigration law practice, Sarah guides foreign and domestic businesses through immigration law and procedure.*

*[Amanda Carrano](#) is an associate at Moore & Van Allen's Charlotte, N.C., office. Her practice covers business immigration as she assists employers in obtaining temporary visas and permanent residency for immigrant workers.*

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