



# United States Conference of Catholic Bishops Government Relations

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## Weekly Update on Immigration and Refugee Legislative Matters 111<sup>th</sup> Congress, First Session

Monday, September 21, 2009

(Revised on September 26, 2009)

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### Legislative Highlights

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*The treatment of legal and illegal immigrants in health care reform and the short-term fate of four expiring immigration programs take center stage this week in Congress.*  
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### This Week's Hearings

At the time of this writing, no hearings had been scheduled for this week at which significant immigration- or refugee-related matters are expected to be discussed. ◇

- **House Judiciary Immigration Bills.** The House Judiciary Committee could markup three relatively minor immigration bills.

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### This Week's Markups

At the time of this writing, three committee actions are anticipated this week that could have implications for immigration- or refugee-related legislation. Two of the potential markups are anticipated to be taking place in the House and the other is occurring in the Senate:

- **Senate Health Care Reform Bill.** The Senate Committee on Finance is scheduled to begin a week-long markup of the Baucus health care reform bill; and
- **Amendments to House Health Care Reform Bill.** The House Committee on Energy and Commerce is expected to conduct a markup to consider remaining amendments to health care reform legislation.

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## *This Week's Markups (continued)*

### House

#### **House Energy and Commerce Committee to Markup Supplementary Health Care Reform Measure:**

While it had not been officially noticed at the time of this writing, the House Committee on Energy and



Commerce is planning this week to continue its consideration of health care reform legislation, marking up a supplementary health care reform bill consisting of amendments left over from the committee's consideration in July

of [H.R. 3200](#), the "America's Affordable Health Choices Act of 2009." It is anticipated that the markup will occur on Wednesday, September 23, 2009. No time for the markup had been set at the time of this writing. However, it is expected that it will take place in Room 2123 of the Rayburn House Office Building.

**Jurisdiction.** The House Committee on Energy and Commerce has broad jurisdiction over health issues, including jurisdiction over health and health facilities (except health care supported by payroll deductions); biomedical research and development; and public health and quarantine. It is one of three House Committees that produced H.R. 3200, the other two being the House Committee on Education and Labor and the House Committee on Ways and Means.

**Parliamentary Situation.** The House Committee on Energy and Commerce approved its version of H.R. 2200 on July 31, 2009. At the time that the Committee approved the measure, 55 to 60 amendments were pending but had not been offered. House Energy and Commerce Committee Chairman Henry Waxman (D-CA) and Ranking Member Joe Barton (R-TX) agreed to a procedure whereby the Committee would conduct a markup sometime in September to consider the 55 to 60 amendments that were still pending when the Committee approved H.R. 3200. Under the agreement, once the Committee completes its consideration of the amendments, they will be packaged together and forwarded to the House Committee on Rules to be considered along with the Committee-approved version of H.R. 3200.

**Summary of Immigration- and Refugee-Related Provisions.** Generally speaking, as introduced, H.R. 3200 would bar both undocumented aliens and most nonimmigrants from receiving health care benefits pursuant to the bill or from having federal funds spent on their behalf under the bill. The bill would, however, include nonimmigrants, undocumented aliens, and legal immigrants

in the list of persons who would either have to purchase health insurance or face a tax penalty for not having done so.

H.R. 3200 would leave in place current law regarding the eligibility of aliens for Medicaid and the Children's Health Insurance Program (CHIP) unchanged.

**Views of the Advocacy Community.** Members of the pro-immigrant advocacy community that have engaged the health care reform debate suggested the following improvements to the version of H.R. 3200 that was introduced in the House:

- Five-Year Bar on Eligibility for Medicaid and CHIP. The pro-immigrant advocacy community has suggested repealing the current law's "five-year after entry" bar for aliens who wish to participate in Medicaid and CHIP.

H.R. 3200 does not address this issue.

- Treatment of Undocumented Aliens Under Medicaid and CHIP. The pro-immigrant advocacy community has suggested making undocumented children and undocumented pregnant women eligible for Medicaid and CHIP.

H.R. 3200 leaves in place current law, which renders undocumented aliens ineligible for CHIP, as well as for all but emergency Medicaid.

- Eligibility of Lawfully Present vs. Lawfully Residing Residents for Affordability Credits. The pro-immigrant advocacy community has suggested refining the bill's provision (found in Section 242(a)(1) of H.R. 3200) that would exclude persons who are not "lawfully present" from eligibility for an Individual Affordability Credit, which is a federal subsidy established in the bill to help persons purchase health insurance. Instead of excluding persons who are not "lawfully present" in the United States, the pro-immigrant advocacy community suggests excluding persons who are not "lawfully residing" in the United States.

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## *This Week's Markups (continued)*

- Treatment of Mixed Alienage Families Under the Bill's Individual Affordability Credit. The pro-immigrant advocacy community suggests that the bill permit families to qualify for the Affordable Credit (found in Section 242(a)(2) of H.R. 3200) rather than focusing eligibility on individuals. It suggests this in order to serve everyone on mixed status families.
- General Exclusion of Federal Individual Affordability Credit Payments to Undocumented Aliens. The pro-immigrant advocacy community has expressed concern about the provision (found in Section 242(a)(2) of H.R. 3200) that precludes Federal affordability credits on behalf of individuals who are not lawfully present in the United States. The pro-immigrant advocacy community believes that the language is too broad and needs to be narrowed.
- Impact of Penalty for Persons Who Fail to Purchase Health Insurance on Undocumented Aliens. The Pro-immigrant advocacy community has expressed concern about the Penalty Tax found in Part VIII, Section 59B(d)(2) of H.R. 3200. The advocacy community fears that the exemption in that paragraph of the bill for “non-resident aliens” is both too narrow and too broad. The community justifies its concerns by asserting that the term, “non-resident” is tax term related to physical presence in the United States during the tax year and that the term is unrelated to immigration status while undocumented persons are considered “resident aliens.” It believes that it would be a huge problem to have many persons who are ineligible for tax credits, thereby making it unaffordable for them to purchase coverage, yet subject to penalties for not obtaining coverage.
- Outreach to Immigrant and Limited English Proficient Communities. The pro-immigrant advocacy community is concerned that the outreach provisions found in Sec. 205(a)(1) of the June 19, 2009, draft bill do not adequately provide for outreach to persons who cannot speak English very well.

**Mitigating Provisions.** The pro-immigrant advocacy community had suggested narrowing the draft bill's provision (found in section 242(a)(1) of the June 19 2009, draft bill) that, as originally drafted, would have excluded all nonimmigrants from eligibility for an Individual Affordability Credit, which is a federal subsidy established in the bill to help persons purchase health insurance.

Advocates contended that by excluding all nonimmigrants from eligibility for the Affordability Credit, the draft health care reform bill would unjustly exclude deserving, vulnerable persons, such as victims of trafficking and victims of domestic violence (T and U visa holders) who are pursuing

paths to permanent status, as well as others who have nonimmigrant visas but are in the United States with some permanency.

The drafters of the bill adjusted the bill prior to introduction to exclude K, T, U, and V nonimmigrant visas holders from the bill's provisions.

**July's Committee Consideration and Amendments.** Only three immigration-related amendments were offered to H.R. 3200 during the House Energy and Commerce Committee's consideration of the measure. The Committee rejected one of the amendments and agreed to the other two:

- DEAL IMMIGRATION STATUS VERIFICATION AMENDMENT.—Representative Nathan Deal (R-GA) offered an amendment that would have required that the SAVE system be used to verify the immigration status of applicants for Medicaid benefits.<sup>1435 1436</sup>

The Committee rejected the Deal Immigration Status Verification Amendment by a vote of 28-29.<sup>1437</sup>

- ESHOO COMPACT MIGRANTS MEDICAID ELIGIBILITY AMENDMENT.—Representative Anna G. Eshoo (D-CA) offered an amendment that would make migrants to the United States from Compact of Free Association Nations (including Micronesia, the Marshall Islands, and Palau) immediately eligible for Medicaid.<sup>1438</sup>

The Committee agreed to the Eshoo Compact Migrants Medicaid Eligibility Amendment by a voice vote.

- SPACE ILLEGAL IMMIGRANT CHIP/MEDICAID AMENDMENT.—Representative Zachary T. Space (D-OH) offered an amendment to provide that nothing in Title VII of Division B of the bill shall change current prohibitions against Federal Medicaid and CHIP payments under titles XIX and XXI of the Social

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<sup>1435</sup> [Click Here](#) to see the text of the Deal Immigration Status Verification Amendment to H.R. 3200

<sup>1436</sup> [Click Here](#) to see video of the debate in the House Committee on Energy and Commerce on the Deal Immigration Status Verification Amendment to H.R. 3200

<sup>1437</sup> [Click here](#) to see the roll call vote by which the House Committee on Energy and Commerce rejected the Deal Immigration Status Verification amendment to H.R. 3200

<sup>1438</sup> [Click Here](#) to see the text of the Eshoo Compact Migrants Medicaid Eligibility Amendment to H.R. 3200

Security Act on behalf of individuals who are not lawfully present in the United States.<sup>1439</sup>

The Committee agreed to the Space Illegal Immigrant CHIP/MEDICAID Amendment by a voice vote.

**Remaining Amendments.** At the time of this writing, no list of the 55 to 60 remaining amendments was publicly available. ☀

**House Judiciary Committee Could Markup Three Immigration Measures This Week:** While it had not been officially scheduled as of the time of this writing, the full House Committee on the Judiciary could as soon as this week markup three immigration-related bills that were approved prior to the August recess by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. The normal time for the committee to markup the measure would be 10:00 am on Wednesday, September 23, 2009. However, a Subcommittee hearing is already scheduled for this week on that date and time. Should a full House Committee on the Judiciary occur, it will take place in Room 2141 of the Rayburn House Office Building.

The Subcommittee approved two of the measures during markups that occurred on Thursday, July 23, 2009, and Friday, July 24, 2009.<sup>1440</sup> It approved the third bill in a Friday, July 31, 2009 markup.<sup>1441</sup>

**Summary of Immigration- and Refugee-Related Appropriations Provisions.** The following summarizes the immigration- or refugee-related provisions of each of the four bills --

- **Honorary Citizenship Bill.** As approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, H.J. Res. 26 would convey honorary U.S. citizenship on Casimir Pulaski, a Polish citizen who fought on behalf of the United States during the Revolutionary War and died

<sup>1439</sup> [Click Here](#) to see the text of the Space Illegal Immigrant CHIP/Medicaid Amendment to H.R. 3200

<sup>1440</sup> See Pages 849-850 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 3290, H.J. Res. 26, H.R. 42, three bills that were approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during two days of markup beginning on July 23, 2009

<sup>1441</sup> See Pages 883-884 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 1425, which was approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during its July 31, 2009, markup

while in combat in 1779. It is a symbolic bill that does not have any impact on the legal status of surviving family or relatives.

The Subcommittee approved H.J. Res. 26 on Thursday, July 23, 2009, by a vote of 10-1.

- **Commission on Wartime Relocation and Internment Bill.** As approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, H.R. 42 would establish a Commission on Wartime Relocation and Internment of Latin Americans of Japanese descent, which would be directed to extend the study of the Commission on Wartime Relocation and Internment of Civilians to investigate U.S. relocation, internment and deportation to Axis countries of Latin Americans of Japanese descent held in U.S. custody from December 1941 through February 1948.

The measure would require the Commission to recommend appropriate remedies to Congress.

The measure would terminate the commission 90 days after submission of its report to Congress.

The Subcommittee approved H.R. 42 on Friday, July 24, 2009, by a vote of 7-2, after a contentious debate, during which Subcommittee Ranking Republican Steve King offered four amendments. Each of the King amendments were rejected on party-line votes.

- **Commission on Wartime Treatment of European Americans and Jewish Refugees.** As approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, H.R. 1425 would establish two commissions:
  1. **The Commission on Wartime Treatment of European Americans** would be charged with reviewing U.S. government wartime treatment of European Americans and European Latin Americans. More specifically, the Commission would be required to review--
    - A. government actions with respect to European Americans and European Latin Americans pursuant to United States laws and directives, including the Alien Enemies Acts, Presidential Proclamations 2526, 2527, 2655, 2662, 2685, Executive Orders 9066 and 9095, and related directives pursuant to these and other pertinent laws, proclamations, or executive orders;
    - B. registration requirements, travel and property restrictions, internment, and forced abandonment of property;

- C. participation by European Americans in the U.S. Armed Forces; and
- D. appropriate remedies, including public education programs and the creation of a comprehensive online database by the National Archives and Records Administration of documents related to the government's wartime treatment of European Americans and European Latin Americans during World War II.

As amended during the course of the Subcommittee markup, H.R. 1425 would require that the selection of the members of the European American Commission should be made so as to ensure the members can fairly review the facts and discharge the duties of the commission without bias. The measure also was amended during the markup to clarify that the European American Commission should include two members with professional expertise relating to the treatment of Italian-Americans and two members with professional expertise relating to the treatment of German-Americans.

- 2. **The Commission on Wartime Treatment of Jewish Refugees** would be charged with reviewing the U.S. government's refusal to allow entry into the United States of Jewish and other refugees fleeing persecution or genocide in Europe during World War II. It would direct the Commission to include reviews of--
  - A. the rationale for such refusal, its perceived benefit, and its impact on refugees; and
  - B. federal refugee policy concerning those fleeing persecution or genocide.

As amended during the Subcommittee markup, the measure would require that the membership of the Jewish Refugee Commission should include two members with professional expertise relating to the treatment of Jewish refugees.

The Subcommittee approved H.R. 1425 on Friday, July 31, 2009, by a vote of 9-1, after considering several amendments to the measure.

**Outlook.** The House Committee on the Judiciary is expected to approve all three measures. However, H.R. 42, and H.R. 1425 are expected to be the subject of amendments that could prove contentious. ☀

## Senate

### Senate Finance Committee to Begin Markup of Baucus Health Care Reform Bill Containing

**Immigrant Restrictions:** The Senate Committee on Finance is scheduled this week to begin what is expected to be a marathon, week-long markup of health care reform legislation. The Baucus Chairman's Mark of the measure contains a number of provisions that would restrict the ability of both legal and illegal immigrants to obtain health insurance. Senators on the Committee have filed 564 amendments to the Chairman's Mark, including at least 11 immigration-related ones. The first Finance Committee markup session is scheduled for 9:00 am on Tuesday, September 22, 2009, in Room SH-516 of the Hart Senate Office Building. The Committee has set aside time on each subsequent day this week to continue the markup.

**Jurisdiction.** The Senate Committee on Finance shares jurisdiction over health with the Senate Committee on Health, Education, Labor, and Pensions (HELP). The Finance Committee has specific jurisdiction over health programs under the Social Security Act and health programs financed by a specific tax or trust fund. In addition, it has jurisdiction over revenue measures, generally. The Health, Education, Labor, and Pensions Committee has jurisdiction over the nation's health care programs.

On July 15, 2009, the Senate Committee on Health, Education, Labor, and Pensions approved a bill that it eventually introduced as [S. 1679](#), the "Affordable Health Choices Act" to the full Senate. That bill will eventually be merged with the measure being marked up this week by the Senate Committee on Finance.

**Parliamentary Situation.** Only amendments that were filed with the Committee before 5:00 pm on Friday, September 19, 2009, may be considered during this week's markup. Amendments must be revenue neutral, which means if an amendment would increase spending, it must have within it provisions that would reduce spending by the same amount.

**Background.** Beginning in June, Senate Finance Committee Chairman Max Baucus (D-MT) engaged in months of protracted negotiations on health care reform with a bipartisan group of senators that came to be known as the "Gang of Six." The Chairman had hoped to reach bipartisan agreement with his colleagues in the "Gang of Six" on a health care reform bill that would be able to garner 60 or more votes in the Senate, thereby avoiding a filibuster.

The bipartisan discussions that Chairman Baucus led began in June and, much to the chagrin of his Senate and House Democratic colleagues, stretched through the August recess. Ultimately, the Chairman was unable to reach an agreement with the three Republicans in his "Gang of Six." Notwithstanding the refusal of the Republicans in the "Gang" to endorse his proposal, Chairman Baucus finally opted, instead, to release a Chairman's Mark of his bill that largely reflects the product of the failed negotiations with the "Gang." On Wednesday, September 16, 2009, Chairman

Baucus released his Chairman's Mark of the Senate Finance Committee health care reform bill.

**Controversy Over Immigrant Eligibility for Health Insurance Benefits.** The release of the Baucus Chairman's Mark comes as the issue of noncitizens' eligibility for benefits and services under the various pending health care reform bills has exploded into public consciousness.

The Obama Administration upped the ante last week when it suggested that illegal immigrants should not be able to purchase health insurance on the health insurance "exchange" (or marketplace) that is one of the centerpieces of almost every health insurance reform plan that has been introduced in Congress.

**Summary of Immigration- and Refugee-Related Provisions.** On Wednesday, September 16, 2009, Chairman Max Baucus released both a [brief summary](#) and a [detailed summary](#) of his long-awaited Chairman's Mark of Committee's health care reform bill. The summaries show that the Chairman's Mark contain a number of restrictions on both legal and illegal immigrants' access to health insurance. The actual legislative language for the Chairman's Mark had not yet been released at the time of this writing, and so it is entirely possible that there are immigrant- and immigration-related provisions in the text of the bill that are not described in the two summaries.

There is some opposition in Congress to placing restrictions on legal immigrants' eligibility for health insurance benefits. Senator Bob Menendez (D-NJ), the only Hispanic in the United States Senate, has indicated strong opposition to many of the immigration restrictions in the Baucus Chairman's Mark. And Representative Luis Gutierrez (D-IL), a leader in the House on immigration matters, has warned that the Congressional Hispanic Caucus might oppose a bill that contains restrictions like the ones being speculated on for inclusion in the Baucus bill. However, it is doubtful, at best, whether that opposition will be substantial enough to eliminate or substantially mitigate the provisions.

An analysis of the summaries reveals that the immigration-related provisions in the bill would:

- **Health Insurance Mandate.** mandate that legal immigrants (along with U.S. citizens) either purchase health insurance or be subject to a tax penalty;
- **Treatment of Illegal Immigrants Under Mandate.** exempt illegal immigrants from the mandate to purchase health insurance;
- **Illegal Immigrants and Health Insurance Exchanges.** bar illegal immigrants from purchasing health insurance in state or federal health insurance exchanges;

- **Health Insurance Exchanges and Mixed Families.** permit illegal immigrants to purchase health insurance in the exchanges for their U.S. citizen or LPR children;
- **Legal Immigrants and Affordability Credits.** permit legal immigrants to receive affordability tax credits to help them pay for health insurance without regard to the five-year waiting period under the law for Medicaid and the Children's Health Insurance Program (CHIP);
- **Illegal Immigrants and Affordability Credits.** bar illegal immigrants from receiving affordability tax credits to help them purchase health insurance;
- **Legal Immigrants with Expiring Immigration Status.** bar legal residents from receiving affordability tax credits to help them purchase health insurance if their legal status will expire within a year;
- **Calculation of the Federal Poverty Level.** exempt illegal immigrants from the calculation of the Federal Poverty Level for the purposes of the bill; and
- **Citizenship and Immigration Status Verification.** impose an immigration status verification regime on all persons --- citizens and noncitizens, alike -- seeking to purchase health insurance.

**Summary of Immigration-Related Amendments to the Chairman's Mark.** In all, Committee members filed 564 amendments to the Chairman's Mark prior to the Friday, September 19, 2009, 5:00 pm deadline set by the Committee for the filing of amendments. At least 11 of the amendments that were filed are immigration-related. Of that number, at least four would expand immigrants' eligibility to participate in either health insurance programs that would be established by the Chairman's Mark of the Finance Committee's Health Care Reform Bill or in existing federal health care programs; at least seven of the amendments would restrict immigrant eligibility in such programs.

The following is a brief summary of the 11 immigration-related amendments that were filed with the Committee prior to the September 19, 2009, deadline:

- **Amendments to Expand Immigrant Eligibility.** The following amendments to expand immigrant eligibility for health insurance coverage were filed by senators on the Committee prior to the filing deadline:
  1. [ROCKEFELLER/MENDEDEZ AMDT #C19 \(COMMITTEE AMDT #199\)](#). Senators Jay Rockefeller (D-WV) and Bob Menendez (D-NJ) filed an amendment to the Chairman's Mark that would "restore Medicaid for individuals who are lawfully present in the U.S."

More specifically, the Rockefeller/Menendez amendment would ensure "that individuals who are lawfully present in the U.S. and are otherwise eligible for Medicaid can secure coverage under Medicaid without a waiting period or other [sponsor-related] barriers."

2. [ROCKEFELLER AMDT #C22 \(COMMITTEE AMDT #202\)](#). Senator Jay Rockefeller (D-WV) filed an amendment to expand eligibility for and increase benefits under the Children's Health Insurance Program (CHIP), a program that the Chairman's Mark would eliminate after 2013. Instead of eliminating the CHIP program in 2013, the Rockefeller Amendment would continue the program through September 30 2019.

Under the Rockefeller Amendment, legal immigrant children would be included in the expansion of eligibility and increased benefits.

3. [MENENDEZ/BINGAMAN AMDT #C2 \(COMMITTEE AMDT #301\)](#). Senators Bob Menendez (D-NJ) and Jeff Bingaman (D-NM) filed an amendment to the Chairman's Mark that would "allow citizen and lawfully present immigrant children to get affordable health coverage while ensuring that undocumented immigrants do not benefit from the tax credit subsidy"

Consistent with eligibility for mixed-status families in the Medicaid program, the amendment would count all income and all members of a household in determining eligibility for tax credits, but would provide a tax credit subsidy only to household members who meet citizenship or legal immigrant eligibility requirements for the tax credit along with all other eligibility requirements.

The amendment would ensure that only eligible citizens and lawfully present immigrants get the benefit of a tax credit subsidy.

The Senators contend that there is no need for a revenue offset for the amendment.

4. [MENENDEZ AMDT #C15 \(COMMITTEE AMDT #313\)](#). Senator Bob Menendez (D-NJ) filed an amendment to the Chairman's Mark that would require the use of the Systematic Alien Verification for Entitlements system (SAVE System) in verifying the eligibility of aliens to participate in programs under the health insurance reform bill.

The Menendez amendment would require the administering agency to protect data; improve the integrity and accuracy of the data by establishing a process by which applicants can view and correct

data, if necessary; provide written responses, without delay, to individuals who make a request to amend, update, or correct records; and develop a written notice to individuals denied a benefit due to a determination of ineligibility based on a final determination under the system.

The Menendez amendment, further, would prohibit the administering agency from disclosing or sharing information provided to the exchange by individuals or the Internal Revenue Service (IRS) with other agencies, entities or individuals for any purpose that is not directly connected with the administration of the health insurance program.

- **Amendments to Restrict Immigrant Eligibility.** The following amendments to restrict or prohibit immigrant eligibility for health insurance coverage were filed by senators on the Committee prior to the filing deadline:

1. [SCHUMER AMDT #C11 \(COMMITTEE AMDT #270\)](#). Senator Charles Schumer (D-NY) filed an amendment to the Chairman's Mark providing a substitute, more specific regime for verifying the lawful presence in the United States of individuals seeking benefits under the Health Care Reform bill than is contained in the Chairman's Mark.

Under the Schumer Amendment, the citizenship status of individuals claiming to be U.S. Citizens would be verified by either: (1) comparing the name, date of birth, and social security account number provided in an inquiry against such information maintained by the Commissioner of Social Security in order to confirm the validity of the information provided regarding an individual whose identity and citizenship must be confirmed; or (2) authentication of identity and citizenship through any biometric verification system administered by the Secretary of Homeland Security, the Attorney General, or the Commissioner of Social Security that is in existence, operational, and mandatory for all persons seeking employment at the time verification is required.

The Schumer Amendment would provide in the case of individuals who do not claim to be U.S. citizens but who claim to be otherwise lawfully present in the United States, the claim of lawful presence would be substantiated by authentication through any verification system administered by the Secretary of Homeland Security, the Attorney General, or the Commissioner of Social Security that is existence and operational at the time of verification.

As is the case in the Chairman's Mark, under the Schumer Amendment, individuals whose status is expected to expire in less than a year would not be

permitted to obtain the tax credit. Also as is the case with the Chairman's Mark, under the Schumer Amendment whose claims of citizenship or lawful status cannot be verified with federal data would be allowed substantial opportunity to provide documentation or correct federal data related to their case that supports their contention.

Under the Schumer Amendment, within two years of enactment, the Government Accountability Office (GAO) would be required to conduct a study regarding: (1) the rate of erroneous non-confirmations of lawful presence; (2) solutions for remedying systemic difficulties causing erroneous non-confirmations; and (3) the economic impact caused by erroneous non-confirmations and the cost of remedying any systemic difficulties causing erroneous non-confirmations.

Finally, under the Schumer Amendment, all personal information submitted to the state exchange could only be used for purposes of providing insurance coverage through the state exchange, eligibility for and determination of the amount of the health care tax credit, or other administrative functions related to the efficient operation of the state exchange. Appropriate penalties would apply to the use of fraudulent information or stolen identity information in the state exchange. Applicants for insurance coverage or for health care tax credits would be required to provide only the information that is necessary to determine eligibility for access to the exchange or tax credits. Information provided to the exchange by the applicant or by the IRS, would not be disclosed or shared with other agencies, entities or individuals for any purpose that is not directly connected with the administration of the health insurance program.

2. [\*\*KYL AMDT #C12 \(COMMITTEE AMDT #379\)\*\*](#). Senator Jon Kyl (R-AZ) filed an amendment to the Chairman's Mark that would, in part, eliminate the ability for legal immigrants subject to a five-year waiting period under Medicaid or CHIP to access a tax credit until the waiting period's expiration.
3. [\*\*KYL AMDT #C14 \(COMMITTEE AMDT #381\)\*\*](#). Senator Jon Kyl (R-AZ) filed an amendment to the Chairman's Mark providing that legal immigrants must reside in the U.S. for at least five years in order to be eligible for the tax credit available through the state exchanges.
4. [\*\*ENSIGN AMDT #C1 \(COMMITTEE AMDT #400\)\*\*](#). Senator John Ensign (R-NV) filed an amendment to the Chairman's Mark that would make legal immigrants ineligible for Health Care Affordability Tax Credits provided for in the

Chairman's Mark for the first five years after their entry into the United States.

The Ensign amendment would accomplish this by designating the Health Care Affordability Tax Credits to be "federal means-tested public benefits."

5. [\*\*ENSIGN AMDT #C2 \(COMMITTEE AMDT #401\)\*\*](#). Senator John Ensign (R-NV) filed an amendment to the Chairman's Mark that would "strengthen the eligibility verification provision in Title I, Subtitle C, and the personal responsibility compliance provision in Title I, Subtitle D."

More specifically, the Ensign amendment would add citizenship status to the list of items to be verified with Social Security Administration data for persons claiming to be citizens; provide that individuals who are trying to correct data in federal databases must not receive presumptive eligibility for tax credits; require that persons who are not initially determined to be a U.S. citizen must have their eligibility re-determined at least every five years; and; require the placement of Social Security Numbers on tax returns as a prerequisite to an individual receiving health insurance affordability tax credits; and impose fines of at least \$10,000 per occurrence for each instance of a false attestation of United States citizenship.

6. [\*\*ENSIGN AMDT #C3 \(COMMITTEE AMDT #402\)\*\*](#). Senator John Ensign (R-NV) filed an amendment to the Chairman's Mark that would hold the sponsors of legal immigrants liable for ensuring that the immigrants they sponsor have health insurance. Under the Ensign amendment, in the event that a sponsored immigrant does not obtain health insurance coverage, the immigrant's sponsor would be "liable for all costs incurred by the American taxpayers should a sponsored alien receive any taxpayer-funded health care."

Under the Ensign amendment, in order to ensure compliance, a sponsor would be required to report on his/her federal income tax return the months for which he/she maintains the required minimum health coverage for him/herself, dependants and all sponsored immigrants. If neither the sponsor nor the sponsored immigrant do not maintain the requisite health insurance for the sponsored immigrant, then the sponsor would be required to pay the greater of: (1) the excise tax specified in the chairman's mark for an individual who does not maintain insurance (based on the income of the immigrant); or (2) any amount provided to such immigrant in the form of a tax credit pursuant to this bill. Furthermore, in the event a sponsor fails to ensure that one of his/her sponsored immigrants maintains adequate health insurance during the period specified in Section 421

of PRWORA, such sponsor will not be allowed to sponsor any immigrants in the future.

7. [GRASSLEY AMDT #F6 \(COMMITTEE AMDT #488\)](#). Senate Finance Committee Ranking Republican Charles Grassley (R-IA) filed an amendment to the Chairman's Mark that would apply a five-year waiting period for legal aliens before they could be eligible for the Health Care Affordability Tax Credits found in the Chairman's Mark.

The Grassley Amendment uses the restriction on immigrants' eligibility for the Health Care Affordability Tax Credits as an offset to pay for a provision providing that qualified prescription drug plan subsidies are excludable from the plan sponsor's gross income for the purposes of income tax and alternative minimum tax.

**Outlook.** The markup of the Baucus Chairman's Mark is expected to be highly contentious. Advocates will have to work hard to defeat amendments that would further restrict immigrants' eligibility for health insurance benefits under the Chairman's Mark. ☼ ◇

## *This Week's Floor Activity*

At the time of this writing, only one measure containing significant immigration- or refugee-related provisions is likely to see House or Senate floor action this week:

- **Extension of E-Verify and Other Expiring Immigration Programs.** The House of Representatives this week is scheduled to take up a fiscal year 2010 continuing appropriations resolution to keep the federal government running for the first weeks of the new fiscal year and extend at least one expiring immigration program.

### **House**

#### **Short-Term Fate of E-Verify and Three Other Expiring Immigration Programs in Doubt As Congress is Set to Take Up Continuing Appropriations Measure:**

The full House of Representatives this week could take up legislation providing for an extension of the controversial E-Verify Program, which is set to expire at the end of September. This week's House action, if it occurs, is could occur as soon as Wednesday, September 23, 2009, in connection with a yet-to-be-introduced continuing appropriations resolution to fund



the operations of the federal government for the first weeks of fiscal year 2010. The continuing appropriations resolution is necessary because Congress is not expected to complete action on all of the 12 regular appropriations bills that fund the federal government's agencies, departments, programs and activities.

It is thought that if an extension of the E-Verify Program is included in this week's continuing appropriations resolution, it will likely be a short-term extension that keeps the program running for the duration of the continuing appropriations bill, which insiders say will be about a month.

**Parliamentary Situation.** The fiscal year 2010 continuing appropriations resolution is expected to be brought directly to the House floor, bypassing consideration by the House Committee on Appropriations.

The House is expected to take up the measure under a procedure that will preclude any amendments from being offered to it.

**Four Expiring Immigration Programs.** Selected immigration advocates are pressing Congress to include more than just a short-term extension of the E-Verify Program in this week's continuing appropriations measure. They are encouraging Congress to include a short-term reprieve for three other immigration programs: the EB-5 Investor Regional Centers, Special Immigrant Non-Immigrant Religious Worker, and Conrad 30 State visa programs, as well. Those three programs are set to expire at the end of September, as well.

Both houses of Congress have approved extensions of one or more of the four expiring immigration programs in question as part of their respective chambers' versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Bill. Indeed, it is that measure that will determine the long-term - if not ultimate - fate of the four expiring immigration programs. However, appropriations insiders are predicting that Congress will not be able to resolve all of the differences between the of the [House-passed](#) and [Senate-passed](#) versions of the Homeland Security Appropriations bill before the end of the month. Should that scenario play out, appropriations for the Department of Homeland Security will have to be folded into a short-term continuing appropriations resolution and the four immigration programs in question will expire.

**Enormous Differences.** There are enormous differences between the House- and Senate-passed bills on immigration policy matters. Included in the House-passed measure is a two year-long authorization of the controversial E-Verify program. However, the Senate-passed bill included numerous immigration-related policy provisions. For instance, the Senate-passed bill contains provisions that would permanently authorize the E-Verify System; make the use of the E-Verify System mandatory for federal contractors; permanently extend authorization for the EB-5 Regional

Center Program; extend the Special Immigrant Non-Minister Religious Worker and Conrad State 30 J-1 Visa Waiver programs for three years; provide immigration relief to widows and orphans of deceased U.S. citizens and permanent residents; bar the Administration from taking certain actions with regard to the SSA No-Match letters; and increase mandates with regard to construction of fencing along the U.S. border with Mexico.

**Background on the E-Verify Program.**

The E-Verify Program is more formally known as the Basic Pilot Employment Verification Program. It is an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). It allows participating employers to electronically verify the employment eligibility of their newly hired employees. It is free of charge to employers, and most employers who participate in the program do so voluntarily. The Department of Homeland Security maintains that it is the best means available for determining employment eligibility of new hires and the validity of their Social Security Numbers. To participate, an employer must enroll and sign a memorandum of understanding (MOU) that spells out the responsibilities of the SSA, DHS USCIS, and the employer.

The Basic Pilot Employment Verification Program was created by Sections 401(b) and 403(a) of P.L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Initially operated in five of the seven states with the highest estimated population of aliens who are not lawfully present in the United States, the program is now operated on a nationwide basis. Its use is mandatory in the state of Arizona for virtually all of the state's public and private sector employers. The State of Mississippi is phasing in the mandatory use of the E-Verify system for its private and public sector employers. The basic pilot program was originally set to expire in November of 2001. However, it was subsequently extended and continues to be extended. It currently is set to expire on September 30, 2009.

**Background on Religious Worker Visa Program**

The Non-Minister Religious Worker Visa Program allows religious organizations to sponsor non-minister religious workers from abroad to perform service here in the United States. Congress enacted the program as part of P.L. 101-649, the Immigration Act of 1990.

The program is composed of two parts:

- The first part provides for up to 5,000 Special Immigrant visas (or permanent resident visas) per year which religious denominations or organizations in the United States can use to sponsor foreign nationals to perform religious service in the United States. Once granted, this visa allows religious workers to permanently immigrate to the U.S. and eventually become citizens of our country. This

program expires from time-to-time. It currently is set to expire at the end of fiscal year 2008.

Unless Congress acts to prevent it, this part of the program will expire on September 30, 2008.

- The second part of the program provides religious denominations and organizations with the ability to sponsor temporary religious workers, called Nonimmigrants, to perform religious service in the United States. Nonimmigrant religious workers under this part of the program may remain and work in the United States for no more than five years. Unlike the special immigrant provision, the nonimmigrant provision is permanent law which has no expiration date.

Non-minister religious workers are persons in a religious vocation or occupation, other than those who lead a religious congregation or group (such as ministers, pastors, priests and rabbis.) Examples of non-minister religious workers include those called to religious vocations, such as nuns and monks, as well as lay persons who work as religious instructors, cantors, liturgical musicians, religious broadcasters, missionaries, pastoral care providers, and in other religious occupations.

Since its enactment, the Special Immigrant provision of the Non-Minister Religious Worker Visa Program has been extended numerous times.

The program expires from time-to-time. It currently is set to expire on September 30, 2009.

**Background on Conrad State 30 Program**

The Conrad State 30 Program was designed to provide each of the fifty U.S. states with 30 waivers for J-1 physicians each fiscal year. Under the program, each State has been given some flexibility to implement its own guidelines, but there are some basic requirements that are common to all STATE 30 programs.

While the exact requirements vary from state to state, the following is generally required: an offer of employment as a primary care physician in a medically underserved area in a particular State; a letter of support from the particular State Director of Health supporting the physician's STATE 30 request; and a three-year employment offer.

The program expires from time-to-time. It currently is set to expire on September 30, 2009.

**Background on the EB-5 Regional Center Program**

The immigrant investor visa, known as the EB-5 visa, was created in 1990 and grants lawful permanent residency to individuals willing to invest at least \$1 million in an enterprise that directly employs at least 10 legal workers in the U.S. In certain rural or high-unemployment areas,

however, the dollar amount is reduced to at least \$500,000, though the job-creation requirements remain the same.

In 1992, to stimulate interest in these immigrant investor visas, Congress created the Immigrant Investor Pilot Program. By investing in the designated "regional centers" instead of creating their own enterprises or partnerships, immigrant investors can meet the job-creation requirements of their visas more easily, since they need only show the indirect creation of ten jobs through a "regional center." Otherwise, an immigrant investor would have to show that his or her investment directly created the jobs.

The Investor Visa Regional Centers Basic Pilot program encourages investors seeking to immigrate to the United States to invest in Regional Centers where they may create jobs "indirectly"

The program expires from time-to-time. It currently is set to expire on September 30, 2009.

**Outlook.** Congress must enact a continuing appropriations resolution into law before the end of September in order to keep the federal government running. If no fiscal year 2010 Homeland Security Appropriations measure is in place by the time Congress gets around to taking up the fiscal year 2010 continuing appropriations resolution, it will need to include funding for the Department of Homeland Security in that resolution. And if funding for the Department of Homeland Security is included in the resolution, then congressional leaders will have to deal with the four expiring immigration programs.

In recent years, Congress has provided short-term extensions of the E-Verify and EB-5 Regional Centers programs in continuing appropriations resolutions, leaving the Special Immigrant Non-Minister Religious Worker and Conrad 30 State Programs to fend for their own. It is unclear whether that history will repeat itself this year or if advocates for the latter two programs will be able to convince Congress to extend all four programs should an extension of any of the four programs make it into the continuing appropriations resolution. ☼

## Senate

At the time of this writing, no floor actions were scheduled in the Senate for this week on measures containing significant immigration- or refugee-related provisions. ◇

## This Week's Conference Activity

At the time of this writing, only one measure containing significant immigration- or refugee-related provisions is pending before a conference committee:

- FY '10 Funding for Immigration Services, Immigration

Enforcement, and Border Security. The full House and Senate have each passed their respective versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Bill and conference deliberations could begin at any time.

## Conferees Have Significant Differences on Immigration to Resolve on Fiscal Year 2010 Homeland Security Appropriations Bill:

Staff level conversations between the House and Senate continue on resolving the differences on immigration policy and spending between the differing [House-passed](#) and [Senate-passed](#) versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Act. That measure funds immigration enforcement, immigration services, and border security departments, agencies, programs, activities, and functions of federal government. Congress must either resolve the differing versions of the measure by October 1, 2009, the date on which fiscal year 2010 begins, or at least temporarily fold funding for the Department into a continuing appropriations resolution. The two versions of the measure differ significantly on immigration policy matters, as well as in appropriations for the U.S. Citizenship and Immigration Services component of the Department of Homeland security.



The significant policy differences between the two version of the bill include differences on the E-Verify System, SSA No-Match letters, border fencing, and visa programs for religious worker and doctors. Conferees could meet at any time, to begin the formal process of resolving differences between the two versions of the measure.<sup>1442</sup>

**Legislative History.** The following is a brief legislative history of the [House-passed](#) and [Senate-passed](#) versions of the Fiscal Year 2010 Homeland Security Appropriations Act:

- **House Committee Actions**

1. On June 8, 2009, the House Appropriations Subcommittee on Homeland Security marked up its version of H.R. 2892, forwarding the measure to the full House Committee on Appropriations.<sup>1443</sup>

<sup>1442</sup> See Pages 928-932 of this week's edition of the *Weekly Legislative Update* for a detailed analysis of some of the key differences between the House-passed and Senate-passed versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Act

<sup>1443</sup> See Pages 634-641 of [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 8, 2009, House Appropriations Subcommittee on Homeland Security markup of the fiscal year 2010 Homeland Security Appropriations bill

2. On June 12, 2009, the full House Committee on Appropriations held a markup session, ordering that the bill be reported to the full House of Representatives as an original measure.<sup>1444</sup>
3. On June 16, 2009, the full House Committee on Appropriations formally reported H.R. 2892 to the House of Representatives.<sup>1445</sup>

- **House Floor Actions**

1. On June 24, 2009, the full House of Representatives took up H.R. 2892, passing it by a vote of 389-37<sup>1446</sup>

- **Senate Committee Actions**

1. On June 17, 2009, the Senate Appropriations Subcommittee on Homeland Security marked up its version of S. 1298, forwarding the measure to the full Senate Committee on Appropriations.
2. On June 18, 2009, the full Senate Committee on Appropriations held a markup session, approving [S. 1298](#)<sup>1447</sup> and formally reported it to the Senate.<sup>1448</sup>

- **Senate Floor Actions**

1. On July 7, 2009, the full Senate took up H.R. 2892, considering the text of S. 1298 for the purposes of floor amendments.
2. On July 9, 2009, the full Senate passed its version of H.R. 2892 by a vote of 84-6, after three days of considering floor amendments to the measure.

**Key Immigration-Related Funding Differences.** There are a number of significant differences in the level of funding in the House- and Senate-passed bills for various bureaus and

programs. The most prominent difference is found in the area of appropriations for U.S. Citizenship and Immigration Services (USCIS). The House-passed bill would appropriate \$2.8 BILLION for USCIS, including \$298 MILLION in directly appropriated funds. However, the Senate-passed bill would appropriate \$2.639 BILLION for USCIS, including only 135.7 MILLION in directly appropriated funds. The big difference between the two chambers on USCIS appropriations is that the House would fund close to half of the Obama Administration's \$201 MILLION request for direct appropriations to fund refugee and asylum adjudications. The Senate did not fund any of the Administration's request for that item.

**Key Immigration-Related Policy Differences.** There are enormous differences between the House- and Senate-passed bills on immigration policy matters. The only significant immigration policy provision that is contained in the House-passed version of the measure is a two year-long authorization of the controversial E-Verify program. However, the Senate-passed version of the bill includes numerous immigration-related policy provisions. For instance, the Senate-passed bill contains provisions that would permanently authorize the E-Verify System; make the use of the E-Verify System mandatory for federal contractors; permanently extend authorization for the EB-5 Regional Center Program; extend the Special Immigrant Non-Minister Religious Worker and Conrad State 30 J-1 Visa Waiver programs for three years; provide immigration relief to widows and orphans of deceased U.S. citizens and permanent residents; bar the Administration from taking certain actions with regard to the SSA No-Match letters; and increase mandates with regard to construction of fencing along the U.S. border with Mexico.

Some of the policy matters included in the Senate-passed version of H.R. 2892 are highly controversial and will make for a number of difficult issues to address during the upcoming House-Senate conference committee deliberations.

**Side-by-Side Comparison.** See the Appendix section of this week's edition of the Weekly Legislative Update for a side-by-side comparison of some of the key immigration-related policy provisions that appear in the House- and Senate-passed versions of the Fiscal Year 2010 Homeland Security Appropriations Act. ◇

## ***This Week's Executive Activity***

At the time of this writing, there are no executive branch activities anticipated this week impacting immigration- or refugee-related legislative matters. ◇

<sup>1444</sup> See Pages 634-641 of [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 12, 2009, full House Appropriations Committee markup of the fiscal year 2010 Homeland Security Appropriations bill

<sup>1445</sup> See Pages 703-707 of the [June 29, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the full House of Representatives' consideration of H.R. 2892

<sup>1446</sup> [House Roll Call No. 450](#), June 24, 2009

<sup>1447</sup> [S. Rept. 111-31](#), June 18, 2009

<sup>1448</sup> See Pages 673-678 of the [June 22, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 18, 2009, Senate Appropriations Committee and the June 17, 2009, Senate Appropriations Subcommittee on Homeland Security markup of the Fiscal Year 2010 Homeland Security Appropriations bill

## Last Week's Legislative Activity

### Last Week's Hearings

**House Homeland Security Panel Holds Hearing on the Secure Border Initiative:** The House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism held a hearing last week on the Secure Border Initiative program. Last week's hearing was held on Thursday, September 17, 2009.<sup>1449</sup>



One of the features of the hearing was a report to Congress by the Government

Accountability Office (GAO) that was highly critical of the Department of Homeland Security's implementation of the Secure Border Initiative program.<sup>1450</sup>

**Witnesses.** The list of witnesses at last week's hearing included the following:<sup>1451</sup>

- Chief David Aguilar, U.S. Border Patrol, U.S. Customs and Border Protection;
- Mark Borkowski, Executive Director, Secure Border Initiative, U.S. Customs and Border Protection;
- Roger A. Krone, President, Network and Space Systems, Integrated Defense Systems, The Boeing Company; and
- Richard Stana, Director, Homeland Security and Justice Issues, Government Accountability Office.

**Opening Statements.** The following summarizes opening statements made by Members at last week's hearing:

- **Chairwoman Sanchez.** In her opening statement, House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism Chairwoman

<sup>1449</sup> [Click Here](#) to see recorded video of the September 17, 2009, House Homeland Security Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law hearing on the Secure Border Initiative Program

<sup>1450</sup> [Click Here](#) to see the text of the September, 2009, Government Accountability Office report on the Secure Border Initiative

<sup>1451</sup> [Click Here](#) to see the complete prepared testimony of the witnesses at the September 17, 2009, House Homeland Security Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law hearing on the Secure Border Initiative Program

Loretta Sanchez (D-CA) called the situation with SBI "very troubling." She complained about excessive costs, ineffective performance, and missed deadlines.<sup>1452</sup>

- **Chairman Thompson.** In his opening statement, House Committee on Homeland Security Chairman Bennie G. Thompson was critical of the Department of Homeland Security's implementation of the Secure Border Initiative. After recounting a series of failures, the Chairman said he was "hopeful this Administration can address many of the problems that have plagued this program and previous border security technology efforts."<sup>1453</sup>
- **Ranking Member Souder.** In his opening statement, House Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism Ranking Republican Mark Souder (R-IN) expressed concern about the SBI program, asserting that "[i]t is hard to be optimistic when we sit here today and have partial technology deployed along just 23 miles of the southwest border and a few northern border pilot sites set to begin in the next month or two." He said that after spending more than \$1 BILLION on SBI, "it seems that very little progress has been made." ☀

### Last Week's Markups

**House Judiciary Committee Approves One Immigration Measure and Postpones Consideration of Three Others:** The House Committee on the Judiciary last week approved an immigration measure that had previously been approved by its Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law last July. However, the Committee left three Subcommittee-approved bills hanging on the agenda for a subsequent markup. Last week's Committee acted occurred on Wednesday, September 16, 2009, in connection with [H.R. 3290](#), the "September 11 Family Humanitarian Relief and Patriotism Act of 2009." The Committee approved the bill by a voice vote after disposing of two amendments to the measure that were offered by Subcommittee Ranking Republican Steve King (R-IA).

<sup>1452</sup> [Click Here](#) to see the complete text of Chairwoman Loretta Sanchez's prepared opening statement at the September 17, 2009, House Homeland Security Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law hearing on the Secure Border Initiative Program

<sup>1453</sup> [Click Here](#) to see the complete text of Chairman Thompson's prepared opening statement at the September 17, 2009, House Homeland Security Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law hearing on the Secure Border Initiative Program

**Legislative History.** The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law approved H.R. 3290 on Thursday, July 23, 2009, by a vote of 7-5. The Subcommittee approved the measure after a contentious debate, during which Subcommittee Ranking Republican Steve King (R-IA) offered two amendments to the measure. The Subcommittee rejected both of the amendments on party-line votes.<sup>1454</sup> Ranking Republican King offered the same amendments during the full Committee markup. The Committee rejected the amendments by a voice vote.

**Summary of Immigration Provisions.** As approved by the full House Committee on the Judiciary, H.R. 3290 would permit aliens who lost a spouse or parent in the Sept. 11, 2001, terrorist attacks in the United States to adjust their status to that of a legal permanent resident. It would apply only to the family members of immigrants killed in the attacks who have already been identified as a beneficiary by the September 11 Victims Compensation Fund. The bill would require that alien beneficiaries of the measure not be inadmissible for a criminal offense and have satisfied all outstanding federal tax liability before their status can be adjusted.

House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Chair Zoe Lofgren (D-CA) has contended that the bill would provide relief to about 17 persons.

**Committee Consideration and Amendments.** The House Judiciary Committee considered two amendment to H.R. 3290 during its consideration of the measure:

1. **KING TAX AMENDMENT.**--House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Ranking Republican Steve King (R-IA) offered an amendment that would have prohibited any illegal immigrant who had not satisfied federal tax liability during the period of time required by law from being eligible for a change in immigration status.

The Committee rejected the King Tax Amendment by a vote of 6-17.

2. **KING PRESENCE BEFORE SEPTEMBER 11 AMENDMENT.**-- House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Ranking Republican Steve King (R-IA) offered an amendment to prohibit any illegal immigrant who was not in the United States on or before Sept. 11, 2001, from being eligible for a change in immigration status.

<sup>1454</sup> See Pages 849-850 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for a detailed description of Subcommittee action on H.R. 3290

The Committee rejected the King Presence Before September 11 Amendment by a vote of 6-17.

**Next Steps.** Now that the House Committee on the Judiciary has approved H.R. 3290, the next step in the legislative process is for the Committee to formally report the measure to the full House of Representatives for its consideration. ☼

### Last Week's Floor Activities

There were no floor actions last week in either the House or Senate on any measures containing significant immigration- or refugee-related provisions.

### Last Week's Conference Activities

There was no formal conference committee last week on any measures containing significant immigration- or refugee-related provisions. ◇

## Last Week's Executive Activity

### Secretary Clinton Meets with the Leadership of the Judiciary Committees on FY '10 Refugee Admissions:

Secretary of State Hillary Rodham Clinton last conducted separate closed door meetings with the leadership of the House and Senate Judiciary Committees to discuss the Department of State's proposed U.S. refugee admissions program for fiscal year 2010. During the course of her meetings, she revealed that the Obama Administration intends to admit 80,000 refugees in fiscal year 2010 and expects to achieve a refugee admissions level of 75,000 in the



fiscal year that is about to end. Secretary Clinton's meetings with the leadership of the two panels took place on Thursday, September 17, 2009. She met with the leadership of the Senate Committee on the Judiciary at the Department of State and with the leadership of the House Committee on the Judiciary in the U.S. Capitol complex.

**The Refugee Consultations Process.** This refugee consultation process is governed by Section 207 of the Immigration and Nationality Act. It provides that “[b]efore the start of each fiscal year the President shall report to the Committee on the Judiciary of the House of Representatives and of the Senate regarding the foreseeable number of refugees who will be in need of resettlement during the fiscal year and the anticipated allocation of refugee admissions during the fiscal year.”<sup>1455</sup> It ultimately leads to a “Presidential Determination” on the number of refugees who

<sup>1455</sup> Section 207(d)(1) of the Immigration and Nationality Act

are to be admitted to the United States in the coming fiscal year. This “Presidential Determination” must be released prior to admitting any refugees into the United States.

**Report to Congress.** Prior to last week's two meetings, the Obama Administration had released its “[Proposed Refugee Admissions for Fiscal Year 2010 Report to the Congress](#).” In the report, the Department of State, Department of Homeland Security, and Department of Health and Human Services reviewed their collective performance in refugee admissions and resettlement over the past fiscal year and set forth their proposals for the coming one. The report revealed the Obama Administration's preliminary plans to establish a ceiling of 80,000 refugee admissions for fiscal year 2010. However, in establishing that ceiling, only 75,000 of the numbers would be allocated to the various regions of the world; the other 5,000 would comprise an “unallocated reserve.”

The following compares the Administration’s proposed ceiling for fiscal year 2010 with the ceiling that was established for fiscal year 2010:

**Refugee Admissions Ceilings  
FY 2009 and 2010**

Region	'09 Ceiling	'09 Projected	'10 Ceiling
Africa	12,000	9,000	15,500
East Asia	20,500	19,500	17,000
Europe and Central Asia	2,500	2,500	2,500
Latin America/Caribbean	5,500	5,000	5,000
Near East/South Asia	39,500	39,000	35,000
<b>Regional Subtotal</b>	<b>80,000</b>	<b>75,000</b>	<b>75,000</b>
Unallocated Reserve <sup>1456</sup>			5,000
<b>Total</b>	<b>80,000</b>	<b>75,000</b>	<b>80,000</b>

**Next Steps.** Now that Secretary Clinton has met with the leadership of the House and Senate Committees on the Judiciary, the next step in the U.S. admissions program process will be the issuance by President Obama of a Presidential Determination on refugee admissions for fiscal year 2010. The President is expected to issue that Presidential Determination in the coming days. ☀ ◇

## Recently Introduced Legislation

The following bills containing significant immigration- or refugee-related provisions were introduced last week:

### House

#### Benefits for Illegal Immigrants

- **New IDEA (Illegal Deduction Elimination Act):** Representative Steve King (R-IA) has introduced H.R. 3580, the Illegal Deduction Elimination Act.

As introduced, [H.R. 3580](#) would clarify that wages paid to unauthorized aliens may not be deducted from gross income, and for other purposes.

It has been referred to the House Committee on Ways and Means and House Committee on the Judiciary.

#### Citizenship & Naturalization

- **Senior Citizenship Act of 2009:** Representative Jerrold Nadler (D-NY) has introduced H.R. 3604, the Senior Citizenship Act of 2009.

As introduced, [H.R. 3604](#) would amend the Immigration and Nationality Act to exempt certain elderly persons from demonstrating an understanding of the English language and the history, principles, and form of government of the United States as a requirement for naturalization, and to permit certain other elderly persons to take the history and government examination in a language of their choice.

It has been referred to the House Committee on the Judiciary.

### Senate

#### Control of Illegal Immigration

- **Identification of Illegal Immigrants in Decennial Census:** Senator Robert F. Bennett (R-UT) has introduced [S. 1688](#), legislation that seeks to prevent congressional reapportionment distortions.

As introduced, S. 1688 would require that, in the questionnaires used in the taking of any decennial census of population, a checkbox or other similar option be included for respondents to indicate citizenship status or lawful presence in the United States.

It has been referred to the Senate Committee on Homeland Security and Governmental Affairs. ◇

<sup>1456</sup> *The Administration initially set aside an unallocated reserve of 5,000 refugee admissions for fiscal year 2009. However, during the course of the fiscal year, the Administration allocated all of these numbers to different regions*

## *Bills in Development*

The following is a listing of immigration- or refugee-related bills that are currently under development and that could soon be introduced in the Senate or House of Representatives. Items that were added or that have substantially changed since the previous edition of the Weekly Legislative Update was issued are marked with a double asterisk (\*\*).

### House

#### **\*\*Representative Gutierrez Steps Up Work on Comprehensive Immigration Reform Bill:**



Representative Luis V. Gutierrez (D-IL), who chairs the Congressional Hispanic Caucus' Immigration Task Force, has accelerated his work on comprehensive immigration reform legislation, pledging last week to introduce "an inclusive and progressive" comprehensive immigration reform measure within the next few weeks. The Congressman made the pledge during a September 17, 2009,

National Citizenship Day celebration in Washington, DC. Later in the day, the Congressman released a press statement, in which he said, " I am overwhelmed by the support of immigrant, faith-based and community-based organizations in urging me to introduce comprehensive immigration legislation. We simply cannot wait any longer for a bill that keeps our families together, protects our workers and allows a pathway to legalization for those who have earned it. Saying immigration is a priority for this Administration or this Congress is not the same as seeing tangible action, and the longer we wait, the more every single piece of legislation we debate will be obstructed by our failure to pass comprehensive reform."<sup>1457</sup>

It is unclear at the time of this writing how the Congressman's September 17, 2009, pledge will impact an earlier pledge he made, reported in Roll Call, to combine provisions from the bill that Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles S. Schumer (D-NY) is drafting with provisions from [H.R. 1645](#), legislation that Gutierrez introduced during the 110th Congress along with Representative Jeff Flake (R-A), a bill that was known as the "Security Through Regularized Immigration and a Vibrant Economy Act of 2007" Act, or the STRIVE Act.

<sup>1457</sup> [Click Here](#) to see the September 17, 2009, press release issued by the office of Representative Luis Gutierrez (D-IL) announcing his impending introduction of comprehensive immigration reform legislation

### **Members Working on Violence Against Women**

**Technical Corrections Bill:** Representative Debbie Wasserman Schultz (D-FL) and Ted Poe (R-TX) are working on a measure that could contain several changes in law that would expand protections for aliens who are victims of domestic violence and sex trafficking. While no text was available at the time of this writing, the measure reportedly will be closely patterned after provisions in [S. 327](#), the "Improving Assistance to Domestic and Sexual Violence Victims Act of 2009", a measure that the Senate Committee on the Judiciary approved on May 7, 2009.<sup>1458</sup>

As reported by the Senate Committee on the Judiciary, S. 327 contains would expand protections for aliens who are victims of domestic violence and sex trafficking.

More specifically—

- **Extension of T Nonimmigrant Status.** Section 114 of S. 327 would amend section 214(o)(7) of the Immigration and Nationality Act to allow an alien to apply for an extension of her T nonimmigrant visa retroactively after the expiration of the visa.<sup>1459</sup>

Advocates contend that the provision is necessary because a number of aliens who received T visas were unable to adjust their status in a timely way because it took the Department of Homeland Security (and its predecessor agency, the Immigration and Naturalization Service) eight years to issue regulations providing for adjustment of status of T visa holder.

- **T and U Nonimmigrant Protections.** Section 115 would amend section 107(b)(1)(E)(i)(II)(aa) of the Trafficking Victims Protection Act of 2000 to permit U visa victims to get work authorization while their case is being adjudicated if they can show prima facie evidence that they meet the qualifications of the visa. This would lower the standard in current law, which currently requires them show bona fide evidence.
- **Nonimmigrant Adjustment of Status.** Section 116 would amend Section 245(m)(3) of the Immigration and Nationality Act to permit an unmarried sibling (under the age of 18) of a U visa holder to adjust her status along with the victim.<sup>1460</sup>

<sup>1458</sup> See Pages 475-477 of the [May 11, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the Senate Judiciary Committee's markup of S. 327

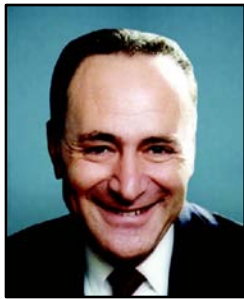
<sup>1459</sup> The T nonimmigrant visa is available for up to 5,000 victims of "severe forms of trafficking" per year. Severe forms of trafficking include: the use of force, fraud, or coercion for sex trafficking and/or involuntary servitude, peonage, debt bondage, or slavery.

<sup>1460</sup> The U nonimmigrant visa is available for up to 10,000 victims of specific crimes per year who cooperate in the investigation or prosecution of the persons charged with the criminal activity.

- Housing Assistance for Qualified Aliens. Section 117 would amend Section 214 of the Housing and Community Development Act of 1980 to permit alien victims of domestic violence to remain eligible for public housing if the perpetrators of violence against them have been evicted from or otherwise have left public housing.

## Senate

### Chairman Schumer Working on Comprehensive Immigration Reform Bill:



Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security Chairman Charles S. Schumer (D-NY), has said that he will have a broad outline of a comprehensive immigration reform bill available for inspection sometime in September. Chairman Schumer is working with Senator Lindsey Graham (R-SC) to draft the measure. Last week's comments last represent somewhat of a retrenchment of an earlier

assertion that he made, in which he had pledged to have a comprehensive immigration reform bill ready for introduction by Labor Day. It is, however, in sync with remarks made by President Obama last week and this week, in which the President indicated a bill would be drafted by the end of 2009 and could be taken up by Congress in early 2010.

**Principles Embodied in the Schumer Bill.** In a June 24, 2009, speech that he made at the Sixth Annual Immigration and Law Policy Conference sponsored by the Migration and Policy Institute, Chairman Schumer outlined seven principles that would be embodied in his bill:

- Illegal immigration is wrong, and a primary goal of comprehensive immigration reform must be to dramatically curtail future illegal immigration.
- Operational control of our borders--through significant additional increases in infrastructure, technology, and border personnel--must be achieved within a year of enactment of legislation.
- A biometric-based employer verification system—with tough enforcement and auditing—is necessary to significantly diminish the job magnet that attracts illegal

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*Crimes covered include: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact; prostitution; sexual exploitation, female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.*

aliens to the United States and to provide certainty and simplicity for employers.

- All illegal aliens present in the United States on the date of enactment of our bill must quickly register their presence with the United States Government—and submit to a rigorous process of converting to legal status and earning a path to citizenship—or face imminent deportation.
- Family reunification is a cornerstone value of our immigration system. By dramatically reducing illegal immigration, we can create more room for both family immigration and employment-based immigration.
- We must encourage the world's best and brightest individuals to come to the United States and create the new technologies and businesses that will employ countless American workers, but must discourage businesses from using our immigration laws as a means to obtain temporary and less-expensive foreign labor to replace capable American workers; and finally
- We must create a system that converts the current flow of unskilled illegal immigrants into the United States into a more manageable and controlled flow of legal immigrants who can be absorbed by our economy.

**Additional Details.** Since his June 24, 2009, address to the Migration Policy Institute, Chairman Schumer and his staff have revealed a few more details about the effort they are undertaking. Among them are the following:

- His bill will be bipartisan and more than a half-dozen Republican Senators will be involved in drafting it.
- His bill will be more generous to highly skilled immigrant workers than those who are lower skilled
- His bill will be tough on future waves of illegal immigration.
- Disagreements between labor and business interests on the flow of legal foreign workers can be worked out.
- The U.S. should encourage legal immigration and find some kind of path for people now here to find a way to legal citizenship.
- The U.S. has "a shortage maybe of engineers here or Ph.D's in physics, but we probably don't have a shortage of people who can do construction work."

### Chairman Kerry Working on Foreign Relations Authorization Bill:

Senate Foreign Relations Committee Chairman John F. Kerry (D-MA) is working on the Senate version of the Foreign Relations Authorization Act, which he

reportedly plans to introduce shortly after Congress returns from its week-long Independence Day recess.

The House of Representatives passed [H.R. 2410](#), the House version of Foreign Relations Authorization Act, Fiscal Years 2010 and 2011, on Wednesday, June 10, 2009. As passed by the House, the measure contains among its many provisions numerous provisions making reforms to the United States refugee admissions process.<sup>1461</sup>

It was unclear at the time of this writing to what degree the bill that Chairman Kerry is planning to introduce will replicate the refugee admissions reform provisions in the House-passed version of H.R. 2410. ◇

## *Over the Horizon ...*

Congress is back in full swing following a tumultuous August recess. It is expected to remain in session well into November, if not into December.

The immigration- and refugee-related matters that Congress will likely address during the period between now and the adjournment of the first session include--

- **Health Care Reform.** The fate of legal immigrants, legal nonimmigrants, and undocumented aliens in the health insurance reform debate;
- **The E-Verify System.** The fate of several pending legislative provisions that would extend and revise authorization for the E-Verify System, including Senate-passed proposals to permanently extend the program, require its use by federal contractors, and permit employers to use the system to verify the employment eligibility of existing employees.
- **SSA No-Match Letters.** The fate of a Senate-passed proposal to force the Administration to issue SSA No-Match letters to employers when Social Security Administration data conflicts with tax data.
- **Fencing Between the U.S. and Mexico.** The fate of a Senate-passed provision that would reduce the Administration's flexibility in building fencing between the U.S. and Mexico and authorize the construction of additional fencing between the two countries;
- **Expiring Immigration Programs.** The fate of provisions passed by either the House or Senate to extend the Conrad State 30 visa program that serves medically underserved communities, the Special

Immigrant Non-Minister Religious Worker Visa program, and the EB-5 Investor Visa Regional Centers program; and

- **Refugee Appropriations.** The amount of funding that will be included in the regular appropriations bills for refugee admissions, overseas refugee assistance, and domestic refugee resettlement.

In addition, Congress is expected to resume its consideration of more than a dozen other bills containing significant immigration- or refugee-related provisions that either have been marked up in a subcommittee, marked up in a full committee, or passed by either the House or Senate. Finally, beginning this week, Members and senators may begin to bring more clarity to efforts that are underway in both chambers to draft a comprehensive immigration reform bill.

The following is a listing of several immigration- or refugee-related items that have either not yet been scheduled for action in Congress or on which it is anticipated that some action will occur within the next several weeks.

Items added to this listing since the previous edition of the Weekly Legislative Update and items on the listing which have substantially changed since the last Weekly Legislative Update was issued are marked with a double asterisk (\*\*).

**Bicameral Conferees Have Significant Immigration Differences to Resolve on Fiscal Year 2010 Homeland Security Appropriations Bill:** Staff members for the House and Senate Committees on Appropriations continue to be engaged in negotiations on how to resolve the significant differences on immigration policy and spending between the differing House- and Senate-passed versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Act. That measure funds immigration enforcement, immigration services, and border security departments, agencies, programs, activities, and functions of federal government. Congress must resolve the differing versions of the measure by October 1, 2009, the date on which fiscal year 2010 begins. The two measures have significant differences on immigration policy provisions, including differences on the E-Verify System, SSA No-Match letters, border fencing, and visa programs for religious worker and doctors. Conferees could meet at any time after Congress returns to begin to resolve the differences between the two versions of the measure.

**Legislative History.** The following is a brief legislative history of the [House-passed](#) and [Senate-passed](#) versions of the Fiscal Year 2010 Homeland Security Appropriations Act:

<sup>1461</sup> See Pages 642-650 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the refugee-related provision that are included in the House-passed version of H.R. 2410

• **House Committee Actions.**

4. On June 8, 2009, the House Appropriations Subcommittee on Homeland Security marked up its version of H.R. 2892, forwarding the measure to the full House Committee on Appropriations.<sup>1462</sup>
5. On June 12, 2009, the full House Committee on Appropriations held a markup session, ordering that the bill be reported to the full House of Representatives as an original measure.<sup>1463</sup>
6. On June 16, 2009, the full House Committee on Appropriations formally reported H.R. 2892 to the House of Representatives.<sup>1464</sup>

• **House Floor Actions.**

2. On June 24, 2009, the full House took up H.R. 2892, passing it by a vote of 389-37.<sup>1465</sup>

• **Senate Committee Actions.**

3. On June 17, 2009, the Senate Appropriations Subcommittee on Homeland Security marked up its version of S. 1298, forwarding the measure to the full Senate Committee on Appropriations.
4. On June 18, 2009, the full Senate Committee on Appropriations held a markup session, approving [S. 1298](#)<sup>1466</sup> and formally reporting the measure to the full Senate.<sup>1467</sup>

• **Senate Floor Actions.**

3. On July 7, 2009, the full Senate took up H.R. 2892, considering the text of S. 1298 for the purposes of floor amendments.
4. On July 9, 2009, the full Senate passed its version of H.R. 2892 by a vote of 84-6.

**Key Immigration-Related Funding Differences.** There are a number of significant differences in the level of funding in the House- and Senate-passed bills for various bureaus and programs. The most prominent difference is in U.S. Citizenship and Immigration Services (USCIS). The House-passed bill would appropriate \$2.8 BILLION for USCIS, including \$298 MILLION in directly appropriated funds. However, the Senate-passed bill would appropriate \$2.639 BILLION for USCIS, including only 135.7 MILLION in directly appropriated funds. The big difference between the two chambers on USCIS appropriations is that the House would fund close to half of the Obama Administration's \$201 MILLION request for direct appropriations to fund refugee and asylum adjudications. The Senate did not fund any of the Administration's request for that item.

**Key Immigration-Related Policy Differences.** There are enormous differences between the House- and Senate-passed bills on immigration policy matters. Included in the House-passed measure is a two year-long authorization of the controversial E-Verify program. However, the Senate-passed bill included numerous immigration-related policy provisions. For instance, the Senate-passed bill contains provisions that would permanently authorize the E-Verify System; make the use of the E-Verify System mandatory for federal contractors; permanently extend authorization for the EB-5 Regional Center Program; extend the Special Immigrant Non-Minister Religious Worker and Conrad State 30 J-1 Visa Waiver programs for three years; provide immigration relief to widows and orphans of deceased U.S. citizens and permanent residents; bar the Administration from taking certain actions with regard to the SSA No-Match letters; and increase mandates with regard to construction of fencing along the U.S. border with Mexico.

Some of the policy matters included in the Senate-passed version of H.R. 2892 are highly controversial and will make for a number of difficult issues to address during the upcoming House-Senate conference committee deliberations.

**Side-by-Side Comparison.** See the Appendix section of this week's edition of the Weekly Legislative Update, which is found beginning on page 983 of this week's edition for a side-by-side comparison of some of the key immigration-related policy provisions that appear in the House- and Senate-passed versions of the Fiscal Year 2010 Homeland Security Appropriations Act. ☼

<sup>1462</sup> See Pages 634-641 of [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 8, 2009, House Appropriations Subcommittee on Homeland Security markup of the fiscal year 2010 Homeland Security Appropriations bill

<sup>1463</sup> See Pages 634-641 of [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 12, 2009, full House Appropriations Committee markup of the fiscal year 2010 Homeland Security Appropriations bill

<sup>1464</sup> See Pages 703-707 of the [June 29, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the full House of Representatives' consideration of H.R. 2892

<sup>1465</sup> [House Roll Call No. 450](#), June 24, 2009

<sup>1466</sup> [S. Rept. 111-31](#), June 18, 2009

<sup>1467</sup> See Pages 673-678 of the [June 22, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 18, 2009, Senate Appropriations Committee and the June 17, 2009, Senate Appropriations Subcommittee on Homeland Security markup of the Fiscal Year 2010 Homeland Security Appropriations bill

## House

**\*\*Three Committee-Approved Immigration-Related Measures Await Consideration by the Full House:** The following measures containing significant immigration- or refugee-related provisions have been approved by various House committees and are awaiting consideration by the full House of Representatives:

- **House Committee on Financial Services.** The House Committee on Financial Services has approved [H.R. 3045](#), the "Section 8 Voucher Reform Act of 2009", after first approving an amendment aimed at ensuring that illegal immigrants not make use of such housing.

At the time of this writing, the Committee had yet to formally report the measure to the full House.<sup>1468</sup>

- **House Energy and Commerce; House Ways and Means; and House Education and Labor Committees.** The House Committee on Energy and Commerce, House Committee on Ways and Means, and House Committee on Education and Labor have all approved differing versions of [H.R. 3200](#), the "America's Affordable Health Choices Act of 2009". The measure is popularly referred to as the House Health Care Reform Bill.

As approved by each of the three committees, H.R. 3200 would bar both undocumented aliens and most nonimmigrants from receiving health care benefits pursuant to the bill or from having federal funds spent on their behalf under the bill. The bill would, however, include nonimmigrants, undocumented aliens, and legal immigrants in the list of persons who would either have to purchase health insurance or face a tax penalty for not having done so.

At the time of this writing, none of the three committees that have acted on the measure had formally reported the measure to the full House of Representatives.

The House Democratic Leadership is expected to fashion a single bill out of the provisions of the differing versions of H.R. 3200 that have been approved by the House Committee on Energy and Commerce, House Committee on Ways and Means, and House Committee on Education and Labor.

- **House Committee on the Judiciary.** The House Committee on the Judiciary has approved [H.R. 3290](#), the "September 11 Family Humanitarian Relief and Patriotism Act of 2009".

<sup>1468</sup> See Page 847 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in House Financial Services Committee-approved version of H.R. 3045

At the time of this writing, the Committee had yet to formally report the measure to the full House. ☀

## **\*\*Five Immigration- or Border Security-Related Measures Await Consideration in House Committees:**

The following measures containing significant immigration-, refugee-, or border security-related provisions have been approved by subcommittees and are awaiting consideration in their full committees:

- **House Committee on the Judiciary.** The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law has approved four bills that contain significant immigration-related provisions and now await consideration by the full House Committee on the Judiciary:
  - [H.J. Res. 26](#), a joint resolution proclaiming Casimir Pulaski to be an honorary citizen of the United States posthumously;
  - [H.R. 42](#), the "Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act; and
  - [H.R. 1425](#), the "Wartime Treatment Study Act".

The Subcommittee approved the first three measures during markups that occurred on Thursday, July 23, 2009, and Friday, July 24, 2009.<sup>1469</sup> It approved the last bill in a markup that occurred on Friday, July 31, 2009.

No full committee markup had been scheduled at the time of this writing. However, it is possible that some or all of the bills could be scheduled for markup in the House Judiciary Committee as soon as this week.<sup>1470</sup>

- **House Committee on Homeland Security.** The House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism has approved two bills containing significant border security provisions:
  1. [H.R. 1726](#), the "Border Security Search Accountability Act of 2009", which would require

<sup>1469</sup> See Pages 849-850 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 3290, H.J. Res. 26, H.R. 42, three bills that were approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during two days of markup beginning on July 23, 2009

<sup>1470</sup> See Pages 883-884 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 1425, which was approved by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law during its July 31, 2009, markup

the Secretary of Homeland Security to issue a rule with respect to border security searches of electronic devices; and

2. [H.R. 3239](#), a bill to require the Secretary of Homeland Security, in consultation with the Secretary of State, to submit a report on the effects of the Merida Initiative on the border security of the United States.

The Subcommittee approved both measures during markups that occurred on Wednesday, July 22, 2009, and Friday, July 24, 2009. No full committee markup of the bills had been scheduled at the time of this writing.<sup>1471</sup>

## Senate

### Senate Panel Postpones Hearing on Violence Along the U.S.-Mexico Border:

The Senate Committee on Homeland Security and Governmental Affairs had scheduled a hearing for last week on Southern Border Violence at the U.S.-Mexico Border, at which Secretary of Homeland Security Janet Napolitano was scheduled to testify. The hearing had been scheduled for 2:00 pm on Wednesday, September 16, 2009, in Room SD-342 of the Dirksen Senate Office Building. However, the hearing has been postponed to a date that is yet to be determined. ☼

### Six House-Passed Immigration-Related Measures are Awaiting Consideration by the Full Senate:

The following measures containing significant immigration- or refugee-related provisions have been passed by the House and are awaiting consideration in the Senate:

- **Fiscal Year 2010 Immigration- and Refugee-Related Appropriations Bills.** The House of Representatives has passed three fiscal year 2010 appropriations bills that still await floor consideration in the Senate:
  1. **Fiscal Year 2010 Appropriations for Refugee Resettlement and Unaccompanied Alien Children.** The House of Representatives has passed H.R. 3293, the Fiscal Year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill (Labor, HHS Appropriations Bill), which funds the federal government's refugee resettlement, trafficking victims assistance, torture victim assistance, and unaccompanied alien child programs.

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<sup>1471</sup> See Page 848 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration-related provisions in H.R. 1726 and H.R. 3239, two bills that were approved by the House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism during its July 22, 2009, markup session

[The House-passed version of H.R. 3293](#)<sup>1472</sup> would appropriate \$432,000 less in ORR funding in fiscal year 2010 compared to the total fiscal year 2009 ORR appropriation.<sup>1473</sup> The House-passed measure would increase funding for ORR's resettlement activities by of \$50.1 MILLION, or 10 percent, when compared to the amount appropriated for ORR's resettlement activities in fiscal year 2009.<sup>1474</sup>

The Senate Committee on Appropriations reported [the Senate Appropriations Committee-approved version of H.R. 3293](#)<sup>1475</sup> on August 4, 2009. It would appropriate more funding for refugee resettlement than would the House-passed bill. However, it would not fully fund the Administration's request for ORR.

The Senate could take up the Senate Appropriations Committee-approved version of H.R. 3293 at any time. However, at the time of this writing, there was no word on when that will occur.

2. **Fiscal Year 2010 Appropriations for the Immigration Court System.** The House of Representatives has passed [H.R. 2847](#), the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill (C-J-S Appropriations Bill), which funds the immigration court system, as well as a grant program that reimburses states for the cost they incur in incarcerating criminal aliens.

Included in the bill is a substantial increase in spending for the Executive Office for Immigration Review (EOIR); increased funding for legal orientation presentations to detained aliens; and continued funding for the State Criminal Alien Assistance Program (SCAAP), which the Obama Administration has proposed ending.<sup>1476</sup>

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<sup>1472</sup> [H. Rept. 111-220](#), July 22, 2009

<sup>1473</sup> *The total fiscal year 2009 appropriation for ORR was \$715.4 MILLION. This includes \$633.4 MILLION that was appropriated in the regular fiscal year 2009 appropriations process and an additional \$82 MILLION that was appropriated in the fiscal year 2009 war supplemental appropriations bill*

<sup>1474</sup> See Pages 850-858 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration- and refugee-related provisions in the House-passed version of H.R. 3293

<sup>1475</sup> [S. Rept. 111-66](#), August 4, 2009

<sup>1476</sup> See Pages 681-682 of the [June 22, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the full House of Representatives' consideration of H.R. 2847

The Senate Committee on Appropriations has approved the [Senate version of H.R. 2847](#), reporting it to the full Senate.<sup>1477</sup>

The Senate could take it up the Senate Appropriations Committee-approved version of H.R. 2847 at any time. However, at the time of this writing, there was no word on when the full Senate will take up the measure.<sup>1478</sup>

3. **Fiscal Year 2010 Appropriations for Refugee Admissions and Overseas Refugee Assistance.** The House of Representatives has passed [H.R. 3081](#), its version the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill, which contains among its many provisions those that fund the federal government's refugee admissions and overseas refugee assistance programs.

Included in the House-passed measure are substantial increases in funding for Migration and Refugee Assistance (MRA) and International Disaster Assistance (IDA), relative to appropriations for those accounts during the regular fiscal year 2009 appropriations cycle. However, when supplemental fiscal year 2009 appropriations spending is taken into account, the House-passed measure would actually appropriate less in fiscal year 2010 for the MRA account than the total amount that was appropriated for that account in fiscal year 2009.<sup>1479</sup>

The Senate Committee on Appropriations has approved [S. 1434](#), the Senate version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill.<sup>1480</sup> It would provide substantially more for the MRA account than is contained in the House-passed version of the bill.

The Senate could take up the Senate Appropriations Committee-approved version of H.R. 3081 at any time.<sup>1481</sup> However, at the time of this writing, there

was no word on when the full Senate will take up the measure.

- **Torture Victims Assistance.** The House of Representatives has passed [H.R. 1511](#), the "Torture Victims Relief Reauthorization Act of 2009", which would fund programs to assist the victims of torture who are resettled in the United States.<sup>1482</sup>

Following House passage of the measure, it was referred to the Senate Committee on Foreign Relations.

- **Reforms to the Refugee Admissions Process.** The House of Representatives has passed [H.R. 2410](#), the Foreign Relations Authorization Act, Fiscal Years 2010 and 2011, which contains among its many provisions numerous ones that would make reforms to the United States refugee admissions process.<sup>1483</sup>

Following House passage of the measure, it was referred to the Senate Committee on Foreign Relations. Senate Foreign Relations Committee Chairman John F. Kerry (D-MA) is working on a version of the bill of his own that he could introduce as soon as late July.<sup>1484</sup>

- **Increased Penalties for Alien Smuggling.** The House of Representatives has passed [H.R. 1029](#), the "Alien Smuggling and Terrorism Prevention Act of 2009". It would increase penalties for alien smuggling and make other changes in law that the bill's proponents contend will help combat the crime of alien smuggling.

While there was no organized opposition to H.R. 1029 during House consideration of the measure, several pro-immigrant and pro-refugee advocacy organizations expressed concerns about the potential impact that the measure would have on good Samaritans and refugees. Those concerns were expressed behind the scenes in the House but are expected to be voiced more vociferously should the Senate take up the measure.

The measure has been referred to the Senate Committee on the Judiciary.

<sup>1477</sup> [S. Rept. 111-34](#), June 25, 2009

<sup>1478</sup> See Pages 702-703 of the [June 29, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the June 25, 2009, Senate Appropriations Committee markup of H.R. 2847

<sup>1479</sup> [H. Rept. 111-187](#), June 26, 2009

<sup>1480</sup> [S. Rept. 111-44](#), July 9, 2009

<sup>1481</sup> See Pages 772-743 of the [July 13, 2009, edition of the Weekly Legislative Update](#) for an analysis of the House-passed version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill

<sup>1482</sup> See Page 858 of the [July 27, 2009, edition of the Weekly Legislative Update](#) for an analysis of the House-passed version of H.R. 1511

<sup>1483</sup> See Pages 642-650 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the refugee-related provisions in the House-passed version of H.R. 2410, the Foreign Relations Authorization Act, 2010 and 2011

<sup>1484</sup> See Pages 642-650 of the [June 15, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the refugee-related provision that are included in the House-passed version of H.R. 2410

It was widely believed at the time that the House acted that the Senate Committee on Commerce, Science, and Transportation would address the issues that are included in H.R. 1029 when it took up [S. 1194](#), the Coast Guard Authorization Act for Fiscal Years 2010 and 2011. The Committee marked up the measure on Wednesday, July 8, 2009, however, without including any immigration-related provisions.<sup>1485</sup> That measure now awaits Senate floor consideration, where the issues embodied in H.R. 1029 could come up. ☀

### Five Committee-Approved Immigration-Related Measures are Awaiting Consideration by the Full Senate:

The following measures containing significant immigration- or refugee-related provisions have been approved by various committees and are awaiting consideration by the full Senate:

- **Senate Committee on Appropriations.** The Senate Committee on Appropriations has approved three appropriations bills that contain significant immigration- or refugee-related provisions and that await consideration by the full Senate:

1. **Fiscal Year 2010 Appropriations for Refugee Resettlement and Unaccompanied Alien Children.** The Senate Committee on Appropriations has approved its version of H.R. 3293, the Fiscal Year 2010 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill (Labor, HHS Appropriations Bill), which funds the federal government's refugee resettlement, trafficking victims assistance, torture victim assistance, and unaccompanied alien child programs.

The Senate Appropriations Committee-approved version of the measure would restore much of the cut in funding for the Department of Health and Human Services Office of Refugee Resettlement (ORR) contained in a measure passed last month by the full House of Representatives. However, the Senate Appropriations Committee-approved measure would still cut funding relative to the Administration's request.<sup>1486</sup>

The Senate could take up the measure at any time after it returns from its August recess.

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<sup>1485</sup> See Page 383 of the [April 20, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the full House of Representatives' consideration of H.R. 1029

<sup>1486</sup> See Pages 876-881 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for a detailed analysis of the immigration- and refugee-related provisions in the Senate Appropriations Committee-approved version of H.R. 3293

2. **Fiscal Year 2010 Appropriations for the Immigration Court System.** The Senate Committee on Appropriations has approved the [Senate version of H.R. 2847](#),<sup>1487</sup> the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Bill (C-J-S Appropriations Bill), which funds the immigration court system, as well as funding a grant program that reimburses states for the costs they incur in incarcerating criminal aliens.

The Senate Appropriations Committee-reported version of H.R. 2847 would significantly increase funding for the Executive Office for Immigration Review (EOIR) and maintain funding for the State Criminal Alien Assistance Program (SCAAP), a program that the Obama Administration has sought to terminate.<sup>1488</sup>

The Senate could take up the measure at any time after it returns from its August recess.

3. **Fiscal Year 2010 Appropriations for Refugee Admissions and Overseas Refugee Assistance.** The Senate Committee on Appropriations has approved [S. 1434](#), the Senate version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill,<sup>1489</sup> which contains among its many provisions those that fund the federal government's refugee admissions and overseas refugee assistance programs.

The Senate Appropriations Committee-approved version of the measure would appropriate substantially more for the Migration and Refugee Assistance account than is contained in the House-passed version of the bill.<sup>1490</sup>

The Senate could take up the measure at any time after it returns from its August recess.

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<sup>1487</sup> [S. Rept. 111-34](#), June 25, 2009

<sup>1488</sup> See Pages 702-703 of the [June 29, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration- and refugee-related provisions in the Senate Appropriations Committee-approved version of H.R. 2847

<sup>1489</sup> [S. Rept. 111-44](#), July 9, 2009

<sup>1490</sup> See Pages 764-767 of the [July 13, 2009, edition of the Weekly Legislative Update](#) for an analysis of the immigration- and refugee-related provisions in the Senate Appropriations Committee-approved version of the Fiscal Year 2010 State, Foreign Operations, and Related Programs Appropriations Bill

- **Senate Committee on the Judiciary.**

1. **Eased Visa Requirements for Victims of Domestic Violence.** The Senate Committee on the Judiciary has approved [S. 327](#), the “Improving Assistance to Domestic and Sexual Violence Victims Act of 2009”, which contains four provisions that would amend the Immigration and Nationality Act, the Trafficking Victims Protection Act of 2000, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to expand protections for aliens who are victims of domestic violence and sex trafficking.

S. 327 has been hotlined. Reports indicate that it has been cleared by the Senate Democratic cloakroom. However, those reports indicate that it has not yet been cleared by the Senate Republican cloakroom.

It is anticipated that once the bill has been cleared by both the Democratic and Republican cloakrooms, the Senate will take it up by unanimous consent.<sup>1491</sup>

- **Senate Committee on Homeland Security.**

1. **Revision of the REAL ID Act's Driver's License Provisions.** The Senate Committee on Homeland Security and Governmental Affairs has approved [S. 1261](#), the "Providing for Additional Security in States' Identification Act of 2009", or PASS ID Act, which would retain many of the alienage-related mandates that are found in the REAL ID Act.

Under S. 1261, states would still be required to deny driver's licenses and state-issued identification cards to aliens who are in the U.S. illegally, they would still be required to obtain identification to verify an applicant's immigration status, and they still would be required to limit the period during which a driver's license or state-issued identification card is valid so that the period of its validity matches the period that an alien is authorized to be in the U.S.

S. 1261 would make a number of changes to the alienage-based restrictions on states' issuance of driver's licenses and identification cards. Some would ease those restrictions. Others would make them more rigorous.<sup>1492</sup> ☼ ◇

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<sup>1491</sup> See Pages 475-477 of the [May 11, 2009, edition of the Weekly Legislative Update](#) for a detailed report on the Senate Judiciary Committee's markup of S. 327

<sup>1492</sup> See Pages 881-882 of the [August 3, 2009, edition of the Weekly Legislative Update](#) for a more detailed analysis of the immigration-related provisions in the Senate Homeland Security and Governmental Affairs Committee-approved version of S. 1261

## *Next Week's Edition ...*

Look for the following articles in the next edition of the Weekly Legislative Update:

- **Treatment of Immigrants and Nonimmigrants in Health Care Reform.** Next week's Weekly Legislative Update will report on this week's Senate Finance Committee and House Energy and Commerce Committee action that bears on the treatment of legal immigrants, illegal immigrants, and nonimmigrants under pending health care reform legislation.
- **Extension of E-Verify and Other Expiring Immigration-Related Programs.** Next week's Weekly Legislative Update will report on any action that occurs this week providing for either a short-term or long-term extension of the E-Verify, Special Immigrant Non-Minister, EB-5 Investor Regional Centers, and Conrad 30 State programs, whether those actions occur as part of a continuing appropriations resolution or as part of the Fiscal Year 2010 Homeland Security Appropriations Bill.
- **Homeland Security Appropriations Conference.** Next week's Weekly Legislative Update will report on any formal or informal action Congress undertakes to resolve differences between the House- and Senate-passed versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Bill, which funds immigration enforcement, immigration services, and border security departments, agencies, programs, activities, and functions of federal government. Congress must resolve the differing versions of the measure by October 1, 2009, the date on which fiscal year 2010 begins. The two versions of the measure differ significantly on immigration policy matters, as well as in appropriations for the U.S. Citizenship and Immigration Services component of the Department of Homeland security.
- **House Judiciary Committee Markup of Immigration Bills.** Next week's Weekly Legislative Update will report on any action that occurs in the House Judiciary Committee on three immigration bills that it could markup this week. ◇

*Appendix*

**Summary of Key Immigration-Related Differences between the House- and Senate-Passed Versions of H.R. 2892, the Fiscal Year 2010 Homeland Security Appropriations Act**

Last Updated: Monday, September 13, 2009

The chart that follows compares selected immigration- or refugee-related policy and appropriations provisions in the House- and Senate-passed versions of the Fiscal Year 2010 Homeland Security Appropriations Act.

**Side-by-Side Comparison of Selected Immigration- and Refugee-Related Appropriations and Policy Matters Addressed in the Fiscal Year 2010 Homeland Security Appropriations Act**

Item	Issue	House Bill	Senate Bill
1.	Funding for Immigration Services Ombudsmen	<p>The House-passed version of H.R. 2892 would appropriate \$6.685 MILLION for the Citizenship and Immigration Services Ombudsman.</p> <p>The committee report accompanying the House bill notes that this would be \$250,000 less than the amount the Administration requested and \$214,000 more than was provided in fiscal year 2009 for that purpose.</p>	<p>The Senate-passed version of H.R. 2892 would appropriate \$6.685 MILLION for the U.S. Citizenship and Immigration Services Ombudsman.</p> <p>The committee report accompanying the Senate bill notes that this would be \$250,000 less than the amount the Administration requested and \$214,000 more than was provided in fiscal year 2009 for that purpose.</p> <p>The report defended the Committee's decision by noting that "[f]unds are decreased below the request due to the delay in filling full-time permanent positions within this office."<sup>1493</sup></p>
2.	Direct Appropriations for Refugee and Asylum Adjudications	<p>The committee report accompanying the House version of H.R. 2892 notes that the measure would directly appropriate \$100 MILLION in fiscal year 2010 for refugee and asylum adjudications, which is \$106 MILLION less than the Administration requested and \$206 MILLION than was appropriated for this purpose in fiscal year 2009.</p> <p>Language in the House committee report precludes USCIS from using those funds until it publishes a new final rule implementing a new schedule of fees for immigration applications.<sup>1494</sup></p>	<p>The committee report accompanying S. 1298, the Senate version of H.R. 2892, notes that the Committee rejected the Administration's proposal that refugee and asylum adjudications be funded by a direct appropriation of \$201 MILLION rather than by continuing the current practice of assessing a surcharge on fees paid by applicants for other immigration services.</p> <p>Language in the Senate committee report indicates that the Committee was directing the Department of Homeland Security "to submit a reprogramming within 30 days after the date of enactment of this act, to reflect the continuation of these activities as fee funded."<sup>1495</sup></p>

<sup>1493</sup> [S. Rept. 111-31, Page 10](#)

<sup>1494</sup> [H. Rept. 111-157, Pages 128-131](#)

<sup>1495</sup> [S. Rept. 111-31, Page 117](#)

**Weekly Immigration and Refugee Legislative Update (continued)**  
**Monday, September 21, 2009**

Item	Issue	House Bill	Senate Bill
3.	Direct Appropriations for Military Naturalizations	The committee report accompanying the House version of H.R. 2892 notes that the bill has rejected the Administration's request that military naturalizations be funded through directly appropriated funds. Instead the Committee stated its expectation that the \$5.1 MILLION cost for military naturalizations should be borne by seeking a reimbursement from the Department of Defense. <sup>1496</sup>	The committee report accompanying S. 1298 notes that the Committee supports the Administration's request that military naturalizations be funded through directly appropriated funds. In approving the request, the committee report notes that the Committee "supports appropriations to support those men and women serving this Nation in the military and has included \$5,000,000, as requested, for military naturalizations." <sup>1495</sup>
4.	Immigration Integration Programs	<p>The committee report accompanying the House version of H.R. 2892 notes that the bill is providing \$11 MILLION for the promotion of legal paths to U.S. citizenship and outreach to immigrant communities in fiscal year 2010.</p> <p>The committee report notes that this would be an increase of \$9.2 MILLION in fiscal year 2010 compared to the \$1.9 MILLION that was provided for this purpose in fiscal year 2009, and that it is \$1 MILLION more than the Administration requested.<sup>1497</sup></p>	<p>The committee report accompanying S. 1298 notes that the Committee has rejected the Administration's request for \$10 MILLION for immigrant integration programs, opting, instead to continue funding at \$1.2 MILLION, the amount provided in fiscal year 2009.</p> <p>In support of the committee's position, the committee report states, "[t]he Committee notes that the current year grant applications are still being evaluated and that the 2009 funds have yet to be awarded. The Committee does not recommend the \$10,000,000 requested in the budget for a new immigrant integration activity. The Committee notes that the Office of Citizenship Services has long provided admirable services to assist those individuals seeking to become U.S. citizens or otherwise legally adjust their status and will have \$6,400,000 of carry forward balances to continue these efforts. This makes a total of \$7,600,000 available for immigrant services and integration grants."<sup>1495</sup></p>
5.	Basic Pilot/E-Verify Program	<p>The House-passed version of H.R. 2892 would appropriate a total of \$162 MILLION for the Basic Pilot/E-Verify Program, \$50 MILLION more than the Administration requested.<sup>1498</sup></p> <p>In addition to appropriating funds for the E-Verify program, the House-passed version of H.R. 2892 would--</p> <ul style="list-style-type: none"> <li>• Extend the program for three years</li> <li>• Make reforms to protect the Social Security Administration.</li> </ul>	<p>The Senate-passed version of H.R. 2892 would appropriate a total of \$118.5 MILLION for the Basic Pilot/E-Verify Program, \$6.5 MILLION more than the Administration requested.</p> <p>In addition to appropriating funds for the E-Verify program, the Senate-passed version of H.R. 2892 would--</p> <ul style="list-style-type: none"> <li>• Permanently extend the program<sup>1500</sup></li> <li>• Formally rename it the E-Verify Program<sup>1500</sup></li> <li>• Require federal contractors to use the E-</li> </ul>

<sup>1496</sup> [H. Rept. 111-157, Pages 128-131](#)

<sup>1497</sup> [H. Rept. 111-157, Pages 131-132](#)

<sup>1498</sup> This includes \$112 MILLION that was provided in the bill as it was reported by the House Appropriations Committee and an additional \$50 MILLION that was added by the Rogers Motion to Recommit that the House of Representatives agreed to on June 24, 2009

<sup>1500</sup> As reported by the Senate Committee on Appropriations, S. 1298, the Senate version of the Fiscal Year 2010 Homeland Security Appropriations Act, would have extended the E-Verify program for three years. On Wednesday, July 8, 2009, the Senate agreed to Sessions Amendment 1371 to H.R. 2892, which would permanently extend the E-Verify Program. The Senate agreed to the Sessions amendment by a voice vote after first rejecting a Schumer motion to table it by a vote of 44-53

Item	Issue	House Bill	Senate Bill
		<p>The committee report accompanying the House version of H.R. 2892 notes that the most recent audit of the system “shows an unacceptably high rate of individuals falsely identified as ineligible to work.” It noted that “[o]f particular concern is the report’s conclusion that nearly 1 in 10 naturalized citizens is reported by Basic Pilot/E-Verify as non-work authorized.” The report strongly urges USCIS “to update and publish regular Basic Pilot/E-Verify accuracy and performance audits, so that Congress and Administration policy makers can remain informed of the system’s strengths and weaknesses.”</p> <p>The report also expresses the Committee’s strong support for efforts by USCIS “to establish a compliance group to monitor use of the Basic Pilot/E-Verify system and to ensure that companies enrolled in the program are not using it to take inappropriate or illegal employment actions.” The draft report notes that the Committee-approved bill will accommodate the Administration’s request to hire 40 Monitoring and Compliance staff “to ensure the system is not used for prohibited purposes.”<sup>1499</sup></p>	<p>Verify program to verify the employment eligibility of their employees<sup>1500</sup></p> <ul style="list-style-type: none"> <li>• Permit employers using the E-Verify System to use it to verify the work eligibility of existing employees, not just new-hires.<sup>1501</sup></li> </ul> <p>The committee report accompanying the Senate version of H.R. 2892 includes an extensive write-up on the E-Verify program, defending and expressing support for it. After explaining why it thinks USCIS has made great improvements in the program, the report goes on to state that, “[g]iven the concerns by some of the general public with E-Verify, the Committee urges USCIS to continue to work to enhance the system to further improve performance, to continue its public outreach and education campaign, and to perform a new, independent evaluation of the system during the first quarter of fiscal year 2010.”</p>
6.	EB-5 Regional Centers	There is no provision in the House-passed version of H.R. 2892 relating to EB-5 Regional Centers	Sec. 549 of the Senate-passed version of H.R. 2892 would permanently extend the EB-5 Regional Center Program. <sup>1502</sup>

<sup>1499</sup> [H. Rept. 111-157](#), June 16, 2009, Page 131

<sup>1501</sup> This provision was not in the Senate Appropriations Committee-reported version of S. 1298, the Senate version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor by Grassley Amendment 1415, which the Senate agreed to by a voice vote

<sup>1502</sup> This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 8, 2009, by Leahy Amendment 1407, a second degree amendment to the Sessions E-Verify Amendment. The Senate agreed to the Leahy amendment by a voice vote. The Senate went on to agree to the Sessions amendment by a voice vote after first rejecting a Schumer motion to table it by a vote of 44-53

**Weekly Immigration and Refugee Legislative Update (continued)**  
**Monday, September 21, 2009**

Item	Issue	House Bill	Senate Bill
7.	Special Immigrant Non-Minister Religious Worker Visas Program	There is no provision in the House-passed version of H.R. 2892 relating to the Special Immigrant Non-Minister Religious Worker Visas Program.	Sec. 571(a) of the Senate-passed version of H.R. 2892 would extend for three years the Special Immigrant Non-Minister Religious Worker Visa Program, extending it through September 30, 2012. The provision also would require U.S. Citizenship and Immigration Services to conduct a study and report on certain aspects of the program. <sup>1503</sup>
8.	Conrad State 30 J-1 Visa Program	There is no provision in the House-passed version of H.R. 2892 relating to the Conrad State 30 J-1 Visa Program.	Sec. 571(b) of the Senate-passed version of H.R. 2892 would extend for three years the Conrad State 30 J-1 Visa Waiver Program <sup>1504</sup> , extending it through September 30, 2012. <sup>1502</sup>
9.	Relief for Widows and Orphans	There is no provision in the House-passed version of H.R. 2892 relating to relief for widows and orphans.	Sec. 571(c) of the Senate-passed version of H.R. 2892 would protect widows, widowers and orphans of deceased U.S. citizens and legal permanent residents who are in the family immigration system by allowing widows, widowers and orphans, to immigrate on a family-based visa despite the death of a petitioner. <sup>1502</sup>

<sup>1503</sup> This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 9, 2009, by Hatch Amendment 1428, which the Senate agreed to by unanimous consent

<sup>1504</sup> The Conrad State 30 / J-1 Visa Waiver Program is used to place international medical graduates who have completed their medical education in the United States in underserved areas of the state. Normally, upon completion of their education, these international medical graduates are required to return to their country of nationality for at least two years before returning to the United States. However, under the Conrad State 30/J-1 Visa Waiver Program this home residency requirement can be waived for up to thirty (30) J-1 physicians annually. In exchange, the J-1 physicians must agree to practice medicine full time at a Delaware pre-approved sponsoring site for a minimum of three years. These practice sites must be located in federally designated Health Professional Shortage Area (HPSA) or a Medically Underserved area (MUA).

Item	Issue	House Bill	Senate Bill
10.	Fencing Along the U.S. Border with Mexico	There is no provision in the House-passed version of H.R. 2892 relating to fencing along the U.S. border with Mexico	<p>Sec. 560 of the Senate-passed version of H.R. 2892 would impose a number of restrictions and mandates on the Administration with regard to fencing being constructed along the U.S. border with Mexico.</p> <p>More specifically, Sec. 560 of the Senate-passed version of H.R. 2892 would --</p> <ul style="list-style-type: none"> <li>• require that construction of the mandated 700 miles of fencing be completed by December 31, 2010;</li> <li>• provide that fencing that does not effectively restrain pedestrian traffic (such as vehicle barriers and virtual fencing) may not be used to meet the 700-mile fence requirement under the law; and</li> <li>• provide that funds for fence construction may not be withheld for failure to comply with consultation requirements.</li> </ul> <p>Sec. 560 of the Senate-passed version of H.R. 2892 also would impose reporting requirements on the Administration with regard to the construction of fencing along the U.S. border with Mexico.<sup>1505</sup></p>
11.	SSA No-Match Letters	There is no provision in the House-passed version of H.R. 2892 relating to SSA No-Match Letters	<p>Sec. 561 of the Senate-passed version of H.R. 2892 provide that none of the amounts made available under the Act may be used to implement changes to the final rule describing the process for employers to follow after receiving a “no match” letter in order to qualify for “safe harbor”.<sup>1506</sup></p>



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<sup>1505</sup> This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 9, 2009, by DeMint Modified Amendment 1399, which the Senate agreed to by a vote of 54-44

<sup>1506</sup> This section was not in the Senate Appropriations Committee-reported version of the Fiscal Year 2010 Homeland Security Appropriations Act. It was added to the measure on the Senate floor on July 8, 2009, by Vitter Modified Amendment 1375, which the Senate agreed to by a voice vote

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