

Legislative Recommendations Regarding Immigrant Students, Higher Education Access, Federal Financial Aid, and Professional and Occupational Licensure

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I. INTRODUCTION

The nonpartisan, nonprofit Presidents' Alliance on Higher Education and Immigration brings college and university presidents and chancellors together on the immigration issues that impact higher education, immigrant and international students, alumni, faculty, and staff, our campuses, communities, and country. The Presidents' Alliance, which is composed of approximately 500 presidents and chancellors of public and private colleges and universities in 42 states, D.C., and Puerto Rico, works to advance immigration policies and practices that are consistent with our heritage as a 'nation of immigrants' and the academic values of equity, openness, diversity, and inclusion. The following are our recommendations for the next Congress on higher education, which includes legislative language recommendations for standalone or for comprehensive immigration reform legislation. These recommendations are in addition to the Alliance's existing support for a roadmap to citizenship for Dreamers and other vulnerable populations, such as Temporary Protected Status holders, and other visa policies concerning international students and scholars.

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II. RECOMMENDATIONS¹

1. Higher Education Access and Affordability

A. Repeal PRWORA Prohibition on Postsecondary Benefits for “Non-Qualified Aliens”

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), enacted in 1996, bars the provision of “state and local public benefits” for non-qualified “aliens” unless the state passes an affirmative law making them explicitly eligible, including “postsecondary benefits.”² Under PRWORA, some courts view in-state tuition, financial aid, and even admission as public benefits.³ This provision potentially undermines future expansions of federal and state benefits. Federally, a court may read this ban to supersede any subsequent legislation that does not “affirmatively provide” for the eligibility of undocumented people, similar to the ongoing litigation around emergency financial grants in the CARES Act and their intersection with this provision of PRWORA.⁴ On a state level, the requirement that a state pass an “affirmative” law or policy, makes it much harder for states to offer these benefits to immigrant students. Thus, any expansion of federal or state aid must be coupled with the elimination of this prohibition. We recommend that Congress amend 8 U.S.C § 1611(c)(B) as follows:

(B) any retirement, welfare, health, disability, public or assisted housing, ~~postsecondary education~~, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

We also recommend that Congress amend 8 U.S. Code § 1621(c)(B) as follows:

(B) any retirement, welfare, health, disability, public or assisted housing, ~~postsecondary education~~, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

Congress should also add conforming language stating the individuals who cannot satisfy the immigration administration requirements found in 20 U.S. Code § 1091(a)(4)(B), § 1091(a)(5), and § 1091(g) (and all other relevant sections) can still apply for and receive postsecondary education benefits.

B. Ensure Federal Financial Aid for Individuals Who Obtain Relief through Dream Act or Similar Legislation

Congress should enact legislation that prohibits the denial of federal financial aid, including federal loans, Pell and other grants, and work-study-based programs for immigrant youth and adult learners (including DACA recipients, TPS holders, and undocumented students) who

¹ ~~Strikethrough~~ denotes suggested deletions. Underline denotes suggested insertions.

² Personal Responsibility and Work Opportunity Reconciliation Act, H.R.3734, 104th Cong. § 401-423 (1996).

³ Kate M. Manuel, Unauthorized Aliens, Higher Education, In- State Tuition, and Financial Aid: Legal Analysis, R43447, Congressional Research Service, Jan. 11, 2016, available at <https://fas.org/sgp/crs/misc/R43447.pdf>.

⁴ Office of Postsecondary Education, U.S. Department of Education, Higher Education Emergency Relief Fund Litigation Updates, June 17, 2020, <https://www2.ed.gov/about/offices/list/ope/heerfupdates.html>.

obtain relief through legislation. Individuals under a Dream Act-like bill may either have “conditional permanent resident” (CPR) status (such as H.R.6, The American Dream and Promise Act); or an “interim” status, which would not generally qualify them for federal financial aid (e.g. because this would make them “non-qualified aliens.”). In the former situation, affirmative language would not be needed, as conditional permanent residents will generally be eligible for all benefits as lawful permanent resident (LPR or commonly known as “green card” holders) status holders (aside from naturalization), including federal financial aid and Pell grants. Thus, the below language (taken largely from H.R.3591, the American Hope Act of 2017) would only be needed when legislation grants an initial status different or less than CPR or LPR status:

(a) In General.—Notwithstanding subsections (a)(5) and (g) of section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) or any other provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), and subject to subsection (b) of this section, an alien who adjusts status to that of a conditional lawful permanent resident under this Act may be eligible only for the following assistance under title IV of such Act (20 U.S.C. 1070 et seq.):

- (1) Federal grants under part A (20 U.S.C. 1070 et seq.).
- (2) Federal work-study programs under part C (42 U.S.C. 2751 et seq.).
- (3) Federal student loans under parts D and E (20 U.S.C. 1087a et seq.).
- (4) Services not otherwise covered under paragraphs (1) through (3).
- (5) Need analysis and refunds calculated under parts F and G (20 U.S.C. 1087kk et seq.; 1088 et seq.).

(b) Other Requirements.—An individual described in subsection (a) may only receive the assistance described in subsection (a) for which such individual would be otherwise eligible (but for such individual’s immigration status).

C. Repeal IIRIRA’s Section 505 Prohibition on In-State Tuition Based on Residency

Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) bars states from providing “postsecondary education benefits” to those who are “not lawfully present” based on in-state residency unless all citizens of the United States are eligible for those benefits regardless of state residency.⁵ Many states have circumvented this prohibition by basing in-state tuition on high school attendance and graduation in the state, but Section 505 still presents a burden to states, often being cited in litigation challenging in-state tuition laws. There is also the possibility that the courts will strike down state in-state tuition laws based on a novel reading of Section 505. Repeal of this law would allow states to affirmatively offer in-state tuition through residency status, and it would protect those states that have currently expanded in-state tuition to undocumented immigrants. We recommend that Congress pass legislation with the following language, taken largely from S.952:

⁵ Illegal Immigration Reform and Immigrant Responsibility Act, H.R. 2202, 104th Cong., § 505 (1996).

Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed. The repeal shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–546).

D. Implement Federal Anti-Discrimination Based on Immigration Status Provision for Higher Ed Access

To ensure non-discrimination based on immigration status in the higher ed context, we also recommend that Congress enact legislation with the following language:

Notwithstanding any other law, an individual may not be denied admission, enrollment, grants, scholarships, in-state tuition (or any other tuition discount), or any postsecondary benefit by an agency of a State or local government, or by appropriated funds of a State or local government, or an institution of higher education on the basis of the individual's immigration status if the individual is otherwise qualified.

2. Professional Licensing

Professional, commercial, and business licenses (also known as “occupational licenses”) represent the licensure framework required for an individual working in a specific field or career. This licensure represents a credential that the federal, state, or local government issues to an individual seeking to be employed in certain fields, and usually requires that an individual satisfy state-specific educational, training, testing and other requirements. Nearly one in four jobs require some sort of license to practice. Over 1,100 different occupations require a license and approximately 25 percent of all workers nationwide are required to obtain a license in order to work in their occupations. There are a variety of federal prohibitions on licensure that the below language attempts to address.

A. Repeal PRWORA Federal and State Prohibition on Federal Professional and Occupational Licensing

Congress should enact legislation rescinding the federal and state prohibition on professional and commercial licenses to non-qualified immigrants. We recommend that Congress amend 8 U.S.C. § 1611(c)(1) as follows:

(A) any grant, contract, ~~or loan~~ ~~professional license, or commercial license~~ provided by an agency of the United States or by appropriated funds of the United States

We also recommend that Congress amend 8 U.S.C § 1621(c)(1):

(A) any grant, contract, or loan ~~professional license, or commercial license~~ by an agency of a State or local government or by appropriated funds of a State or local government

C. Prohibit Denial of Federal and State Licenses Based on Immigration Status

Congress, through its constitutional authority to regulate immigration, should enact legislation that prohibits both the federal government and states from denying licensure based on immigration status to an immigrant who is otherwise qualified. We recommend Congress enact

one of the following language versions, taken and modified from S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act (but removing the requirement that an individual possess an employment authorization document to benefit from the non-discrimination provisions):⁶

Notwithstanding any other law, an individual in the United States may not be denied a professional, commercial, or business license on the basis of his or her immigration status if the individual is otherwise qualified.

D. Licensing and Legislative Protections for Immigrant Youth, TPS and DED Recipients

Many forms of immigration relief legislation grant conditional permanent resident (CPR) status to applicants, a qualified immigrant status that enables individuals to apply for and receive professional and occupational licenses. There is a pressing need for potential applicants and applicants with pending applications to access licensing before obtaining CPR status, including those with Deferred Action for Childhood Arrivals (DACA), Temporary Protected Status (TPS), or Deferred Enforced Departure (DED). Specifically, these individuals need to fully utilize their work permit and participate in licensed fields to save up funds to apply for relief. We recommend that Congress enact legislation with the following language as part of any Dream legislation:

Notwithstanding any other law, for the purposes of professional, commercial, and business licenses, individuals with Deferred Action for Childhood Arrivals, Temporary Protected Status under Section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a(b)), a grant of Deferred Enforced Departure, or an employment authorization document obtained under this Act, shall not be denied a professional, commercial, or business license on the basis of their immigration status if otherwise qualified.

⁶ Border Security, Economic Opportunity, and Immigration Reform Act, S.744, 113th Cong. § 3105 (2013).