Policy Brief: 
Budget Reconciliation as an Approach to Passing Immigration Reform
June 22, 2021

I. Background

Created by the Congressional Budget Act of 1974, policymakers have used a special legislative process called “reconciliation” 21 times in order to quickly advance bills. Earlier this year, Democrats used a fiscal 2021 budget resolution as the vehicle for a $1.86 trillion coronavirus relief package.

Currently Democratic leaders, pending the success of Sen. Durbin’s bipartisan working group on immigration, are attempting to use this process to advance immigration reform attached to a high-priority fiscal legislation. If successful, Dreamers, TPS recipients, essential workers, and more than 427,000 undocumented students, including DACA recipients, enrolled in higher education would potentially be provided with relief. While they have found past precedents, including one from 2005, in which changes to immigration policy were allowed as part of a budget-reconciliation package, and another from 1996 that restricted the eligibility of certain groups of immigrants for federal benefits, the path to citizenship is complex.

While the budget reconciliation process allows the Senate to pass legislation concerning taxes, spending, or the national debt with a simple majority, or 51 votes – rather than the traditional 60 votes – all language included must be approved by the Senate Parliamentarian as relevant to the national budget without increasing the deficit, also known as the Byrd Rule. Further, it is not clear whether all 50 Democratic senators would be on board with a path to citizenship via reconciliation, and Republicans have stated they will not consider such legislation without border security provisions and restrictions on asylum given the events at the southern border.

The Presidents’ Alliance remains committed to the bipartisan working group trying to develop an immigration bill that will get 60 votes in the Senate. The Presidents’ Alliance has not taken a position on reconciliation.

II. Discussion

The three methods of legalization mentioned in the upcoming reconciliation are (1) advancing the cutoff for immigration registry, (2) advancing the cutoff for Section 245(i) of the INA, and (3) eliminating the three- and ten-year bars. Congress may utilize these mechanisms to provide relief to some or all of the undocumented populations that the Presidents’ Alliance advocates for, including DACA recipients, Dreamers, TPS holders, essential workers, and others.

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1 For questions regarding this template or general strategy, please contact info@presidentsalliance.org.
Immigration registry has provided a legal means (green cards) for undocumented immigrants to secure a lawful status based on their long-standing presence in the United States regardless of their status or method of entry. However, Congress has not updated the law since 1986 and the current eligibility date (1972) excludes most undocumented immigrants in the U.S. today. By advancing the date of entry cutoff, Congress could extend access to immigration registry for millions of undocumented immigrants.6

Section 245(i) provides undocumented immigrants (such as temporary workers or international students) an opportunity to adjust to lawful permanent resident (LPR) status and receive a green card without having to first leave and reenter the country. To qualify, individuals must have had an immigrant visa petition or labor certification application filed on their behalf on or before April 2001. Section 245(i) became particularly important after the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was implemented in 1996, which imposed severe penalties on individuals who were present without authorization in the U.S. However, the law has not been updated, meaning increasingly fewer people are able to access it.7

Three- and ten-year bars were enacted with the passage of IIRIRA, which prevent individuals from returning to the U.S. if they had voluntarily departed after having been unlawfully present in the U.S. The three-year bar applies to those who have been in the United States without legal status for more than 180 consecutive days, while the ten-year bar applies to those who have been here for one year or longer. IIRIRA provides exceptions for minors, asylum applicants, and battered women and children and victims of severe trafficking. Estimates suggest upwards of half of the undocumented population could be eligible to adjust status if the bars were eliminated.8

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