

## Summary of Reconciliation's Legalization and Higher Ed Provisions<sup>1</sup> September 14, 2021

The 117th Congress is currently considering legislation that would modernize our nation's immigration laws through the creation of a roadmap to citizenship and expansion of access to higher education for the segments of the nation's undocumented population. This legislation—contained in the FY 2022 Budget Reconciliation Resolution—must pass both the House and Senate and then be signed by the President to become law. On the House side, two committees, the House Judiciary Committee and the House Committee on Education and Labor, released and marked up legislation. Below, we provide a summary of the key provisions likely to end up in the final reconciliation resolution.

### I. House Judiciary Committee Provisions<sup>2</sup>

**A. Roadmap to Citizenship.** The legislative text would establish a roadmap to citizenship for: (a) Dreamers; (b) Temporary Protected Status (TPS) & Deferred Enforced Departure (DED) holders; (c) essential workers; and (d) farmworkers. To apply, individuals would have to pay a \$1,500 surcharge in *addition* to processing and filing fees (likely around \$500 to \$750 per application). Finally, unlike previous legislation, this bill provides a direct roadmap to Lawful Permanent Resident (LPR) status (also known as a “green card”), as opposed to previous legislation that usually required some sort of interim legal status.

1. **Dreamers.** The roadmap to citizenship for Dreamers would include undocumented Dreamers, DACA recipients, and documented Dreamers (e.g. those with some sort of legal status or visa); and provide a stay of removal for children enrolled in pre-school or K-12 until they qualify for relief under the bill. To be eligible, applicants must demonstrate that they:
  - a. Were continuously physically present in the United States since January 1, 2021; (*Note: under existing law, travel with advance parole does not interrupt continuous physical presence.*)
  - b. Were 18 years or younger upon entry; and
  - c. **ONE** of the following:
    - Attained a degree from a higher education institution or postsecondary credential from an area career and technical education school or completed of at least two years of a qualifying program;
    - Consistently earned income during the three years before applying;

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<sup>1</sup> There are other immigration-related provisions in this legislation that are not discussed in this summary, including provisions related to the Diversity Visa and EB-5 backlog reduction. For a comprehensive summary, click [here](#).

<sup>2</sup> The markup in the House Judiciary Committee occurred on September 13, 2021; you can find the proposed amendments, roll call votes, and more on the committee's [website](#). You can view the most recent version of the language [here](#).

- Are enrolled in a higher education institution of a postsecondary program and currently employed or participating in an internship, apprenticeship or similar program; **OR**
- Honorably served in the uniformed services.

**NOTE:** Enrollment in and completion of higher education would represent a key avenue for undocumented immigrants to obtain permanent relief. Approximately [70% of all undocumented students](#) enrolled in higher education, or about 290k students, arrived in the United States before the age of 18. LPR status will allow individuals to immediately access a variety of state and federal aid and benefits related to higher education (if they are otherwise qualified), including: (a) financial assistance (including grants, scholarships, loans, work study, services, and more); (b) occupational and professional licensure; (c) enrollment and admissions; (d) in-state tuition; and more.

2. **TPS & DED.** The roadmap to citizenship for TPS & DED holders would include current and former TPS & DED holders; **AND** individuals who were previously eligible for TPS & DED but did not apply. To be eligible, applicants must demonstrate that they:
  - a. Were continuously physically present in the United States for at least three years;
  - b. Did not engage in conduct that would render them ineligible for TPS or DED (mostly around criminal background issues); **AND**
  - c. **ONE** of the following:
    - Had or were eligible for TPS on January 1, 2017; **OR**
    - Had or were eligible for DED on January 20, 2021.
3. **Essential Critical Infrastructure Workers.** The path to lawful permanent residence for essential critical infrastructure workers would include individuals employed in a variety of industries, including education, information technology, farm, agriculture, healthcare and other workers. To be eligible, applicants must demonstrate that they:
  - a. Were continuously present in the United States since January 1, 2021; **AND**
  - b. Consistently earned income between January 31, 2021 (note: the bill reads 2020, but that may be a drafting error, since the physical presence clock does not start until January 1, 2021) and August 24, 2021 in an industry identified as “essential critical infrastructure” in the U.S. Department of Homeland Security’s August 10, 2021 memorandum: [Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response](#).
    - **NOTE:** International students who were lawfully employed in an “essential critical infrastructure” industry during the requisite time period, while not specifically mentioned in the bill, do not appear to be excluded from the possibility of qualifying for LPR under this legislation.
4. **Ineligibility Grounds.** Additionally, to be eligible for relief:
  - a. **Inadmissibility Grounds and Persecutor Bar.** Individuals must not be subject to an enumerated list of grounds of ineligibility, including criminal grounds, security grounds, smuggling, student visa abusers, individuals permanently ineligible for citizenship, polygamy, international child abductors,

and unlawful voters (there are some waivers available); or participated in persecuting people.

- b. Criminal Convictions.** Individuals must not have been convicted of a single felony or three or more misdemeanors (excluding or have been convicted of a felony or three or more separate, non-immigration related misdemeanors).
- c. Expunged Convictions.** Expunged convictions will not automatically be considered convictions and will be reviewed on a case-by-case basis.

**B. Recapture of Unused Visas.** The bill would recapture visas that were not allocated due to adjudication backlogs or other issues from 1992 onwards. This recapture would restore approximately 500,000 unused visas, with the majority benefiting applicants in the family-based visa queue, and some would also be allocated to employment-based visas.

***NOTE:** : A September 13 column in Forbes, [Dreamers And Legal Immigration Changes Highlight New House Bill](#), highlights that the bill has positive implications for international students on OPT and for international alumni who are caught in the green card backlog. “The provisions in the House bill would allow employees in the backlog to file for adjustment of status without regard to whether a priority date is available,” said immigration attorney Cyrus Mehta in an interview. “From an employer’s perspective, they may not need to rely on the uncertainty of the H-1B visa lottery as much as they do now. An F-1 on Optional Practical Training (OPT) can be sponsored for permanent residence through labor certification during the F-1 OPT period, although one eligible for F-1 STEM OPT will have more time for the labor certification to get processed and approved.”*

**C. Appropriations for U.S. Citizenship and Immigration Services (USCIS).** The bill appropriates \$2.8 billion in funding to USCIS to implement the proposed roadmap to citizenship and reduce backlogs. The allocation of these monies regarding backlog reduction will generally be decided through the discretion of USCIS.

## II. House Committee on Education and Labor Provisions<sup>3</sup>

**A. Expansion of Eligibility for Federal Financial Aid.** This legislation would expand eligibility for federal financial assistance, including Pell grants, loans, and work assistance, to DACA recipients and TPS & DED holders through 2030.

**B. Increase in Pell Grants.** This legislation would increase the maximum amount of Pell grants (e.g. federal financial aid grants for higher education) by \$500 through 2030.

**C. Inclusion of Immigrants in Tuition Free Community College Provisions.** This legislation would ensure that the bill’s expansion of free community college (which takes place through grant programs to state and local jurisdictions) would include all immigrants, including undocumented immigrants, DACA recipients, TPS & DED holders, and other noncitizens in various immigration statuses.

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<sup>3</sup> The markup in the House Committee on Education and Labor occurred on September 10, 2021; you can find the proposed amendments, roll call votes, and more on the committee’s [website](#). You can view the most recent version of the language [here](#).

**D. Inclusion of Immigrants in Tuition Assistance Grants to Minority-Serving Institutions.** This legislation would ensure that the proposed expansion of tuition assistance grants to Historically Black Colleges and Universities (HBCUs), tribal colleges and universities, and minority-serving institutions would include immigrants, including undocumented immigrants, DACA recipients, TPS & DED holders, and other noncitizens in various immigration statuses.

**E. Inclusion of Immigrants in Universal Pre-Kindergarten.** This legislation would ensure that the proposed expansion of universal pre-kindergarten would include immigrants, including undocumented immigrants, DACA recipients, TPS & DED holders, and other noncitizens in various immigration statuses.