

LPR Legislation

The question before us is whether a series of proposed amendments to the Immigration and Nationality Act (INA) that remove existing barriers to adjustment of status to that of lawful permanent resident (LPR) for a variety of existing and newly created classes of immigrants and non-immigrants, including many not legally present in the United States, is a policy change that substantially outweighs the budgetary impact of that change. We believe it is, and we find that the material from previous reconciliation bills cited as support for the current proposal is distinguishable or not controlling on this issue.

In summary, CBO estimates that 8 million people will adjust to LPR status under this proposal and that such adjustment will increase the deficit by 140B over 10 years as a result of the social safety net/benefits programs to which LPR's would be entitled. Although the proposed change does not grant LPR status, CBO's score is **not** based on the likely number of applications for status – it is based on the “number of people who would **receive** LPR status” [*emphasis added*]. While a portion of that 8 million has one form or another of temporary legal status under statute or Presidential order, the vast majority (nearly 7 million by CBO's estimate) are unlawfully present and generally ineligible for adjustment of status under current law (as are some of the temporary status holders). The current proposal would waive the relevant sections of the INA, and create a new class of alien who is eligible for adjustment of status, including a wholly new category of persons called “essential critical infrastructure workers” (derived from a 16 page list that covers 18 major categories and over 220 sub-categories of employment). The provision also includes conditions of ineligibility for these applicants along with waivers of many of those disqualifiers at the discretion of DHS. It is by any standard a broad, new immigration policy.

In support of their argument, proponents cite provisions from several previous reconciliation bills – OBRA 1990, PRWORA 1996, BBA 1997 and the DRA from 2005. None of these provisions was the basis of an actual Senate precedent under 313(b)(1)(D) – the merely incidental clause. There was no such point of order raised and no ruling by the Chair - so the value is limited (4 sections of the qualified alien title of PRWORA were subject to Byrd points of order – 3 on committee jurisdiction, as Judiciary was not instructed, and 1 for having no score). There is also evidence that the provisions had broad bipartisan support which made inclusion in reconciliation less fraught.

Each provision can be distinguished from the current proposal. The OBRA and PRWORA provisions cited were not amendments to the INA. OBRA 1990 contained an amendment to the Social Security Act (not the INA) decriminalizing the use of social security numbers by LPR's who had obtained their legal status specifically through a direct Act of Congress (IRCA/Simpson-Mazzoli) - they were already in status. PWRORA's provisions were reported by the Ways and Means and Finance Committees – there was no Judiciary title. It contained a series of free-standing provisions (later codified in title 8) that changed the definitions of eligibility for a range of federal benefits – a common theme of reconciliation measures. Among the people disqualified or restricted from the various benefits were many classes of immigrants

(documented and undocumented), whose prior access to federal benefit programs had been patchy. But there were also classes of U.S. citizens who were disqualified from receipt of federal benefits, including felons, parole violators, people who were in arrears in child support payments and under certain circumstances, people who were not working. BBA 1997 further amended PRWORA's eligibility standards with respect to SSI benefits and Food Stamps. PRWORA's restrictions had by that time been codified in title 8, but again, this was not about immigration status, it was about access to benefits. Those changes to eligibility for various benefits, which did not change the status or ability to adjust status of any immigrant or non-immigrant, are a far cry from amending the INA to remove legal bars to adjustment for many millions of people.

The DRA of 2005, which did contain amendments to the INA, was, again, the product of a bipartisan agreement. The provisions cited are distinguishable as they applied to persons who were already admissible and not barred under law from applying for status, which is not the case here. Additionally, the provisions had broad support in the Senate and while most INA amendments were not on the committee's "Byrd list" they also were not reviewed with the Parliamentarian at the time or anyone in the office. Neither the Parliamentarian nor any of the staff of the office in 2005 have any notes pertaining to the merits of the proposal (there is one email relating to a possible "no score" finding from CBO of hypothetical text), despite the fact that this bill, and the Judiciary committee proposal on splitting the 9th circuit were the subject of many meetings. The provisions did not survive the process of conference or amendments between the Houses and their value is, for all those reasons, minimal. There are innumerable provisions in reconciliation bills that are popular and receive no initial scrutiny. Most are small changes in law and policy, and some – like CHIP - are massive policy changes -- and we are still litigating them though the ink has long since dried.

The reasons that people risk their lives to come to this country – to escape religious and political persecution, famine, war, unspeakable violence and lack of opportunity in their home countries – cannot be measured in federal dollars. The same is true of the value of having the security of LPR status in this country. LPR status comes with a wide range of benefits far beyond the social safety net programs (Medicare, Medicaid, SNAP, CHIP, SSI, etc.) that generate the CBO score. Broadly speaking, as most of the beneficiaries of this policy change are not in status, there will be other, life-changing federal, state and societal benefits to having LPR status, for example: the ability to work anywhere in almost any job, the ability to obtain a driver's license in any state, in-state tuition in any state, the ability to sponsor family members under the INA, the ability to make campaign contributions, the freedom from the specter of deportation to the very country from which they fled. Many undocumented persons live and work in the shadows of our society out of fear of deportation. They are exploited by employers, face extra hurdles in the banking and housing sectors and are often afraid to report that they are victims of crime or seek medical care for fear of exposing themselves to authorities. LPR status would give these persons freedom to work, freedom to travel, freedom to live openly in our society in any state in the nation, and to reunite with their families and it would make them eligible, in time, to apply for citizenship – things for which there is no federal fiscal equivalent. Changing the law to clear the way to LPR status is tremendous and enduring policy change that dwarfs its budgetary impact.

Finally, it is important to note that an obvious corollary of a finding that this proposal is appropriate for inclusion in reconciliation would be that it could be repealed by simple majority vote in a subsequent reconciliation measure. Perhaps more critically, permitting this provision in reconciliation would set a precedent that could be used to argue that rescinding any immigration status from anyone - not just those who obtain LPR status by virtue of this provision -- would be permissible because the policy of stripping status from any immigrant does not vastly outweigh whatever budgetary impact there might be. That would be a stunning development but a logical outgrowth of permitting this proposed change in reconciliation and is further evidence that the policy changes of this proposal far outweigh the budgetary impact scored to it and it is not appropriate for inclusion in reconciliation.