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Benefit Restrictions Beyond Those in Senate Immigration Bill Would Jeopardize Legalization for Many And Risk Severe Hardships for Others

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The Senate immigration reform bill establishes a long and difficult path to legal status that includes substantial fees and fines and tough restrictions on eligibility for federal assistance for immigrants who newly convert to a legal status. Yet, there will be efforts on the Senate floor to make it considerably more difficult for undocumented workers to convert to legal status and to further restrict or discourage needy families from seeking help such as emergency medical care and assistance for U.S. citizen children in immigrant families.

Under the Senate bill, undocumented workers can convert to “registered provisional immigrant” (RPI) status if they meet a series of requirements, including paying substantial fees and fines. RPIs would be legally authorized to work but would not have access to federal benefit programs such as Medicaid or SNAP. There would be no “hardship exceptions” to this restriction.

RPIs would have to meet additional requirements, including providing evidence of steady employment, to retain RPI status and ultimately convert to lawful permanent resident (LPR) status. Most RPIs could not convert to LPR (so-called “green card”) status for ten years and would not be eligible to become a citizen for at least 13 years, a longer path to citizenship than in previous immigration bills.

In addition, most immigrants who convert to LPR status would *remain ineligible* for key benefit programs such as Temporary Assistance for Needy Families (TANF), SNAP (formerly food stamps), and Medicaid for five additional years. Most immigrants converting to legal status thus would be ineligible for major forms of assistance *for 15 years*. (Some could qualify after 13 or 14 years if they became U.S. citizens in less than five years after attaining LPR status.)

These are highly restrictive rules and would ensure that no one chose to remain in the United States to obtain safety net benefits. Going further, as some Senators are calling for, would risk undermining the fundamental goal of enabling undocumented workers to come out of the shadows and legalize their status and could leave immigrant families, including their U.S. citizen children, even more vulnerable to hardship.

Current Law Includes Tough Restrictions on Legal Immigrants' Access to Benefits

Undocumented workers are ineligible for nearly all forms of public benefits under current law. In addition, most *legal* immigrants are ineligible for key types of assistance (such as Medicaid and SNAP) for their first five years in the country as lawful residents. Most legal immigrants also are ineligible for Supplemental Security Income (SSI), which provides cash assistance to poor seniors and people with disabilities, regardless of how long they have lived in the United States.

There are some limited exceptions. For example, humanitarian immigrants such as refugees do not face a “five-year bar” on assistance. In addition, undocumented immigrants can receive certain emergency services such as care in a hospital emergency room. In some cases, children who are legal immigrants can qualify for health and nutrition benefits that can be critical to child development even if their parents are ineligible.

Yet another restriction under current law is that an individual cannot become a lawful permanent resident or come live in the United States to reunite with close family members if federal authorities determine that he or she is likely to become a “public charge” at some point in the future — that is, to rely on government cash assistance to meet basic expenses.

Senate Bipartisan Bill Has Still Tougher Restrictions

Under the current bipartisan Senate bill, undocumented immigrants who convert to RPI status will generally be ineligible for both federal means-tested benefit programs and subsidies to help them purchase coverage in the new health insurance exchanges for the entire period that they are in RPI status — i.e., for a full decade (except for those who meet the requirements of the DREAM Act and certain agricultural workers, described below). When they convert from RPI to LPR status, they will remain ineligible for key programs such as Medicaid, TANF, and SNAP for five more years.¹

Thus, most immigrants would be ineligible for key public benefits for 15 years and would remain ineligible for exchange subsidies for a decade, regardless of their circumstances. The restrictions mean that parents who convert to legal status could remain ineligible for help throughout nearly all of their children’s childhood, even if they fall on hard times. There are no hardship exceptions to these restrictions. If an immigrant in RPI status loses her job — or is injured on the job or falls ill and is unable to work — she could not get SNAP or Medicaid and would not qualify for TANF cash assistance. If the immigrant has a child who is a U.S. citizen, the child could be eligible, but the worker would not be, and the family as a whole could face significant hardships such as an inability to pay the rent, afford groceries, or get needed medical care.

The provisions are somewhat different for young people who meet the DREAM Act requirements — that is, those who were brought to the United States as children and meet other educational or military service requirements. These individuals could convert from RPI to LPR status in five rather than ten years. But they too would remain subject to the five-year bar on

¹ Under the bill, an immigrant who converts to RPI status and then LPR status after 10 years is eligible to become a U.S. citizen after three years in LPR status. Thus, an immigrant who was able to naturalize at the first opportunity theoretically would be ineligible for means-tested benefit programs for 13 years, rather than 5 years. However, few are likely to be able to naturalize this quickly.

eligibility for programs such as Medicaid while in LPR status (though they could become citizens shortly after they attain LPR status, and the five-year bar would cease to apply if they became citizens).

Certain agricultural workers would also receive somewhat different treatment under the Senate bill. Some could convert to a new legal status called “blue card” status instead of RPI status; they could then become LPRs in five years (rather than ten), but they could not become citizens until they had been in LPR status for five years. During their blue-card status, these individuals — like RPIs — would be ineligible for federal benefit programs, and once they became LPRs, they would be subject to the five-year bar on benefit receipt.

Proposals Could Jeopardize Legalization for Many and Risk Severe Hardship for Others

Some senators have proposed changes to the bipartisan immigration bill that would make it much more difficult for large numbers of undocumented workers to convert to legal status and would discourage or prohibit legal immigrants, and in some cases their U.S. citizen family members, from receiving needed assistance. These include proposals to:

- **Require workers seeking to legalize their status to prove they have paid all taxes owed since they entered the United States, which could preclude millions of workers and their families from obtaining legal status.** The Senate bill takes a pragmatic approach, requiring those seeking to convert to RPI or LPR status to pay all unpaid taxes that the IRS has assessed. (The bill does *not* provide “tax amnesty,” as some have claimed; it maintains current-law requirements that all workers, regardless of immigration status, pay applicable federal taxes. Immigrants found at any time by the IRS to owe more in taxes than they have paid face civil and criminal penalties and risk immigration-related penalties such as a loss of status and deportation.)

But Senators Orrin Hatch (R-UT) and Marco Rubio (R-FL) have proposed an amendment to the bill (amendment 1247) that would require undocumented workers to *prove* they have paid both income and payroll taxes since they entered the U.S., effectively requiring millions of workers to produce earnings and tax records for many years in the past that, in many cases, will be impossible for them to obtain. In addition, the Hatch/Rubio amendment would require workers whose *employers* failed to withhold proper payroll taxes to pay those taxes themselves — including the employer share.

Many workers who worked off the books at some point would find it extremely difficult or impossible to produce documents recreating their work and earnings histories and verifying whether their employers withheld payroll taxes. Many were paid in cash, and their prior employers (who violated the law in employing these workers) are unlikely to help recreate earnings records that could show they hired undocumented workers or didn’t properly pay taxes on those workers’ wages. Moreover, some prior employers may be impossible to locate (some will have died). Many currently undocumented workers simply will not have — or be able to obtain — the records to *prove* they have paid all prior taxes or to retroactively file a tax return, which would leave them without a mechanism for converting to legal status and paying their taxes going forward. (Senator Hatch argued on the Senate floor that the IRS is well-positioned to determine such individuals’ tax liability. This is discussed in the box below.)

In short, this Hatch/Rubio amendment would undermine the basic goal of the bill: to create a workable mechanism that allows undocumented workers, after paying substantial fees, fines and taxes, to convert to a legal status, under which they will work legally and they and their employers will pay all of their taxes going forward.

- **Deny immigrants access to health insurance even after they have converted to LPR status.** Under the Senate bill, once individuals in RPI status become LPRs (generally, after ten years), they — like other LPRs — will be able to receive subsidies to help purchase private health coverage through the exchanges if their incomes are low. (They will remain ineligible for Medicaid for five additional years.) Senators Hatch and Rubio have proposed (in amendment 1248) requiring these individuals to wait *another* five years before being able to receive these exchange subsidies.

This approach would create a two-tier health care system where some legal immigrants with LPR status would lack access to health coverage for an additional five years while other legal immigrants would be able to obtain coverage. (It could also open the door to further restrictions down the road on exchange subsidies for other legal immigrants.) Research shows that uninsured immigrants, like uninsured people generally, are less likely to obtain preventive care or immunizations than those with coverage. Lacking needed care, uninsured immigrants would be more likely to end up in poor health, develop serious illnesses such as communicable diseases, and require costly care (including hospital admissions) to treat preventable but serious conditions.

- **Deny the Earned Income Tax Credit (EITC) to people working legally in RPI status.** The EITC is an integral part of the tax code. It reflects policymakers' decisions about the taxes that working families who are raising children and have modest incomes should face. Policymakers designed the EITC both to offset other regressive federal taxes, such as payroll and excise taxes, and to make up for some of the very large erosion in the minimum wage's purchasing power.

Denying the credit to individuals in RPI status, as Senator Jeff Sessions (R-AL) proposed as an amendment in the Judiciary Committee, would subject them to substantially higher taxes than others who are working lawfully for the same wages. It would, for the first time, create a two-tier tax system that treats some lawful workers differently than others who have the same number of family members and are paid the same amounts.

Moreover, most of the low-income children who would be affected by denying the EITC to families in which the parents are in RPI status are U.S. citizens. The Pew Hispanic Center estimates that nearly 80 percent of children living with an undocumented parent are citizens.²

² Jeffrey Passel and Paul Taylor, "Unauthorized Immigrants and Their U.S.-Born Children," Pew Hispanic Center, August 11, 2010, <http://www.pewhispanic.org/2010/08/11/unauthorized-immigrants-and-their-us-born-children/>.

Hatch Statement Vastly Understates Difficulty of Implementing “Back Tax” Amendment

On the Senate floor Wednesday, Senator Hatch dismissed the argument that many undocumented workers would not be able to reconstruct earnings and tax records in order to meet his proposed requirement that people converting to legal status prove they have paid all applicable federal taxes since entering the United States:

The IRS is well experienced at estimating the tax liabilities for people who, for whatever reason, lack the records that normally support a tax return. . . . Using bank records, credit card statements, housing records, and other evidence of an individual’s lifestyle, the IRS is able to construct returns and estimate tax liabilities for nonfilers who are U.S. citizens and resident aliens. The same process can be used for immigrants looking to certify they no longer owe any Federal taxes. That is not a tough thing to do..

But the IRS does *not* routinely try to use such records to guesstimate people’s incomes. These are extreme methods, which it resorts to in only a very small number of cases each year.

Senator Hatch is essentially arguing that it would be workable — and a good use of taxpayer money — to require the IRS to conduct extensive field audits of very large numbers of undocumented immigrants seeking legal status. The audits would be very complicated in many cases; many of these workers’ past employers will be difficult to locate, will not have records for cash transactions made years ago, and (for obvious reasons) may be reluctant to cooperate. Moreover, many of these immigrants likely will not have bank records or credit cards and will have moved many times. The IRS would have to undertake extremely labor-intensive — and very costly — efforts to try to reconstruct (and essentially guess at) past earnings as well as any taxes that may have been withheld for workers, including workers who have been in the country for years or even decades.

The IRS’s experience in estimating a family’s income based on its “lifestyle” is largely restricted to a very small number of generally high-income people and small businesses where there is a large disconnect between the income an individual reports and the person’s lifestyle or business’s spending and the IRS has reason to believe large-scale tax evasion may have occurred. The IRS has never used this method for large numbers of low-income workers.

Given that an estimated 11 million people are eligible to legalize under the bill, the increased workload for the IRS would be tremendous. Of the 187 million individual and business tax returns filed in 2011, the IRS examined just 1.7 million — fewer than 1 percent. Moreover, over 70 percent of these audits were conducted by mail (where information is requested and provided by mail) and are not the complex, intensive audits that Senator Hatch envisions.^a

The IRS spent \$5.3 billion on enforcement activities in 2012, the bulk of it on examinations and collection efforts. Data on the average cost of an audit that includes a field examination (rather than just an audit conducted by mail) are not available, but given the total cost of enforcement efforts and the number of returns examined each year, each field examination would clearly cost thousands of dollars. This means that the cost of conducting vast numbers of complicated audits, as Senator Hatch evidently envisions, would run into the billions.

Senator Hatch, however, has not proposed any new funding for the IRS to conduct such audits or indicated that large numbers of new IRS staff would be hired. Thus, if the IRS tried to implement his proposal, it would have to divert a very large portion of its total enforcement resources, probably for a number of years, from enforcement activities that yield a much higher return for the Treasury to auditing millions of legalizing workers, most of whom have modest incomes. The likely result would be a *net loss* of revenues to the Treasury, the opposite of what Senator Hatch asserted on the Senate floor: “A number of my colleagues talk a lot about closing the tax gap . . . my amendment would take significant steps towards doing just that...”

More realistically, the IRS would never be able to conduct the required audits, so the process of legalizing undocumented workers would grind to a halt for many. Undocumented workers would remain undocumented and the Treasury would collect less in taxes going forward than if these workers were allowed to come out of the shadows.

^a Internal Revenue Service, “Statistics of Income Data Book,” Table 9a, <http://www.irs.gov/uac/SOI-Tax-Stats-IRS-Data-Book>.

Whether the affected children are citizens or immigrants, they are likely to remain in the United States throughout their lives and to become part of the next generation of American workers. Important recent research shows that the EITC is linked to improved performance (including better test scores) by children in school — and to increased employment and earnings when the children reach adulthood. These children are likely to have poorer health, educational, and employment outcomes if their families are summarily denied the EITC,³ despite working for low wages and paying their taxes.

- **Make it hard, or even impossible, for low- and moderate-income workers to show they will not become a “public charge.”** During committee consideration of the bill, Senator Sessions proposed significantly broadening the forms of assistance considered when determining if an immigrant is likely to become a “public charge” to include benefits that many *working* families receive, often for short periods, such as Medicaid, SNAP, and subsidies to help buy health coverage through the health-insurance exchanges, along with state-funded assistance. Exchange subsidies are available to families with incomes up to 400 percent of the poverty line, an income level that is well into the middle class.

Such proposals could make it extremely difficult for large numbers of immigrants who earn modest wages to attain or retain legal status because the Department of Homeland Security could conclude that, unless they had high earnings, they could qualify for one of the above benefits at some future point.

These proposals also could deter immigrant families from seeking emergency health care if they face a medical emergency, out of fear that this assistance could be used as evidence that they are “public charge” risks. And they could deter immigrant families from seeking health or nutrition for U.S. citizen children in the family who may qualify. Immigrant parents may reasonably fear that if their citizen children receive CHIP, Medicaid, or SNAP, immigration authorities will conclude that the parents will one day qualify for these benefits and consider them a “public charge” risk.

- **Change long-standing rules for the treatment of Social Security and Medicare taxes that workers paid while undocumented.** Many undocumented workers pay payroll taxes into the Social Security and Medicare trust funds. Under long-standing law, undocumented workers who later attain legal immigration status can obtain credit for these taxes — which would help them meet the work-history requirements to qualify for Social Security and Medicare benefits — *if* they can adequately document to the Social Security Administration that the earnings and taxes paid were earned and paid by the worker or the worker’s employer (which is often difficult to do). Undocumented immigrants are *not* eligible for *any* Social Security or Medicare benefits; but individuals who paid taxes while in an undocumented status can obtain credit for such payments later, if they have become legal residents.

Senators Hatch and Rubio have proposed a very broad amendment (amendment 1249) that would deny credit for any quarter to anyone who received a Social Security number in or after 2004 and is not a native-born U.S. citizen — *unless* the Social Security Administration could *prove* that the individual was legally authorized to work in that quarter. The amendment is not limited

³ Chuck Marr, Jimmy Charite, and Chye-Ching Huang, “Earned Income Tax Credit Promotes Work, Encourages Children’s Success at School, Research Finds,” Center on Budget and Policy Priorities, revised April 9, 2013, <http://www.cbpp.org/cms/index.cfm?fa=view&id=3793>.

to those seeking legal status under the bill; it would also apply to immigrants who were *never* in an undocumented status and always worked here legally.

The amendment is unworkable; neither SSA nor the Department of Homeland Security has the records to make such determinations accurately for tens of millions of quarters. As a result, the Hatch/Rubio amendment would jeopardize millions of quarters worked by immigrants who were worked here legally.

Even if the amendment were more narrowly tailored, many currently undocumented individuals who paid their employment taxes — often for many years — and later attained legal status would be denied credit for those taxes paid. This would leave them vulnerable to serious hardship if they became ill or developed a severe disability and were unable to work long enough to meet Social Security and Medicare’s work-history requirements, despite having paid into these pay-as-you-go systems for many years.

Conclusion

The Senate immigration bill establishes a challenging but workable mechanism to allow millions of undocumented workers to come into legal status, participate in their communities without fear of deportation, and accept the responsibilities that come with that participation, such as paying their taxes. It includes very stringent restrictions on the receipt of benefits for individuals who are in RPI status and who then convert to LPR status, in most cases denying them access to basic parts of the safety net for 15 years, regardless of their circumstances, without any hardship exemptions. These restrictions come on top of the fees and fines that workers would have to pay to convert to RPI status, retain that status, and subsequently become an LPR.

A number of the proposed amendments to the bill are punitive and would almost certainly deter or prevent large numbers of immigrants from coming into legal status in the first place. The proposals also would treat those who do convert to legal status more harshly, exposing them to far higher taxes than other legal workers pay, denying them access to subsidies to purchase health coverage even after they have converted to LPR status, and discouraging them from seeking emergency medical care or assistance for their U.S. citizen children. Such changes would not only harm immigrants converting to legal status but also imperil millions of children, an important part of our future workforce.