Unauthorized Alien Students: Issues and "DREAM Act" Legislation

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Summary

Supporters of comprehensive immigration reform have urged the President and Congress to pursue reform legislation. While legislative action on comprehensive reform does not appear likely during the remainder of the 111th Congress, there may be an effort to enact a measure, commonly referred to as the "DREAM Act," to enable certain unauthorized alien students to legalize their status.

Unauthorized aliens in the United States are able to receive free public education through high school. They may experience difficulty obtaining higher education, however, for several reasons. Among these reasons is a provision enacted in 1996 that prohibits states from granting unauthorized aliens certain postsecondary educational benefits on the basis of state residence, unless equal benefits are made available to all U.S. citizens. This prohibition is commonly understood to apply to the granting of "in-state" residency status for tuition purposes. Unauthorized alien students also are not eligible for federal student financial aid. More broadly, as unauthorized aliens, they are not legally allowed to work and are subject to being removed from the country.

Multiple bills have been introduced in recent Congresses to address the unauthorized student population. Most have proposed a two-prong approach of repealing the 1996 provision and enabling some unauthorized alien students to become U.S. legal permanent residents (LPRs) through an immigration procedure known as *cancellation of removal*. Bills proposing this type of relief for unauthorized students are commonly referred to as the DREAM Act. While there are other options for dealing with this population, this report deals exclusively with the DREAM Act approach in light of the widespread congressional interest in it.

Two similar stand-alone DREAM Act bills have been introduced in the 111th Congress (S. 729 and H.R. 1751). Like most DREAM Act bills introduced in prior Congresses, these measures would repeal the 1996 provision and enable eligible unauthorized students to adjust to LPR status through a two-stage process. Aliens granted cancellation of removal under the bills would be adjusted initially to *conditional* permanent resident status. To have the condition removed and become full-fledged LPRs, the aliens would need to meet additional requirements.

This report will be updated as legislative developments occur.

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Introduction

The November 2008 election results sparked renewed interest in immigration reform among reform supporters. While legislative action on comprehensive immigration reform seems unlikely during the remainder of the 111th Congress, there may be an effort to enact a measure, commonly referred to as the "DREAM Act," to enable certain unauthorized alien students to legalize their status. Legalization of unauthorized (illegal) aliens—termed "earned legalization" by supporters and "amnesty" by opponents—has proven to be highly controversial in recent years. While still controversial, proposals for legalization of the subpopulation of unauthorized aliens who were brought, as children, to live in the United States by their parents or other adults have enjoyed a broad base of support in recent Congresses.

While living in the United States, unauthorized alien children are able to receive free public education through high school.[1] Many unauthorized immigrants who graduate from high school and want to attend college, however, face various obstacles. Among them, a provision enacted in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)[2] discourages states and localities from granting unauthorized aliens certain "postsecondary education benefits." More broadly, as unauthorized aliens, they are unable to work legally and are subject to removal from the United States.[3]

In recent years, multiple bills have been introduced in Congress to provide relief to unauthorized alien students. In most cases, these bills have proposed to repeal the 1996 provision and enable certain unauthorized alien students to adjust to legal permanent resident (LPR) status in the United States. These bills have often been entitled the Development, Relief, and Education for Alien Minors Act, or the DREAM Act. In this report, however, following common usage, the term DREAM Act is used to refer to similar bills to provide relief to unauthorized alien students whether or not they carry that name. In the 110th Congress, the Senate considered a major immigration bill that included DREAM Act provisions (S. 1639), as well as a stand-alone DREAM Act bill (S. 2205). Neither of these bills was passed by the Senate. DREAM Act bills (S. 729, H.R. 1751) have again been introduced in the 111th Congress.

Estimates of Potential DREAM Act Beneficiaries

As discussed below, DREAM Act bills introduced in recent Congresses would enable certain unauthorized alien students to obtain LPR status in the United States, in the case of most bills through a two-stage process. Requirements to obtain conditional LPR status (stage 1) typically include residence of at least five years in the United States and a high school diploma (or the equivalent) or admission to an institution of higher education in the United States. Requirements to have the condition removed and thereby become a full-fledged LPR (stage 2) typically include

[1] For a discussion of the legal basis for the provision of free public education, see CRS Report RS22500, *Unauthorized Alien Students, Higher Education, and In-State Tuition Rates: A Legal Analysis*, by Jody Feder.

[2] IIRIRA is Division C of P.L. 104-208, September 30, 1996.

[3] Unauthorized alien students are distinct from a group commonly referred to as foreign students. Like unauthorized alien students, foreign students are foreign nationals. Unlike unauthorized alien students, however, foreign students enter the United States legally on nonimmigrant (temporary) visas in order to study at U.S. institutions. See CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by Chad C. Haddal.

acquisition of a degree from an institution of higher education in the United States, completion of at least two years in a bachelor's or higher degree program, or service in the uniformed services for at least two years.

In 2003, using data from the March 2000, March 2001, and March 2002 Current Population Surveys (CPS), Census 2000, and supplementary research, Jeffrey S. Passel of the Pew Hispanic Center made estimates of the number of potential DREAM Act beneficiaries.[4] According to his analysis, each year roughly 65,000 undocumented immigrants graduate from high school who have lived in the United States for at least five years. Passel further estimated as part of this 2003 analysis that there were about 7,000 to 13,000 unauthorized aliens enrolled in *public* colleges and universities in the United States who had lived in the United States for at least five years and graduated from U.S. high schools.

In 2007, using data from the March 2007 CPS and other sources, the Center for Immigration Studies (CIS) estimated the number of potential beneficiaries under the DREAM Act bill considered in the Senate in October 2007 (S. 2205). CIS put the number of potential beneficiaries at 2.1 million based on the physical presence and age requirements in the bill.[5]

In 2010, using data from the March 2006, March 2007, and March 2008 CPS and other sources, the Migration Policy Institute (MPI) published estimates of the population potentially eligible for legal status under the Senate DREAM Act bill in the 111th Congress (S. 729).[6] This bill would establish a two-stage process for unauthorized alien students to obtain LPR status. As detailed below, aliens who met specified age, physical presence, educational, and other requirements could first apply for conditional LPR status. After meeting additional requirements, including two years of either college or military service, they could apply to have the condition on their status removed and become full-fledged LPRs. According to the MPI analysis, if the DREAM Act were enacted, about 2.1 million individuals could attempt to become LPRs under its provisions. This total includes estimates of individuals who already meet the substantive requirements under the bill for conditional status (or for both conditional status and the removal of the condition), as well as estimates of individuals who currently meet some, but not all, of the requirements for conditional status. The largest group in the latter category numbers some 934,000 (almost half the 2.1 million estimated total) and is composed of potential beneficiaries who are children under age 18 in elementary or secondary school. The MPI report also includes an estimate of the number of individuals who would likely obtain LPR status under the DREAM Act:

> If future behavior mirrors past trends, we project that approximately 38 percent [of the 2.1 million]—or 825,000—of the potential beneficiaries would actually achieve lawful permanent status under the legislation.[7]

[4] Unpublished work by Passel, October 21, 2003 (on file with CRS).

[5] Center for Immigration Studies, "DREAM Act Offers Amnesty to 2.1 Million," news release, October 23, 2007, at http://www.cis.org.

[6] Jeanne Batalova and Margie McHugh, *DREAM vs. Reality: An Analysis of Potential DREAM Act Beneficiaries,* Migration Policy Institute, July 2010, http://www.migrationpolicy.org.

[7] Ibid., p. 17.

Higher Education Benefits and Immigration Status

Unauthorized aliens are neither entitled to nor prohibited from admission to postsecondary educational institutions in the United States. To gain entrance to these institutions, these students must meet the same requirements as any other student, which vary depending on the institution and may include possessing a high school diploma, passing entrance exams, and surpassing a high school grade point average (GPA) threshold. Although admissions applications for most colleges and universities request that students provide their Social Security numbers, this information typically is not required for admission.

Even if they are able to gain admission, however, unauthorized alien students often find it difficult, if not impossible, to pay for higher education. Under the Higher Education Act (HEA) of 1965, as amended, they are ineligible for federal financial aid.[8] In most instances, unauthorized alien students are likewise ineligible for state financial aid. Furthermore, as explained in the next section, they also may be ineligible for in-state tuition.

1996 Provision

Section 505 of IIRIRA places restrictions on state provision of educational benefits to unauthorized aliens. It directs that an unauthorized alien

> shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.

There is disagreement about the meaning of this provision, and no authoritative guidance is available in either congressional report language or federal regulations.[9] The conference report on the bill containing IIRIRA did not explain §505. (A conference report on a predecessor IIRIRA bill, which contained a section identical to §505, described the section as "provid[ing] that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education."[10]) Some interested parties have argued that Congress exceeded its authority in §505 by legislating on how states can dispense state benefits.

Although §505 does not refer explicitly to the granting of "in-state" residency status for tuition purposes and some question whether it even covers in-state tuition, the debate surrounding §505 has focused on the provision of in-state tuition rates to unauthorized aliens. A key issue in this debate is whether it is possible to grant in-state tuition to resident unauthorized students (and not to all citizens) without violating §505. Various states have attempted to do this. For example, a

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[8] The HEA is P.L. 89-329, November 8, 1965, 20 U.S.C. §1001 *et seq*. Section 484(a)(5) sets forth immigration-related eligibility requirements for federal student financial aid, and §484(g) requires the U.S. Department of Education to verify the immigration status of applicants for federal financial aid. Also see U.S. Department of Education, Office of Federal Student Aid, Federal Student Aid Handbook 2008-2009, Volume 1 (Student Eligibility), Chapter 2 (Citizenship), at http://www.ifap.ed.gov/ifap.

[9] No implementing regulations on §505 have been issued.

[10] U.S. Congress, House Conference Committee, *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, conference report to accompany H.R. 2202, 104th Cong., 2nd sess., H.Rept. 104-828, p. 240.

California law passed in 2001 makes unauthorized aliens eligible for in-state tuition at state community colleges and California State University campuses.[11] The measure, however, bases eligibility on criteria that do not explicitly include state residency. To qualify for in-state tuition, a student must have attended high school in California for at least three years and graduated. An unauthorized alien student is also required to file an affidavit stating that he or she has filed an application to legalize his or her status or will file such an application as soon as he or she is eligible. California officials have argued that by using eligibility criteria other than state residency, their law does not violate the §505 prohibition on conferring educational benefits on the basis of state residency. This California law is being challenged in state court. Several federal courts also have considered whether state laws that authorize in-state tuition for unauthorized students violate §505.[12]

Action in the 111th Congress

Senator Durbin and Representative Berman have introduced similar DREAM Act bills in the 111th Congress. Senator Durbin has introduced the Development, Relief, and Education for Alien Minors (DREAM) Act of 2009 (S. 729), and Representative Berman has introduced the American Dream Act (H.R. 1751). Both measures have bipartisan cosponsorship.

S. 729

S. 729, the DREAM Act of 2009, is almost identical to S. 774, as introduced by Senator Durbin in the 110th Congress (and discussed in the **Appendix**). Like this earlier bill, S. 729 would repeal IIRIRA §505 and thereby eliminate the restriction on state provision of postsecondary educational benefits to unauthorized aliens. It also would enable eligible unauthorized students to adjust to LPR status in the United States through an immigration procedure known as cancellation of removal. Cancellation of removal is a discretionary form of relief authorized by the Immigration and Nationality Act (INA)[13] that an alien can apply for while in removal proceedings before an immigration judge. If cancellation of removal is granted, the alien's status is adjusted to that of an LPR.[14] S. 729 would enable aliens to affirmatively apply for cancellation of removal without first being placed in removal proceedings, and it would place no limit on the number of aliens who could be granted cancellation of removal/adjustment of status.

To be eligible for cancellation of removal/adjustment of status under S. 729, an alien would have to demonstrate that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment; had not yet reached age 16 at the time of initial entry; had been a person of good moral character since the time of application; and, in a requirement not included in S. 774 in the 110th Congress, had not yet reached age 35 on the date of enactment of the act.[15] The alien also would have to demonstrate

[11] The law does not apply to the University of California system.

[12] For additional information, see CRS Report RS22500, *Unauthorized Alien Students, Higher Education, and In-State Tuition Rates: A Legal Analysis*.

[13] Act of June 27, 1952, ch. 477, as amended; 8 U.S.C. §1101 et seq.

[14] Rules governing cancellation of removal/adjustment of status are set forth in INA §240A.

[15] A similar age requirements was included in S. 2205, another DREAM Act bill introduced in the 110th Congress (see the **Appendix**). S. 2205 would have required an alien applying for relief to show that he or she was under age 30 on the date of enactment.

that he or she had been admitted to an institution of higher education in the United States, or had earned a high school diploma or the equivalent in the United States.

Aliens applying for relief under S. 729 would be subject to special requirements concerning inadmissibility and deportability. The INA enumerates classes of inadmissible and deportable aliens. Under the INA, except as otherwise provided, aliens who are inadmissible under specified grounds, such as health-related grounds or criminal grounds, are ineligible to receive visas from the Department of State or to be admitted to the United States by the Department of Homeland Security.[16] The INA similarly enumerates classes of deportable aliens.[17] Under S. 729, however, only specified grounds of inadmissibility and deportability would apply to aliens seeking cancellation of removal/adjustment of status. To be eligible for cancellation of removal/ adjustment of status under S. 729, an alien would have to demonstrate that he or she was not inadmissible or deportable on INA criminal, security, smuggling, or international child abduction grounds. In addition, the alien would have to show that he or she had never been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

Aliens granted cancellation of removal under S. 729 would be adjusted initially to *conditional* permanent resident status. Such conditional status would be valid for six years and would be subject to termination. To have the condition removed and become a full-fledged LPR, an alien would have to submit an application during a specified period and meet additional requirements. Among these requirements, the alien would need to have demonstrated good moral character during the period of conditional permanent residence; could not have abandoned his or her U.S. residence; and would need either a college degree (or to have completed at least two years in a bachelor's or higher degree program) in the United States, or to have served in the uniformed services for at least two years.

S. 729 would place restrictions on the eligibility of aliens who adjust to LPR status under its provisions for federal student financial aid under Title IV of the Higher Education Act of 1965, as amended. Under that act, LPRs and certain other eligible noncitizens may receive federal financial aid. Aliens adjusting status under S. 729, however, would be eligible only for student loans, federal work-study programs, and services (such as counseling, tutorial services, and mentoring), subject to the applicable requirements. Unlike other LPRs, they would be ineligible for federal Pell Grants or federal supplemental educational opportunity grants.

H.R. 1751

The American Dream Act (H.R. 1751) is the same as the bill of the same name (H.R. 1275) introduced by Representative Berman in the 110th Congress (see the **Appendix**). H.R. 1751 is also similar to S. 729 (discussed above). Like the Senate bill, H.R. 1751 would repeal IIRIRA §505 and thereby eliminate the restriction on state provision of postsecondary educational benefits to unauthorized aliens. It would likewise enable eligible unauthorized students to adjust to LPR status in the United States through the cancellation of removal procedure. As under S. 729, aliens could apply for cancellation of removal without first being placed in removal proceedings, and there would be no limit on the number of aliens who could be granted cancellation of removal/adjustment of status.

[16] The INA grounds of inadmissibility are in INA §212(a).

[17] The INA grounds of deportability are in INA §237(a).

To be eligible for cancellation of removal/adjustment of status under H.R. 1751, an alien would have to demonstrate that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment, had not yet reached age 16 at the time of initial entry, and had been a person of good moral character since the time of application. Both bills also would require the alien to demonstrate that he or she had been admitted to an institution of higher education in the United States, or had earned a high school diploma or the equivalent in the United States. Unlike S. 729, however, H.R. 1751 would not require the alien to show that he or she was under age 35 on the date of enactment.

An alien applying for cancellation of removal/adjustment of status under H.R. 1751 also would have to demonstrate that he or she was not inadmissible or deportable on INA criminal, security, or smuggling grounds. Unlike under S. 729, the alien would not have to show that he or she was not inadmissible on international child abduction grounds and would not have to show that he or she had never been under a final administrative or judicial order of exclusion, deportation, or removal.

Aliens granted cancellation of removal under H.R. 1751, as under S. 729, would be adjusted initially to *conditional* permanent resident status. Such conditional status would be valid for six years and would be subject to termination. To have the condition removed and become a full-fledged LPR, an alien would have to apply during a specified period and meet additional requirements. Among these requirements, the alien would have had to demonstrate good moral character during the period of conditional permanent residence; could not have abandoned his or her U.S. residence; and would need either a college degree (or to have completed at least two years in a bachelor's or higher degree program) in the United States, or to have served in the uniformed services for at least two years.

H.R. 1751 would place temporary restrictions on the eligibility of aliens who adjusted to LPR status under its provisions, for federal student financial aid under Title IV of the Higher Education Act of 1965, as amended. Aliens adjusting status under the bill would be ineligible for federal Pell Grants and federal supplemental educational opportunity grants while in conditional permanent resident status. Once the conditional basis was removed and they became full-fledged LPRs, these restrictions would no longer apply. By contrast, under S. 774, as discussed above, these restrictions would be permanent.

Pro/Con Arguments

Those who favor DREAM Act proposals to repeal §505 and grant LPR status to unauthorized alien students offer a variety of arguments. They maintain that it is both fair and in the U.S. national interest to enable unauthorized alien students who graduate from high school to continue their education. And they emphasize that large numbers will be unable to do so unless they are eligible for in-state tuition rates at colleges in their states of residence.

Advocates for unauthorized alien students argue that many of them were brought into the United States at a very young age and should not be held responsible for the decision to enter the country illegally. According to these advocates, many of the students have spent most of their lives in the United States and have few, if any, ties to their countries of origin. They argue that these special circumstances demand that the students be granted humanitarian relief in the form of LPR status.

Those who oppose making unauthorized alien students eligible for in-state tuition or legal status emphasize that the students and their families are in the United States illegally and should be removed from the country. They object to using U.S. taxpayer money to subsidize the education of individuals (through the granting of in-state tuition rates) who are in the United States in violation of the law. They maintain that funding the education of these students should be the responsibility of their parents or their home countries. They further argue that it is unfair to charge unauthorized alien students in-state tuition, while charging some U.S. citizens higher out-of-state rates.

More broadly, these opponents argue that granting benefits to unauthorized alien students rewards lawbreakers and, thereby, undermines the U.S. immigration system. In their view, the availability of benefits, especially LPR status, will encourage more illegal immigration into the country.[18]

[18] For pro and con arguments, see, for example, Lourdes Medrano, "A Dream Deferred," *Arizona Daily Star*, May 28, 2006; Eunice Moscoso, "Bill to Aid Immigrant Students Could Pass in New Congress," Cox News Service, December 17, 2006; and Karina Gonzalez, "Legal Status for Students," *Chattanooga Times Free Press*, December 21, 2006.

Appendix. Action in the 109th and 110th Congresses

Bills to provide relief to unauthorized alien students by repealing the 1996 provision and enabling certain unauthorized alien students to obtain LPR status have been introduced in recent Congresses. In both the 107th and 108th Congresses, the Senate Judiciary Committee reported such bills, known as the DREAM Act.[19]

Legislation in the 109th Congress

In the 109th Congress, Senator Durbin introduced the Development, Relief, and Education for Alien Minors (DREAM) Act of 2005 (S. 2075), and Representative Lincoln Diaz-Balart introduced the American Dream Act (H.R. 5131). Both bills had bipartisan cosponsors.

Both S. 2075 and H.R. 5131 would have repealed IIRIRA §505 and thereby eliminated the restriction on state provision of postsecondary educational benefits to unauthorized aliens. Both bills also would have enabled eligible unauthorized students to adjust to LPR status in the United States through the cancellation of removal procedure. Cancellation of removal is a discretionary form of relief that an alien can apply for while in removal proceedings before an immigration judge. If cancellation of removal is granted, the alien's status is adjusted to that of an LPR. S. 2075 and H.R. 5131 would have allowed aliens to affirmatively apply for cancellation of removal without being placed in removal proceedings. There would have been no limit on the number of aliens who could be granted cancellation of removal/adjustment of status under the bills.

Among the eligibility requirements for cancellation of removal/adjustment of status in both S. 2075 and H.R. 5131, the alien would have had to demonstrate that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment, had not yet reached age 16 at the time of initial entry, and had been a person of good moral character since the time of application. The alien also would have been required to demonstrate that he or she had been admitted to an institution of higher education in the United States, or had earned a high school diploma or the equivalent in the United States.

The eligibility requirements for cancellation of removal/adjustment of status in S. 2075 and H.R. 5131 differed with respect to the applicable INA grounds of inadmissibility and deportability. S. 2075 and H.R. 5131 each specified which of the inadmissibility and deportability grounds would have applied to aliens seeking to adjust status under its provisions. A greater number of these grounds would have applied under S. 2075 than H.R. 5131. In addition, to be eligible under S. 2075, an alien could never have been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

An alien granted cancellation of removal under S. 2075 and H.R. 5131 would have been adjusted initially to *conditional* permanent resident status. Such conditional status would have been valid for six years and would have been subject to termination. To have the condition removed and become a full-fledged LPR, the alien would have had to submit an application during a specified period and meet additional requirements. These requirements would have included that the alien

[19] For further information and analysis, see archived CRS Report RL31365, *Unauthorized Alien Students: Legislation in the 107th and 108th Congresses*, by Andorra Bruno and Jeffrey J. Kuenzi.

had demonstrated good moral character during the period of conditional permanent residence; had not abandoned his or her U.S. residence; and had either acquired a college degree (or completed at least two years in a bachelor's or higher degree program) in the United States, or had served in the uniformed services for at least two years.

Both S. 2075 and H.R. 5131 would have placed restrictions on aliens who adjusted to LPR status under their provisions, with respect to eligibility for federal student financial aid under Title IV of the Higher Education Act of 1965, as amended. S. 2075 would have made aliens who adjusted to LPR status under the bill eligible only for student loans, federal work-study programs, and services (such as counseling, tutorial services, and mentoring), subject to the applicable requirements. Thus, they would not have been eligible for federal Pell Grants or federal supplemental educational opportunity grants. H.R. 5131 would have imposed similar restrictions on eligibility for federal student financial aid, but they would have been temporary. This bill would have made aliens adjusting status under its terms ineligible for federal Pell Grants and federal supplemental educational opportunity grants while they were in conditional permanent resident status. Once the conditional basis of their LPR status had been removed, these restrictions would no longer have applied.

The 109th Congress took no action on S. 2075 or H.R. 5131. S. 2075, however, was incorporated into the Comprehensive Immigration Reform Act of 2006 (S. 2611) as Title VI, Subtitle C. S. 2611 passed the Senate on May 25, 2006, but saw no further action. The major immigration bill passed by the House in the 109th Congress, the Border Protection, Antiterrorism, and Illegal Immigration Control Act (H.R. 4437), did not contain any provisions on unauthorized alien students.

Legislation in the 110th Congress

DREAM Act legislation was introduced in the 110th Congress, both in stand-alone bills and as part of larger comprehensive immigration reform measures. A selected number of these bills are described here. Neither the House or Senate passed any of these bills. As discussed below, the Senate failed to invoke cloture on two measures: S. 1639, a bipartisan comprehensive immigration reform proposal that included a DREAM Act title, and S. 2205, a stand-alone DREAM Act bill.

S. 774 and H.R. 1275

The DREAM Act of 2007 (S. 774), introduced by Senator Durbin, and the American Dream Act (H.R. 1275), introduced by Representative Berman, were similar, but not identical, measures. Both had bipartisan cosponsors. Both also were highly similar, respectively, to S. 2075 and H.R. 5131 in the 109th Congress.

S. 774 and H.R. 1275 would have repealed IIRIRA §505 and thereby eliminated the restriction on state provision of postsecondary educational benefits to unauthorized aliens. Both bills also would have enabled eligible unauthorized students to adjust to LPR status in the United States through the cancellation of removal procedure, discussed above. Under S. 774 and H.R. 1275, aliens could have affirmatively applied for cancellation of removal without being placed in removal proceedings. There would have been no limit on the number of aliens who could be granted cancellation of removal/adjustment of status under the bills.

To be eligible for cancellation of removal/adjustment of status under S. 774 or H.R. 1275, an alien would have had to satisfy a set of requirements. Under both bills, the alien would have had to demonstrate that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment, had not yet reached age 16 at the time of initial entry, and had been a person of good moral character since the time of application. Both bills also would have required the alien to demonstrate that he or she had been admitted to an institution of higher education in the United States, or had earned a high school diploma or the equivalent in the United States.

Other requirements for cancellation of removal/adjustment of status under S. 774 and H.R. 1275 concerned the INA grounds of inadmissibility and deportability. The eligibility requirements with respect to deportability from the United States were the same in both bills, while the requirements with respect to inadmissibility to the country differed somewhat. To be eligible for cancellation of removal/adjustment of status under either S. 774 or H.R. 1275, an alien would have had to demonstrate that he or she was not inadmissible or deportable on INA criminal, security, or smuggling grounds. S. 774 would have further required that the alien not be inadmissible on international child abduction grounds. In addition, to be eligible for cancellation of removal/adjustment of status under S. 774, an alien could never have been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

Aliens granted cancellation of removal under S. 774 or H.R. 1275 would have been adjusted initially to *conditional* permanent resident status. Such conditional status would have been valid for six years and would have been subject to termination. To have the condition removed and become a full-fledged LPR, an alien would have had to submit an application during a specified period and meet additional requirements. Among these requirements, the alien would have needed to demonstrate good moral character during the period of conditional permanent residence; could not have abandoned his or her U.S. residence; and would have needed either a college degree (or to have completed at least two years in a bachelor's or higher degree program) in the United States, or to have served in the uniformed services for at least two years.

Both S. 774 and H.R. 1275 would have placed restrictions on the eligibility of aliens who adjusted to LPR status under their provisions, for federal student financial aid under Title IV of the Higher Education Act of 1965, as amended. S. 774 would have made aliens who adjusted to LPR status under the bill eligible only for student loans, federal work-study programs, and services (such as counseling, tutorial services, and mentoring), subject to the applicable requirements. Thus, they would not have been eligible for federal Pell Grants or federal supplemental educational opportunity grants. H.R. 1275 would have imposed similar restrictions on eligibility for federal student financial aid, but they would have been temporary. Aliens adjusting status under the House bill would have been ineligible for federal Pell Grants and federal supplemental educational opportunity grants while in conditional permanent resident status. Once the conditional basis was removed and they became full-fledged LPRs, these restrictions would no longer have applied.

H.R. 1645

The Security Through Regularized Immigration and a Vibrant Economy Act of 2007, or the STRIVE Act of 2007 (H.R. 1645), introduced by Representative Gutierrez for himself and a bipartisan group of cosponsors, contained DREAM Act provisions in Title VI, Subtitle B. These provisions were nearly identical to S. 774, as discussed above.

H.R. 1221

The Education Access for Rightful Noncitizens (EARN) Act (H.R. 1221), introduced by Representative Gillmor, was a version of the DREAM Act. It was similar in some ways to the bills described above and significantly different in other respects. Like S. 774, H.R. 1275, and H.R. 1645, it would have enabled eligible unauthorized students to adjust to LPR status in the United States through the cancellation of removal procedure described above. Under H.R. 1221, as under these other bills, aliens could have affirmatively applied for cancellation of removal without being placed in removal proceedings, and there would have been no limit on the number of aliens who could be granted cancellation of removal/adjustment of status as specified.

Many of the eligibility requirements for cancellation of removal/adjustment of status—including the physical presence, age at entry, good moral character, and educational requirements—were the same under H.R. 1221, S. 774, H.R. 1275, and H.R. 1645. There were differences, however, with respect to the INA grounds of inadmissibility and deportability. Under H.R. 1221, as under these other bills, aliens would have been ineligible for cancellation of removal/adjustment of status if they were inadmissible or deportable on criminal, security, or smuggling grounds. They also would have been ineligible under H.R. 1221 if they were inadmissible on other grounds, including failure to attend a removal proceeding, or deportable on other grounds, including marriage fraud. In addition, aliens would have been ineligible for cancellation of removal/adjustment of status under H.R. 1221, as under S. 774 and H.R. 1645, if they had ever been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

As under S. 774, H.R. 1275, and H.R. 1645, aliens granted cancellation of removal under H.R. 1221 would have been adjusted initially to a *conditional* permanent resident status, which would have been valid for six years. To have the condition removed and become a full-fledged LPR, an alien would have had to submit an application during a specified period and meet additional requirements regarding good moral character, no abandonment of U.S. residence, and higher education or military service, among others, as described above in the "S. 774 and H.R. 1275" section.

At the same time, H.R. 1221 did not contain certain key provisions included in S. 774, H.R. 1275, and H.R. 1645. Unlike these other bills, it would not have placed restrictions on the eligibility of aliens who adjusted to LPR status under its terms, for federal student financial aid. Also unlike S. 774, H.R. 1275, and H.R. 1645, it would not have repealed IIRIRA §505 and thus would not have eliminated the restriction on state provision of postsecondary educational benefits to unauthorized aliens.

S. 1639

A version of the DREAM Act was included in a bipartisan comprehensive immigration reform bill (S. 1639) introduced by Senator Kennedy for himself and Senator Specter. The DREAM Act provisions comprised Title VI, Subtitle B, of S. 1639. The Senate failed to invoke cloture on the measure in June 2007, and the bill was pulled from the Senate floor.

The S. 1639 version of the DREAM Act was substantially different than the other DREAM Act bills in the 110th Congress. The DREAM Act provisions in S. 1639 were tied to other provisions in Title VI of the bill that would have enabled certain unauthorized aliens in the United States to obtain legal status under a new "Z" nonimmigrant visa category. Among the eligibility

requirements for Z status, an alien would have had to be continuously physically present in the United States since January 1, 2007, and could not have been lawfully present on that date under any nonimmigrant classification or any other immigration status made available under a treaty or other multinational agreement ratified by the Senate.[20]

S. 1639's DREAM Act title would have established a special adjustment of status mechanism for aliens who were determined to be eligible for, or who had been issued, probationary Z[21] or Z visas, and who met other requirements, including being under age 30 on the date of enactment, being under age 16 at the time of initial entry into the United States, and having either acquired a college degree (or completed at least two years in a bachelor's or higher degree program) in the United States or served in the uniformed services for at least two years. The Secretary of the Department of Homeland Security could have begun adjusting the status of eligible individuals to LPR status three years after the date of enactment.[22] Unlike under the other DREAM Act bills discussed above, DREAM Act beneficiaries under S. 1639 would not have adjusted status through the cancellation of removal procedure and would not have been adjusted initially to conditional permanent resident status.

In other respects, the DREAM Act adjustment of status provisions in S. 1639 were similar to those in the other DREAM Act bills before the 110th Congress. As under the other bills, there would have been no limit on the number of aliens who could have adjusted to LPR status under S. 1639. With respect to federal student financial aid, beneficiaries of the S. 1639 provisions, like beneficiaries under S. 774 and H.R. 1645, would have been eligible for student loans, federal work-study programs, and services (such as counseling, tutorial services, and mentoring), subject to the applicable requirements, but would not have been eligible for grants.[23]

S. 1639, like most other DREAM Act bills before the 110th Congress, coupled adjustment of status provisions for unauthorized students with provisions addressing IIRIRA §505, which, as explained above, places restrictions on state provision of educational benefits to unauthorized aliens. Unlike S. 774, H.R. 1275, and H.R. 1645, however, S. 1639 would not have completely repealed IIRIRA §505. Instead, §616(a) of S. 1639 proposed to make §505 inapplicable with respect to aliens with probationary Z or Z status.

S. 2205

Another version of the DREAM Act (S. 2205) was introduced in October 2007 by Senator Durbin. It contained legalization provisions similar to those in S. 774, H.R. 1275, H.R. 1645, and

[20] For further information about the proposed Z classifications, see CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno.

[21] Under S. 1639 §601, certain applicants for Z status would have been eligible to receive probationary benefits in the form of employment authorization pending final adjudication of their applications.

[22] Unlike Z aliens applying to adjust to LPR status under S. 1639 §602, beneficiaries of the DREAM Act provisions would not have been subject to a "back of the line" provision requiring them to wait to adjust status until immigrant visas became available to others whose petitions had been filed by a specified date. Under S. 1639 §602(a)(5), a Z alien could not adjust status to that of an LPR under §602 until 30 days after an immigrant visa became available for approved family-based or employment-based petitions filed before May 1, 2005. For further information about the permanent immigration system, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

[23] Aliens in probationary Z or Z nonimmigrant status who met certain requirements similarly would have been eligible for student loans, federal work-study programs, and services, but not grants.

H.R. 1221. Under S. 2205, eligible unauthorized students could have adjusted to LPR status through the cancellation of removal procedure. Aliens could have applied affirmatively for cancellation of removal without being placed in removal proceedings, and there would have been no limit on the number of aliens who could have been granted cancellation of removal/adjustment of status as specified.

To be eligible for cancellation of removal/adjustment of status under S. 2205, an alien would have had to demonstrate, among other requirements, that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment, had not yet reached age 16 at the time of initial entry, had been a person of good moral character since the date of enactment, and had been admitted to an institution of higher education in the United States or had earned a high school diploma or the equivalent in the United States. In addition, in a requirement not in S. 774, H.R. 1275, H.R. 1221, or H.R. 1645 but included in S. 1639, the alien would also have had to show that he or she was under age 30 on the date of enactment. The eligibility requirements in S. 2205 with respect to the INA grounds of inadmissibility and deportablity were similar to those in H.R. 1221, as discussed above. Also like H.R. 1221 and most of the other DREAM Act bills before the 110th Congress, S. 2205 would have made ineligible, aliens who had ever been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

An alien granted cancellation of removal under S. 2205 would have been adjusted initially to conditional permanent resident status. To have the condition removed and become a full-fledged LPR, the alien would have had to meet additional requirements, including acquisition of a college degree (or completion of at least two years in a bachelor's or higher degree program) or service in the uniformed services for at least two years.

A key difference between S. 2205 on the one hand and S. 774, H.R. 1275, and H.R. 1645 on the other was that S. 2205, like H.R. 1221, would not have repealed IIRIRA §505 and thus would not have eliminated the restriction on state provision of postsecondary educational benefits to unauthorized aliens. On October 24, 2007, the Senate voted on a motion to invoke cloture on S. 2205. The motion failed on a vote of 52 to 44.

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