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Unauthorized Alien Students: Issues and "DREAM Act" Legislation

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Summary

Immigration reform has been hotly debated in recent years. Broadly construed, it encompasses a range of issues, including the highly controversial question of legalizing large numbers of unauthorized immigrants in the United States. A historically less controversial, more targeted legalization proposal has been included in "DREAM Act" legislation, which seeks to enable certain unauthorized aliens who entered the United States as children to obtain legal immigration status. The name DREAM Act derives from the bill title, Development, Relief, and Education for Alien Minors Act, but it refers more broadly to a class of measures to provide immigration relief to unauthorized students, whether or not particular bills carry that name.

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 places restrictions on state provision of certain postsecondary educational benefits on the basis of state residence to aliens who are unlawfully present in the United States, unless equal benefits are made available to all U.S. citizens. This language is commonly understood to apply to the granting of "in-state" residency status for tuition purposes. In addition, unauthorized alien students are not eligible for federal student financial aid. More broadly, as unauthorized aliens, they typically are not legally allowed to work and are subject to being removed from the country.

Multiple DREAM Act 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. lawful permanent residents (LPRs) through an immigration procedure known as *cancellation of removal*. While there are other options for dealing with this population, this report deals exclusively with the DREAM Act approach in light of the considerable congressional interest in it.

In the 111th Congress, the House approved DREAM Act language as part of an unrelated bill, the Removal Clarification Act of 2010 (H.R. 5281). The Senate, however, failed to invoke cloture on a motion to agree to the House-passed DREAM Act amendment, and the bill died at the end of the Congress. The House-approved language differed in key respects from earlier versions of the DREAM Act. Bills to legalize the status of unauthorized alien students were again introduced in the 112th Congress.

In 2012, in the absence of congressional action on DREAM Act legislation, the Obama Administration announced that certain individuals who entered the United States as children and meet other criteria would be considered for relief from removal. Under a Department of Homeland Security (DHS) memorandum, these individuals can apply for consideration of deferred action for childhood arrivals (or DACA, as the program is known) and for employment authorization.

DREAM Act language was considered in the 113th Congress as part of comprehensive immigration reform legislation. The Senate-passed Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) included DREAM Act provisions. The same DREAM Act language was included in a related bill with the same name introduced in the House (H.R. 15). The DREAM Act provisions were integrated with the broader legalization provisions in these bills. As of this writing, no DREAM Act bills have been introduced in the 114th Congress.

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Introduction

Immigration reform has been hotly debated in recent years. Although many component issues are controversial, the question of legalizing large numbers of unauthorized immigrants in the United States has been a focal point of debate, galvanizing both support for and opposition to reform proposals. Historically less controversial has been legislation known as the "DREAM Act" that proposes a more targeted legalization program to enable certain unauthorized students[1] to obtain legal immigration status. The name DREAM Act derives from the bill title, Development, Relief, and Education for Alien Minors Act, but it refers more broadly to a class of measures to provide immigration relief to unauthorized alien students, whether or not particular bills carry that name.

While living in the United States, unauthorized alien children are able to receive free public education through high school.[2] 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)[3] discourages states and localities from granting unauthorized aliens certain "postsecondary education benefits." More broadly, as unauthorized aliens, they typically are unable to work legally and are subject to removal from the United States.[4]

Multiple bills have been introduced in recent Congresses to provide relief to unauthorized aliens who were brought into the United States as children. Prior to the 111th Congress, DREAM Act bills generally proposed to repeal the 1996 provision and to enable certain unauthorized alien students to adjust to legal permanent resident (LPR) status.[5] In the 111th Congress, the House approved a different type of DREAM Act measure as an amendment to an unrelated bill (H.R. 5281). Unlike earlier DREAM Act bills, the DREAM Act language added to H.R. 5281 did not include a repeal of the 1996 provision and proposed to grant eligible individuals an interim legal status prior to enabling them to adjust to LPR status. H.R. 5281 died at the end of the 111th Congress.

Bills to legalize the status of unauthorized alien students were again introduced in the 112th Congress. Some of these bills were similar to the measure approved by the House in the 111th Congress, while others included more traditional DREAM Act elements. In the 113th Congress, DREAM Act provisions were incorporated into larger comprehensive immigration reform bills, including the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), and were integrated with other legalization provisions in these bills. The Senate passed S.

[1] This report generally describes beneficiaries of the DREAM Act as "students" as a convenient shorthand, following common practice. As a technical matter, however, an individual would not have to be a currently enrolled student in order to be granted immigration relief under the DREAM Act. The eligibility requirements under the various DREAM Act proposals are detailed in this report.

[2] For a discussion of the legal basis for the provision of free public education, see CRS Report R43447, *Unlawfully Present Aliens, Higher Education, In-State Tuition, and Financial Aid: Legal Analysis*, by (name redacted).

[3] IIRIRA is Division C of P.L. 104-208, September 30, 1996. The provision is §505.

[4] 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.

[5] *Legal permanent residents*, also known as *immigrants* and *green card holders*, are noncitizens who are legally authorized to reside permanently in the United States.

744, but it was not considered in the House and died at the end of the 113th Congress. As of this writing, no DREAM Act bills have been introduced in the 114th Congress.[6]

Higher Education Benefits and Immigration Status

Under federal law, unauthorized aliens are neither entitled to nor prohibited from admission to postsecondary educational institutions in the United States. State laws vary and may prohibit enrollment in public postsecondary institutions. To gain entrance to available institutions, unauthorized aliens 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.[7] 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 rates.

1996 Provision

Section 505 of IIRIRA places restrictions on state provision of educational benefits to aliens who are not lawfully present in the United States. It directs that such aliens

> 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.[8] The conference report on the bill containing IIRIRA did not explain Section 505. (A conference report on a predecessor IIRIRA bill, which contained a section identical to Section 505, described the section as "provid[ing] that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education.")[9]

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[6] However, at least one bill has been introduced in the 114th Congress (Save America Comprehensive Immigration Act of 2015, H.R. 52) that includes special legalization provisions for children.

[7] 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, *2014-2015 Federal Student Aid Handbook*, Volume 1 (Student Eligibility), Chapter 2 (Citizenship), http://ifap.ed.gov/fsahandbook/attachments/1415Vol1Ch2.pdf.

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

[9] 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.

Although Section 505 does not refer explicitly to the granting of "in-state" residency status for tuition purposes and some have questioned whether in-state tuition is a "postsecondary education benefit" for purposes of Section 505, the discussion surrounding the provision has focused on the granting of in-state tuition rates to unauthorized aliens. A key issue has been whether it is possible to grant in-state tuition to resident unauthorized students (and not to all citizens) without violating Section 505. Various states have attempted to do this. For example, a California law passed in 2001 makes unauthorized aliens eligible for in-state tuition at state community colleges and California State University campuses. The measure, however, bases eligibility on criteria that do not explicitly include state residency. The requirements to qualify for in-state tuition under the California law include attendance at a California high school for at least three years and either graduation from a California high school "or attainment of the equivalent thereof." In addition, the law requires an unauthorized alien student to file an affidavit stating that he or she either 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, the law does not violate the Section 505 prohibition on conferring educational benefits on the basis of state residency. In November 2010, the California Supreme Court upheld the California law. At least one federal court also has considered whether state laws that authorize in-state tuition for unauthorized students violate Section 505.[10]

Deferred Action for Childhood Arrivals (DACA)

On June 15, 2012, in the absence of congressional action on DREAM Act bills, the Department of Homeland Security (DHS) issued a memorandum[11] announcing that certain individuals who were brought to the United States as children and meet other criteria would be considered for deferred action[12] for two years, subject to renewal. The eligibility criteria for deferred action for childhood arrivals, or DACA, as the initiative is known, are similar to those for relief in DREAM Act bills. These criteria include the following: (1) under age 16 at time of entry into the United States; (2) continuous residence in the United States for at least five years before June 15, 2012 (that is, since June 15, 2007); (3) in school, graduated from high school or obtained general education development certificate, or honorably discharged from the Armed Forces; (4) not convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and not otherwise a threat to national security or public safety; and (5) below age 31 on June 15, 2012. Consideration for DACA is limited to individuals who entered the United States without inspection or whose lawful immigration status expired as of June 15, 2012. Aliens granted deferred action can apply for

[10] For additional information, see "In-State" Tuition section in CRS Report R43447, *Unlawfully Present Aliens, Higher Education, In-State Tuition, and Financial Aid: Legal Analysis.*

[11] U.S. Department of Homeland Security, Memorandum to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services, John Morton, Director, U.S. Immigration and Customs Enforcement, from Janet Napolitano, Secretary of Homeland Security, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, June 15, 2012, http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf (hereinafter cited as DHS, *Exercising Prosecutorial Discretion*, June 15, 2012).

[12] Deferred action is "a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion." U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Consideration of Deferred Action for Childhood Arrivals Process, Frequently Asked Questions, http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions. For additional information on prosecutorial discretion and deferred action, see CRS Report R43782, *Executive Discretion as to Immigration: Legal Overview*, by (name redacted) and (name redacted); and CRS Report R42924, *Prosecutorial Discretion in Immigration Enforcement: Legal Issues*, by (name redacted) and (name redacted)

employment authorization. The DACA program, however, provides no pathway to a legal immigration status.[13] The program is administered by DHS's U.S. Citizenship and Immigration Services (USCIS).[14]

On November 20, 2014, DHS issued another memorandum[15] that directs USCIS to expand eligibility for the DACA initiative and make other changes to the program, as follows: (1) eliminate the "below age 31 on June 15, 2012" requirement; (2) advance the required starting date of continuous residence from June 15, 2007, to January 1, 2010; and (3) extend the initial grant and renewal periods for DACA and accompanying employment authorization from two to three years. In the memorandum, DHS directs USCIS to begin accepting applications under the expanded DACA parameters in 90 days.[16]

Estimates of Potential DREAM Act Beneficiaries

Traditional DREAM Act bills would enable certain unauthorized alien students to obtain LPR status in the United States through a two-stage process. Requirements to obtain conditional 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 become a full-fledged LPR (stage 2) typically include 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 2010, using data from the March 2006, March 2007, and March 2008 Current Population Survey (CPS) and other sources, the Migration Policy Institute (MPI) published estimates of the population potentially eligible for legal status under S. 729, a Senate DREAM Act bill introduced in the 111th Congress.[17] This bill would have established a two-stage process for unauthorized alien students to obtain LPR status. Aliens who met specified age, physical presence, educational, and other requirements could have first applied for conditional LPR status. After meeting additional requirements, including two years of either college or service in the uniformed

[13] DHS, *Exercising Prosecutorial Discretion*, June 15, 2012, p. 3. The memorandum states: "This memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law."

[14] For additional information about DACA, see CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*, by (name redacted).

[15] U.S. Department of Homeland Security, Memorandum to Leon Rodriguez, Director, U.S. Citizenship and Immigration Services, Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection, from Jeh Charles Johnson, Secretary of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents are U.S. Citizens or Permanent Residents, November 20, 2014.

[16] See CRS Report R43852, *The President's Immigration Accountability Executive Action of November 20, 2014: Overview and Issues* , coordinated by (name redacted).

[17] Jeanne Batalova and Margie McHugh, *DREAM vs. Reality: An Analysis of Potential DREAM Act Beneficiaries,* Migration Policy Institute, July 2010, http://www.migrationpolicy.org (hereinafter cited as MPI, *DREAM vs. Reality*). MPI is a self-described independent, nonpartisan, nonprofit think tank dedicated to the analysis of international migration.

services, they could have applied to have the condition on their status removed and become full-fledged LPRs.[18]

According to the MPI analysis, if this DREAM Act bill had been enacted, about 2.150 million individuals could have attempted to become LPRs under its provisions. This total included estimates of individuals who, on the date of enactment, would already have met 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, on the date of enactment, would have met some, but not all, of the requirements for conditional status. About 43% (934,000) of the estimated 2.150 million potential beneficiaries were children under age 18 in elementary or secondary school. The MPI report also included an estimate of the number of individuals who likely would have obtained LPR status under S. 729, if it had been enacted:

> If future behavior mirrors past trends, we project that approximately 38 percent [of the 2.15 million]—or 825,000—of the potential beneficiaries would actually achieve lawful permanent status under the legislation.[19]

As part of a 2010 analysis of the costs and likely impact of DREAM Act legislation before the 111th Congress, the Center for Immigration Studies (CIS) similarly estimated the number of potential DREAM Act beneficiaries using 2009 and 2010 CPS data.[20] Although CIS did not identify the bills at issue in its analysis, the bill requirements mentioned matched those in S. 729, as described above, and S. 3827, a similar bill introduced in the 111th Congress.[21] CIS estimated that there were some 1.998 million unauthorized aliens who would have met the residency and age requirements under the DREAM Act legislation, including 859,000 children under age 18. Of the 1.998 million potential beneficiaries, CIS estimated that 1.426 million individuals would have met the high school graduation, or equivalent, requirement for conditional LPR status (either on the date of enactment or at a later date). CIS, however, did not provide an estimate of the number of individuals who likely would have obtained LPR status under the DREAM Act.

Estimates of Potential DACA Beneficiaries

Since 2012, MPI has published estimates of the potentially eligible population under DHS's DACA policy based on guidelines issued by the agency. In August 2014, MPI estimated that some 2.1 million unauthorized aliens in the United States could be eligible for DACA relief.[22] As of September 30, 2014, a total of 610,375 requests for consideration of DACA had been approved.[23]

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[18] See description of S. 729 in the **Appendix**.

[19] MPI, *DREAM vs. Reality*, p. 17.

[20] Steven A. Camarota, *Estimating the Impact of the DREAM Act*, Center for Immigration Studies, December 2010, http://www.cis.org. CIS is a self-described independent, nonpartisan, nonprofit research organization with a "low-immigration, pro-immigrant" vision.

[21] See "S. 729 and S. 3827" in the **Appendix**.

[22] Jeanne Batalova, Sarah Hooker, and Randy Capps, *DACA at the Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action*, Migration Policy Institute, August 2014, http://migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action. These estimates update earlier MPI estimates. See *Ibid*., p. 25.

[23] Data available at http://www.uscis.gov. For additional information about DACA, see CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*.

Action in the 112th Congress

Similar, but not identical, Senate and House DREAM Act bills (S. 952, H.R. 1842) were introduced in the 112th Congress. Although there were differences between the bills, both were entitled the Development, Relief, and Education for Alien Minors (DREAM) Act of 2011. Both likewise took a step back from some of the revisions incorporated in the DREAM Act measure approved by the House in the 111th Congress[24] and included some more traditional DREAM Act provisions. By contrast, other House bills (H.R. 3823, H.R. 5869) more closely resembled the version of the DREAM Act approved by the House in 2010.

S. 952

S. 952, the DREAM Act of 2011, was introduced by Senator Richard Durbin with 32 original cosponsors. It would have repealed IIRIRA Section 505 and thereby eliminated this statutory restriction on state provision of postsecondary educational benefits to unlawfully present aliens. It also would have enabled eligible unauthorized students (including those in temporary protected status under the Immigration and Nationality Act (INA))[25] 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 that an alien can apply for while in removal proceedings before an immigration judge. If cancellation of removal is granted in removal proceedings, the alien's status is adjusted to that of an LPR. S. 952 would have enabled aliens to affirmatively apply for cancellation of removal without first being placed in removal proceedings, and it would have placed no limit on the number of aliens who could be granted cancellation of removal/adjustment of status under its provisions.

To be eligible for cancellation of removal/adjustment of status under S. 952, an alien would have had to demonstrate that he or she had been continuously physically present in the United States for five years immediately preceding the date of enactment of the act; was age 15 or younger at the time of initial entry; had been a person of good moral character since the time of initial entry; and was age 35 or younger on the date of enactment. The alien also would have needed 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.

Aliens applying for relief under S. 952 would have been subject to special requirements concerning inadmissibility. The INA enumerates classes of inadmissible 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.[26] S. 952

[24] See "House-approved DREAM Act Language and H.R. 6497" in the **Appendix**.

[25] As set forth in INA §244, TPS is blanket relief that may be granted under the following conditions: there is ongoing armed conflict posing serious threat to personal safety; a foreign state requests TPS because it temporarily cannot handle the return of nationals due to environmental disaster; or there are extraordinary and temporary conditions in a foreign state that prevent aliens from returning provided that granting TPS is consistent with U.S. national interests. See CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by (name redacted), (name redacted), and (name redacted).

[26] The INA grounds of inadmissibility are in INA §212(a). See CRS Report R43589, *Immigration: Visa Security Policies*, by (name redacted).

would have specified the grounds of inadmissibility applicable to aliens seeking relief.[27] An alien applying for cancellation of removal/adjustment of status under S. 952 would have had to show that he or she was not inadmissible on INA criminal, security, smuggling, student visa abuse, citizenship ineligibility, polygamy, international child abduction, or unlawful voting grounds.[28] Applicants also would have needed to satisfy requirements concerning convictions for offenses under federal or state law. In addition, they would have had to submit biometric and biographic data, which would have been used to conduct background checks, and they would have needed to register under the Military Selective Service Act, if applicable.

S. 952 would have required that applications for cancellation of removal/adjustment of status be filed not later than one year after the date the alien earned a high school diploma or the equivalent, or the effective date of final regulations, whichever was later. Under the bill, the Secretary of Homeland Security or the Attorney General could not have removed an alien with a pending application who established prima facie eligibility for relief. In addition, the Attorney General would have stayed the removal proceedings of an alien who was at least age five,[29] met all the eligibility requirements except high school graduation, and was enrolled in primary or secondary school.

Aliens granted cancellation of removal under S. 952 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 have demonstrated 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 to have earned a degree from an institution of higher education (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[30] for at least two years. Other requirements for removal of the condition would have included satisfaction of the English language and civics requirements for naturalization, submission of biometric and biographic data, and completion of background checks.

S. 952 would have placed restrictions on the eligibility of aliens who had conditional LPR status under the bill for federal student financial aid under Title IV of the Higher Education Act of 1965, as amended (see "Higher Education Benefits and Immigration Status"). Aliens with conditional LPR status would have been eligible only for student loans, federal work-study programs, and services (such as counseling, tutorial services, and mentoring), subject to the applicable requirements. They would have been ineligible for federal Pell Grants or federal supplemental educational opportunity grants.

[27] Unlike DREAM Act bills in prior Congresses, S. 952 did not specify grounds of deportability that would have applied to aliens seeking relief. The INA grounds of deportability are in INA §237(a).

[28] The Secretary of Homeland Security would have had the authority to waive specified grounds for humanitarian, family unity, or public interest purposes.

[29] This age five cutoff was a departure from past DREAM Act bills, which typically had limited protections from removal to potential beneficiaries who were at least age 12.

[30] As defined in Section 101(a) of Title 10 of the U.S. Code, the term *uniformed services* means the Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard); the commissioned corps of the National Oceanic and Atmospheric Administration; and the commissioned corps of the Public Health Service.

The time an alien spent as a conditional LPR would have counted for naturalization[31] purposes under S. 952. (Typically, an alien must be in LPR status for five years before he or she can naturalize.) Under S. 952, however, the condition on the LPR status would have had to have been removed before an alien could apply for naturalization.

H.R. 1842

H.R. 1842, the DREAM Act of 2011, was introduced by Representative Howard Berman with bipartisan cosponsorship. It was similar in many respects to S. 952, but different in some areas. Like the Senate bill, it would have repealed IIRIRA Section 505 and thereby eliminated this restriction on state provision of postsecondary educational benefits to unlawfully present aliens. It also would have enabled eligible unauthorized students to adjust to LPR status in the United States through cancellation of removal. Unlike S. 952, it would not have provided for adjustment to LPR status for aliens in temporary protected status. Like S. 952, it would have enabled aliens to affirmatively apply for cancellation of removal without first being placed in removal proceedings, and it would have placed no limit on the number of aliens who could be granted cancellation of removal/adjustment of status.

H.R. 1842 included many of the same requirements as S. 952 for cancellation of removal/ adjustment of status. Under the House bill, as under the Senate bill, an alien would have needed to demonstrate that he or she had been continuously physically present in the United States for not less than five years immediately preceding the date of enactment of the act; was age 15 or younger at the time of initial entry; had been a person of good moral character since the time of initial entry; 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. Under H.R. 1842, the alien would have needed to demonstrate that he or she was age 32 or younger on the date of enactment, compared to age 35 or younger under the Senate bill.

With respect to the INA grounds of inadmissibility, an alien applying for relief under H.R. 1842, as under S. 952, would have had to show that he or she was not inadmissible on INA criminal, security, smuggling, student visa abuse, citizenship ineligibility, polygamy, international child abduction, or unlawful voting grounds.[32] An additional ground of inadmissibility—the public charge ground (i.e., indigence)—would have applied under the House bill. As under S. 952, applicants for relief under H.R. 1842 would have had to submit biometric and biographic data, which would have been used to conduct background checks, and they would have needed to register under the Military Selective Service Act, if applicable. They would not have been subject to requirements like those in S. 952 related to convictions for offenses under federal or state law.

The provisions in H.R. 1842 concerning the application process and protection from removal for potential beneficiaries were very similar to those in S. 952. Like S. 952, the House bill would have required that applications be filed not later than one year after the date the alien earned a high school diploma or the equivalent, or the effective date of final regulations, whichever was later. Under the House bill, the Secretary of Homeland Security or the Attorney General could not have removed an alien with a pending application who established prima facie eligibility for

[31] Naturalization is the process through which an LPR becomes a U.S. citizen.

[32] The Secretary of Homeland Security would have had the authority to waive the criminal grounds for humanitarian, family unity, or public interest purposes.

relief. In addition, the Attorney General would have stayed the removal proceedings of an alien who was at least age 12 (compared to the age five cutoff in S. 952), met all the eligibility requirements except high school graduation, and was enrolled in primary or secondary school.

Aliens granted cancellation of removal under H.R. 1842, as under S. 952, 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 have demonstrated 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 to have earned a degree from an institution of higher education (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. Other requirements for removal of the condition would have included satisfaction of the English language and civics requirements for naturalization, submission of biometric and biographic data, and completion of background checks. The time an alien spent as a conditional LPR would have counted for naturalization purposes under H.R. 1842, but the condition on the LPR status would have had to be removed before an alien could apply for naturalization.

H.R. 1842 would have placed 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 who were in conditional permanent resident status would have been eligible for student loans, federal work-study programs, and services, but they would not have been eligible for federal Pell Grants and federal supplemental educational opportunity grants.

H.R. 3823

H.R. 3823, the Adjusted Residency for Military Service (ARMS) Act, was introduced by Representative David Rivera. It was similar in many respects to the DREAM Act language approved by the House as part of H.R. 5281 in the 111th Congress,[33] and it was significantly different than S. 952 and H.R. 1842. Unlike S. 952 and H.R. 1842, H.R. 3823 would not have repealed IIRIRA Section 505 and thus would not have eliminated this statutory restriction on state provision of postsecondary educational benefits to unlawfully present aliens. Unlike S. 952, H.R. 1842, and the House-approved measure in the 111th Congress, H.R. 3823 would have required unauthorized alien students to perform military service in order to obtain LPR status.

Under H.R. 3823, as under the House-approved DREAM Act language in the 111th Congress, an eligible alien could have gone through the cancellation of removal procedure and been granted conditional *nonimmigrant* status. Unlike under S. 952, H.R. 1842, and most other DREAM Act bills introduced in past Congresses, the alien's status would not have been adjusted to that of a conditional LPR.

Like most other DREAM Act bills, H.R. 3823 would have enabled an alien to affirmatively apply for cancellation of removal without first being placed in removal proceedings; would have

[33] See "House-approved DREAM Act Language and H.R. 6497" in the **Appendix**.

established a deadline for submitting initial cancellation of removal applications; and would have prohibited the Secretary of Homeland Security from removing an alien with a pending application who established prima facie eligibility for relief. Unlike other DREAM Act bills, H.R. 3823 did not include provisions about staying the removal proceedings of alien children who were enrolled in primary or secondary school and who met all the eligibility requirements for initial conditional status except high school graduation.

To be eligible for cancellation of removal/conditional nonimmigrant status under H.R. 3823, an alien would have needed 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 of the legislation; had not yet reached age 16 at the time of initial entry; had been a person of good moral character since the date of initial entry; and was younger than age 30 on the date of enactment. These requirements were the same as in S. 952 and H.R. 1842, except for the maximum age limitation on the date of enactment.[34] Under H.R. 3823, the alien also would have had 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, as under both S. 952 and H.R. 1842, and that he or she had never been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

H.R. 3823 specified the grounds of inadmissibility and deportability that would have applied to aliens seeking relief. An alien applying for cancellation of removal/conditional nonimmigrant status under the bill would have had to show that he or she was not inadmissible on INA health-related, criminal, security, public charge, smuggling, student visa abuse, citizenship ineligibility, polygamy, international child abduction, or unlawful voting grounds, and was not deportable on INA criminal, security, smuggling, marriage fraud, public charge, or unlawful voting grounds.[35] Applicants also would have needed to satisfy requirements concerning convictions for offenses under federal or state law. In addition, they would have had to submit biometric and biographic data, which would have been used to conduct background checks, and they would have needed to register under the Military Selective Service Act, if applicable.

As noted above, an alien whose removal was cancelled under H.R. 3823 would have been granted conditional nonimmigrant status, as opposed to conditional LPR status under S. 952 and H.R. 1842. Such conditional nonimmigrant status would have been valid for an initial period of five years and would have been subject to termination. Among the grounds for termination would have been failure to successfully enlist in the Armed Forces[36] within nine months after being granted conditional status.

Under H.R. 3823, an alien's conditional nonimmigrant status would have been extended for a second five-year period (for a total conditional period of 10 years) if the alien met the following requirements: demonstration of good moral character as a conditional nonimmigrant; compliance with the bill's inadmissibility and deportability provisions discussed above; no abandonment of

[34] Under H.R. 1842, an alien would have had to be age 32 or younger; under S. 952, an alien would have had to be age 35 or younger.

[35] The Secretary of Homeland Security would have had the authority to waive some of these grounds of inadmissibility and deportability for humanitarian, family unity, or public interest purposes.

[36] The term *Armed Forces*, as defined in Section 101(a) of Title 10 of the U.S. Code, means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

U.S. residence; and service in the Armed Forces on active duty for at least two years or service in a reserve component of the Armed Forces in active status for at least four years.

By comparison, under the House-approved measure in the 111th Congress, there also would have been two five-year conditional nonimmigrant status periods and beneficiaries would have had to meet a set of requirements to have their status extended for the second five-year period. With respect to the requirements for extension, however, the House-approved measure included different military service requirements than H.R. 3823 and, unlike H.R. 3823, would have given beneficiaries the option of completing two years of higher education instead of serving in the Armed Forces.

Another similarity to the DREAM Act language approved in the 111th Congress, and a difference from S. 952, H.R. 1842, and other DREAM Act bills, was that H.R. 3823 would have established surcharges on applications for relief. There would have been a surcharge of $525 on each application for cancellation of removal/conditional nonimmigrant status, and a surcharge of $2,000 on each application for an extension of conditional nonimmigrant status.

At the end of the second period of conditional nonimmigrant status, as specified, the alien could have applied for adjustment to LPR status. Among the requirements for adjustment of status, the alien would have needed to have demonstrated good moral character during the period of conditional nonimmigrant status; would have needed to be in compliance with the bill's inadmissibility and deportability provisions; and could not have abandoned his or her U.S. residence. In addition, applicants for adjustment of status under H.R. 3823, as under the House-approved version of the DREAM Act in the 111th Congress, would have needed to satisfy the English language and civic requirements for naturalization, satisfy any applicable federal tax liability, submit biometric and biographic data, and complete background checks. There would have been no limitation on the number of individuals eligible for adjustment of status.

Under H.R. 3823, aliens who adjusted status and met other requirements would have been eligible for naturalization after three years in LPR status. Unlike under S. 952 and H.R. 1842, the time spent in conditional status under H.R. 3823 (during which the aliens would have been conditional nonimmigrants) would not have counted for naturalization purposes.

H.R. 3823 also contained provisions on the treatment for other purposes of aliens who were granted conditional nonimmigrant status or LPR status under the bill. Like the version of the DREAM Act approved by the 111th Congress, H.R. 3823 would have directed that conditional nonimmigrants be considered lawfully present for all purposes except for provisions in the Patient Protection and Affordable Care Act (PPACA), as enacted by the 111th Congress,[37] concerning premium tax credits and cost sharing subsidies.[38] It also would have directed that aliens who adjusted to LPR status under the bill be deemed to have completed the five-year period required for LPR eligibility for certain types of federal public assistance, as established by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.[39] H.R. 3823

[37] P.L. 111-148, March 23, 2010.

[38] For information on the PPACA provisions, see CRS Report R43561, *Treatment of Noncitizens Under the Affordable Care Act*, by (name redacted) and (name redacted).

[39] PRWORA is P.L. 104-193, August 22, 1996. For information on current eligibility policy, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by (name redacted).

contained no provisions on the eligibility of aliens who were granted relief under its provisions for federal student financial aid.

H.R. 5869

H.R. 5869, the Studying Towards Adjusted Residency Status (STARS) Act, was also introduced by Representative Rivera. It was a counterpart bill to H.R. 3823 (discussed above) in that it would have provided a pathway to LPR status through higher education, while H.R. 3823 would have provided a pathway through military service. H.R. 5869, like H.R. 3823, was similar in many respects to the DREAM Act language approved by the House as part of H.R. 5281 in the 111th Congress,[40] and it was significantly different than S. 952 and H.R. 1842. Like H.R. 3823 and the DREAM Act language approved by the House in the 111th Congress, H.R. 5869 would not have repealed IIRIRA Section 505 and thus would not have eliminated this statutory restriction on state provision of postsecondary educational benefits to unlawfully present aliens.

Under H.R. 5869, as under H.R. 3823 and the House-approved DREAM Act language in the 111th Congress, an eligible alien could have gone through the cancellation of removal procedure and been granted conditional nonimmigrant status. Unlike under S. 952, H.R. 1842, and most other DREAM Act bills introduced in past Congresses, the alien's status would not have been adjusted to that of a conditional LPR.

Like most other DREAM Act bills, H.R. 5869 would have enabled an alien to affirmatively apply for cancellation of removal without first being placed in removal proceedings and would have prohibited the Secretary of Homeland Security from removing an alien with a pending application who established prima facie eligibility for relief. Unlike some other DREAM Act bills, H.R. 5869 did not include provisions about staying the removal proceedings of alien children who were enrolled in primary or secondary school and who met all the eligibility requirements for initial conditional status except high school graduation.

To be eligible for cancellation of removal/conditional nonimmigrant status under H.R. 5869, an 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 of the legislation; had not yet reached age 16 at the time of initial entry; and had been a person of good moral character since the date of initial entry. These requirements were the same as in S. 952 and H.R. 1842. Unlike these bills, H.R. 5869 also would have required an alien to demonstrate that he or she was younger than age 19 at the time of submitting the application, except as specified. In addition, as under H.R. 3823, the alien would have had to demonstrate that he or she had never been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

The educational requirements for conditional status in H.R. 5869 were different than in S. 952 and H.R. 1842 and in other traditional DREAM Act bills. Under H.R. 5869, the applicant would have had to demonstrate that he or she had earned a high school diploma or the equivalent in the United States, *and* had been admitted to an *accredited four-year* institution of higher education in the United States.

[40] See "House-approved DREAM Act Language and H.R. 6497" in the **Appendix**.

H.R. 5869 specified the grounds of inadmissibility and deportability that would have applied to aliens seeking relief. They were the same grounds as under H.R. 3823. An alien applying for cancellation of removal/conditional nonimmigrant status under H.R. 5869 would have to show that he or she was not inadmissible on INA health-related, criminal, security, public charge, smuggling, student visa abuse, citizenship ineligibility, polygamy, international child abduction, or unlawful voting grounds, and was not deportable on INA criminal, security, smuggling, marriage fraud, public charge, or unlawful voting grounds.[41] Applicants also would have needed to satisfy requirements concerning convictions for offenses under federal or state law. In addition, they would have had to submit biometric and biographic data, which would have been used to conduct background checks, and they would have needed to register under the Military Selective Service Act, if applicable.

An alien whose removal was cancelled under H.R. 5869 would have been granted conditional nonimmigrant status, as opposed to conditional LPR status under traditional DREAM Act bills. Such conditional nonimmigrant status would have been valid for an initial period of five years and would have been subject to termination. Among the grounds for termination would have been failure to enroll in an accredited four-year institution within one year after being granted conditional status or failure to remain enrolled in such an institution.

Under H.R. 5869, an alien's conditional nonimmigrant status would have been extended for a second five-year period (for a total conditional period of 10 years) if the alien met the following requirements: demonstration of good moral character as a conditional nonimmigrant; compliance with the bill's inadmissibility and deportability provisions discussed above; no abandonment of U.S. residence; and graduation from an accredited four-year institution of higher education in the United States.

Like H.R. 3823, H.R. 5869 would have established surcharges on applications for relief. There would have been a surcharge of $525 on each application for cancellation of removal/conditional nonimmigrant status, and a surcharge of $2,000 on each application for an extension of conditional nonimmigrant status.

At the end of the second period of conditional nonimmigrant status, as specified, the alien could have applied for adjustment to LPR status. Among the requirements for adjustment of status were demonstration of good moral character during the period of conditional nonimmigrant status, compliance with the bill's inadmissibility and deportability provisions, and no abandonment of the alien's U.S. residence. In addition, applicants for adjustment of status under H.R. 5869 would have needed to satisfy the English language and civic requirements for naturalization, satisfy any applicable federal tax liability, submit biometric and biographic data, and complete background checks. There would have been no limitation on the number of individuals eligible for adjustment of status. Aliens who adjusted status and met other requirements would have been eligible for naturalization after five years in LPR status.

H.R. 5869 also contained provisions on the treatment for other purposes of aliens granted conditional nonimmigrant status or LPR status under the bill. Like the version of the DREAM Act approved by the House in the 111th Congress and H.R. 3823, H.R. 5869 would have provided that conditional nonimmigrants were to be considered lawfully present for all purposes except for

[41] The Secretary of Homeland Security would have had the authority to waive some of these grounds of inadmissibility and deportability for humanitarian, family unity, or public interest purposes.

provisions in the Patient Protection and Affordable Care Act concerning premium tax credits and cost sharing subsidies. It also would have directed that aliens who adjusted to LPR status under the bill be deemed to have completed the five-year period required for LPR eligibility for certain types of federal public assistance, as established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Unlike other DREAM Act bills that offered a higher education route to LPR status, H.R. 5869 contained no provisions on the eligibility of aliens who were granted relief under its provisions for federal student financial aid.

Action in the 113th Congress

In the 113th Congress, DREAM Act provisions were incorporated into larger comprehensive immigration reform bills. Both the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), as passed by the Senate,[42] and a related House bill of the same name (H.R. 15), as introduced in the House, included the same DREAM Act language.

S. 744 and H.R. 15 proposed to establish a general legalization program for unauthorized aliens in the United States, with a special "DREAM Act" pathway to LPR status for certain aliens who entered the country as children.[43] Both bills would have established a new multi-step, multi-year process for eligible unauthorized aliens to transition into a provisional legal status and ultimately to lawful permanent residence. They would have added a new section (245B) to the INA, providing for adjustment to a newly created *registered provisional immigrant (RPI)* status. The Secretary of Homeland Security would have been authorized to grant RPI status to a foreign national who met the specified eligibility requirements, submitted an application in the specified period, and paid a fee and a penalty, if applicable.[44] Under S. 744 and H.R. 15, the initial period of RPI status would have been six years, which could have been extended if the alien remained eligible for RPI status and met specified requirements.

The RPI eligibility requirements in S. 744 and H.R. 15 stated that the alien: must be physically present in the United States on the date of submitting the RPI application; must have been physically present in the United States on or before December 31, 2011; and must have maintained continuous physical presence in the United States from December 31, 2011, until the date the alien is granted RPI status. Dependent spouses and children could have been classified as RPI dependents if they were physically present in the United States on or before December 31, 2012; had maintained continuous physical presence in the United States from that date until the date the principal alien was granted RPI status; and met the other RPI eligibility requirements.

Under S. 744 and H.R. 15, a foreign national would have been ineligible for RPI status: if he or she had a conviction for specified criminal offenses or for unlawful voting; if the Secretary of Homeland Security knew or had reasonable grounds to believe that the alien had engaged in, or was likely to engage in, terrorist activity; or if the alien was inadmissible under specified INA grounds, including health-related, criminal, security, smuggling, citizenship ineligibility, polygamy, international child abduction, unlawful voting, and renunciation of U.S. citizenship to

[42] See CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*, by (name redacted).

[43] Under both bills, there would have been a separate legalization program for certain agricultural workers.

[44] Unlike other DREAM Act bills, S. 744 and H.R. 15 would not have used the cancellation of removal procedure to confer legal status on beneficiaries.

avoid taxation grounds.[45] Aliens with LPR, refugee, asylum, or (with specified exceptions) legal nonimmigrant status on the date S. 744 was introduced also would have been ineligible.

Aliens seeking RPI status under S. 744 or H.R. 15 would have been required to pay both a processing fee and a penalty, but the penalty fee would not have applied to individuals who met the DREAM Act criteria described below. The bills also would have required aliens to satisfy any applicable federal tax liability prior to filing an RPI application, and to submit biometric and biographic data and clear national security and law enforcement background checks as part of the application process. An RPI applicant could have been subject to additional security screening at the discretion of the DHS Secretary. An alien granted RPI status or who appeared prima facie eligible for RPI status would have been provided with specified protections from removal under S. 744 and H.R. 15.[46]

S. 744 and H.R. 15 would have amended the INA[47] to establish a special pathway to LPR status for RPIs who entered the United States as children and satisfied a set of requirements similar to those traditionally included in DREAM Act bills. Under these provisions, the DHS Secretary could have adjusted the status of an RPI to that of an LPR if the alien demonstrated that he or she: had been an RPI for at least five years; was under age 16 at the time of initial entry into the United States; had earned a high school diploma, general education development (GED) certificate, or the equivalent in the United States; and had earned a degree from an institution of higher education or completed at least two years in good standing in a bachelor's or higher degree program in the United States, or had served in the uniformed services for at least four years. Such aliens would have been subject to English language and civics requirements and to national security and law enforcement screening. RPIs adjusting to LPR status under the DREAM Act provisions, however, would have been exempt from the $1,000 penalty applicable to RPIs adjusting status under other provisions. There would have been no limit on the number of aliens who could adjust status under the DREAM Act provisions in S. 744 and H.R. 15.

S. 744 and H.R. 15 included language on federal student assistance under Title IV of the Higher Education Act (see "Higher Education Benefits and Immigration Status") for RPIs who initially entered the United States before age 16. The bills specified that these aliens would only be eligible for student loans, federal work-study programs, and services. In addition, S. 744 and H.R. 15 would have repealed Section 505 of IIRIRA, which places certain restrictions on state provision of postsecondary educational benefits to unlawfully present aliens (see "1996 Provision").[48]

With respect to naturalization, an alien granted LPR status under the DREAM Act provisions in S. 744 and H.R. 15 would have been considered to have been lawfully admitted for permanent residence and to have been in the United States as an LPR (and therefore accumulating time toward the residency requirement for naturalization) during the period the alien was an RPI.[49]

[45] Certain other grounds would have applied in specified circumstances. The Secretary of Homeland Security would have had the authority to waive some applicable grounds of inadmissibility for humanitarian, family unity, or public interest purposes.

[46] For a discussion of these protections, see CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*.

[47] Both bills would add a new section (245D) to the INA.

[48] S. 744 and H.R. 15 also would have barred RPIs from receiving certain federally provided benefits. See CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*.

[49] Under the INA, with some exceptions, an alien must be an LPR for five years before he or she can naturalize.

With some exceptions, however, an alien could not have applied for naturalization while in RPI status.

Concluding Observations

Those who favor DREAM Act proposals to repeal Section 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. They further maintain that enacting the DREAM Act would have economic benefits for the United States by adding hundreds of billions of dollars to the economy and promoting new job creation.

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 also 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 and the rule of law. Taking issue with the economic benefit argument made by DREAM Act supporters, critics maintain that the legislation would cost money and would take jobs and college spots away from legal residents and give them to people who entered the United States illegally. In their view, the availability of benefits, especially LPR status, would encourage more unlawful immigration into the country.[50]

[50] For pro and con arguments, see, for example, Jerry Gonzalez and Phil Kent, "Should Congress Pass DREAM Act for Immigrant Children?," *Atlanta Journal-Constitution*, November 23, 2010; Stacy Teicher Khadaroo, "Why DREAM Act Passed House, But May Fall in Senate," *Christian Science Monitor*, December 9, 2010; and Beth Brown, "DREAM Act Youths Might Be Worth Billions to Texas," *San Antonio Express-News*, October 31, 2012.

Appendix. Action in the 111th Congress

Senator Durbin and Representative Berman introduced DREAM Act bills in the 111th Congress.[51] Senator Durbin introduced the Development, Relief, and Education for Alien Minors (DREAM) Act of 2009 (S. 729) and four versions of the Development, Relief, and Education for Alien Minors (DREAM) Act of 2010 (S. 3827, S. 3962, S. 3963, S. 3992). Representative Berman introduced the American Dream Act (H.R. 1751) and the Development, Relief, and Education for Alien Minors (DREAM) Act of 2010 (H.R. 6497). Representative Charles Djou introduced a related bill, the Citizenship and Service Act of 2010 (H.R. 6327).

On December 8, 2010, the House approved DREAM Act language as part of an unrelated bill, the Removal Clarification Act of 2010 (H.R. 5281). On December 18, 2010, the Senate failed to invoke cloture on a motion to agree to the House-passed DREAM Act amendment. The vote on the cloture motion was 55 to 41.[52]

House-Approved DREAM Act Language and H.R. 6497

The DREAM Act language approved by the House as part of H.R. 5281 was the same as the text of the DREAM Act of 2010 (H.R. 6497), as introduced by Representative Berman, and was similar to the DREAM Act of 2010 (S. 3992), as introduced by Senator Durbin. Like other DREAM Act bills in the 111th Congress, the House-approved DREAM Act amendment to H.R. 5281 would have enabled eligible unauthorized students to adjust to LPR status in the United States, although it would have established a different pathway than most of the other bills. Unlike some other DREAM Act bills introduced in the 111th Congress, the House-approved DREAM Act language would not have repealed IIRIRA Section 505 and thus would not have eliminated this statutory restriction on state provision of postsecondary educational benefits to unlawfully present aliens (see "1996 Provision").

Under the House-approved DREAM Act amendment to H.R. 5281, an eligible alien could have gone through the cancellation of removal procedure and been granted conditional nonimmigrant status. Unlike under most other DREAM Act bills in the 111th Congress, as discussed below, the alien's status would not have been adjusted to that of a conditional LPR. The House-approved version of the DREAM Act would have enabled an alien to affirmatively apply for cancellation of removal without first being placed in removal proceedings and also would have established a deadline for submitting initial cancellation of removal applications.

To be eligible for cancellation of removal/conditional nonimmigrant status under the House-approved DREAM Act amendment to H.R. 5281, an alien would have needed 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 of the legislation; had not yet reached age

[51] For DREAM Act legislation introduced in earlier Congresses, see CRS Report R43335, *Unauthorized Alien Students: Legislation in the 109th and 110th Congresses*, by (name redacted); and archived CRS Report RL31365, *Unauthorized Alien Students: Legislation in the 107th and 108th Congresses*, by (name redacted) and (name redacted).

[52] In addition, on December 9, 2010, following House action on H.R. 5281, there was another DREAM Act-related vote in the Senate. That day, the Senate voted, 59-40, to table a motion to proceed to a Senate DREAM Act bill, S. 3992. DREAM Act supporters voted for the tabling motion in an effort to clear the way for the Senate to consider the House-approved DREAM Act amendment to H.R. 5281.

16 at the time of initial entry; had been a person of good moral character since the date of initial entry; and was younger than age 30 on the date of enactment. The alien also would have had 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; and that he or she had never been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

The House-approved version of the DREAM Act specified the grounds of inadmissibility and deportability that would have applied to aliens seeking relief. An alien applying for cancellation of removal/conditional nonimmigrant status under the House-passed measure would have had to show that he or she was not inadmissible on INA health-related, criminal, security, public charge, smuggling, student visa abuse, citizenship ineligibility, polygamy, international child abduction, or unlawful voting grounds, and was not deportable on INA criminal, security, smuggling, marriage fraud, public charge, or unlawful voting grounds.[53] Applicants also would have needed to satisfy requirements concerning convictions for offenses under federal or state law. In addition, they would have had to submit biometric and biographic data, which would have been used to conduct background checks, and would have needed to register under the Military Selective Service Act, if applicable.

Aliens whose removal was cancelled under the House-approved DREAM Act amendment to H.R. 5281 would have been granted conditional nonimmigrant status. Such conditional status would have been valid for an initial period of five years and would have been subject to termination. An alien's conditional nonimmigrant status would have been extended for a second five-year period if the alien met the following requirements: demonstration of good moral character as a conditional nonimmigrant; compliance with the bill's inadmissibility and deportability provisions; no abandonment of U.S. residence; and either acquisition of a degree from an institution of higher education (or completion of at least two years in a bachelor's or higher degree program) in the United States, or service in the Armed Forces for at least two years.

Unlike other DREAM Act bills in the 111th Congress, the House-approved DREAM Act amendment to H.R. 5281 would have established surcharges on applications for relief. There would have been a surcharge of $525 on each application for cancellation of removal/conditional nonimmigrant status, and a surcharge of $2,000 on each application for an extension of conditional nonimmigrant status.

At the end of the second period of conditional nonimmigrant status, as specified, the alien could have applied for adjustment to LPR status. Among the requirements for adjustment of status, the alien would have needed to have demonstrated good moral character during the period of conditional nonimmigrant status; would have had to be in compliance with the bill's inadmissibility and deportability provisions; and could not have abandoned his or her U.S. residence. In addition, applicants for adjustment of status under the House-approved version of the DREAM Act would have needed to satisfy the English language and civic requirements for naturalization, satisfy any applicable federal tax liability, submit biometric and biographic data, and complete background checks. There would have been no limitation on the number of individuals eligible for adjustment of status.

[53] The Secretary of Homeland Security would have had the authority to waive some of these grounds of inadmissibility and deportability for humanitarian, family unity, or public interest purposes.

Aliens who adjusted status and met other requirements would have been eligible for naturalization after three years in LPR status. Unlike under DREAM Act bills in the 111th Congress that would have granted conditional LPR status, the time spent in conditional status under the House-approved DREAM Act language (during which the aliens would have been conditional nonimmigrants) would not have counted for naturalization purposes.

Like other DREAM Act bills in the 111th Congress, the House-approved DREAM Act amendment to H.R. 5281 would have placed restrictions on the eligibility of aliens who adjusted status under its provisions for federal student financial aid under Title IV of the Higher Education Act of 1965, as amended (see "Higher Education Benefits and Immigration Status"). Aliens granted conditional nonimmigrant status or LPR status 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. Unlike other LPRs, they would not have been eligible for federal Pell Grants or federal supplemental educational opportunity grants.

The House-approved version of the DREAM Act also contained provisions on the treatment for other purposes of aliens who were granted conditional nonimmigrant status or LPR status under the bill. It provided that conditional nonimmigrants would have been considered lawfully present for all purposes except for provisions in the Patient Protection and Affordable Care Act concerning premium tax credits and cost sharing subsidies.[54] It also provided that aliens who adjusted to LPR status under the bill would have been deemed to have completed the five-year period required for LPR eligibility for certain types of federal public assistance, as established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.[55]

H.R. 1751

The American Dream Act (H.R. 1751), as introduced by Representative Berman, would have repealed IIRIRA Section 505 and thereby eliminated this restriction on state provision of postsecondary educational benefits to unlawfully present aliens. It likewise would have enabled eligible unauthorized students to adjust to LPR status in the United States through the cancellation of removal procedure. Under H.R. 1751, aliens could have applied for cancellation of removal without first 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.

To be eligible for cancellation of removal/adjustment of status under H.R. 1751, an 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; had been a person of good moral character since the time of application; and was not inadmissible or deportable on INA criminal, security, or smuggling grounds. The bill 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. Unlike under most other DREAM Act bills in the 111th Congress, however, H.R. 1751 would not have required the alien to show that he or

[54] For information on the PPACA provisions, see CRS Report R43561, *Treatment of Noncitizens Under the Affordable Care Act*.

[55] For information on current eligibility policy, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*.

she was under a particular age on the date of enactment. H.R. 1751 also provided for expedited processing of applications without an additional fee.

Aliens granted cancellation of removal under H.R. 1751 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. The time an alien spent as a conditional LPR would have counted for naturalization purposes. Under H.R. 1751, however, the condition on the LPR status would have needed to be removed before the alien could apply for naturalization.

To have the condition removed and become a full-fledged LPR, an alien would have had 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 have needed either to have earned a degree from an institution of higher education (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 have placed 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 have been eligible for student loans, federal work-study programs, and services, but they would not have been eligible 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 and they would have been eligible for grants. By contrast, under the House-approved version of the DREAM Act and the various Senate bills, aliens who obtained full-fledged LPR status would have remained ineligible for grants.

H.R. 6327

The Citizenship and Service Act of 2010 (H.R. 6327), introduced by Representative Charles Djou, was similar to H.R. 1751 in many respects but noticeably different than that bill in others. Like some other DREAM Act bills but unlike H.R. 1751, H.R. 6327 would not have repealed IIRIRA Section 505. In addition, unlike all the other DREAM Act bills in the 111th Congress discussed here, H.R. 6327 would have required eligible aliens to serve in the uniformed services for at least two years in order to become full-fledged LPRs. Higher education would not have been an alternative to this service requirement under H.R. 6327.

Like H.R. 1751, H.R. 6327 would have enabled eligible unauthorized students to adjust to LPR status in the United States through the cancellation of removal procedure. Aliens could have applied for cancellation of removal without first 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.

To be eligible for cancellation of removal/adjustment of status under H.R. 6327, an 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 had 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.

As under H.R. 1751, an alien applying for cancellation of removal/adjustment of status under H.R. 6327 would have had to demonstrate that he or she was not inadmissible or deportable on INA criminal, security, or smuggling grounds. Also like H.R. 1751, H.R. 6327 provided for expedited processing of applications without an additional fee.

Aliens granted cancellation of removal under H.R. 6327, as under H.R. 1751, 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. The time an alien spent as a conditional LPR would have counted for naturalization purposes, but the conditional basis would have had to be removed before the alien could apply to naturalize.

To have the condition removed and become a full-fledged LPR, an alien would have had to apply during a specified period and meet additional requirements. Among these requirements, the alien would have had 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 have needed to have served in the uniformed services for at least two years. Unlike the other DREAM Act bills in the 111th Congress, H.R. 6327 would not have offered conditional residents the option of completing at least two years of higher education as an alternative to serving in the uniformed services.

H.R. 6327, like H.R. 1751, would have placed 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 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.

S. 729 and S. 3827

S. 729, the DREAM Act of 2009, and S. 3827, the DREAM Act of 2010, were highly similar bills introduced by Senator Durbin. Differences between S. 729 and S. 3827, as discussed below, concerned the applicable grounds of inadmissibility and the application process under the bills.

Both S. 729 and S. 3827 would have repealed IIRIRA Section 505 and thereby eliminated this restriction on state provision of postsecondary educational benefits to unlawfully present aliens. These bills also would have enabled eligible unauthorized students to adjust to LPR status in the United States through cancellation of removal. S. 729 and S. 3827 would have enabled aliens to affirmatively apply for cancellation of removal without first being placed in removal proceedings, and they would have placed 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 and S. 3827, an 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 of the act; 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 had not yet reached age 35 on the date of enactment. The alien also would have had 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.

Under both bills, the alien could not have been inadmissible on INA criminal, security, smuggling, or international child abduction grounds and could not have been deportable on INA criminal, security, or smuggling grounds; S. 3827 also would have made applicable the INA ground of inadmissibility barring practicing polygamists. In addition, under both bills, the alien would have had to show that he or she had never been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

S. 729 and S. 3827 included some different language concerning the application process. S. 729 included a provision, not included in S. 3827, to consider applications on an expedited basis without charging an additional fee. S. 3827 included a provision, not included in S. 729, establishing a deadline for submitting initial cancellation of removal/adjustment of status applications.

Aliens granted cancellation of removal under S. 729 or S. 3827 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 have demonstrated 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 to have earned a degree from an institution of higher education (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.

The time an alien spent as a conditional LPR would have counted for naturalization purposes under S. 729 and S. 3827. Under both bills, however, the condition on the LPR status would have to have been removed before an alien could apply for naturalization.

S. 729 and S. 3827 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. Aliens adjusting status under S. 729 or S. 3827 would have been 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 have been ineligible for federal Pell Grants or federal supplemental educational opportunity grants.

S. 3962 and S. 3963

S. 3962 and S. 3963 were two highly similar bills introduced by Senator Durbin, both entitled the DREAM Act of 2010. They differed from one another with respect to the cutoff age for eligibility for cancellation of removal/adjustment of status. S. 3962 and S. 3963 were also similar to S. 3827, another version of the DREAM Act of 2010, discussed in the preceding section. The main difference between S. 3962 and S. 3963 on the one hand and S. 3827 on the other was that the former bills would not have repealed IIRIRA Section 505 and thus would not have eliminated this statutory restriction on state provision of postsecondary educational benefits to unlawfully present aliens.

S. 3962 and S. 3963 would have enabled eligible unauthorized students to adjust to LPR status in the United States through cancellation of removal. Both bills would have enabled aliens to affirmatively apply for cancellation of removal without first being placed in removal proceedings, and they would have placed no limit on the number of aliens who could be granted cancellation of removal/adjustment of status. There would have been a deadline for submitting initial cancellation of removal/adjustment of status applications.

To be eligible for cancellation of removal/adjustment of status under S. 3962 and S. 3963, an 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 of the act, 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 included an eligibility requirement concerning the age of the alien on the date of enactment of the legislation. Under S. 3962, the alien would have had to demonstrate that he or she had not yet reached age 35 on the date of enactment. Under S. 3963, the alien would have had to demonstrate that he or she had not yet reached age 30 on the date of enactment. Under both bills, the alien also would have had 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.

As under S. 3827, an alien applying for relief under S. 3962 and S. 3963 would have had to show that he or she was not inadmissible on INA criminal, security, smuggling, polygamy, or international child abduction grounds, and was not deportable on INA criminal, security, or smuggling grounds. The alien also would have had 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. 3962 or S. 3963 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. The time an alien spent as a conditional LPR would have counted for naturalization purposes, but the conditional basis would have had to be removed before the alien could apply to naturalize.

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 have demonstrated 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 to have earned a degree from an institution of higher education (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. 3962 and S. 3963 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. Aliens adjusting status under S. 3962 or S. 3963 would have been 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 not have been eligible for federal Pell Grants or federal supplemental educational opportunity grants.

S. 3992

S. 3992, another version of the DREAM Act of 2010 introduced by Senator Durbin, would, like the other DREAM Act bills in the 111th Congress, have enabled eligible unauthorized students to adjust to LPR status in the United States. Its legalization provisions were similar to those in the House-approved DREAM Act amendment to H.R. 5281, although there were some differences between the measures. Also like the House-approved amendment, S. 3992 would not have repealed IIRIRA Section 505 and thus would not have eliminated this statutory restriction on state provision of postsecondary educational benefits to unlawfully present aliens.

Under S. 3992, as under the House-approved DREAM Act amendment to H.R. 5281, an eligible alien could have gone through the cancellation of removal procedure and been granted conditional *nonimmigrant* status. An alien could have affirmatively applied for cancellation of removal without first being placed in removal proceedings, and there would have been a deadline for submitting initial cancellation of removal applications. There would have been no limit on the number of aliens who could be granted cancellation of removal under S. 3992.

To be eligible for cancellation of removal/conditional nonimmigrant status under S. 3992, an alien would have had to meet requirements similar to those in the House-approved version of the DREAM Act. 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 of the legislation, had not yet reached age 16 at the time of initial entry, had been a person of good moral character since the date of initial entry, and was younger than age 30 on the date of enactment. The alien also would have had 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, and that he or she had never been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions. Unlike under the House-approved DREAM Act amendment to H.R. 5281, there would have been no surcharges on applications under S. 3992.

The same grounds of inadmissibility and deportability would have applied under S. 3992 as under the House-approved DREAM Act language. An alien applying for relief under this bill would have had to show that he or she was not inadmissible on INA health-related, criminal, security, public charge, smuggling, student visa abuse, citizenship ineligibility, polygamy, international child abduction, or unlawful voting grounds, and was not deportable on INA criminal, security, smuggling, marriage fraud, public charge, or unlawful voting grounds.[56] Applicants would further have needed to: satisfy requirements concerning convictions for offenses under federal or state law; submit biometric and biographic data, which would have been used to conduct background checks; and register under the Military Selective Service Act, if applicable.

Aliens whose removal was cancelled under S. 3992 would have been granted conditional nonimmigrant status. Such conditional status would have been valid for 10 years (compared to H.R. 5281's initial period of five years, which could have been extended for a second five-year period) and would have been subject to termination.

[56] The Secretary of Homeland Security would have the authority to waive some of these grounds for humanitarian, family unity, or public interest purposes.

For adjustment to LPR status, the conditional nonimmigrant would have had to submit an application during a specified period and meet requirements similar to those in other DREAM Act bills. Among these requirements, the alien would have needed to have demonstrated good moral character during the period of conditional nonimmigrant status; could not have abandoned his or her U.S. residence; and would have needed either to have earned a degree from an institution of higher education (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 Armed Forces for at least two years. Other requirements included satisfaction of the English language and civic requirements for naturalization, payment of federal taxes, submission of biometric and biographic data, and completion of background checks. There would have been no limitation on the number of individuals eligible for adjustment of status under S. 3992.

Aliens who adjusted status under S. 3992 and met other requirements would have been eligible for naturalization after three years in LPR status. The time spent in conditional status under S. 3992, as under the House-approved DREAM Act amendment to H.R. 5281 (during which the aliens would have been conditional nonimmigrants, as opposed to conditional LPRs under the other DREAM Act bills), would not have counted for naturalization purposes.

Like the House-approved DREAM Act amendment to H.R. 5281, S. 3992 would have placed restrictions on the eligibility of aliens who adjusted status under its provisions for federal student financial aid under Title IV of the Higher Education Act of 1965, as amended. Aliens granted conditional nonimmigrant status or LPR status under S. 3992 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. Unlike other LPRs, they would not have been eligible for federal Pell Grants or federal supplemental educational opportunity grants.

S. 3992 also contained provisions like those in the House-approved DREAM Act amendment to H.R. 5281 on the treatment for other purposes of aliens who were granted conditional nonimmigrant status or LPR status under the bill. It provided that conditional nonimmigrants would have been considered lawfully present for all purposes except for provisions in the Patient Protection and Affordable Care Act concerning premium tax credits and cost sharing subsidies. It also provided that aliens who adjusted to LPR status under the bill would have been deemed to have completed the five-year period required for LPR eligibility for certain types of federal public assistance, as established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

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