

Build Back Better Act: Immigration Provisions

November 29, 2021

The Build Back Better Act ([H.R. 5376, Rules Committee Print 117-18](#)), as passed by the House on November 19, 2021, contains five immigration-related provisions that would impact large numbers of both [unauthorized and legally present foreign nationals](#) (aliens).

Section 60001. Protections and Work Permits

Section 60001 would make [unauthorized aliens](#) eligible for [immigration parole](#) if they had entered the United States before January 1, 2011, and have resided continuously in the country since then.

Immigration parole is official permission to enter and remain temporarily in the United States for the parole grant duration. Parole is not formal admission under the Immigration and Nationality Act (INA) and does not grant beneficiaries [lawful permanent resident \(LPR\) status](#).

Prospective parolees would have to pay a fee, complete background checks, and would not be admissible under certain INA grounds (e.g., certain prior [criminal convictions](#), national security threat). Parolees would be eligible for a driver's license or state identification card and authorized to work in and travel outside the United States. Parole would be granted for five years, extendable until September 30, 2031, and would be irrevocable unless the parolee had become ineligible under Section 60001. An [estimated six to seven million](#) unauthorized aliens would qualify.

Section 60002. Recapture of Unused Immigrant Visa Numbers

In 1990, Congress established the current annual numerical limits for [family-sponsored](#) and [employment-based](#) immigrants. Processing issues and INA statutory language prevent some visas from being used each year, and they subsequently become unavailable. [Bills repeatedly have been introduced](#) to recapture them.

Section 60002 would amend the INA to make unused employment-based visa numbers available in the following fiscal year, as currently occurs for most unused family-sponsored visa numbers. Section 60002 would also recapture any remaining family-sponsored and employment-based immigrant visas that went unused from FY1992 through FY2021. Based on the bill language, CRS estimates that 247,000 family-sponsored and 194,100 employment-based visas remained unused at the end of FY2021.

Section 60002 would also recapture certain unused [diversity immigrant visas \(DVs\)](#) that foster immigration from countries sending relatively few U.S. immigrants. Because DV demand far exceeds the

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IN11811

INA's annual limit of 55,000 DVs, applicants are selected by lottery. To receive a visa, selectees must pass security and medical screenings and be interviewed in person before their selected fiscal year ends.

Section 60002 would allow DV selectees for FY2017 through FY2021 to remain eligible for DVs if they were unable to complete the visa application process or were barred from traveling to or entering the United States on a DV for certain reasons. Those reasons relate to (1) [four orders](#) issued by former President Donald Trump restricting entry of foreign nationals from certain countries and (2) restrictions or limitations on [visa processing](#), [visa issuance](#), [travel](#), or other effects of the Coronavirus Disease 2019 (COVID-19) public health emergency. CRS estimates Section 60002 would make fewer than 80,000 DVs available.

Section 60003. Adjustment of Status

Under current law, foreign nationals with approved immigrant petitions establishing a family relationship with a U.S.-based citizen or LPR relative, or foreign nationals who are sponsored by a U.S. employer, [acquire LPR status](#) in two ways. Those residing abroad [acquire an immigrant visa](#) at a U.S. Department of State consulate that allows them to travel and present themselves before an immigration officer at a U.S. port of entry. If admitted, they acquire LPR status. Alternatively, those residing in the United States on a [nonimmigrant \(temporary\) visa](#) apply for [adjustment of status](#) (AOS) with U.S. Citizenship and Immigration Services (USCIS).

Foreign nationals can receive an immigrant visa or apply to adjust status only if an immigrant visa number is immediately available. Because demand for immigrant visa numbers far exceeds INA limits, many foreign nationals residing in the United States are waiting to adjust to LPR status in two queues that include [almost four million family-sponsored](#) and [one million employment-based](#) prospective immigrants.

Section 60003 would allow such individuals to *file to adjust to LPR status* even if an immigrant visa number is not immediately available. Filers would have to pay a supplemental fee of \$1,500 (plus \$250 for every adjusting family member). Filing to adjust status does not grant LPR status, and filers still must wait for an immigrant visa number before actually adjusting to LPR status. However, filing provides benefits including continued lawful presence without maintaining nonimmigrant status; flexibility to travel abroad through [advance parole](#); and eligibility to work for any U.S. employer. Eligible spouses and children would receive identical benefits.

Section 60003 would allow the Department of Homeland Security to *grant LPR status* to certain AOS filers regardless of visa number availability. Eligible prospective immigrants would have to have filed their family-sponsored or employment-based immigration petitions at least two years prior to applying for LPR status under this provision. They would also have to pay a supplemental fee of \$2,500 for family-sponsored immigrants, \$5,000 for employment-based immigrants (except EB-5), and \$50,000 for [EB-5 immigrant investors](#).

Section 60003 would remain effective through September 30, 2031. Until then, current INA annual numerical limits for family-sponsored and employment-based immigrants would not apply to those using this provision. A large and indeterminate number of prospective immigrants might meet Section 60003 eligibility requirements, and it might alter the decision calculus for all foreign nationals overseas contemplating education, employment, or permanent residence in the United States over the provision's eligibility period (eight years). Therefore, CRS cannot estimate how many would acquire LPR status under Section 60003.

Section 60004. Additional Supplemental Fees

Section 60004 would establish nine supplemental USCIS immigration processing fees ranging from \$19 for entering nonimmigrants to \$15,000 for EB-5 immigrant investors. Fee revenues would be deposited into Treasury's general fund, not set aside solely for USCIS operations as is currently the case.

Section 60005. U.S. Citizenship and Immigration Services

Section 60005 would appropriate \$2.8 billion to USCIS in FY2022 to facilitate application adjudication related to this bill and reduce [case processing backlogs](#).

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