



Immigration Innovation Act, S. 169

Senators Hatch (R-UT), Klobuchar (D-MN), Rubio (R-FL), and Coons (D-DE) drafted bipartisan high skilled immigration reform legislation introduced January 29, 2013, the Immigration Innovation Act of 2013 (or I²), S. 169. I² proposes a means to reset the entire construct of high skilled immigration. The bill revises which immigrants are subject to numerical caps set by Congress for both H-1B status and green card status, promotes the portability of H-1B workers, addresses consistency in decision-making for employer-sponsored temporary workers (H-1Bs and L-1s), and advances the growth of the pipeline of American students in STEM fields by new employer fees for education funding to the states.

This high skilled bill will be subject to amendment before it is brought to the floor for a vote, but as introduced I² does the following to reform the high skilled legal immigration system:

H-1B Reform

- H-1B base cap increased by 50,000 from 65,000 to 115,000
- U.S. Masters and Doctorates (regardless of field) are exempt from H-1B cap, meaning that U.S. companies could offer employment to individuals they recruit from U.S. graduate schools
- Market regulator for H-1Bs so that cap goes up within FY if early filings exceed cap and cap goes down in following FY (but not below 115,000) if end of year FY usage is below cap

Green Card Reform

- EB green card quotas do not apply to spouses and minor children
- EB green card quotas do not apply to first preference immigrants in either the extraordinary ability or outstanding researcher categories
- Recapture non used EB FY92 going forward, with any unused EB in one FY being part of EB numerical limit for following FY
- Elimination of per country caps for EB (and raise to 15% for EB)
- EB green card quotas do not apply to immigrants earning US Masters or Doctorate in STEM field, with STEM definition per DHS OPT

Reforms Promoting Consistent Decisions, Worker Mobility and Travel

- DHS must defer to its prior adjudicative decisions regarding petitions for H-1B specialty occupation workers and L-1 intracompany transfer staff and may not deny an extension petition for the same foreign national with the same employer absent a determination of material error, substantial change, or new material information adversely impacting eligibility.
- 60 day grace period for H-1Bs between jobs, increasing the ability of foreign professionals to be portable in the economy, the best protection of a worker's rights
- Visa revalidation is returned for Es, Hs, Ls, Os, Ps (temporary worker programs requiring an individual to work in order to maintain status), facilitating travel
- Dual intent for F-1 students, allowing foreign students to study in the U.S. without being barred from taking steps indicating an interest to remain in the U.S. long term
- Spousal work authorization for H-4 spouses of H1B workers

Fees

- H-1B training fee increased from \$1,500 to \$2,500 (\$750 to \$1250 for businesses with 25 or less employees) and a new green card fee (for EB1, EB2, and EB3) of \$1,000 levied, with the new training fee funds and green card fees going to the states for improved K-12 STEM education, where any state can apply for a per capita portion of the money to be used to supplement, not supplant, state education funding for the purpose of pursuing state STEM-related education activities

Market regulator for the H-1B cap, as measured by early demand for H-1Bs

- If cap met within 45 days from first day petitions can be filed, additional 20,000 for that FY, which is added to new base cap for next year
- If cap met 46-60 days from first day petitions can be filed, additional 15,000 for that FY, which is added to new base cap for next year
- If cap met 61-90 days from first day petitions can be filed additional 10,000 for that FY, which is added to new base cap for next year
- If cap met 91-275 days from first day petitions can be filed (if cap is met prior to December 31st in each FY), additional 5,000 for that FY, which is added to new base cap for next year
- If total H1B petitions approved in FY (end of FY) is 20,000 or more under the cap for that year, then cap for following year declines by 20,000 but not below 115,000
- If total H1B petitions approved in FY (end of FY) is 15,000 or more under the cap for that year, then cap for following year declines by 15,000 but not below 115,000
- If total H1B petitions approved in FY (end of FY) is 10,000 or more under the cap for that year, then cap for following year declines by 10,000 but not below 115,000
- If total H1B petitions approved in FY (end of FY) is 5,000 or more under the cap for that year, then cap for following year declines by 5,000 but not below 115,000
- According to the introduced legislation, the H-1B cap could never exceed 300,000. We expect this cap ceiling to be significantly lowered. The highest the cap ceiling has ever been set is 195,000 and that cap has never been met. In the highest year of H-1B demand, FY2001, about 163,000 H-1B petitions subject to the cap were approved.

EB – Employment Based

FB – Family Based

FY – Fiscal Year

STEM – Science, Technology, Engineering and Mathematics

OPT – Optional Practical Training given to F-1 foreign students after completing a degree in the U.S. DHS currently has a process, pursuant to federal regulation, of recognizing certain STEM degree fields for eligibility for longer periods of OPT.

