Changes and current developments in US immigration law

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Agenda

- Update on proposed legislation
- Political environment
- Analysis of proposed legislation and a breakdown of the specific sections as it relates to US business
- Questions
S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act
Senate proposal

The bill proposes sweeping changes to nearly all aspects of the US immigration laws, focusing on four primary areas:

1. Border security
2. Path to citizenship
3. Interior enforcement
4. Immigration overhaul
Current political environment
Obama Administration

► President Barack Obama is committed to comprehensive immigration reform. The White House website says, “Our nation’s immigration system is broken. Fixing it is an economic and national security imperative.”

► The President’s plan is to build a system that continues efforts to secure US borders and cracks down on employers who hire undocumented immigrants.
The Border Security, Economic Opportunity, and Immigration Modernization Act was introduced by a bipartisan group of Senators, the “Gang of Eight”:

- Michael Bennet, D-CO
- Dick Durbin, D-IL
- Jeff Flake, R-AZ
- Lindsey Graham, R-SC
- John McCain, R-AZ
- Robert Menendez, D-NJ
- Marco Rubio, R-FL
- Charles Schumer, D-NY
Observers believe that the chances for a comprehensive immigration reform (CIR) bill to pass in the House are not high.

The Democratic-controlled Senate appears to have more support for CIR than the GOP-controlled House.

The House is facing pressures to produce a more conservative approach. The main focus will be on protecting the borders and protecting US jobs.
Analysis of proposed legislation and a breakdown of the specific sections as it relates to US business
Proposed legislation

► The proposed bill, if signed into law, would significantly improve the green card application process for many foreign workers by reducing backlogs and providing additional categories for qualification.
► At the same time, S. 744 would impose severe restrictions on employers of H-1B and L-1 workers, which could limit the use and the benefit of hiring individuals in a timely fashion.
Questions
Reference
On 16 April 2013, the Senate Gang of Eight introduced S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act.

The bill proposes sweeping changes to nearly all aspects of the US immigration laws focusing on four primary areas: border security, path to citizenship, interior enforcement and immigration overhaul.

On 21 May 2013 the Senate Judiciary Committee successfully voted the final bill as amended to the floor of the Senate on a 13-5 vote.

This bill passed in the Senate on 27 June 2013 and goes to the House next for consideration.
Obama Administration

The plan has four primary objectives:

1. Border security
2. Path to citizenship
3. Interior enforcement
4. Immigration overhaul
In a statement issued by House Speaker John Boehner (R-OH), Majority Leader Eric Cantor (R-VA), Majority Whip Kevin McCarthy (R-CA), Republican Conference Chairman Cathy McMorris Rodgers (R-WA) and Judiciary Committee Chairman Bob Goodlatte (R-VA), the following was noted:

“The House remains committed to fixing our broken immigration system, but we will not simply take up and accept the bill that is emerging in the Senate if it passes. Rather, through regular order, the House will work its will and produce its own legislation. Enacting policy as consequential and complex as immigration reform demands that both chambers of Congress engage in a robust debate and amendment process.”
Congress

Options for the House of Representatives:

- Create separate, piecemeal legislation
- Create a comprehensive bill that could be sent to a conference committee with the Senate’s bill
- Do nothing and let immigration reform die until the next session of Congress (after the 2014 elections)
- Consider the Senate bill directly
Proposed legislation

► Elimination of per country limits on employment-based immigrant visas (green cards)
► Exemptions from the annual limits
► Introduction of merit-based permanent residence program
► Increase in annual H-1B cap
► Restrictions on employment of H-1B and L-1 workers
► US worker recruitment for all H-1B employers
Proposed legislation

► Limitations on outplacement of H-1B and L-1 workers
► Wages for H-1B employees
► H-1B spousal work authorization
► Additional visa categories
► Expansion of E-verify and increased focus on compliance
Impact to US business

- Allows the filing of an I-129 H-1B petition before receiving a certified labor condition application (LCA), but requires that U.S. Citizenship and Immigration Services cannot approve the petition until it receives that certified application.

- Extends §214(n) portability to O-1 visa holders upon filing by a prospective employer of a new petition.

- Allows specialty occupation workers to enter the US pursuant to a free trade agreement, as long as Department of Labor (DOL) wage and related attestations are met; imposes a limit of 5,000 per fiscal year for each country.
Impact to US business

- Potentially decreases the total time required to obtain status as a lawful permanent resident (green card holder)
- Increases H-1B numbers, 110,000 to 180,000 based on complex market driven formula
- H-1B dependent employment authorization
- Eliminates impediments to worker mobility through:
  - Required deference to prior petitions absent any indication of gross errors
  - 60-day grace period after termination for H-1B visa holders
  - Visa revalidation in the US
  - Option to waive Department of State (DOS) interviews in certain situations
Impact to US business

► Provides that the period of stay and employment authorization of (A), (E), (G), (H), (I), (J), (L), (O), (P), (Q), (R) and NAFTA non-immigrants for whom petitions to extend have been timely filed is extended until the petition or application is adjudicated

► Requires visa issuing posts to conduct visa interviews expeditiously

► Establishes a goal that 80% of visa applicants will be interviewed within three weeks of the submission of the visa application

► Possibly expands the visa waiver program
Impact to US business

► Directs exploration of expansion of visa processing in China and Brazil with the goal of maintaining visa interview wait times under 15 days on a consistent, year-round basis, taking into account spikes in demand and the protection of US citizens

► Creates a temporary 90-day non-immigrant visa for executives and managers to oversee operations of their related companies; creates a temporary 180-day non-immigrant visa for employees of multinational corporations to observe operations of their related company and to participate in select activities
Impact to US business

Creates INVEST non-immigrant category (X visa) by amending §101(a)(15) to add (x) for “qualified entrepreneur” who in the three years before application has had venture capital or other investors devote $100,000 to the alien’s business or the alien’s business has resulted in the creation of no fewer than three jobs and generated $250,000 in annual revenue arising from business conducted in the US.
Impact to US business

 createStore a new §203(b)(6) (EB-6) immigrant investor visa, capped at 10,000 per year, for “qualified entrepreneur” aliens, defined as an alien with a significant ownership in a US business, who is employed as a senior executive in the business, and who had a significant role in the founding or early stage growth of the enterprise.

- Increases compliance measures, such as expansion of E-verify, resulting in increased administrative cost/burden for US employers and possibly opening up US employers to increased civil and criminal penalties for compliance violations, technical and other
Impact to US business

- Adds additional H-1 and L-1 visa fees ($1,250 for employers with less than 25 employees and $2,500 for employers with more than 25 employees)
- Requires H-1B dependent employers with 50 or more employees, for each fiscal year starting in 2015, years 2015–24, to pay an extra $5,000 in fees if 30% to 50% of its employees are H-1B or L-1B specialized knowledge, and in fiscal years 2015–17 to pay an extra $10,000 if 50% to 75% are H-1B or L-1B specialized knowledge
- Adds a $500 fee for PERM
- Increases wage required for H-1b employees (tier 2 of a 3 tier system)
Impact to US business

Institutes a recruitment requirement for all H-1Bs that includes posting the position before filing a labor condition application for 30 days on a DOL website to be designed for the purpose (The posting includes a detailed description of wage ranges, job requirements and the process for applying for the job. It requires that the employer offers the job to any US worker applicant who is equally or better qualified than the H-1B. H-1B dependent employers would need to also recruit under industry-wide recruitment standards and offer compensation at least as great as that offered to the H-1B.)
Impact to US business

► Adds a non-displacement provision for non-H-1B dependent employers, requiring that the employer attest that for 90 days before and after the LCA filing, it has not and will not displace a US worker (not applicable if the number of US workers employed by the non-H-1B dependent employer in the same O*NET (or similar database) job zone has not decreased in the past year)

► For H-1B dependent employers, makes the look-back/look-forward period 180 days and makes them ineligible for the exception
Impact to US business

► Prohibits outplacement, outsourcing, leasing or “otherwise contracting for services or placement of” H-1Bs by H-1B dependent employers; requires non-H-1B dependent employers who outplace, etc., to pay a fee of $500 per outplaced worker

► Defines an H-1B dependent employer as:
  ► A company with 25 or fewer full-time equivalent employees (FTEs) in US that employs more than seven H-1Bs
  ► A company with 26–50 FTEs that employs more than 12 H-1Bs
  ► A company with 51 or more FTEs and 15% of them are H-1Bs
Impact to US business

- Prohibit employers (other than an educational or research employer) that employ 50 or more employees in the US from having more than 75% of the employees be H-1B or L-1 in fiscal 2015, 65% in fiscal 2016 and 50% in each fiscal year after fiscal year 2016 (does not count intending immigrants as defined in Section 4211 as H-1B or L-1 for these purposes)

- Requires all H-1B employers to submit an annual report to Department of Homeland Security (DHS) that includes W-2 tax forms for each H-1B employed during the previous year
Impact to US business

- Changes the timeframe in which DOL is required to certify an LCA from 7 to 14 days
- Authorizes a DOL investigation if a review of the LCA identifies evidence of fraud or misrepresentation of a material fact
- Requires DOL to conduct annual compliance audits of each employer with more than 100 employees if more than 15% of the employees are H-1Bs, and requires a publicly available executive summary of the audits
- Increases fines for LCA violations
Impact to US business

► Allows DOL to initiate an investigation of an H-1B, eliminating the requirement for reasonable cause to initiate and eliminating the requirement for certification of reasonable cause

► J–1 Visa Exchange Visitor Program fee: imposes a fee of $500, to be paid by the employer to DOS, for each non-immigrant for whom the employer submits a J-1 petition

► F-1 visa fee: imposes a $100 fee on each non-immigrant admitted under 101(a)(15)(F)(i), to be paid to DHS

► Imposes a fee of $5 on each non-immigrant admitted under Section 101(a)(15)(B)