

## ImmigrationWorks USA



*The business voice on immigration*

# COMPREHENSIVE IMMIGRATION REFORM PICKING UP WHERE WE LEFT OFF

No one knows who invented the term, but sometime in 2003 lawmakers and advocates in Washington began talking about what they called “comprehensive immigration reform.” The first bills were sketchy – more concept papers than workable legislation. Then in late 2004, staffers from four Hill offices – Sens. Edward Kennedy (D-MA) and John McCain (R-AZ), Reps. Jeff Flake (R-AZ) and Luis Gutierrez (D-IL) – went into a backroom and emerged six months later with the legislation that became known as McCain-Kennedy: in many ways, the blueprint for all comprehensive reform bills that have been considered since.

What exactly was included in a comprehensive package went through innumerable changes as version after version was proposed in Congress between 2005 and 2010. As with any legislation, the details were critically important: a few small choices could make or break a measure politically – and also make the difference between a bill that worked to solve the problem and one that did not, as the 1986 Immigration Reform and Control Act had not solved it two decades before. But the essence of comprehensive reform – what supporters sometimes call the architecture – remained largely consistent through the years, and it is still the starting point for any serious discussion of what would constitute a meaningful immigration overhaul.

This architecture consisted of three pillars: enforcement, legalization and worker visas. In the eyes of most reformers, these were three moving parts of a single engine – each indispensable to the functioning of the others and of the machine as a whole.

### **PILLAR ONE – ENFORCEMENT**

For many Americans, the most important part of the proposal was enforcement, both on the border and in the workplace. The events of 9/11 crystallized a public consensus that had been forming for more than a decade of seemingly unlimited illegal entry across the southern frontier: it was time to get control. And all the bills proposed in the early 2000s included extensive measures aimed at securing the border.

Though more than double the number on duty just a decade before, 10,000 Border Patrol Agents no longer seemed adequate to monitor 2,000 miles of open frontier. The stretches of border where a string of barbed wire or no marking at all had long sufficed no longer seemed acceptable – voters wanted these gaps taken in hand, whether with a physical barrier or more manpower. More modern technology was part of the package – cameras, sensors, airborne drones. So was a tougher attitude toward illegality and stiffer punishments across the board. True or not, as the public saw things, the government had

been inept or looking the other way for decades – how otherwise could millions of poor, uneducated illegal immigrants have managed simply to walk across the border? And the first promise of comprehensive reform was to end that charade with whatever policing and other tools were necessary, both on the border and in the interior.

***In the workplace.*** Equally important and part of the same mandate was worksite enforcement. Recognizing that most unauthorized immigrants came across the border looking for work, the 1986 Immigration Reform and Control Act had made it illegal for U.S. employers to “knowingly” hire them. IRCA introduced an array of measures – reporting requirements, financial and other penalties – to support the new ban. But the statute failed to create any means for businesses to determine if their employees were legal or not – no work authorization card, no computerized government database, not even a telephone help line. And after a proliferation of inexpensive forged identity documents hit the black market in the early 1990s, the immigration service all but gave up trying to make the worksite prohibition stick.

By 2004, worksite infractions were the service’s lowest enforcement priority. That year, agents sent out exactly three notices to noncompliant employers. But in fact, most immigration policy experts agree: far more than the border, the worksite is the place to effect meaningful control. That’s where unauthorized immigration pays off, for the immigrant and the employer, and any muscle applied there will go much further than a comparable effort on the border. Lawmakers on both sides of the aisle understand that the key to controlling illegal immigration is creating a means to verify the identities and immigration status of new hires. And every comprehensive proposal of the past decade has mandated some version of the program now known as E-Verify, a government-run, web-based system that allows employers to confirm the identities and work eligibility of new employees.

***New developments.*** Thinking about enforcement has evolved somewhat since the debate about comprehensive reform began a decade ago. Lawmakers continue to develop new tools – and abandon others. E-Verify has improved dramatically. As recently as 2006, error rates exceeded 10 percent; today according to the Department of Homeland Security, fewer than 1 percent of authorized workers receive an inaccurate response. A full one-third of the states require some or all employers to enroll in the program, and many companies that have – particularly larger businesses with fully staffed human resources departments – say they are comfortable using the system and grateful for the added certainty it provides.

Border security is also more sophisticated. One of the most effective measures introduced in the last few years: it turns out that even slightly more stringent prosecution for illegal entry – the possibility of a night in jail or a hearing before a judge – pays big dividends in deterring would-be violators. Among the biggest enforcement failures: the multi-billion dollar virtual fence, known as SBInet, contracted out to Boeing in 2006 and cancelled abruptly in early 2011.

Yet another new technology option, not yet tested but popular with both Democratic and Republican lawmakers: a biometric work authorization card to be used in concert with government databases to create a national system of foolproof employee verification.

Some of this new technology will be controversial – expensive and disconcerting to many Americans. But the basics of what needs to be done to enhance enforcement, both on the border and in the workplace, have been understood and largely agreed upon for many

years. What's disputed is whether enforcement alone will solve the problem, bringing the border under control and ending illegal immigration. Supporters of comprehensive reform, liberal and conservative, agree – it will not.

## **PILLAR TWO – AN ANSWER FOR THE UNAUTHORIZED**

The second and most controversial pillar of comprehensive reform is its proposal for the millions of unauthorized immigrants already living and working in the U.S.

To reform opponents, any effort to accommodate this group is amnesty: sanction for their illegal entry and worse, an open invitation to millions of others like them who would breach our borders in the future – an unmistakable signal that we will look the other way. Many if not most reform proponents also oppose amnesty: what most argue for is giving violators of what they see as bad or unrealistic law a chance to earn restitution.

For some supporters, this is a matter of compassion; for others, simple pragmatism. After all, no matter what your political values, the status quo is unacceptable. Eleven million people living among us but not part of our society are a mockery of the law, a festering security risk and a violation of our most basic democratic values. Deporting a group this size – or even a substantial portion of it – is out of the question. If the cost, estimated in the hundreds of billions of dollars, didn't stop us, the media images soon would.

In recent years, reform opponents have been advancing a third option: what they call "attrition through enforcement" – cracking down so harshly with state and federal enforcement measures that unauthorized immigrants leave the country voluntarily. This approach has been implemented in several states, including Arizona and Alabama – and many immigrants have fled, with severe consequences for the local economy. But even in Arizona and Alabama, the effects of attrition through enforcement have been limited. Many unauthorized immigrants have lived in the U.S. for more than a decade. They're married to Americans, have U.S.-citizen children, own homes or businesses in the U.S. and are not likely to leave, even under sustained pressure.

***Remaining questions.*** As with the other two pillars of comprehensive reform, significant questions remain about how to approach the 11 million. Proponents differ among themselves. Is the ultimate goal for the unauthorized immigrants in the U.S. citizenship or merely legalization? What should be required of those making the transition – what combination of learning English, working, paying taxes, obeying the law and how big a fine? How long should they be required to wait in order to first accommodate other would-be immigrants who made a different choice – who applied for visas years ago and are waiting patiently outside the country in a lawful queue? Should all the unauthorized in the U.S. be eligible and all on the same conditions? Or should young people brought to U.S. illegally as children be given an easier path?

Polls showed widespread support for President Obama's June 2012 memo granting work permits to many of these young people, known as "Dreamers," after the bipartisan DREAM Act first considered in Congress in 2001. Several leading Republicans – including presidential candidate Mitt Romney and Florida Senator Marco Rubio – have also floated proposals to provide relief to Dreamers. As of December 2012, some 400,000 young people have applied to take advantage of the Obama order.

At the high point of the last immigration debate, in 2006 and 2007, even conservative reform proponents favored citizenship for all or most of the 11 million, and many advocates still consider anything less a travesty.

### **PILLAR THREE – FIXING THE SYSTEM SO IT WORKS FOR THE FUTURE**

The third pillar of the comprehensive architecture is the least discussed but arguably the most important: fixing the legal immigration system so workers we need to sustain a vibrant economy can enter the country lawfully in years to come.

Fixing the legal system is an economic imperative. Highly skilled immigrants, knowledge workers, entrepreneurs and unskilled immigrants who fill jobs for which there not enough willing and able U.S. workers: all are essential to America's future competitiveness. Fixing the legal system to bring our annual intake more into line with our labor needs is also an essential piece of gaining the control the public craves. As we learned the hard way in the aftermath of the 1986 Immigration Reform and Control Act, without fixes of this kind, the problems of the past decade are all but sure to recur in years to come. If we don't create a legal path, needed workers will be tempted to enter illegally. Meaningful enforcement will be difficult if not impossible, and a decade or two from now, the U.S. is likely to find itself grappling with yet another large unauthorized population.

The driving force is economics. As no nation today can ignore globalization, so no nation produces exactly the mix it needs of skilled, unskilled and seasonal workers. In the U.S., we need additional manpower at both the top and bottom of the job ladder. In 1960, half of the native-born men in the U.S. workforce had dropped out of high school and were doing unskilled work; today, the figure is less than 10 percent – yet if anything, thanks to changing consumer demands and industrial restructuring, our need for unskilled labor is growing. So too at the top of the educational pyramid: the U.S. workforce alone is simply not educated enough to sustain a globally competitive knowledge economy.

The economic downturn diminished America's demand for labor somewhat – but only temporarily and not in all sectors. And hard times did nothing to reverse the fundamental trends – globalization, the new economy, declining fertility rates and rising educational attainment – that drive our changing workforce needs. The good news: because they are generally unlike U.S. workers – either more or less educated and with different skills – most foreign workers complement rather than compete with Americans. Even unskilled workers attract capital and generate economic growth that would not occur if the labor was not available. Counterintuitive as it sounds, even unskilled immigrants create jobs for more skilled Americans and sustain economic activity up and downstream in the economy.

***Aligned with the market, not fighting it.*** Immigrants entering the country in search of work are highly responsive to market conditions. In the boom years of the last decade, they flocked to cities and states where the economy was flourishing and largely avoided areas that missed out on the new prosperity. Days after Hurricane Katrina, thousands of immigrant workers descended on New Orleans: a just-in-time labor force without which the clean-up would have dragged on for many years. Then, when the downturn hit, the flow of workers across the southern border slowed abruptly. The number coming north in 2011 was less than a quarter of the number that entered the country in search of work in 2006 and 2007 when the economy was expanding. This year, for the first time in six years, the number crossing the border is rising again – a sign that recovery is gaining momentum.

The third goal of comprehensive reform is to bring our legal intake of foreign workers, skilled and unskilled, into sync with these fluctuating labor needs. This is an economic imperative, but also essential to restore the rule of law and avoid the social and human costs associated with unlawful immigration. The best antidote for illegal immigration is a legal immigration system that works. Even the toughest immigration enforcement cannot hope to succeed as long as our legal quotas remain as unrealistically low as they were in the boom years. Without adequate visas for the workers we will need to sustain and grow the economy in years ahead, the two other pillars of comprehensive reform are temporary stopgaps at best – they will not create a workable, orderly or legal system, let alone one that can sustain the U.S. economy.

***New thinking.*** With regard to this third pillar too, the devil is in the details – and thinking has grown more sophisticated over the years that Congress has been debating immigration. In 2006 and 2007, Senate reformers advanced the idea of a *temporary* worker program to meet U.S. labor needs. Today, increasingly, immigration experts, business and labor talk about *provisional* programs that would admit workers initially on short-term visas but then allow those who do well in the U.S. to graduate to permanent residence. It's understood by most reformers: any comprehensive bill must streamline and expand the programs that provide visas for highly skilled immigrants. More contentious and harder to design: a program to admit less-skilled, nonfarm workers – a group for which no program at all exists today.

Business and labor agree that U.S. employers should make every effort to hire Americans first and should treat foreign and U.S. workers with equal dignity. They also agree that any short-term visa program should be flexible in size, growing in capacity when the economy is booming but shrinking in bad times when fewer foreign workers are needed in the U.S. What's at issue: just how big a program is necessary? How to regulate the waxing and waning of intake? Who should oversee these ups and downs: Congress, a commission of experts – or perhaps a mathematical formula that reflects the fluctuations of the labor market? And how to balance employers' need for a timely, streamlined program with unions' and others' demands for government regulation and oversight?

### **INCREMENTAL STEPS OR ALL AT ONCE?**

From 2005 through 2010, most reform advocates were adamant: all the elements of the comprehensive architecture were essential and all had to be enacted at once, in a single legislative package.

Part of the reason was political. Only by moving all three components at once, it was thought, could lawmakers hope to rally the legislative majorities needed to drive a bill over the finish line. The only way to win, in this view: with a package that business, labor, family groups, immigrant rights advocates, law enforcement and security interests could all get behind. But the case for a comprehensive package was also rooted in policy. After all, all three pillars of reform would be necessary to remedy the mistakes of the past, and all three are necessary to create a system that works for the future. Without an adequate pipeline for legal workers, for example, worksite enforcement is unlikely to be effective – and it makes no sense to build a new legal system on a foundation of illegality.

This consensus in favor of a broad package frayed somewhat in recent years. With Congress deadlocked and unable to act, comprehensive reform began to look like a

distant pipe dream, and some advocates – never the majority, but a significant number – began to wonder if it made sense to approach the problem incrementally. Perhaps, the reasoning went, an incremental approach would make it easier for Congress to get the job done. Legislators could start with relatively simple problems, finding and agreeing on solutions and taking those issues off the table. Moving step by step would build trust among lawmakers and help them earn the confidence of voters. Then, over time, Congress could work up to tougher, more contentious problems – and eventually find the courage to confront the most divisive. The incrementalists were almost vindicated in the past year when House Republican leadership introduced and passed two narrowly tailored measures streamlining the high-skilled immigration process. But both provisions died in the Senate in 2012.

**Since November 2012.** The debate between gradualists and advocates of what was once called the “whole enchilada” took a new turn after the 2012 elections. Many reform advocates, emboldened by the new clout of Latino voters, began to clamor anew for a comprehensive approach, and even some unlikely voices – some formerly die-hard opponents – have started to use the term. But other voices, including a number of Republicans who could be key to bipartisan compromise, continue to make the case for an incremental approach – moving doable step by doable step toward a larger vision they endorse but do not believe can be enacted in a single package.

For the time being, the jury is out. On this and other questions, the answer will depend on politics – what the political marketplace can bear in 2013.

There is little question: in the long run, the nation needs a full solution. We need better, smarter enforcement. We need visas for high- and low-skilled workers. We need a legal immigration system that works – for entrepreneurs, inventors, investors, science students, nurses, home health care aides, busboys, farmhands and seasonal hotel help, among others. We need a family-based system that reunites relatives in a timely way. We need answers that serve immigrants without shortchanging U.S. workers. And we need a path to citizenship – for Dreamers and their parents.

Just how the answers will be packaged is still unclear. The good news is that the debate has resumed, with lawmakers and advocates picking up where they left off in 2007.

*ImmigrationWorks USA is a national federation of employers working to advance better immigration law. Our network links major corporations, trade associations and state-based coalitions of small to medium-sized business owners concerned that the broken immigration system is holding back the nation's economic growth. Their shared aim: legislation that brings America's annual legal intake of foreign workers more realistically into line with the country's labor needs.*