

109th Congress: 2005-2006

Budget Reconciliation (EB, H-1B and L Visa) Proposals

October 2005

Background – Faced with Federal budget deficits as far as the eye can see, House and Senate committees are scrambling to cut mandatory and discretionary spending and find creative ways to raise revenues in order to meet targets set forth in the FY 2006 Congressional budget resolution (H Con Res 95). This year the task has been complicated by the urgent need to help pay for growing hurricane relief and reconstruction costs.

The budget reconciliation process begins with the passage of a budget resolution directing authorizing committees (committees with jurisdiction over programs that raise and/or spend Federal revenues) to make legislative changes in those programs in order to effect specified levels of savings. The budget resolution also generally includes a timetable under which the authorizing committees must report legislation that meets these savings targets.

Among the revenue raising programs that fall within the jurisdiction of the House and Senate Judiciary Committee are various immigrant (permanent) and non-immigrant (temporary) admissions programs.

House Judiciary Committee L Visa Fee Proposal - In order to meet its FY 2006 budget reconciliation targets, the House Judiciary Committee approved HR 3648 on September 29 by a vote of 20 to 6. As reported by the Committee, HR 3648 amends the Immigration and Nationality Act with respect to L (Intra-Company Transfer) non-immigrant visas by imposing a new \$1,500 per application fee on petitioning employers when they file for initial authorization to admit foreign employees to work temporarily in the United States and when they file to extend the stay of L visa holders.

HR 3648 makes it clear that petitioning employers may not seek reimbursement for any or all of the fee from individual beneficiaries and that resulting revenues will be deposited in the General Fund and not be available for visa program administration or enforcement.

On September 27, IEEE-USA communicated its support for HR 3648 to all members of the House Judiciary Committee.

Senate Judiciary Committee Unused Visa Recapture Proposal – To meet a \$300 million budget reconciliation target, Senate Judiciary Committee Chair Arlen Specter (R-PA) and Ranking Minority Member Ted Kennedy (D-MA) developed an innovative “unused visa recapture” mechanism to effectively raise immigrant and non-immigrant admissions ceilings and impose a new \$500 per application fee on resulting employment-based visa application transactions.

The proposal impacts the permanent EB-1 (Extra-ordinary Ability) EB- 2 (Advanced Degree Professional) and EB- 3 (Baccalaureate Degree Professional) visas and the temporary H-1B (Specialty Occupation) visa programs.

Unused Immigrant Visa Recapture Provisions - The original Specter/Kennedy proposal raises the current annual 140,000 ceiling on permanent, employment-based admissions to 230,000 per year by providing for the “recapture” of up to 90,000 EB-1 (Extra-ordinary Ability), EB-2 (Advanced Degree Professional) and EB-3 (Baccalaureate Degree Professional and other skilled worker) visas that were made available but not issued in prior years. Petitioning employers will be assessed \$500 for each of the new “recapture” visas they apply for.

In addition, immigrant (legal permanent resident status) visas issued to spouses and children on or after October 1 2004 will not count against the numerical limit As many as two-thirds of the current permanent employment-based visa allotment (140,000 per year) are routinely assigned to dependents (spouses and minor children) and therefore not available for use by skilled professionals.

Permanent Legalization (Adjustment of Status) Provisions - The Specter/Kennedy proposal also provides an “interim work and travel authorization” for eligible workers for whom employers submit applications for legal permanent resident status and pay a supplementary \$500 fee.

Individuals who qualify will be effectively treated as legal permanent residents (rather than as temporary residents) until their green card applications are officially approved.

H-1B Visa Recapture Provisions - In addition, the “Chairman’s Mark” provides for the issuance of additional H-1B visas in any fiscal year in which the current numerical ceilings (65,000 for baccalaureate degree professionals and 20,000 for advanced degree professionals) are reached.

In such cases, the numerical ceiling will be supplemented in an amount equal to the lesser of “the cumulative total number of visas available in all prior fiscal years and not issued in each of those years or any subsequent fiscal year and 60,000.”

Applications for these H-1B recapture visas must be accompanied by a \$500 fee.

Revenue Implications - The unused immigrant visa recapture and the adjustment of status fee provisions are expected to generate \$30 million a year (\$150 million over 5 years). The H-1B visa recapture fee will produce an additional \$30 million a year (\$150 million over 5 years).

IEEE-USA Position – On October 19, IEEE-USA communicated its opposition to the H-1B visa recapture component of the Specter Kennedy proposal in a letter to all members of the Senate Judiciary Committee. As an alternative, we recommended the \$1,500 L visa fee proposal as approved by the House Judiciary Committee.

Proposed Amendments – At a markup on October 20, Senators Hatch (R-UT), Sessions (R-AL) and Feinstein (D-CA) offered amendments to the Chairman’s Mark (the original Specter/Kennedy proposal).

Senator Hatch recommended that a simple 5% increase be imposed on all visa application fees as a way to meet the Committee’s budget reconciliation target without affecting visa program policies.

Senator Sessions urged the Committee to impose a \$1,500 fee on L visa applications as the House Judiciary Committee did on September 29th.

Senator Feinstein offered a two-part amendment calling for 1) the recapture of up to 30,000 unused H-1B visas (instead of 60,000, as the Chairman had proposed) and 2) the imposition of a new \$750 fee on L (Intra-company) visa applications.

The Feinstein compromise was approved (10-5). The Chairman’s Mark, as amended, was then approved (14-2).

Recommended Next Steps

Q:cpc/2005legis/BudRec.Visa Proposals