

**IMMIGRATION NUMBERS IN CONTEXT: AN ANALYSIS OF SENATE IMMIGRATION BILL S. 2611**

**EXECUTIVE SUMMARY**

Spirited debate has ensued over S. 2611, immigration legislation that passed the U.S. Senate 62-36 on May 25, 2006. The broader context of the bill is that increasing enforcement alone has proven ineffective in controlling illegal immigration. Data show a temporary worker program with sufficient visas is likely to do more to curtail illegal immigration than the enforcement measures in the recently-passed House immigration bill, as well as the rest of S. 2611. The Senate bill's most controversial provisions involve legalization that is part of a compromise that seeks to address the situation of those already here, to allow the new temporary worker program to function without a significant overhang of existing illegal workers, and to gain support for new enforcement measures.

Our analysis finds particularly in the first 10 years, many of those "immigrating" under the Senate legislation already would be in the country, including here lawfully on temporary visas, and merely transferring status to become a legal immigrant. The Congressional Budget Office (CBO) estimated that in the bill's first 10 years, 59 percent of new legal immigrants under S. 2611 would be "individuals who are or will be in the United States under current law and would change their immigration status."<sup>1</sup> Most of the others are close relatives of U.S. citizens who will come to the U.S. sooner, rather than waiting years separated overseas, and new skilled employment-based immigrants, who will be able to stay and create innovations in America, rather than leaving the country (or never coming in the first place) because of 5 year waits for green cards.

This NFAP analysis concludes that over 20 years the United States will admit approximately 28.48 million net new legal immigrants under Senate bill S. 2611. This represents an average increase of 1.42 million per year, many of whom, as noted by the CBO, would not be "new" people entering the country but already would be in the United States and become counted as legal immigrants.<sup>2</sup> An earlier analysis by Senator Jeff Sessions (R-AL) claimed that "up to 217.1 million new legal immigrants would join the U.S. population" over the next 20 years as a result of S. 2611.<sup>3</sup> An analysis released by Robert Rector of the Heritage Foundation stated, "The maximum number that could legally enter would be almost 200 million over twenty years – over 180 million more legal immigrants than current law permits." Rector said his estimate of the likely impact of the bill was to allow "an estimated 103 million persons to legally immigrate to the U.S. over the next 20 years."<sup>4</sup> A number of U.S. Senators cited Rector's estimates when declaring opposition to S. 2611. Recently, Robert Rector wrote, "Facing criticism, the Senate has amended the bill - which now, if enacted, would 'only' allow around 66 million new immigrants," for a net increase of 47 million legal immigrants.<sup>5</sup>

This National Foundation for American Policy (NFAP) analysis of the legislation finds that both Rector and Senator Sessions overstated the number of new legal immigrants admitted under S. 2611. It is useful in debating legislation to have reasonably accurate estimates available and, more importantly, that the numbers be placed in context. That is the purpose of this analysis. But in the end, the debate about immigration is not about numbers. It's about our values and traditions, our hearts and minds, and about which policies will make America a better place.

## **EXAMINATION OF KEY CATEGORIES**

To examine S. 2611, the Comprehensive Immigration Reform Act of 2006, it is helpful to divide the numerical impact into four categories: 1) employment-based immigration, 2) family-sponsored immigration, 3) legalization, 4) blue-card beneficiaries, and 5) future temporary workers.

### **EMPLOYMENT-BASED IMMIGRATION**

Under current law, the annual numerical limit on employment-based immigration is 140,000, which includes the spouse or minor children of the sponsored immigrant. However, the limit has proved inadequate to the demand, compelling many skilled employment-based immigrants to wait more than 5 years for a green card (longer for the small number of lesser skilled immigrants permitted under the law in this category).

Under the Senate legislation, for the first 10 years, the limit will increase to 450,000. In addition, spouses and minor children of the principal immigrant will no longer be counted against the annual cap. If one assumes, as has been past practice, that approximately 1.2 dependents will come in for each principal, that would be an additional 540,000 legal immigrants, for a total of 990,000 per year. The Congressional Research Service came to the same conclusion independently.<sup>6</sup> If one subtracts the current annual limit of 140,000 from the total, this would have represented a net increase of 850,000 per year or 8.5 million over 10 years. However, an amendment by Jeff Bingaman (D-NM) that passed shortly before final passage of S. 2611 places a hard annual cap of 650,000 on employment-based immigrants. This estimate assumes the 650,000 annual cap will be reached during each of the first 10 years. This would give a net of 510,000 (650,000 minus the current 140,000 limit) over the first 10-year period, or 5.1 million over 10 years.

Many of these individuals are now already in the United States, which is important to note in analyzing the early years after the bill's passage. Perhaps as many as 450,000 H-1B visa holders may be in the United States waiting for a green card, and with family members that would be close to 1 million people. In recent years as many as 80% of the employment-based applicants acquiring permanent residence have been processed inside the United States by U.S. Citizenship and Immigrations Services, not by embassies and consulates abroad.<sup>7</sup> That means that those applicants have not only been in the United States but have been here legally, mostly on H-1B temporary visas.

Under S. 2611, after 10 years, the employment-based annual limit would be reduced to 290,000 a year, also not including spouses and minor children, who would add another 348,000 per year (or a combined total of 638,000, which is below the 650,000 annual limit established by the Bingaman amendment). After one subtracts the current

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annual limit of 140,000, it would mean a net annual increase of 498,000 employment-based immigrants annually, or 4.98 million over the second 10-year period.

Combining the two calculations, the best estimate of total additional employment-based immigration over the next twenty years (above that authorized by a continuation of current law) appears to be 10.08 million plus whatever additional number qualifies under the proposed exemptions from numerical limitations. (See “Other Legal Immigrants” below.)

Note that this number includes those who may enter as *future* H-2C temporary workers in lesser skilled occupations and then become sponsored for permanent residence. It also includes those who have been here in unauthorized status between two and five years under the bill. As the Congressional Research Service notes, “Under Title IV, employment-based immigrant visas would be available to H-2C nonimmigrants (both those who were previously in the United States illegally and others) who meet specified requirements. . . . Adjustments of status by H-2C aliens would be subject to the numerical limitations on employment-based immigrant visas.”<sup>8</sup>

If numbers go unused because of a lack of demand for either high or low-skilled workers or because of “per country” limitations it is possible the total may not reach 10.08 million.

*Estimated 20 year total for new employment-based immigrants above currently expected total = 10.08 million*

## **FAMILY-SPONSORED IMMIGRATION**

Under current law, the family preference category is limited to 480,000 minus the number of Immediate Relatives of U.S. Citizens, with a minimum annual allocation of 226,000. A U.S. citizen may sponsor a spouse, minor child (under 21) or parent without quota, but faces annual limits for siblings (65,000 a year) and married adult children (23,400) and unmarried adult children (23,400). A permanent resident (green card holder) may sponsor a spouse or minor child (87,934) or adult child (26,266). Per-country limits for family-sponsored immigrants are generally set at 7% of the 226,000 annual limit for family preferences.

Under the Senate bill, the new annual limit would be 480,000, instead of 226,000. That would represent 254,000 additional family-based immigrants a year, or 2.54 million over 10 years and 5.08 million over 20 years. There is sufficient demand and backlogs in the current family categories that it is unlikely any numbers would go unused.

*Estimated 20 year total for new family-sponsored immigrants above currently expected total = 5.08 million*

## LEGALIZATION

The Senate bill would allow individuals now in the country illegally to legalize their status by paying fines, working, and meeting other criteria. Illegal immigrants are divided into three categories under the Senate bill: 1) those here more than 5 years, specifically those who have maintained a continuous presence in the United States since April 5, 2001; 2) illegal immigrants here 2 to 5 years; and 3) individuals here in unlawful status less than 2 years. The first two groups have an opportunity to gain permanent residence status; those in the third group (here less than two years) would not.

The Congressional Budget Office (CBO) presented an analysis of legalization that offers a reasonable estimate of the number of people likely to become legal immigrants under S. 2611. The CBO analysis starts by using the Pew Hispanic Center's analysis, which states that as of 2005, there were approximately 11 million undocumented immigrants in the United States: "We estimate that about one million of those individuals would not be affected by the bill because they will become LPRs [Lawful Permanent Residents] under current law before 2015, which CBO expects is the earliest undocumented immigrants could become LPRs under the bill. CBO also excluded one million undocumented immigrants from this portion of the analysis to account for individuals that we anticipate would become LPRs through the blue-card program. (Some individuals would be eligible for both programs, but the blue-card program would offer a quicker and less expensive path to permanent residency.)"<sup>9</sup> See below for a discussion of the blue-card program for agricultural guest workers.

The CBO analysis continues: "Using information from the Pew Hispanic Center, CBO estimates that about 70 percent of undocumented immigrants have been in the United States five years or more, 20 percent have been here between two and five years, and 10 percent have been here for less than two years. As a result, after accounting for those who would become LPRs under current law and those who would choose the blue-card route to legal status, we estimate that more than six million undocumented immigrants have been in the United States for five years or more, another two million have been here for two-to-five years, and about one million have been here for less than two years. . . CBO projects that about two-thirds of the undocumented immigrants who have been in the country for more than five years and who do not emigrate over the next several years would ultimately become LPRs under S. 2611. That level of participation is consistent with the experience of undocumented immigrants who obtained legal status under the Immigration Reform and Control Act of 1986. We anticipate that undocumented immigrants who have been in the United States for two-to-five years are somewhat more likely to return to their home countries, and estimate that 50 percent would obtain legal status under the bill, primarily by become guest workers."<sup>10</sup>

Utilizing the CBO analysis and performing a new additional calculation, provides the following result: Among those here unlawfully five years or more, the Senate bill would produce 4 million legal immigrants. If one uses the traditional formula of 1.2 dependents per principal immigrant, that would add another 4 million people, for a total of 8.8 million.

CBO estimates 50 percent of those here illegally from two to five years would gain legal status primarily by becoming guest workers, for a total of approximately one million. However, as the Congressional Research Service has pointed out, those in the “two to five year” category would not become Lawful Permanent Residents outside of numerical quotas. Rather, anyone in that category who receives permanent residence would be counted against the employment-based immigrant quotas discussed earlier.<sup>11</sup>

*Total Legalization, including dependents = 8.8 million*

## **BLUE-CARD AGRICULTURAL WORKERS**

Under S. 2611, a blue-card program exists for agricultural workers who meet certain past work requirements and who can gain permanent residence if they meeting certain future obligations. The category is limited to 1.5 million. CBO estimates that of approximately 1.1 million people eligible for the blue-card program, 80 percent would apply, leaving 888,000 people. If one assumes that 90 percent of the applications will ultimately be approved and lead to permanent residence, then that would give us 800,000 individuals gaining green cards under the blue-card program. These figures may be high, since the 90 percent approval rate is based on the old Special Agricultural Worker (SAW) Program from the 1986 Act, and the blue-card program, with its future work requirements, carries tougher criteria.<sup>12</sup>

After multiplying the 800,000 principals in this category by 1.2 dependents, we would have an additional 960,000 spouses and children, or a total of 1.76 million.

*Total legal immigration for blue-card participants, including dependents = 1.76 million*

## **FUTURE TEMPORARY WORKERS**

The Senate voted to limit the number of new temporary workers under the bill to 200,000 a year. More importantly for the purposes of this analysis, as noted in the CRS analysis, if new temporary workers are sponsored for green cards they would be counted against the numerical limit for employment-based immigrants under S. 2611.

## **OTHER LEGAL IMMIGRANTS**

In conducting this category-by-category analysis of S. 2611 it is possible that other parts of the legal immigration system have been overlooked. To account for this, the analysis presented here will assume that the Immediate Relatives of U.S. citizens (spouses, minor children, and parents of U.S. citizens) will eventually show an increase if S. 2611 were to become law. Since it takes five years as a Lawful Permanent Resident before one can become a U.S. citizen, this impact would not be felt until the earliest in the 6<sup>th</sup> year of the bill (and later for those obtaining legalization). If one posits an average of an additional 50,000 Immediate Relatives a year for the final 15 years of this 20 year analysis, that would give us 750,000 additional legal immigrants. Given the uncertainties, such as forecasting future marriages, it is possible this number underestimates the future flow of Immediate Relatives.

In addition, there are measures in S. 2611 to exempt from numerical limitations some of the employment-based immigrants now counted against such limits. One would exempt for a ten-year period employment-based immigrants coming to work in occupations certified by the Department of Labor as being in general short supply in the United States. Another would permanently exempt employment-based immigrants having advanced degrees in scientific or technological fields who have been working in the United States in such fields for at least three years. The legislation also exempts from the employment-based limits those who obtain a master's degree or higher from a U.S. university and individuals who receive medical specialty certification based on postdoctoral training experience. It is difficult to quantify with precision the effect of these proposals, but it does appear that to some extent they overlap each other.

Based on the above, it is safe to assume that there may be skilled immigrants entering without quota under the bill that eluded the earlier analysis of employment-based immigration. If one assumes an average of 40,000 such individuals a year – and 1.2 dependents per principal – that would add another 88,000 annually or 1.76 million over 20 years.<sup>13</sup>

In addition, under S. 2611 unused family and employment-based visas from FY 2001-2005 are allowed to be used, separately, for those categories. CRS estimates the combined total of unused visas may reach 250,000, though it's possible it will be less than that number under closer inspection.<sup>14</sup>

If one calculates the subcategories discussed in this "Other Legal Immigrants" section (750,000, 1,760,000, and 250,000), one would arrive at 2.76 million.

*Other Legal Immigrants Over 20 Years Under S. 2611 = 2.76 million*

**TABLE 1**  
**20 YEAR ESTIMATE OF NET LEGAL IMMIGRATION UNDER S. 2611**

<b>Immigration Category Under S. 2611</b>	<b>Estimated Net Number of Legal Immigrants Over 20 Years</b>
<b>Employment-based</b>	10.08 million
<b>Family-based</b>	5.08 million
<b>Legalization</b>	8.8 million
<b>Blue-card</b>	1.76 million
<b>Other</b>	2.76 million
<b>TOTAL (net increase under S. 2611)</b>	<b>28.48 million</b>

*Source: National Foundation for American Policy; Congressional Research Service, Congressional Budget Office.*

### **KEY SHORTCOMINGS WITH THE RECTOR AND SESSIONS ANALYSES**

In May 2006, Robert Rector of the Heritage Foundation released an analysis of S. 2611 that received a good deal of attention. At the same time, in a “Dear Colleague” and press conference, Senator Jeff Sessions issued a similar analysis to assert that “up to 217.1 million new legal immigrants would join the U.S. population” over the next 20 years as a result of S. 2611.<sup>15</sup> The NFAP analysis of the legislation presented here finds Rector and Senator Sessions overstated the number of new legal immigrants admitted under S. 2611.

Robert Rector stated in his original analysis, “The maximum number that could legally enter would be almost 200 million over twenty years – over 180 million more legal immigrants than current law permits.” Rector said his estimate of the likely impact of the bill was to allow “an estimated 103 million persons to legally immigrate to the U.S. over the next 20 years.”<sup>16</sup> Recently, Robert Rector wrote, “Facing criticism, the Senate has amended the bill - which now, if enacted, would ‘only’ allow around 66 million new immigrants,” for a net increase of 47 million legal immigrants.<sup>17</sup> However, this also appears to have overstated the impact of the legislation.

In some areas, the analysis presented here is the same (or close to) Robert Rector’s analysis. Prior to the Bingaman amendment capping employment-based immigrants at 650,000 annually, which was adopted shortly before final passage, both analyses came to the conclusion that over 20 years there would be approximately 13.6 million new legal immigrants admitted through changes to the employment-based immigrant quotas. Similarly, both the NFAP and Rector analyses agree that as a result of S. 2611 over 20 years there will be approximately 5.1 million additional family-sponsored immigrants than under current law.<sup>18</sup>

Where the NFAP and Rector analyses differ is primarily in three areas. First, Rector uses a higher figure on legalization due to an assumption that almost everyone here illegally (and their family members) will be eligible for – and later receive – lawful permanent residence. The CBO approach adopted in our analysis appears more likely to reflect reality.

Second, Rector assumes a larger increase in Immediate Relatives than NFAP. He writes in his *New York Post* op-ed that he believes the bill will produce an additional 3.5 million Parents of U.S. citizens over 20 years under the bill after more people become naturalized citizens.<sup>19</sup> Since no one would likely become a naturalized citizen until the 6<sup>th</sup> year after the bill is passed at the earliest (and much later for those legalizing their status), Rector is positing an average of 233,333 additional Parents of U.S. citizens immigrating each year. This seems unlikely, since in the years 2002-2004, the total number of Parents of U.S. citizens immigrating averaged only 80,496 per year. It would seem an overstatement to assume an additional 233,333 would enter on top of the 80,496 average, for an annual average of 313,829 Parents of U.S. citizens each year, which would nearly quadruple the category.

For comparison purposes, in the years after the 1986 amnesty and the rise in legal immigration quotas in 1990, the annual average of Parents of U.S. citizens admitted rose only about 28 percent when comparing the years 1990-1994 and 2000-2004, (even given the fact 2003 had lower than expected legal immigrant numbers due to processing problems).<sup>20</sup>

Third, Rector counts all temporary visa holders and family members who enter the country as “legal immigrants.” However, one cannot properly count temporary visa holders as legal immigrants with a right to stay permanently. By definition, only those who gain permanent residence, in most cases through the employment-based categories, which maintain their own numerical limitations, could become legal immigrants under the law.

Finally, both Rector and Senator Sessions appear to have arrived at their maximum estimates for legal immigration under the bill (approximately 200 million each) primarily through counting new temporary visa holders as permanent residents, as well as their family members, and by assuming exponential growth based on what could theoretically be possible under the legislation. For example, the H-2C category for new temporary workers in lower-skilled jobs contained provisions that allowed for increases in its cap if the annual limit was reached in a prior year. The Senate has already capped the H-2C category – after Rector and Senator Sessions completed their analyses – at 200,000 a year and removed the 20 percent “escalator” provision.

Approximately 133 million of the 193 million total that Rector stated could have come in under the bill in his original analysis was derived from using unlikely upper-bound estimates of annual totals under the H-2C temporary category. Senator Sessions used a similar methodology. For example, both the Sessions analysis and

one scenario in Rector's analysis assumed that within 20 years after the bill's passage over 10.3 million H-2C less skilled temporary workers a year might enter the United States.<sup>21</sup>

This NFAP analysis does not accuse Robert Rector or Senator Sessions of bad faith but seeks only to point out what appear to be shortcomings in some parts of their analysis.

## **REASON FOR THE INCREASE IN IMMIGRATION IN S. 2611**

In S. 2611, legal immigration is being increased in an attempt to achieve concrete goals. In the case of legalization, the objective is to achieve a compromise that combines increased immigration enforcement, legalization of those here in undocumented or unlawful status, and the establishment of new market mechanisms to provide a path for lesser skilled workers to enter and work legally in the United States.

The temporary worker program that, as of this writing, would provide 200,000 visas a year, is the vehicle chosen to provide a viable alternative to entering the country illegally for those seeking employment. There is a history that shows such a mechanism can work, though 200,000 visas may be too low a figure given both the current demand for labor and the flow of illegal immigrants.

Some say we should pass (another) enforcement-only bill and leave for later talk of a new temporary worker program. The problem is that those who say we should not permit more people to work on legal temporary visas until we "control the border" have it backwards: The only proven way to control the border is to open up paths to legal entry, allowing the market to succeed where law enforcement alone has failed.

Beginning in 1942, the Bracero Program allowed Mexican farm workers to be employed as seasonal contract labor. Despite these legal admissions, limited enforcement and other factors provided little deterrent to illegal entry until 1954.

That is when a controversial crackdown on illegal immigration ensued. Importantly, Immigration and Naturalization Service Commissioner Joseph Swing preceded the crackdown by working with growers to replace an illegal, and therefore unpredictable, source of labor with a legal, regulated labor supply. The workers, being rational, preferred entering legally, and Mr. Swing received praise for pushing the substitution of legal for illegal workers.

Bracero admissions rose from approximately 201,000 in 1953 to more than 430,000 a year between 1956 and 1959. The increased Bracero admissions produced dramatic results. Illegal entry, as measured by INS

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apprehensions at the border, fell by an astonishing 95 percent between 1953 and 1959. (Apprehensions fell to 45,336 in 1959, compared to more than 1 million in both 1954 and 2005).

However, complaints from unions led to the end of the program by 1964. What happened to illegal immigration after we stopped letting Mexican farm-workers enter legally? It skyrocketed. From 1964 to 1976, while the number of Border Patrol agents remained essentially constant, INS apprehensions of those entering illegally increased more than 1,000 percent.

Though economic conditions in Mexico and the lack of temporary visas for non-agricultural jobs also contributed, an internal INS report found that apprehensions of male Mexican agricultural workers increased by 600 percent between 1965 and 1970. This did not surprise INS officials. At a House Committee on Agriculture hearing in the 1950s, a top INS official was asked what would happen to illegal immigration if the Bracero Program ended. He replied, "We can't do the impossible, Mr. Congressman."<sup>22</sup>

Today, it is not necessary to reestablish the Bracero Program. However, a modernized temporary worker program with sufficient visas is likely to do more to curtail illegal immigration than all the measures in the recently-passed House immigration bill, as well as the rest of S. 2611. The legalization provisions are part of a compromise to address the situation of those already here, to allow the new temporary worker program to function without a significant overhang of existing illegal workers, and to gain political support for tougher enforcement provisions.

The employment-based immigration increases in S. 2611 are aimed at incorporating some of the future flow of temporary workers (and some already here). Perhaps more importantly, the increases are aimed at alleviating green card backlogs that threaten American competitiveness and innovation. As noted earlier, by law, the current annual limit on employment-based immigrant visas (green cards) is 140,000. This has demonstrated to be well below demand, creating backlogs of 5 years or more in key categories, making it impossible for individuals to be hired directly on green cards.

In certain categories, the unavailability of green cards has worsened significantly in the past year. An employment-based immigrant in the Skilled Workers and Professionals category can expect to wait at least 5 years for a green card. These wait times are likely to worsen further absent legislative changes by Congress.<sup>23</sup>

Under S. 2611, additional green cards will become available that will ease the wait times in the employment-based immigration categories. Patricia McDermott, a manager at Keane, Inc., which has an estimated 225 sponsored employees "in limbo" waiting for green cards, says the waits inflict an enormous "human cost" on individuals and their families.<sup>24</sup> Those waiting cannot buy a home or travel freely, nor, in most cases, can they

transfer positions or have their spouses work. This also harms innovation, as those with new ideas cannot go on to start new companies or gain venture capital, as in the past. Others just give up on waiting and leave the United States to work back in their native country or in Europe. Unfortunately, because of these long waits and disruptions, the day may soon come when promising international students and outstanding foreign-born scientists and engineers decide America is no longer the land of opportunity for them.

Inadequate family immigration quotas keep close family members apart for many years. These are individuals attempting to immigrate legally to the United States. Today, because the quotas for family immigration levels are set well below demand, wait times are quite lengthy in most categories. Siblings of U.S. citizens can expect to wait 11 to 12 years from today before immigrating to America (22 years from the Philippines). Unmarried adult children can anticipate waiting 6 years, but 12 years if from Mexico and 14 years from the Philippines. A spouse or minor child of a legal resident (green card holder) from Mexico has a 7 year wait (a five year wait from other countries). A married child of a U.S. citizen must wait 7 years to immigrate (11 and 15 years, respectively, if from Mexico or the Philippines). And there is a 9 year wait for unmarried adult children of legal residents (14 years if from Mexico).<sup>25</sup>

The practical effect of S. 2611 would be to allow close family members of U.S. citizens and certain Lawful Permanent Residents to immigrate sooner than they would have otherwise, in many cases cutting years off their time waiting outside the country.

In the debate over immigration, many have said we must “honor” legal immigrants. Behind every statistic related to waiting lists and backlogs stand tens of thousands of individuals and their family members. The best way to honor legal immigrants both now and in the future is to solve the immigration and backlog problems that cause such pain, frustration, and heartache. S. 2611 makes considerable progress toward a solution for legal immigrants languishing in family and employment-based immigration backlogs.

## CONCLUSION

Table 1 details our analysis, estimating that over a 20-year period the net number of new legal immigrants admitted under S. 2611 will be approximately 28.48 million. This compares with the most recent estimate from Robert Rector of 47 million net new legal immigrants under the bill. (Presumably, Rector’s estimate would be lower today after taking into account passage of the Bingaman amendment to institute a 650,000 hard annual cap on employment-based immigrants.)

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The estimate of 28.48 million net new legal immigrants over 20 years under S. 2611 represents a net increase of 1.42 million per year. However, many in that total are already here in the United States, particularly if one focuses on the earlier years of the bill. The Congressional Budget Office (CBO) estimated that in the bill's first 10 years, 59 percent of new legal immigrants under S. 2611 would be "individuals who are or will be in the United States under current law and would change their immigration status."<sup>26</sup> The family immigration increases would speed up the entry of family members by cutting years from their wait and allowing them to become legal immigrants sooner. And the employment-based immigration increases help the United States retain top talent from around the world.

This analysis presents a good faith estimate that seeks to reconcile complex parts of the Senate legislation with current law and imprecise information about the current composition of the illegal population and future actions by many individuals. Though the National Foundation for American Policy consulted current and former government officials experienced in this area, it is possible misinterpretations of the bill may leave weaknesses in the estimate that are unintentional. Still, even given the uncertainties it is a fair analysis that approximates the likely impact of S. 2611 on legal immigration.

In the end, the debate about immigration is not about numbers. It's about the country's future. And it's about our values and traditions, our hearts and minds, and about which policies will best overturn a status quo that satisfies few – and angers many.

**END NOTES**

<sup>1</sup> Letter to Senator Jeff Sessions from Donald B. Marron, Acting Director, Congressional Budget Office, May 24, 2006. CBO's letter did not take into account floor amendments to the bill but it is unlikely those amendments significantly changed the percentage.

<sup>2</sup> This would be in addition to the current annual flow, which would result in the admission of approximately 19 million legal immigrants over 20 years.

<sup>3</sup> Dear Colleague, Senator Jeff Sessions, May 15, 2006.

<sup>4</sup> Robert Rector, "Senate Immigration Bill Would Allow 100 Million New Legal Immigrants Over the Next Twenty Years," Web Memo, The Heritage Foundation, May 15, 2006.

<sup>5</sup> Robert Rector, "Tidal Wave," *The New York Post*, May 19, 2006.

<sup>6</sup> *Legal Immigration: Projecting Immigrant Admissions Under S. 2611*, Ruth Ellen Wasem and Andorra Bruno, Congressional Research Service, May 19, 2006, p. 4. One uncertainty that could increase the estimates of CRS and those used in this paper is if the traditional 1.2 dependents per principal "formula" underestimates the number of dependents for future lesser skilled workers or those who obtain legalization in the "five years or more" category and as blue-card workers in agriculture.

<sup>7</sup> *2004 Yearbook of Immigration Statistics*, Office of Immigration Statistics, Department of Homeland Security, January 2006.

<sup>8</sup> Congressional Research Service, p. 6. CRS adds: "While the language of S. 2611 is somewhat unclear on this point, it appears that aliens who obtain H-2C status who were previously granted Deferred Mandatory Departure under Title VI may not be able to adjust to LPR status until the earlier of eight years or the consideration of all applications filed under INA Sections 201, 202, or 203 before the date of enactment."

<sup>9</sup> Congressional Budget Office Cost Estimate, S. 2611, May 16, 2006, p. 22.

<sup>10</sup> Ibid.

<sup>11</sup> Congressional Research Service, p. 6: “Under Title IV, employment-based immigrant visas would be available to H-2C nonimmigrants (both those who were previously in the United States illegally and others) who meet specified requirements. . . . Adjustments of status by H-2C aliens would be subject to the numerical limitations on employment-based immigrant visas.” Also, the Senate bill includes, the “Dream Act,” which allows adjustment of status outside of numerical quotas for those who entered illegally as children, had been physically present in the U.S. five years prior to the date of enactment, and meet other criteria. Given the dates, it appears the children or young adults covered under this measure would likely be included either as a principal or dependent in the legalization calculations.

<sup>12</sup> Nancy Rytina, “IRCA Legalization Effects: Lawful Permanent Residence and Naturalization through 2001,” Immigration and Naturalization Service, presented October 25, 2002, p. 3. The paper states: “The approval rates for temporary and permanent residence were fairly high among both legalization (pre-1982 applicants) and SAW applicants. Nearly 2.7 million persons – nearly nine in ten applicants for temporary residence – were ultimately approved for permanent residence.”

<sup>13</sup> In FY 2004, principals in the Employment first and second preference categories came to approximately 30,000, though it’s not clear that everyone in the these categories would be exempt under S. 2611.

<sup>14</sup> Congressional Research Service, p. 13.

<sup>15</sup> Dear Colleague, Sen. Jeff Sessions, May 15, 2006.

<sup>16</sup> Robert Rector, “Senate Immigration Bill Would Allow 100 Million New Legal Immigrants Over the Next Twenty Years,” Web Memo, The Heritage Foundation, May 15, 2006.

<sup>17</sup> Robert Rector, “Tidal Wave,” *The New York Post*, May 19, 2006.

<sup>18</sup> Rector, *The New York Post*.

<sup>19</sup> Ibid.

<sup>20</sup> *2004 Yearbook of Immigration Statistics*.

<sup>21</sup> Senator Sessions, chart, S. 2611 Numerical Projections (assuming maximum growth in H-2C Future Flow and H-1B), May 15, 2006; Rector, Web Memo, May 15, 2006.

<sup>22</sup> See Stuart Anderson, *The Impact of Agricultural Guest Worker Programs on Illegal Immigration*, National Foundation for American Policy, November 2003.

<sup>23</sup> Wait times are based on “cut-off dates.” To stay within the numerical limits, after estimating the demand in a category, the State Department assigns a “cut-off” date that leads to processing only applications filed prior to that date. Per-country limits for employment-based immigrants are generally set at 7% of the 140,000 annual limit, though they can exceed 7% if visa slots would otherwise be left unused for skilled workers. Under Section 202(a)(5) of the Immigration and Nationality Act, “If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 203(b) for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.”

<sup>24</sup> Interview with NFAP.

<sup>25</sup> See Stuart Anderson and David Miller, *Legal Immigrants: Waiting Forever*, National Foundation for American Policy, May 2006; U.S. Department of State Visa Bulletin, June 2006. As noted earlier, wait times are based on State Department “cut-off” dates. After estimating the demand in a category, the State Department assigns a “cut-off” date that leads to processing only applications filed prior to that date.

<sup>26</sup> Letter to Senator Jeff Sessions, Congressional Budget Office, May 24, 2006. CBO’s letter did not take into account floor amendments to the bill but it is unlikely those amendments significantly changed the percentage.

**ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY**

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration, and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, Cesar Conda, until recently Vice President Dick Cheney's chief domestic policy adviser, and other prominent individuals. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at [www.nfap.com](http://www.nfap.com).