



## **Council for Advancement of Adult Literacy**

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### **SIZE & FLOW**

#### **Adult Education Issues in the Senate Immigration Bill**

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Years ago at a National Coalition for Literacy meeting in Washington, immigration legislation was under discussion. Someone pointed out how ironic it was that the oldest person in the room was the one to bring up the long-term implications for Adult Education of “size and flow.” Today, there is a sense of déjà vu where the Senate Immigration Bill (S.744) is concerned. CAAL doesn’t know if the Senate Bill will be voted on, or if the House will tender its own bill or series of bills, or if there will be action at all. But assuming that a bill of some kind is on the horizon, the primary issues of “size and flow” are raised by S.744 regarding undocumented immigrants and they should be highlighted now as they were in the past. They are profoundly important to Adult Education and its capacity to provide services. They need to be recognized by legislators and planners. Their satisfactory resolution is essential if we are not to further handicap the already-underfunded Adult Education system and generate expectations that cannot be met.

#### **1. SIZE OF UNDOCUMENTED POPULATION TO BE SERVED**

Nobody really knows how many undocumented immigrants will need ESL/civics instruction in the next several years. The Department of Homeland Security estimates that there are 11 million undocumented people in the United States. But not all will need English language and civics instruction in order to have their status adjusted to become Lawful Permanent Residents (LPR’s). For example, most agricultural workers should probably be subtracted from the 11 million because there seems to be no legislative requirement that they must meet an English language/civics requirement to adjust to LPR status (although some may wish and should be able to enroll because they feel the need to speak and write in English).

Apart from agricultural workers, other undocumented immigrants who aspire to have their status adjusted to Lawful Permanent Resident form the largest group of undocumented immigrants that must satisfy an English/civics requirement. These immigrants must apply for provisional legalization. At the time of application each immigrant is provided with a document designating him or her a Registered Provisional Immigrant or RPI. *Adult and child dependents of RPI’s are also deemed provisionally legal by virtue of the head of the family’s RPI status if they meet all admissibility requirements.*

S.744 exempts dependents from the requirement to engage in full-time education or employment. However, all RPI's who are 16 years of age or older must satisfy the English/civics requirement. Not included would be RPI's 60 years of age or older who will be 70 and exempt by the time their 10-year waiting period called for in the legislation ends.

A special subset of RPI's are "Dreamers". They are certain undocumented immigrants who entered the country as children. They are subject to the same English/civics requirements as other RPI's but most are unlikely to need instruction from adult education programs because they will have attended American elementary and high schools and will be engaged in postsecondary level instruction or serving in the armed forces.

Two other groups are established in S.744. One is comprised of those people who entered the country legally but whose cases are still unresolved. The legislation calls for their cases to be resolved by the end of a 7-year period via a new Track 2. Some of them could certainly profit from ESL/civics instruction, but there is no English/civics *requirement* for them until they apply for citizenship.

The other group is made up of applicants who will be allowed to enter under the auspices of a new Track 1, two-tier provision that sets up a "merit" system permitting a set number of individuals to immigrate based on characteristics established in the Act. One characteristic that awards points in the merit system is being able to prove fluency in English on standardized ESL tests. Thus, a number of entrants on Track 1-will arrive on the scene already well versed in English.

In sum, of the five groups of immigrants treated by Title II of S.744 (agricultural workers, Dreamers, legal entrants whose cases are unresolved, new legal entrants, and eligible RPI's) only RPI's must satisfy an English/civics requirement to qualify for Lawful Permanent Residence.

## **2. ANNUAL FLOW OF ADULT STUDENTS INTO ADULT EDUCATION**

To ensure that Track 2 immigrants would be served before RPI's, the legislation imposes on RPI's a 10-year waiting period before being able to apply for an adjustment in status to Legal Permanent Resident. The one exception is a five-year waiting period for Dreamers.

If we can establish more precisely the number of undocumented workers eligible for instruction, and set realistic annual service goals for them for each of the next 10 years, an instructional capacity could be built up to meet the flow of these students into Adult Education. But if need waxes and wanes, and we neglect to plan for this influx carefully, the system will not be able to have just enough teachers, programs, and funding in place to meet the demand/need in any given year. They could easily have too much or too little capacity and preparedness to serve undocumented adults (apart from the many other adults who need their services).

Of great concern is the tendency in the legislation to concentrate activity toward the end of the RPI waiting period. The effect of this on Adult Education would be only a limited need for adult education instruction in the early years, followed by a dramatic increase in the final years.

### **3. SOME POSSIBLE SOLUTIONS**

S.744 provides two very different options by which RPI's can meet the English/civics requirements and adjust their status to Lawful Permanent Resident. The first is to pass an English/immigration test required by the law. This test is likely to be the one that implements Sec.312 of the Immigration and Naturalization Act. If RPI's could take whatever test is required as soon as they are ready during the 10-year waiting period, and not have to wait until actually applying for LPR status, it might reduce greatly the potential spike in instructional need toward the end of the waiting period. This change might well be done through regulation.

Another way the legislation allows RPI's to satisfy their English/civics requirements is to show that they are satisfactorily pursuing a course of study—pursuant to standards established by the Secretary of Education, in consultation with the Secretary of Homeland Security—by which they will achieve an understanding of English and knowledge and understanding of U.S. history and government, as described in INA Section 312(a). (Note that Senator Rubio, one author of the Bill, tried unsuccessfully to have this second option removed during mark-up, a move that would be strongly opposed by the State ABE Directors). For now, both options are still in the Senate Bill.

The language of the second option appears to be based upon an expectation that an RPI applying for adjustment to Lawful Permanent Status is still undergoing instruction but has not reached a level to pass the required test. The legislation uses the present tense (“is satisfactorily pursuing”) and appears to expect that an ongoing instructional program will send a message to the adjustment staff that the RPI is satisfactorily pursuing instruction. This option in its present form cannot be spread across the 10-year waiting period; it only makes sense if used at the end of that period. Programs will be under heavy pressure to meet the Education Secretary's standards at the end of the 10 years as millions of RPI's apply for adjustment. But, ironically, nothing in the law requires the new LPR to continue attending instruction once LPR status has been granted. So this too would produce an unintended consequence that just as there is pressure to mount a dramatic increase in instructional programs, there would be a constant drain on enrollment.

Possibly the Simpson-Mazzoli approach (they were the sponsors of the Immigration Reform and Control Act of 1986) would work better. In that approach, applicants for legalization had to log a certain number of hours in which to receive instruction. They then had to submit a document from the instructional program to certify that they had met the requisite hour requirement. The

Senate Bill or any new House immigration legislation proposed could fix this problem by substituting the Simpson-Mazzoli approach and language for the second option, but calling for more instructional hours than that legislation required.

Note that education advocates were successful in getting full-time basic education--which is designed to lead to placement in postsecondary education, training, or employment--and high school equivalency approvable as satisfying the requirement that RPI's remain employed. But it may be difficult for RPI's to avail themselves of educational opportunities. Work-study grants and student loans are still available, but Pell grants are not, nor are food stamps, welfare payments, health insurance subsidies, and other public benefit programs, although the legislation restores the state option to determine residency for purposes of higher education. Consideration might be given to allowing a full-time combination of work and education/training to satisfy the legislation's work requirement.

Once the "size and flow" issues are worked out in new legislation, and perhaps in existing legislation as well, advocates should turn their attention to authorization and appropriations and use size-and-flow facts for RPI's to justify any request. The current authorization of \$100 million<sup>1</sup> *to be used over 5 years* is grossly inadequate (the amount is less than a third of the *annual* Adult Education spending for ESL/civics now). This new legislation is expected to generate a great deal of money—so much that Republican Senator Bob Corker (TN) had no difficulty getting \$1.5 billion added to the authorization for jobs for youth.

It is not generally recognized that only 12% of Workforce Investment Act funds have been specifically designated for ESL/civics. However, between 2001-2011 ESL students comprised an average of 44% (47% in 2006-07) of WIA Title II enrollments, although programs are held accountable by WIA for economic and educational improvements, not just English/civics.

Once advocates and policymakers agree on the needed changes, it is probably best to make them by regulation wherever possible. But it may not be too late to make changes in Senate S.744, or to make insertions in a House bill that the Senate could recede on. #

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<sup>1</sup> Plus \$50 million for the Office of Citizenship and New Americans.