



## EDUCATION ISSUES RAISED BY S.744

### The Border Security, Economic Opportunity, and Immigration Modernization Act

June 13, 2014

An Essay by Garrett Murphy

The Border Security, Economic Opportunity, and Immigration Modernization Act (S.744) contains many requirements to be satisfied by undocumented immigrants. Assuming that S.744 will move forward in Congress, legislators and planners should be aware of the issues examined in this article having to do with certain language, civics and government, and education/training provisions as they relate to Adult Education.

A basic tenet of S.744 is that undocumented immigrants must “get in line.” People who have entered the country legally must be served ahead of those who have not. Thus, undocumented aliens are assigned long waiting periods before they can adjust to legal status. Except for agricultural workers and Dreamers, who only need to wait 5 years, most will have to wait 10 years.

The Congressional Budget Office estimates that there are 1.5 million agricultural workers. Even though these people do not have to satisfy any language or civics requirements during that 5-year span, they are mentioned here solely to be sure that planners and service providers who expected otherwise know that S.744 doesn’t call for that.

Dreamers are immigrants who entered the U. S. as children (under age 16 on their date of entry). There are about 1.5 million of them. Dreamers must have lived in the U.S. as Registered Provisional Aliens (RPI’s)\* for at least 5 years. They must have completed high school or an approved state high school equivalency test, and/or have acquired a degree from an institution of higher education or have completed 2 years in good standing in a program for a bachelor’s or higher degree, or have served honorably for 4 years in one of the armed forces. They must also satisfy a language and civics requirement – a test of English language ability and U.S. history and government described in Section 312(a) of the Immigration and Nationality Act. This same test is administered to all applicants for naturalization except in certain hardship cases. Meeting all these requirements will result in Dreamers having their status adjusted to Legal Permanent Resident (LPR) and they will be able to apply for citizenship immediately.

All other nonagricultural undocumented immigrants must register with the federal government as RPI’s. Most RPI’s and their dependents, who must also register, will have to wait 10 years before adjusting to

---

\* RPI’s make up a special category established in the law that allows illegal aliens to remain in the country and work.

Lawful Permanent Resident (LPR) status, and an additional 3 years before applying for citizenship. RPI's must be continually employed or show in other ways that they will not become a public charge.

RPI's may substitute full-time education for full-time employment for some period during their 10 -year waiting period. This provision appears to pave the way for career advancement, but the law does contain obstacles. For example, RPI's may not apply for any public benefit program, which by definition includes a means test. Examples of such programs are Temporary Assistance for Needy Families (TANF), the Affordable Care Act, the Earned Income Tax Credit, Medicaid or Medicare, and Pell Grants.

However, federal student loans and work-study aid are allowed, and S.744 restores to the states the right to determine residency for higher educational benefits (by repealing Section 505 of the Illegal Immigrant Reform and Immigrant Responsibility act of 1996).

**ISSUE #1 – Under S.744, an RPI may have difficulty earning enough to meet living expenses if education and/or training can only be full time. *Some combination of work and study might be more feasible and sustainable.***

Sometime during the 10-year waiting period, RPI's and dependents who are 16 or older must satisfy an English language and U.S. history and government requirement. S.744 provides two ways to do this. The first is to take the same test that is administered to all applicants for citizenship (see INA Section 321(a) for a description of the requirement). RPI's who pass this test, satisfy the law's employment requirements, and have no problems with the criminal justice system can have their status adjusted to lawful permanent resident (LPR) at the end of the waiting period. Three years later, should LPR's wish to become citizens, they need not take the Sec. 321(a) test again.

**ISSUE #2: If an RPI may take the Sec. 321(a) test at any time during the 10-year waiting period, preparation for the test and possibly readiness assessment must be available prior to the actual testing (except in cases where an RPI can pass the test without instruction). If the need for instruction and testing occurs evenly throughout the 10-year period, adult education providers should be able to maintain an even level of instructional service. But if need for instruction waxes and wanes during this 10-year period, there will be periods when instructional resources may be insufficient and/or when there may not be enough business to occupy existing program staff. *It may be beneficial for adult education providers to work with the Office of New Americans to work out a schedule that keeps the instructional and assessment flow as even as possible.***

Homeland Security reports that 91% of immigrants who have been administered the Sec. 321(a) test have received a passing score, with an average preparation time of 4.5 months.

**ISSUE #3: Some of the refugee and immigrant assistance programs that have worked with people who have passed the test should have a pretty good idea of the language level and civics content needed to succeed. *States may find it useful to identify and work with programs that have demonstrated such success.***

S.744 provides an alternative way to satisfy the English language, civics, and government requirement for those RPI's unable to pass the Sec. 321(a) test. These RPI's must be "satisfactorily pursuing a course of study pursuant to standards established by the Secretary of Education, in consultation with the Secretary, to achieve an understanding of English and knowledge and understanding of the history and Government of the United States as described in Section 321(a)." The outcome of either method of satisfying the English language/civics requirement is that the RPI has a status adjustment to Lawful Permanent Resident (LPR), but the RPI's who satisfy the requirement by passing the Sec. 321(a) test will not have to take that test again when applying for citizenship. RPI's who choose the alternate route must pass the test to become citizens.

**ISSUE #4: If an RPI chooses an alternative process to satisfy his or her English/civics requirement early in the 10-year waiting period by presenting evidence of enrollment in an approved program, can an examiner reject the application, indicating that there is still plenty of time to prepare to take the Sec. 321(a) test? Or will there be a set number of hours of instruction in an approved program that the examiner must accept as meeting the language/civics requirement?**

**ISSUE #5: On what basis would an approved program issue a document indicating that an RPI has been attending?**

**ISSUE #6: Will there be any mandatory length of instruction for applicants choosing the alternative process as there was in the Simpson-Mazzoli immigration legislation of 1981?**

**ISSUE #7: Will an RPI be able to try the Sec. 321(a) test and, if failing, fall back to the alternative way to satisfy the English language/civics requirement if indeed they had been attending an approved instructional program?**

**ISSUE #8: The use of the present tense (i.e., "is satisfactorily pursuing") in the alternative English/civics bill language could be interpreted to mean that the RPI must actually be enrolled in an approved program when seeking adjustment of status. Since RPI status cannot be adjusted until 10 years has passed, it is possible that all RPI's using the alternative process would have to be "satisfactorily pursuing" at the end of 10 years, creating a need for many approved instructional programs to be operating at the time. But once RPI's attained LPR status they would no longer be required to be in instruction, so all of those programs would suddenly be without students. *Educators need to explore ways in which RPI's choosing the alternative route may submit evidence of enrollment and progress throughout the 10-year waiting period rather than at the end of the period.***

S.744 would create three new entities, the Office of Citizenship and New Americans (OCNA), the Task force for New Americans (TFNA), and the United States Citizenship Foundation. OCNA will be responsible for promoting training on citizenship responsibilities for new immigrants, providing advice on integrating immigrants into society, establishing goals for immigrant integration, and providing information about English and citizenship education programs. The TFNA will coordinate the federal response to immigrant-integration issues, and advise on how to carry out policies and goals concerning

access to education, workforce training, health care policy, access to naturalization, and community development. The Secretary of Education serves on the Task Force. The Foundation would be the repository of gifts and bequests and is responsible for expanding citizenship preparation programs, coordination thereof, and providing assistance to individuals applying for RPI status, LPR status, and naturalization.

An authorization of \$10 million for the first 5 years is made available to support activities of ONCA, TFNA, and the Foundation. \$100 million is authorized for two new grant programs for the first five years. These programs are the *Initial Entry, Adjustment and Citizen Assistance Grant Program* and *The Pilot Program to Promote Immigrant Integration*. For the former program, the Secretary, through the Director of the U.S. Immigration Service, may award grants to public and private agencies and institutions on a competitive basis to design improved delivery of services needed by both RPI's and LPR's – including English language and civics instruction. In the latter program, the Chief of OCNA may award grants on a competitive basis to states, local governments, or other qualifying entities to form an Immigrant Council of 15 to 19 members (two of whom could be adult education representatives). The Chief may also award competitive state grants to develop, implement, expand, or enhance programs that provide English as a second language, civics instruction, and financial literacy, and to engage receiving communities in the citizenship and civic integration process by increasing local service capacity and building meaningful connections between newer immigrants and long-term residents.

**ISSUE #9: The level of funding authorized in S.744 for the first 5 years is grossly insufficient even if used only for English and civics instruction. English and civics instruction expenditures in the existing Workforce Investment Act (WIA) or even just ESL alone, is three times the amount authorized in S.744, and the WIA level is considered inadequate. It should be noted that waiting lists are already prevalent nationwide.**

**ISSUE #10: The authorized amounts in S.744 must support a number of direct services to participants other than instruction, rendering the grossly inadequate funding even more so. It is also a problem that not all states would be funded – only the 10 with the most RPI's or the most recent arrivals.**

**ISSUE #11: At the markup session for the bill, Senators learned that the fiscal impact of the legislation would be to reduce the federal deficit by close to \$900 billion, leading some Senators to add to the cost of the bill by enacting an amendment by Senator Corker that adds \$1.5 billion for jobs for disadvantaged youth. If this much funding can be made available for a non-immigrant program, the bill should be able to provide a more realistic amount for educational services for nearly 10 million people throughout the nation.**

*Special Note: The legislation promises streamlined action for DACA (Deferred Action for Childhood Arrivals) eligibles. These provisions will undoubtedly make it possible for DACA youth to become Dreamers. DACA youth who are unable to satisfy Dreamer requirements would likely be classified as RPI's and thus be subject to the 10-year waiting period.*