



Comparison of H.R.4437 and S.2611 (July 3, 2006)

		H.R.4437	S.2611
Worksite Enforcement	Mandatory Verification	Mandatory verification of all employees and all "previous hires" (§§ 701, 703)	Mandatory verification of all new employees, <u>but only after \$400 million is appropriated to fund system</u> ; DHS may change procedures to improve system (§ 301).
	Verification System Required	Expands Basic Pilot Program and renames it the Employment Eligibility Verification System (§ 701)	Requires DHS and SSA to implement an Employer Eligibility Verification System (§ 301).
	Documents Authorized to Verify Work Eligibility	Requires a digitized photograph on documents that establish identity; otherwise no change to I-9 system (§ 701).	<u>Streamlines acceptable documents; requires security features for alien documents; requires new hires to provide EIN of last employer; allows transition until new system is implemented</u> (§ 301).
	Implementation schedule	Expanded Basic Pilot must be implemented for new hires in 2 yrs (§ 709); verification of previous hires must be done within 6 years (3 for govt employers); employers may voluntarily check previous hires beginning 2 yrs after enactment (§ 703).	All employers must comply with verification procedures <u>18 months after \$400 million is appropriated to DHS for implementation</u> (§ 301); DHS <u>may</u> require critical employers to comply " <u>on a priority basis</u> " (§ 301).
	Worksite Enforcement	Expressly requires DHS to investigate employers who submit identical social security numbers multiple times in a way that indicates fraud; provides that SSA is only required to perform worksite verification function to the extent DHS first gives SSA the funds (§ 701)	Requires SSA to disclose to DHS "no match notices" issued to employers that either have more than 100 no-matches or report more than 10 names with the same taxpayer number (§ 301). Annually adds 2,000 DOL compliance investigators to enforce H-2C program (§ 412).
	Employer Penalties for Hiring Illegal Aliens	Increases civil penalties for employers who hire illegal aliens: 1st offense is increased from \$250-\$2,000 to \$5,000-\$7,500; 2nd offense is increased from \$2,000-\$5,000 to \$10,000-\$15,000; 3rd offense is increased from \$3,000-\$10,000 to \$25,000-\$40,000; Reduces civil penalties for businesses depending on size: penalties for those with an average of 25 or less employees are reduced by 60%; those with an average of 26 to 100 employees are reduced by 40%; those with an average of 101 to 250 employees are reduced by 20%; provides exemption from civil penalties for a first violation made in good faith. Increases criminal penalty for a pattern of hiring unauthorized aliens from a fine of \$3,000 and up to 6 months to a fine of \$50,000 and not less than one year (§ 706 contains all penalties)	Increases civil penalties for hiring unauthorized aliens: minimum penalty for each offense is increased from \$250-\$2,000 to \$500-\$4,000; range for 2 nd offense w/n 12 months is \$4,000-\$10,000; range for 3 rd offense w/n 24 months is \$6,000-\$20,000; employers who fail to keep records or use system are subject to a civil penalty of: for 1 st offense, \$200-\$2,000; for 2 nd offense, \$400-\$4,000; for 3 rd offense, \$600-\$6,000; <u>Gives DHS discretion to reduce penalties</u> (§ 301(e)). Increases criminal penalty <u>from 6 months to 3 years</u> and increases the fine from \$3,000 to \$20,000 (§ 301).

* Blue text indicates provisions added by amendment.

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Enforcement Provisions

Border Enforcement	Directs DHS to take necessary steps to achieve operational control of the borders within 18 months (§ 101); Creates segments of border fence (698 miles total) along southern border (§ 1002); Directs DHS to establish a border security advisory committee (§ 304); Directs DHS to develop a “national strategy for border security” (§ 102); Directs DHS to report to Congress on the implementation of cross-border security agreements between the U.S., Mexico, and Canada (§ 103); Directs DHS to report to Congress on the “tangible and quantifiable benefits” of the One Face at the Border Initiative (§ 105); Over 5 yrs, annually increases trained detection canines by 25% (§ 108); Requires DHS to deploy radiation portal monitors within one year to all ports of entry and cargo screening facilities as determined by DHS (§ 116)	Authorizes replacing old and building new fencing (370 miles) along urban areas of southern border, but requires prior consultation with Mexico (§§ 106, 117); Authorizes use of National Guard to supplement border patrol at southern border (§ 133) ; Allows use of DOD equipment for aerial surveillance (§ 102); Directs DHS to develop a Surveillance Plan for the border (§ 111); Directs DHS to develop a “National Strategy for Border Security” (§ 112); Directs DHS and State Dept. to work with Mexico, Guatemala, and Belize to improve Mexico’s southern border (§ 114).
Customs and Border Protection	Adds 1,000 full-time port of entry inspectors over four years; Authorizes appropriations for Border Patrol agents added in Intelligence Reform Act (§ 101); Directs DHS to implement a plan to ensure secure two-way communication between Border Patrol agents (§ 106); Requires Comptroller General to review basic training of Border Patrol agents (§ 110); Creates a Border Patrol unit for the Virgin Islands (§ 113); Requires Border Patrol uniforms to be manufactured in the U.S. (§ 119); See also § 101.	Adds 2,500 point of entry inspectors over 5 years (§ 101); Authorizes 5,000 new border patrol agents over 5 years (§101); Increases Border Patrol helicopters and power boats (§ 162) ; Authorizes Border Patrol to maintain temporary or permanent checkpoints on roadways near the border (§ 104). Authorizes DHS to construct additional ports of entry and to make improvements to existing ones (§ 105);
Immigration and Customs Enforcement (ICE)	<i>Note: Does not add ICE personnel, but does add 700 investigators over 4 years to USCIS to investigate internal corruption and benefits fraud. See H.R.4437 §§ 1301-1310.</i>	Adds 11,000 ICE agents over 5 years; requires that at least 25% of ICE work hours be dedicated to worksite enforcement (§ 303) ; Adds 1,000 new DHS investigators to detect fraud and alien smuggling (§ 101).
Local and State Authorities	Affirms inherent authority of state and local law enforcement agencies to enforce federal immigration law; Prohibits language from being construed to require sharing of information on aliens who are victims of or witnesses to crimes (§ 220).	Affirms state and local law enforcement authority to enforce criminal immigration laws (§ 229); Restricts arrest authority for aliens smuggling crimes to federal officers (§ 205).
Detention Facilities	Requires DHS to “fully utilize” all available detention facilities operated or contracted by DHS (§ 403)	Requires the acquisition or construction of at least 20 detention facilities with combined capacity of 20,000 beds (§ 233).
Expedited Removal	Requires use of expedited removal for OTMs who are apprehended within 100 miles of the border within 14 days of entry; also permits use of expedited removal on aggravated felons (§§ 407, 610).	Requires use of expedited removal for OTMs who are apprehended within 100 miles of the border within 14 days of entry (§ 227); Permits use of expedited removal on incarcerated aliens (§ 227).

Document Reform

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Document Integrity	Requires connectivity between IDENT and IAFIS fingerprint databases; requires collection of 10 fingerprints from each alien required to submit them under IIRAIRA (§ 104).	Requires enhanced connectivity between IDENT and IAFIS fingerprint databases by October 1, 2007 (§ 121) Adds anti-fraud measures and biometric data to all visa and immigration documents (§ 126); Requires collection of fingerprints from each alien required to submit them under IIRAIRA (§ 121).
Fraud Prevention	Requires DHS to distribute and collect information on document fraud from federal, state, and local agencies, turn that information into reports on document fraud, and to distribute those reports to federal, state and local law enforcement agencies (§ 210); Requires that allegations of immigration benefits fraud be cleared before any immigration benefits are granted or documentation is issued (§ 122).	Adds 1,000 fraud detection personnel to DHS over 5 years (§ 303); Directs DHS to train CBP officers in detecting fraudulent documents (§ 125).
Penalties for Document-Related Fraud	Rewrites Ch. 75 of Title 18 (relating to passport, visa, and immigration fraud) adding new sections on seizure and forfeiture; additional jurisdiction; venue; and authorized law enforcement activities (§ 213); adds distribution of false documents as crime; doubles penalties for document fraud (§ 618)	Rewrites Ch. 75 of Title 18 (relating to passport, visa, and immigration fraud) adding new sections on seizure and forfeiture; additional jurisdiction; venue; and authorized law enforcement activities (§ 208).
US-VISIT	Requires DHS within a year of enactment to submit a timeline for: (1) equipping all land border ports of entry with the system; (2) developing and deploying at all land border ports of entry the exit component of the system; and (3) making all immigration screening systems operated by DHS interoperable (§ 120).	Requires DHS within a year of enactment to submit a timeline for: (1) equipping all land border ports of entry with the system; (2) developing and deploying at all land border ports of entry the exit component of the system; and (3) making all immigration screening systems operated by DHS interoperable (§ 124).

Change in Status for Illegal Aliens

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<p>Amnesty Options Available to Illegal Aliens</p>	<p>N.A.</p>	<p>“Earned Adjustment” for illegal aliens present on/before April 5, 2001; Deferred Mandatory Departure for aliens present on January 7, 2004; AgJobs (see Subtitle B of Title VI); DREAM Act (see Subtitle C of Title VI)</p>
<p>Conditions for Participation</p>	<p>N.A.</p>	<p>For earned adjustment, the alien must: (1) show presence on or before April 5, 2001 and may not have departed since that date, except for brief periods; (2) general admissibility under INA § 212 (<u>numerous provisions are waivable</u>); (3) employment for 3 yrs out of 5-yr period prior to the alien’s application; (4) employment 6 years after date of enactment (<u>part-time permissible, reduced for those under 21, college study qualifies</u>); (5) pay taxes since April 5, 2001 (there are various ways to interpret this language); (6) must learn English and civics (as already required by INA § 312); (7) must submit fingerprints for background check (although no deadline is given); (8) register for selective service; and (9) pay \$3,250 in fines (§ 601). For “deferred mandatory departure status,” the alien must: (1) show presence in the U.S. on Jan. 7, 2004 and may not have departed since except for brief periods; (2) show employment before January 7, 2004 (<u>but it does not have to be continuous or full-time</u>); (3) show employment continuously that date (<u>except for periods of 60 days or less</u>); (4) establish general admissibility under INA § 212 (<u>numerous provisions are waivable</u>); (5) undergo a background check; (6) pay a \$2,250 fee (§ 601).</p>
<p>Eligibility for Legal Permanent Resident Status (LPR Status)</p>	<p>N.A.</p>	<p>“Earned adjustment” automatically leads to LPR status, but note that there is no clear legal status granted in the interim (§ 601(b)). Aliens granted “Deferred Mandatory Departure” status may apply for any nonimmigrant or immigrant visa while in the U.S. (§ 601); <u>Note that caps for all nonimmigrant visas (including H-2Cs) are waived for applicants with Deferred Mandatory Departure Status</u> (§ 601).</p>
<p>Sanctions for Illegal Aliens</p>	<p>Makes unlawful presence a crime punishable by a year and a day (felony); increases criminal penalty for illegal entry from 6 months (misdemeanor) to a year and a day (felony)(§ 203).</p>	<p>No change to current law.</p>

Guest Worker Program

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Type of Guest Worker Visa	N.A.	H-2C visa; not sector-specific, but excludes agricultural work (H-2A), high-tech work (H-1B) and work falling under certain other visas (§§ 402-403).
May Illegal Aliens Apply from Inside U.S.?	N.A.	Yes. Illegal presence prior to enactment may be waived (§ 403).
Requirements for Guest Worker Program	N.A.	H-2C applicants must establish capacity to work; an offer of employment; general admissibility (<u>numerous provisions of § 212 are waivable</u>); pay a \$500 fee; undergo medical exam and a background check (§ 403); <u>Note that numerical cap of 200,000 on H-2C visas is waived for applicants with deferred mandatory departure status</u>
Ineligible Aliens	N.A.	Terrorists and <u>aliens with conviction of a felony or 3+ misdemeanors are ineligible; certain removable aliens eligible for waivers</u> (§ 403).
Length of Visa	N.A.	H-2C is valid for 3 years and renewable once; maximum length is 6 years (§ 403).
Early Dismissal of Worker	N.A.	H-2C alien may be unemployed for 60 days, <u>or longer if resulting from circumstances not under alien's control</u> , after which alien must return home before reapplying for H-2C visa (<u>return requirement may be waived</u>)(§ 403).
Opportunity to Adjust Status?	N.A.	Yes: anytime w/ employer sponsorship; after 4 years in U.S. as H-2C alien; <u>or if DOL certifies there are no U.S. workers available & alien establishes current employment</u> (§ 408(h)).
Portability of Visas	N.A.	Yes (§ 403).
Employer Responsibilities	N.A.	Employers of H-2Cs must: file a petition; pay fee; attest that hiring H-2Cs will not depress wages of similar workers or cause layoffs. Must also pay H-2Cs the greater of the actual wage of those similarly employed or the prevailing wage and provide same benefits and conditions as similar workers (§ 404). Provides it is unlawful to intimidate discriminate or retaliate against H-2C workers for reporting violations (§ 404). Employers subject civil and criminal penalties for violating agreements with workers (§ 404).
Advertisement of Jobs Prior to Hiring Guest Worker	N.A.	Must post job openings at prevailing wage rate (§ 407); <u>must send posting to state employment agency for posting and circulation; must post in conspicuous place at worksite</u> (§ 404)
Health Care for Guest Workers	N.A.	Must provide insurance if alien is not covered by workers' compensation laws (§ 404).
Families May Visit the U.S.	N.A.	Spouse and children may accompany under H-4 visa (§ 403).

Changes in Legal Immigration

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Employment-Based Visas (green cards)	N.A.	Increases employment-based visas from 140,000 to 450,00 for 10 years, then annual cap drops to 290,000 (§ 501(b)); Provides that cap automatically increases by the number of unused employment visas from previous years (§ 501(b)); Provides that family members may be admitted via employment based visas to the extent a 650,000 ceiling is not exceeded (exempts visas issued for earned adjustment or deferred mandatory departure) BUT SEE § 524(a) which appears to contradict this ; Reallocates employment-based visas to increase percentage given to skilled workers and unskilled workers (§ 503(b)); Annually reserves 30% of unskilled immigrant visas for aliens present before Jan. 7, 2004 (§ 503(b)(7)); exempts persons with advanced degrees from cap (§§ 508, 524); Adds \$500 fee for LPR adjustment (§ 527); Creates streamlined and expedited process for employers who file petitions (§§ 528-529); Requires DOL to process prevailing wage info for labor certification w/n 20 days (§ 530)
Family-Based visas (green cards)	N.A.	Reallocates family-based visas (§ 503); expands definition of immediate family member (§ 504).
Country Caps (green cards)	N.A.	Increases country caps from 7% to 10% (for a single foreign state) and from 2% to 5% (for a single foreign dependent) (§ 502).
Student Visas	N.A.	Expands F visas to include aliens engaged in certain professional training (§ 525); Creates F-4 visas for foreign students accepted to graduate programs in math and sciences, allows F-4 students to engage in distance learning programs and provides that such aliens need only be temporarily in U.S. (§ 507(a)); expands J visas to include foreign students accepted to graduate programs in math and sciences (§ 507(b)); allows F-4 and J-2 aliens who have earned degrees to apply for LPR status (§ 507); authorizes extension of F-4 and J-2 visas to give holder time to apply (§ 507); allows foreign students to work in off-campus jobs (§§ 507, 525).
Temporary Work Visas	N.A.	Allows F-4 or J-2 aliens classified as extraordinary ability, professors and researchers to apply for LPR status (§ 507); exempts graduates from U.S. universities from labor certification requirements (§§ 508, 524); exempts degree earners from U.S. universities from H-1B cap (§ 508); Increases H-1B visa cap from 65,000 to 115,000 with an automatic 20% escalator (§§ 508, 524); extends the J-1 visa program for doctors (§ 226); Puts limits on L-1 visa program (§ 411).