

POLICY MATTERS

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Missed Opportunity for Long Sought After Immigration Legislation. With Senator McConnell fulfilling his promise to bring an open immigration debate to the Senate floor this week, both partisan and bipartisan solutions were offered by lawmakers. However, as noted below, none of the measures were able to pass through the Senate this afternoon. Considering the Senate has been able to pass comprehensive immigration reform legislation in the recent past (e.g., [S. 744](#) in 2013), some might view this as another sign that Washington is more divided than ever.

Obviously immigration reform has been a contentious sticking point in Congress for quite some time. Legislative efforts over the last decade have centered around five basic issues: 1) the proper level of border security and enforcement; 2) the need for temporary worker programs, whether high-skilled or low-skilled, and whether these workers undermine US workers; 3) should the approximately 11 million undocumented immigrants (or some subset of those) be legalized under certain conditions; 4) should employers be required to use an electronic verification system to supplement or replace the current I-9 process; and 5) the appropriate mix of immigrants coming in on family and employer based visas, and the degree to which "merit" (beyond family relationships) should govern the allocation of visas. These longstanding issues will continue to complicate the search for a solution to resolve the fate of the Dreamers.

While the Senate could potentially revisit attempts for a DACA fix following their recess next week and before the March 5 deadline, the chances of that seem unlikely. After this week's outcome in the Senate, it is unclear whether Speaker Ryan will bring a bill to the floor in the House. Stay tuned.

Thursday Afternoon Votes in the Senate. Senator McConnell filed cloture on the four amendments below last night and the Senate proceeded to vote on the motion to invoke cloture on said amendments this afternoon. All four measures failed to garner the necessary 60 votes to advance.

1. Durbin for Coons amendment #1955 (Uniting and Securing America Act of 2018)
Result: Not invoked, 52 - 47.
2. Toomey amendment #1948 (Sanctuary Cities)
Result: Not invoked, 54 - 45.
3. Rounds amendment #1958 as modified (same as Rounds/King amendment #2010, the Immigration Security and Opportunity Act)
Result: Not invoked, 54 - 45.
4. Grassley amendment #1959 (SECURE and SUCCEED Act)
Result: Not invoked, 39 - 60.

Bipartisan Proposal Falls Short in the Senate. Led by Senators Mike Rounds (R-SD) and Angus King (I-ME), the bipartisan “Common Sense Caucus” released their immigration proposal yesterday. Their amendment somewhat [follows the president’s framework](#) by granting legal status to 1.8 million Dreamers, authorizing \$25 billion in border security spending (doled out at \$2.5B / year over 10 years), and curbing family-based immigration by preventing legalized Dreamers from sponsoring their parents for citizenship. However, the bill would not end the diversity visa lottery program, one of the priorities of President Trump’s four-part plan. While the proposal received the most bipartisan support [among any of the amendments offered](#), including Minority Leader Chuck Schumer (D-NY), it ultimately failed to achieve 60 votes.

Hatch Pivots to H-1B’s in Immigration Debate. On Wednesday, Senator Orrin Hatch (R-UT) filed five different amendments aimed at increasing employer access to specialized foreign guest workers through the H-1B visa program. The amendments largely came straight out of Hatch’s [I-Squared Act](#) that was filed in January, which champions an [approach](#) to reforming high-skilled worker immigration that could vastly increase U.S. businesses’ access to high-skilled foreign workers. The bill would increase the H-1B cap from 65,000 to 115,000 with an escalator provision up to 195,000 depending on a given fiscal year’s filing patterns. Among numerous other provisions, the bill would uncap the number of workers under the advanced degree exemption and create a series of exemptions to the employment-based green card cap. Unfortunately, the Senate did not take up any of Senator Hatch’s amendments during votes today.

House Vote on Bill Addressing ADA Drive-By Lawsuits. Earlier today, the House passed [H.R. 620](#), the “ADA Education and Reform Act of 2017.” Sponsored by Rep. Ted Poe (R-TX), the bill seeks to limit “drive-by” lawsuits that are brought against businesses by serial plaintiffs in search of quick settlements from businesses. The bill would require plaintiffs to first deliver a written notice to a business detailing the illegal barrier to access. After written notice is received, that business would then have 60 days to come up with a plan to address the complaints and an additional 120 days to make “substantial progress” in removing the barrier. Seyfarth’s [Minh Vu](#) has been following legislative activity on the bill and provides a more in-depth look at the bill’s provisions [here](#).

DOJ Tells Court that Suspending Proposed EEO-1 Provisions was Lawful. The controversy regarding the proposed revisions to the EEO-1 form continues in federal court. As a refresher, the EEOC proposed to amend the EEO-1 employer data report to require employers to file extensive reports detailing the compensation paid to their employees. The proposal was met with criticism as many experts stated that the data request was extremely burdensome, would produce information of no legal value, and that there were no systems in place to protect the confidentiality of the report. Seyfarth’s [Camille Olson testified before the EEOC](#) on behalf of the U.S. Chamber of Commerce to highlight these deficiencies. After the proposal was adopted in 2016, Seyfarth headed the Chamber’s efforts to get further review of the requirement. In February 2017, the Chamber [filed an appeal to OMB](#) (signed by current Seyfarth partner [Randy Johnson](#)) which eventually led to implementation of the EEO-1 revisions being postponed.

A Seyfarth client, DHL, also [filed a detailed analysis](#) of the proposal highlighting its burdens and ineffectiveness in identifying compensation discrimination. After OMB sent the proposal back to the EEOC, two groups filed a challenge in federal court claiming that the OMB action was not appropriate. The [DOJ recently replied](#) noting that OMB had the statutory authority to review any approved data collection requirement under the Paperwork Reduction Act. We will continue to monitor the litigation as well as any other developments regarding required government data requests.

Confirmation Hearing for NLRB Nominee Ring Delayed. As highlighted in last week’s edition of *Policy Matters*, a Senate HELP Committee hearing was previously scheduled for February 14 for NLRB nominee John F. Ring. However, at the request of Ranking Member Patty Murray (D-WA), [Ring’s hearing has now been rescheduled for March 1](#). Murray’s request was made in order to give fellow lawmakers more time to review other activities at the NLRB, including the [investigation into Member Bill Emanuel’s participation in overturning Browning-Ferris](#) and General Counsel Peter Robb’s plan to restructure the agency’s field office system. A committee vote on Ring has been scheduled for March 7.

House Hearing on Opioid Abuse and the Workplace. Earlier today, the Subcommittee on Health, Employment, Labor, and Pensions jointly with the Subcommittee on Workforce Protections, both of the Education and the Workforce Committee, held a [hearing on “The Opioids Epidemic: Implications for America’s Workplaces.”](#) The hearing focused on what policies employers have identified that successfully provide support to employees who struggle with opioid abuse. We will also be stressing that the federal government must not tie employers’ hands when it comes to addressing opioids in the workplace, but instead it should ensure employers are allowed to provide support and resources to assist employees and their family members struggling with opioid abuse.

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