



Legislative Bulletin..... July 30, 2014

Contents:

H.R. 5230 – Making supplemental appropriations for the fiscal year ending September 30, 2014, and for other purposes

H.R. 5230 – Making supplemental appropriations for the fiscal year ending September 30, 2014, and for other purposes (Rogers, R-KY)

Order of Business: The legislation may be considered on the floor, subject to a rule, on Thursday, July 31, 2014.

Summary: [H.R. 5230](#) provides \$659 million in supplemental funds (in addition to currently appropriated FY2014 funding) to address the border crisis. \$462 million of the funds are available through FY2015 (September 30, 2015). **Detailed breakdown of the appropriations below:**

- Division A-Title I provides an additional \$71 million for Salaries and Expenses for the U.S. Customs and Border Protection service to remain available until September 30, 2015.
- Division A-Title I provides an additional \$334 million for Salaries and Expenses for U.S. Immigration and Customs Enforcement to remain available until September 30, 2015.
- Division A-Title II provides an additional \$12.4 million for the Army National Guard and \$2.3 million for the Air Force National Guard Military Personnel accounts. It provides an additional \$15.8 million for the Operation and Maintenance Accounts of the Army National Guard and \$4.5 million for Operation and Maintenance account of the Air National Guard. The funds made available in this title are available through September 30, 2015.
- Division A-Title III provides an additional \$22 million for the Department of Justice for Administrative Review and Appeals to remain available through September 30, 2015.
- The legislation also provides up to \$40 million of previously appropriated funds assistance for Central American countries for repatriation and reintegration activities. The funds authorized for Central American countries may be suspended if the government of a Central American country does not make significant progress in helping to prevent the flow of people to the U.S. border.
- Division A-Title V provides an additional \$197 million for the Department of Health and Human Services Refugee and Entrant Assistant program.

To pay for these additional funds, a total of \$659 million of rescissions are made as follows: \$405 million of the unobligated balance of the “Department of Homeland Security-Federal Emergency Management Agency-Disaster Relief Fund,” \$35 million of the unobligated balances for “Operation and Maintenance, Defense-Wide,” and \$22 million of the unobligated balances available for “Department of Justice – Legal Activities – Assets Forfeiture Fund.” The bill rescinds \$197 million of the unobligated balance available to the President for bilateral economic assistance under the heading “Economic Support Fund.”

Summary of Policy Changes:

- **Equalization of Treatment for Unaccompanied Alien Children (UACs) from Mexico and Central America:** The legislation amends the William Wilberforce Victims Protection Reauthorization Act of 2008 (“TVPRA”) ([8 U.S.C. 1225](#)) to equalize the treatment of unaccompanied alien children (UACs) from Canada, El Salvador, Guatemala, Honduras, Mexico and any other foreign countries that the Secretary of Homeland Security determines appropriate. It also amends TVPRA to provide expedited removal proceedings for UACs and prohibits UACs from being released from the custody of the United States Government until the child is repatriated. The legislation requires an immigration judge to conduct an inspection of the unaccompanied child within 7 days after the first screening under TVPRA. The immigration judge is required to issue an order regarding the immigration status of the child within 72 hours after the conclusion of the proceeding. The screening can be done in person or remotely through video or telephone conference. The legislation contains safeguards to protect mentally incompetent aliens. There are other safeguards to protect the rights of the aliens such as the right to counsel, at no cost to the Government, and the ability to review the evidence. The alien can withdraw their application for admission to the United States at any time and be immediately returned to their home country. The legislation also contains penalties, such as an order of removal from the United States, for failure of the alien to appear at proceedings. In a proceeding to determine whether the UAC is likely to be admissible to the United States or eligible for any relief from removal the alien has the burden, by a preponderance of the evidence, to prove that they are likely to be granted relief from removal or likely to be admitted or are lawfully present in the U.S. If the judge determines the UAC has met the burden of proof, then the UAC will be placed in further proceedings. If the judge determines that the UAC has not met the burden of proof, he or she will be ordered to be removed unless he or she claims an intention to apply for asylum or a fear of persecution.
- **Asylum Claims:** Aliens who claim asylum will be subject to a “credible fear” interview by an asylum officer. Credible fear of persecution is defined by the Immigration and Nationality Act ([8 U.S.C. 1225\(b\)\(1\)\(B\)\(v\)](#)) as “a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.” In general, ([see Section 1158](#)), to be eligible for asylum, the applicant must establish that he/she is a refugee, the applicant must also establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant. In general terms, a refugee is someone who is outside of his or her home country because of persecution or a well-founded fear of persecution. (For a detailed definition of

“refugee” see [8 U.S.C. 1101\(a\)\(42\)\(A\)](#)) If the asylum officer determines that the child has a credible fear of persecution then he or she will be held by the Secretary of the Department of Health and Human Services (HHS) pursuant to Section 235b of TVPRA” ([8 U.S.C. 1225](#)). If the officer determines that the alien does not have a credible fear of persecution then he or she shall be ordered to be removed from the U.S. The asylum officer is required to prepare a written report of the reasons for the determination.

- **Review of Asylum Claims:** This determination can be reviewed by an immigration judge subject to a process established by the Attorney General by regulation. The review process must provide an opportunity for the alien to be heard by an immigration judge (in person or through video or telephonic conference). The review must be conducted no later than 7 days after the initial determination by the asylum officer. All aliens under review must be held by the Secretary of HHS according to TVPRA (8 U.S.C. 1232 (b)) until a final determination of their asylum application or until removal if a judge determines that the alien does not have a credible fear of persecution. The removal order is not subject to administrative appeal.
- **Timing of Removal Proceedings:** The most recent arrivals to the United States will be dealt with first under a “last in, first out” policy.
- **Due Process protections for UACs present in the U.S:** The legislation creates a system of due process for UACs that were issued a Notice to Appear by an immigration court between January 1, 2013, to the date of enactment of the Act to permit them to appear in-person, before an immigration judge, state their desire to apply for admission to the United States, and file a motion to replace a Notice to Appear issued between January 1, 2013, and the date of enactment of the Act and to apply for admission to the United States under Section 235B of the Immigration and Nationality Act (“INA”). An immigration judge, at his or her sole and unreviewable discretion, may grant the UAC’s motion to replace the Notice to Appear. If the motion to replace the Notice to Appear is approved, while the UAC remains in person, the judge who granted the motion may immediately inspect the child for admission into the U.S. and replace the Notice to Appear with a order under section 235B(e) of INA.
- **Additional Judges:** The legislation allows the Attorney General of the United States to designate up to 40 immigration judges that are dedicated to conducting humane and expedited inspection and screening for UACs. The categories of judges that can be hired include retired judges, administrative law judges, or the reassignment of current immigration judges.
- **Safeguards for Placement of UACs:** TVPRA is amended to prohibit the placement of UACs with anyone convicted of sex offenses or human trafficking and requires a criminal background check before placement.
- **Ineligibility for Asylum:** The Immigration and Nationality Act is amended to make anyone convicted of a drug offense punishable by prison term of more than one year ineligible for asylum.
- **National Guard:** The legislation allows appropriated funds to be used for the National Guard that are deployed to secure areas of the border that experience a high traffic of UACs.
- **U.S. Customs and Border Protection on Federal Lands:** The legislation prohibits actions that impede border security on federal lands. Specifically, the legislation prohibits the Secretary of Agriculture and the Secretary of the Interior from taking any

actions which impede the activities of the U.S. Customs and Border Protection within 100 miles of the U.S. border with Mexico. U.S. Customs and Border Protection is granted immediate access to these lands to construct border protection infrastructure (roads, barriers, surveillance equipment). This Act does not have effect on State or private lands and does not provide authority or access to State or private lands. Legislation aiming to ensure border security on federal lands has been advocated by many RSC Members including Rep. Pearce, Rep. Goodlatte, Rep. Bishop, and Rep. Franks.

- **Sense of Congress:** The bill also contains a Sense of Congress that unauthorized aliens shall not be placed at military installation unless certain procedures are followed.

Additional Information: There has been a recent surge in border crossings by Unaccompanied Alien Children (UACs) from Guatemala, Honduras, and El Salvador. The President sent a [letter](#) to Congress on June 30, 2014, in which he stated “we are eager to work with the Congress to ensure that we have the legal authorities to maximize the impact of our efforts.”

On July 8, 2014, the President requested that Congress approve \$3.7 billion in emergency supplemental funds to address the border crisis. The letter is available [here](#). The Congressional Budget Office conducted a [cost estimate](#) of the President’s request and estimated outlays of \$25 million by the end of FY 2014 (September 30, 2014). A better indication of how much of the new spending authority would be used before September 30, 2014, would be an estimate of total obligations (contracts entered, etc.) before that date. However, CBO did not, and does not routinely, provide estimates of obligations over a certain time period.

Speaker Boehner asked Rep. Kay Granger (TX-12) to Chair the House Working Group to address the border crisis. On July 23, 2014, Congresswoman Granger released the recommendations of the Working Group. The recommendations are available [here](#).

Some conservatives believe policies not taken up by the Working Group or the bill under consideration have contributed to the ongoing border crisis as well.

DACA: The Heritage Foundation published an [article](#) pointing to the Obama Administration’s Deferred Action for Childhood Arrivals (DACA) program as a major draw for people to enter the United States illegally. Representative Blackburn introduced a bill, [H.R. 5160](#) “To prevent the expansion of the Deferred Action for Childhood Arrivals program unlawfully created by Executive memorandum on August 15, 2012.” Rep. Blackburn’s bill prohibits the expansion of DACA and prohibits the Federal government from authorizing any aliens to work that are not compliant with INA (8 U.S.C. 1101) or have lawful status. DACA allows people who have resided in the United States continuously since June 15, 2007, arrived in the U.S. before June 15, 2012, came to the U.S. before the age of 16, and were under 31 years old as of June 15, 2012, to apply for deferred action for removal proceedings for a period of two years, during which they cannot be removed. During this time they are also eligible for work authorization. Detailed information about DACA can be found on the United States Customs and Immigration website [here](#). This legislation does not address DACA.

Definition of Asylum. According to the [U.S. Citizenship and Immigration Services](#) asylum is

legal status for people who have “suffered persecution or fear that they will suffer persecution due to Race, Religion, Nationality, or Membership in a particular social group or political opinion.” The Judiciary Committee, under Chairman Goodlatte, issued a press release on the subject, “Judiciary Obtains Data Showing Majority of Central Americans’ Asylum Claims Immediately Approved,” available [here](#). The press releases states that “65% of unaccompanied alien minors’ asylum applications have been immediately approved by asylum officers in Fiscal Year 2014.”

Past Border Supplementals: On August 10, 2010, the House passed an emergency border supplemental appropriations bill by voice vote, H.R. 6080, that because public law [111-230](#). The legislation appropriated \$600 million in emergency funds for border security.

Committee Action: The bill was introduced on July 29, 2014, and referred to the House Committee on Appropriations. There was no further action by the Committee on the bill.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: No Congressional Budget Office cost estimate is available.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. It authorizes supplemental funds, some of which are available through the end of FY2015, September 30, 2015.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The constitutional authority statement is unavailable.

RSC Staff Contact: Scott Herndon, Scott.Herndon@mail.house.gov, (202) 226-2076.

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*
